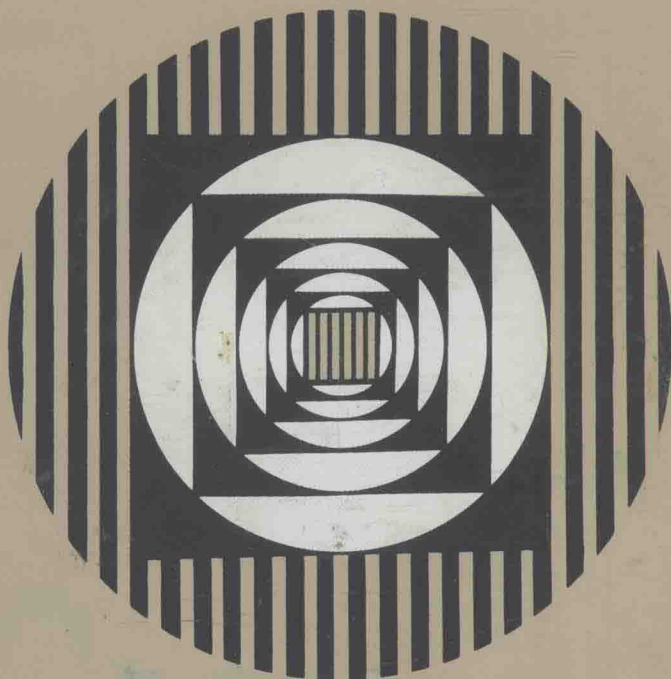


THE CRIMINAL JUSTICE SYSTEM

A Social-Psychological Analysis

Konečni and Ebbesen



THE CRIMINAL JUSTICE SYSTEM

A Social-Psychological Analysis

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THE CRIMINAL JUSTICE SYSTEM
A Social-Psychological Analysis

A SERIES OF BOOKS IN PSYCHOLOGY

Editors: *Richard C. Atkinson*
Gardner Lindzey
Jonathan Freedman
Richard F. Thompson

*To Egon Brunswik, Kurt Lewin,
and our psychology/law students*

PREFACE

During the past decade, a discipline that is primarily concerned with the role of psychological factors in the legal process and the application of psychological principles to legal matters has developed rapidly. The growth of the discipline—legal psychology—can be easily documented and has been reflected in a relatively large number of edited volumes, symposia at psychological conventions, and the founding of a specialized journal (*Law and Human Behavior*). Although the practitioners of legal psychology have rather diverse backgrounds, social psychologists probably represent a majority and seem to have played a particularly prominent role.

The discipline has experienced acute growing pains. In our opinion, at least four broad classes of difficulties can be readily identified. First, instead of attempts to develop systematic and coherent theoretical positions that are specially suited to the new field, there has been a haphazard introduction of various theoretical approaches developed in other disciplines within psychology, especially in social psychology. Second, the range of research methods has been quite limited, and the methods used have often been poorly suited to a comprehensive analysis of legal issues. Third, the choice of research problems and settings has been very narrow in scope. Finally, many studies have reflected considerable naiveté concerning the actual operation of the legal system, not to mention the fine points of the law. In summary, much of the discipline seems to capture the worst of both worlds, in the sense that neither is the analysis of legal issues profiting from the psychological perspective, nor are the disciplines within psychology from which the theories and methodologies were being rashly imported being systematically advanced through the introduction of legal contexts. In many instances, inves-

tigators have seemed to continue their ongoing research programs, merely including in their experiments some legal aspects, either because of convenience, or to give studies an air of "applied importance," or simply because legal psychology was becoming a "hot area." Needless to say, many of these efforts were regarded with considerable skepticism by people in the legal profession.

The present book is a reflection of the contributors' and our own concerns about the nature of the development of legal psychology. It is our belief that one of the most important objectives of legal psychology is to enhance the understanding of the operation of the legal system by using psychological research methods. Social psychology, because of its traditional concern with the development of new research methods, with external validity, and with applied issues, should play a special role in this undertaking. However, we think it reasonable to argue that the emphasis should be on the understanding of the legal process, instead of the research efforts being limited to using the legal system merely as a place to test perhaps fascinating, but nevertheless highly idiosyncratic, features of the social-psychological theories currently in vogue. This entire volume therefore addresses a single issue, and one that is meaningful from the *legal* point of view: How does the criminal justice system operate, and how can its operation be elucidated by using psychological approaches and methods of inquiry?

The criminal justice system can be approached and studied from many points of view. The emphasis in this book is on an empirical and quantitative analysis of the decisions made by the various participants in the criminal justice system (the offender, the victim, the eyewitness, the police officer, the bail-setting judge, the district attorney, the juror, the sentencing judge, the probation officer, the parole board, etc.) at various key points in the processing of a criminal case. After the two introductory chapters on theory and methods, a number of chapters reporting research results follow. These have been written by various contributors. Each chapter deals with a key decision point in the processing of a criminal case. The ordering of the chapters follows the procedurally determined temporal sequence of events in a typical case. Thus, the chapters trace the history of the offender from the decision to commit a crime to the decision of the parole board whether or not to grant parole. Between these two decision points, the various chapters are concerned with the victim's decision whether or not to report the crime, with the police officer's decision whether or not to make an arrest, with the judge's decision concerning the amount of bail to set, with the district attorney's decision which charges (if any) to file, with the decisions that various participants in a trial have to make, with the judge's sentencing decision,

and so on. In a polemical final chapter, we have ventured some recommendations for changes in the criminal justice system.

Most of the chapters in the research part of the book report data. One exception to this is a chapter on the police feedback cycle, which makes concrete proposals for improved functioning of the police in the community (by taking into account the internal structure of a police department, the external demands on the police, and the information available to the individual officer when making decisions in the field), and thus complements the chapter that directly analyzes the decision to make an arrest. In addition, the chapter on the gathering of evidence is a review, rather than a data, chapter; we felt that readers would benefit more from a comprehensive review of this one area in which a great deal of research has been done since the beginning of the century, than from being informed of a relatively small set of new data. In addition to the fact that most of the research chapters present new findings, in most cases the data were collected in real-world settings, such as the courtroom, or else the chapters deal with archival information from actual legal cases, such as the filed charges or sentencing decisions. The only exceptions to this are the chapters that deal with the offender's decision to commit a crime and the victim's decision to report the crime, both of which are decisions that would have been difficult, if not impossible, to study as they occur naturally. In fact, even in one of these chapters (concerned with reporting the crime), every effort was made to make the experimental situation as naturalistic as possible.

We feel that we owe the readers a few words of explanation concerning the term "social-psychological" in the title of the book. Several of the chapters in the book are indeed concerned with certain traditional social-psychological problems, at least in part. However, many of the chapters, including our own, have little, if any, social-psychological emphasis in the sense of dealing with the concepts and theories one finds, for example, in textbooks on social psychology. Some of these chapters are highly quantitative and take a strong systems-analysis orientation to the decision-making issues in the criminal justice system. Nevertheless, for several reasons, we feel that even these chapters, and thus the book as a whole, have a distinct social-psychological flavor, if not of the traditional variety. First, the book is concerned with the analysis of an intact *social* system of decision-makers. Second, the decisions made by some participants in the system become information to which other participants in a system are exposed and that they presumably take into account when reaching their own decisions. In this sense and some others (for example, in actual persuasion attempts that occur in the courtroom and elsewhere in the system), the relationships between participants

in the criminal justice system are as good examples as any of *social influence*. Both of the above arguments rest on the premise that phenomena, rather than concepts and theories currently in vogue, define the domain of social psychology. Third, we feel that the concern expressed in many chapters with the use of complementary research methods, with multiple dependent measures, with careful attention to the issues of experimenter demand and bias, with external validity and generalizability, and with an applied orientation in the Lewinian tradition of “action research” are all characteristic of social psychology to a greater degree than perhaps any other discipline in psychology. Finally, there is the not entirely irrelevant fact that the majority of the contributors to the book consider themselves primarily social psychologists.

The decision-making approach to the legal system, and the sequential analysis of the key points in the processing of a case, are not unique to our book; for these general features we are indebted to the pioneering efforts of Leslie T. Wilkins and the related contributions that he generally inspired (for example, the work of A. K. Bottomley, W. R. LaFave, F. W. Miller, and others). In addition, our own and our contributors' emphasis on studying the legal system *in situ* has undoubtedly been in part inspired by the important early work of Hans Zeisel. Nevertheless, it would seem that the present book goes well beyond the previous efforts in that the authors whose work is brought together here present a variety of new approaches, statistical techniques, methodological procedures, theoretical insights, and data—all within a unified framework. For this reason, although the overall approach of the book is essentially a social-psychological one, we hope that students and practitioners from several disciplines, such as law, sociology, criminology, public administration, as well as various branches of psychology, may find the work reported here useful and relevant to their concerns.

Because the editors contributed equally to this volume, the order of our names on the title page was determined randomly.

October 1981
La Jolla

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THEORETICAL ISSUES

Social Psychology and the Law: A Decision-Making Approach to the Criminal Justice System

Ebbe B. Ebbesen and Vladimir J. Konečni

This chapter describes the theoretical approach that has guided much of our own research on the criminal justice system. In developing this theoretical approach, we have focused on the *behavior* of the participants in the system rather than on the letter of the law. Furthermore, we do not describe how participants in the criminal justice system *ought* to behave; instead we attempt to provide a theoretical approach useful in understanding how they *actually* do behave. Because the extent to which rules of law and discretion mix in determining the behavior of participants in the criminal justice system is largely unknown, much of our knowledge about the behavior of participants can come only from empirical investigations. For this reason, we believe an adequate theoretical treatment of the criminal justice system must be closely linked to the empirical determination of factors that control the behavior of the participants, whether or not these factors are legally sanctioned.

THE RULE OF LAW VERSUS DISCRETION

The traditional view of the criminal justice system, as presented in most legal textbooks, portrays the behavior of the participants in the system as determined largely by the rule of law, due process, and administrative guidelines. Each action by a participant is seemingly constrained by a set of rules, precedents, statutory limitations, constitutional interpretations, and so on, all designed to minimize the chances of convicting the innocent, to prevent personal abuses of legally sanctioned power, to insure due process, and to create an