

PSYCHOLOGY AND THE LEGAL SYSTEM

SECOND EDITION

Lawrence S. Wrightsman

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Psychology and the Legal System

Second Edition

Lawrence S. Wrightsman
University of Kansas



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*Dedicated to Franz Joseph Haydn, who wrote:
"Since God gave me a joyful heart,
He will forgive me for having served Him joyfully."*

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Preface

Citizens of the United States—more than those of any other country—are quite ambivalent about their legal system. The man who complains “Where is a cop when you need one!” when he is mugged may, a week later, brag to his family about how he fooled the Internal Revenue Service on his tax return. The woman who demands that the government require food producers to provide nutritional information about their products may rant and rave about the mass of governmental regulations that consume her time at work.

No other country in history has been so obsessed with the law as the United States. Lawyers continue to be distrusted; yet their numbers grow, and they are increasingly consulted when people face decisions or respond to emergencies. Americans are reminded that their country is “a nation of laws, not of men”; yet they are also told (by some, at least) that social change will not result from new regulations alone.

The pervasiveness of the law demands analysis, and in the last 15 years especially, scholars from a wealth of disciplines have applied their concepts to the legal system. As one of those perspectives, psychology has much to offer. The purpose of this book is to examine the legal system through the use of psychological concepts, methods, and findings. The primary audience for the book is students taking a course in the psychology of the law or the criminal justice system, as well as others who are considering law as a profession. This book may also be used as a supplement in those undergraduate psychology courses that emphasize applied social psychology, social issues, or policy analysis. In addition, it offers coverage of a number of topics relevant to law school courses that introduce law students to social science findings and applications.

■ Organization

The book is organized by means of four basic conflicts that pervade a psychological analysis of the law. These conflicts generate dilemmas that persist, whether the topic is the training of lawyers, the punishments prescribed by judges, or the

rights of mental patients. Society demands responses to these conflicts, and psychology provides methods and empirical results that bear on their resolutions. Chapter 1, by introducing these conflicts and dilemmas, serves as an organizing structure for the rest of the book. Chapter 2 identifies four roles for psychologists in response to the dilemmas in Chapter 1; much of the material in this chapter is not found in other psychology-and-law texts.

Textbooks on psychology and the law are mostly a product of the decade of the 80s, and fewer than a dozen have appeared. The field is still taking shape. The earliest texts focused on the courts; others limit their coverage to the criminal justice system; some acknowledge that they are selective for other reasons. This book aspires to be comprehensive in its coverage of research-related issues. The criminal justice system is not slighted; a chronological treatment of this process is provided, with chapters on the police, criminal investigations, bail setting and plea bargaining, the trial process, sentencing, and theories of crime. But the book's coverage extends beyond this cluster of topics. I believe that psychology has much more to offer; for example, the socialization and training of lawyers has received empirical study in recent years, in studies summarized in Chapter 4. The appellate process, neglected in most other books, also receives chapter-length coverage. Conceptions of morality and legality that form a cornerstone for responses to the conflicts are analyzed in Chapter 3 and then utilized in subsequent chapters of the book. An entire chapter is devoted to the psychological analysis of rape.

Other, more specialized topics that receive extended coverage (often for the first time in such a book) include recent views on the hereditary explanations of criminal behavior, the use of confessions as evidence, entrapment, masculine and feminine conceptions of justice, death-qualified jurors, alternative dispute resolution, prisoners' rights, and children's rights. This text offers a variety of devices to aid students in their learning. Each chapter begins with a chapter outline and ends with a detailed summary. Throughout the book, examples from actual cases and trials—often in the form of interest boxes—are used to illustrate concepts and stimulate thought. Frequently used concepts are cross-referenced. A glossary of terms, prepared by Nancy W. Perry of Creighton University, with assistance from Angela Kraybill, appears at the end of the text. A separate instructor's manual is available from the publisher.

One of the pitfalls of a psychological analysis of a phenomenon is that, because of newer findings and concepts, it soon becomes out-of-date. When the topic is a psychological analysis of the legal system, the need for revision is exacerbated. This second edition reflects more-recent laws and court decisions on such diverse topics as children's rights, the exclusionary rule, and the use of the polygraph, among others. In addition to 685 references from the first edition, this edition includes 340 new references. The order of chapters has been somewhat changed; theories of crime are now reviewed in Chapter 5, so that they may be applied to the material in subsequent chapters. The chapter on rape (Chapter 14) now follows those on a chronological analysis of the criminal justice system.

The responsibility of a textbook author does not end with the preparation of the book manuscript; any publication is only a step in the never-ending search for understanding. I continue my search; I earnestly hope that the second edition of *Psychology and the Legal System* will aid you in yours.

■ Acknowledgments

The genesis of this book was an Intra-University Visiting Professorship awarded to me for the 1981–1982 academic year, funded through a grant to the University of Kansas from the Exxon Foundation. The grant permitted me to develop a new undergraduate course, “Psychology and the Law,” oriented primarily toward juniors and seniors; I taught this course for the first time during the next academic year. The grant also relieved me of all teaching and administrative responsibilities for the year so that I could sit in on courses at the University of Kansas School of Law. Professor Sally Y. Sedelow, then associate dean of the College of Liberal Arts and Sciences, and Professor Michael D. Storms, then chair of the Department of Psychology, encouraged me to seek this extremely useful professional training.

During that year, I was in some ways both “fish” and “fowl,” both professor and student. After almost 30 years on the other side of the lectern, I found that being called on to recite as I sat in the midst of 200 law students was an anxiety-producing experience. But the law school faculty was also generous in both its advice and its interest. After consulting with Professor Laurence Rose, my sponsor at the law school, and with Professor Phillip Kissam, my informal host there, I participated in a variety of courses, ranging from “Evidence and Legal Ethics” to “Jurisprudence,” to “Trial Advocacy” and a litigation workshop. Dean Michael Davis of the School of Law eased my transition to semistudent status by providing office space at the law school; most law students are not so fortunate!

The experience of immersing myself in a different environment for a year helped me to explore some of the dilemmas that are used as organizing themes in this book. Dilemmas are often not capable of resolution; yet they force choices between equally appealing alternatives and thus cannot be avoided. The course I teach and the book that unfolded from it reflect the differing perspectives that psychology and the law often bring to these dilemmas.

While preparing this second edition, I have benefited from the support system provided by the Department of Psychology at the University of Kansas. Edwin Martin, chair of the Department of Psychology, and Dennis Karpowitz, associate chair, have been very responsive to my requests for assistance. Most of the chapter drafts were typed by Jennifer Lamb, the best typist I have ever had, assisted by Lori Larison and Lynn Porter.

The ideas expressed on the pages of this book are better because of suggestions made by the reviewers who examined the draft of the first edition. They are Ellen Cohn of the University of New Hampshire, David Gottlieb of the School of Law at the University of Kansas, Valerie P. Hans of the University of Delaware, and Gary L. Wells of the University of Alberta. The prepublication reviews for this edition were provided by John C. Brigham of Florida State University, Ellen Cohn of the University of New Hampshire, Richard Leavy of Ohio Wesleyan University, Kathy A. Olson of the University of Nebraska, Joseph J. Palladino, of the University of Southern Indiana, and Nancy W. Perry of Creighton University. The expertise and insights of all these reviewers have greatly contributed to the quality of the book; to each of them I express my gratitude.

My first book contract with Brooks/Cole Publishing Company was signed 25 years ago. Now—more than two decades, seven different books, and about 15

revised editions later—many aspects of my life have changed, but my feelings about B/C have remained the same: the company combines meticulous care about the production of books with a sincere concern about the nurturance of its authors. Through most of this 25-year period, Claire Verduin, the sponsoring editor of this book, has epitomized the company's image for me. She always combines genuine praise and gentle nudges in a most effective manner. It is a pleasure to work once again with Fiorella Ljunggren, the production coordinator, and to be the recipient of her warm renewal of me into the Brooks/Cole family. Stacey C. Sawyer deserves special thanks for her careful checking and editing of the manuscript.

During the preparation of this second edition, two other persons have influenced my life in different ways. Pete Rowland has listened to my harangues and clarified my thinking and, in the process, has helped me appreciate what it means to be a native Texan. Last but by no means least, Bea Gray has communicated to me, without coming out and saying so, that she would still love me whether or not I finished this book or any other. I want to thank her for giving me a new perspective on my life.

Lawrence S. Wrightsman



**Psychology
and the
Legal System**

Second Edition

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Psychology and the Law: Impossible Choices

CHAPTER 1

THE IMPORTANCE OF LAWS

The Extensiveness of Laws • Laws as Human Creations •
Laws and the Resolution of Conflict • The Changing of Laws

DIFFERENT APPROACHES TO THE STUDY OF THE LAW

The Anthropological Approach • The Sociological Approach •
The Philosophical Approach • The Psychological Approach

BASIC CHOICES IN THE PSYCHOLOGICAL STUDY OF THE LAW

THE FIRST DILEMMA:

RIGHTS OF INDIVIDUALS VERSUS THE COMMON GOOD

Values in Conflict • The Warren Court versus the Burger/Rehnquist Court •
Two Models of the Criminal Justice System

THE SECOND DILEMMA: EQUALITY VERSUS DISCRETION

THE THIRD DILEMMA:

TO DISCOVER THE TRUTH OR TO RESOLVE CONFLICTS

The Jury's Task: Providing Stability? • Attorneys' Opinions about the
Purpose of a Trial • Truth versus Conflict Resolution in Plea Bargaining

THE FOURTH DILEMMA:

SCIENCE VERSUS THE LAW AS A SOURCE OF DECISIONS

Law Is Doctrinal; Psychology Is Empirical • Law Functions
by the Case Method, Psychology by the Experimental Method •
Law Supports Contrasting Views of Reality;
Psychology Seeks to Clarify One Muddled View of Reality

SUMMARY

It's "one of those semesters." Over the last couple of months, you have experienced each of the following:

First, your "little" sister has called. Actually, she's not so little anymore. She's a junior in high school, and she's just discovered she's pregnant. She's mortified; what should she do? Although abortions are legal in her state (at least right now), she questions whether abortion is the proper choice for her. However, she has serious doubts about whether having a baby would be a good idea.

Next, you get an official (and officious) notice from your bank, informing you that a check has bounced. The bank claims that you wrote a check for \$90; you know you didn't. But the bank, frustrated by a wave of "hot" checks by students, is considering prosecuting you. Actually, you managed to lose your checkbook several weeks ago, and now apparently someone has forged your name. You are innocent of any criminal intent or action. But are you liable?

Distracted by these events, and hence distracted, you drive your car through a crosswalk and gently bump a pedestrian. As far as you can tell, he appears to be more outraged than injured, but he copies down your name, address, and license number, and he angrily tells you to expect a call from his lawyer.

Certainly these events are not happy ones. And let us hope that they are not frequent ones for you. But they are frequent in the United States. Close to half the pregnancies in this country occur outside of wedlock, nearly one third of all pregnancies now end in abortion, at a rate of about 4000 a day. Although your "hot check" was beyond your control, someone has committed fraud and the bank is entitled to legal redress. And the nudging of a pedestrian by your car's fender seemingly caused no harm, but there are close to 800,000 attorneys in the United States—most of whom stay quite busy—and more than a few of them would be willing to assist the aggrieved party in bringing suit against you.

■ The Importance of Laws

To outsiders, the incidents just described may seem less than noteworthy because they are commonplace. But they remain urgently important to the people involved. Taken together they illustrate the pervasiveness of the law in our society. But just how *does* the law work? The purpose of this book is to help you understand how the legal system operates, by applying psychological concepts, findings, and methods to its study.

The Extensiveness of Laws

Laws are everywhere. They entwine us; they bear on—often intrude on—everything from birth to death (Post, 1963). Laws regulate both our private and our public actions. Laws dictate how long we have to stay in school, how fast we can drive, when (and, to some extent, whom) we can marry, and whether we are allowed to express some of our most individualistic pleasures, such as playing our stereo at full volume or letting our dog romp through the neighbors' yards and gardens. Some say our society has too many laws, or at least too many restrictions

and prohibitions, but almost all would agree that a system of laws is necessary. Social life without law as a means of social control would result in anarchy, and anarchy—for most of us—carries costs that far outweigh its freedoms.

Laws as Human Creations

Given that the body of laws is so wide in its impact, we might expect that the legal code is a part of nature, that it was originally discovered by a set of archaeologists or explorers. Perhaps we summon the image of Moses bringing the Ten Commandments down from the mountain. But our laws are not chiseled in stone. Rather, laws are human creations.

Laws evolve out of the need to resolve human conflicts. Any complex society is going to generate differences in behavior and hence disagreements. When disagreements occur, the society must have some mechanism to resolve them. So societies develop laws and other regulations as conflict-resolution mechanisms (for an example, see Box 1-1).

Laws and the Resolution of Conflict

Conflict—that is, disagreement, argument, and dispute—is not necessarily bad, nor is it necessarily good. Mainly, conflict is inevitable. It cannot be avoided, any more than you can avoid sneezing when the urge to sneeze begins. But society can establish procedures to deal with your behavior when your sneezing intrudes on another's rights. We recognize the need for mechanisms—laws, rules, habits, actions—to discourage a person from sneezing in people's faces or on their food. Customs and rules of etiquette evolve partly to deal with the conflict between one person's uncontrollable impulses and others' rights; hence we cover our face with a hand-

1-1

A "BOOM" FOR 50 BUCKS

States are beginning to pass laws restricting the "boom car," or the playing of a car stereo at a very high volume. Effective at the beginning of 1990, California made it illegal to operate a car sound system that can be heard 50 feet away (Bishop, 1990). Convicted violators must pay a \$50 fine for the first offense and increased fines for any subsequent violations.

Although California was the first state to pass such a law, other states are considering even more severe penalties, such as the con-

fiscation of such sound systems. And many cities and municipalities have already passed local ordinances that require drivers to turn down the volume.

One driver who may be affected by "boom" laws is Pat Brister, of Arlington Heights, Illinois, winner of the "Thunder on Wheels" competition for two consecutive years. His 1987 Thunderbird has a 15-speaker system with 890 watts of sound, leaving enough space for "a passenger and maybe a folding toothbrush" (Bishop, 1990, p. 10).