

Psychology & Law
PSY 4931

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INTRODUCTION TO PSYCHOLOGY & LAW CHAPTER 1

Psychology & Law: A Cognitive Perspective

- All good research begins with theory and is grounded in a scientific paradigm.
- This semester we will explore how Cognitive research and theory has been applied to “real world” problems in the legal system.
- Applied Cognitive Psychologists have had a big impact on legal procedures and policies:
 - Eyewitness IDs: Gary Wells
 - Jury note taking and asking questions: Steven Penrod
 - False memories and misinformation effect: Elizabeth Loftus
 - Children’s eyewitness testimony: Stephen Ceci
 - Comprehension of jury instructions

Definition of Cognitive Psychology

- **Cognitive Psychology**: is the scientific study of the thinking mind and is concerned with:
 - how we attend to (attention) & gain information about the world (learning),
 - how that information is stored in memory by the brain, and
 - how that knowledge is used to think, to solve problems, make decisions, and to produce & understand language.

Cognitive Psychology draws on research from many areas.

- Cognitive Neuroscience
- Perception
- Pattern recognition
- Attention
- Memory
- Imagery
- Language
- Developmental Psychology
- Thinking & Concept Formation
- Human Intelligence
- Artificial Intelligence

APPLIED COGNITIVE PSYCHOLOGY

- Application of cognitive science to “real” life situations.
- It is concerned with how cognitive processes affect our behavior and performance in “real” world settings.
- There is hope that applied research can produce solutions to real problems, providing us with knowledge and insights that can actually be used in the real world.
- To be effective at creating useful application, applied researchers need to be well informed about basic processes and cognitive mechanisms (e.g., perception, memory, and attention).
- Besides having a thorough understanding of these components, it is also important to recognize how these components are affected by noncognitive modes (e.g., person’s physical state, emotional state, motivation, and social context).
- It is essential that applied researchers fully understand the system, machine, and process they are trying to improve.

A BRIEF HISTORY OF PSYCHOLOGY & LAW

- In **1906 Sigmund Freud** gave a speech in which he cautioned Austrian judges that their decisions were influenced by unconscious processes.
- Freud also noted that insights from his theory could be used to understand criminal behavior and to improve the legal system.
- **Hugo Munsterberg (1863-1916)**
 - Student of Wundt & father of applied psych
 - He conducted a number of applied research projects and urged others to do the same.
 - His book *On the Witness Stand* (1908): focused on why children may not make good witnesses in court.
 - After Munsterberg’s death in 1916, interest in applied cognitive psychology went underground → behaviorism.
 - **John H. Wigmore (1909)** a leading legal scholar wrote an article in which Munsterberg was put on trial for libel, cross-examined, and found guilty.
 - Not only did *On The Witness Stand* receive an icy reception from legal scholars, it failed to mobilize research psychologists.

A BRIEF HISTORY OF PSYCHOLOGY & LAW

- **Muller v. Oregon (1907)**: The Supreme Court Ruled that the workday of any woman employed in a laundry or factory could be limited to 10 hours.
 - “**Brandies Brief**” cited Social Science statistics relating women working long hours to many negative consequences for society, suggesting that overworked mothers directly attacked the welfare of the nation.
 - This brief opened the door for use of social science research by the courts.

Legal Realism Movement (1920's & 1930's)

- **Natural Law**: judicial decisions were thought to reflect principles found in nature and the task of judges was to deduce the single correct decision in a particular case.
- **Legal Realist** believed that judges actively construct the law through their interpretations of evidence and precedent and so the actual **behavior** of lawyers and judges is important.
- **Influence of Legal Realism Movement**:
 - They promoted the use of social science research.
 - In **1927**, the **Dean of Yale Law School** appointed a **psychologist to the faculty** in an effort to “...make clear the part of the law in the predictions and control of behavior” (Schlegel, 1979, p. 43).
 - In **1930**, **The American Bar Association** journal proclaimed that, “The time has arrived when the grim hard facts of modern psychological inquiry must be recognized by our lawmakers despite the havoc they may create in the established institutions” (Cantor, 1930, p. 386).
- The movement was **NOT** very successful in promoting the use of research findings in legal settings.
 - Almost none of the Legal Realists had collaborated with psychologists or other social scientists.
 - The enthusiasm of the Legal Realists was based on rather naïve assumptions about the nature of psychological science.
 - The answers to psychological questions were more complicated and arduous than the Realists had anticipated.
 - The answers provided by social scientists were equivocal and probabilistic.

A BRIEF HISTORY OF PSYCHOLOGY & LAW

- ***Brown v. Board of Education (1954)*** The US Supreme Court voted unanimously that keeping black and white children segregated in separate schools was a violation of the **Fourteenth Amendment's** guarantee of **“equal protection under the law.”**
 - It was the 1st ruling to explicitly make use of research provided by social scientist.
 - **The Amicus Curiae Brief** has proven to be a useful tool for educating judges about relevant Psychological research.
 - The **APA**, through its **Committee on Legal Issues (COLI)**, has filed amicus briefs in a wide range of cases.
- **The Field of Psychology & Law make great steps in the 1960's:**
 - **1966 Harry Kalven (attorney) & Hans Zeisel (sociologist)** published **“*The American Jury.*”**
 - **1966 Karl Menninger's book, “*The Crime of Punishment,*”** advocated much greater use of therapeutic methods to rehabilitate criminals.
 - **1969 George Miller's presidential address to the APA** called for **“giving psychology away”** – using psychological knowledge to address pressing social problems.
 - **The American Psychology-Law Society (AP-LS) was established in 1969**
 - The first issue of its journal ***Law and Human Behavior*** appeared in **1977.**
- **Journals featuring Psychology and Law Research:**
 - *Law and Human Behavior*
 - *Law and Society Review*
 - *Criminal Justice and Behavior*
 - *Behavioral Sciences and the Law*
 - *Psychology, Public Policy and the Law*
 - *JEP: Applied*
 - *Applied Cognitive Psychology*

A CLASH OF CULTURES:
LAW V. PSYCHOLOGY

Law Functions by Case Method & Psychology by Experimental Method

- **Psychologists** are leery of findings based on anecdotal evidence, single subjects (case method), or small samples.
- **Attorneys** are leery of deciding a person's fate on the basis of aggregate data drawn from other people (Ellsworth & Mann, 1998).
 - Knowing how people behave in general doesn't necessarily tell us why a specific defendant behaved in a particular way.
- The law's emphasis on the individual defendant or plaintiff explains why courts have been more receptive to **clinical psychologists** than to other types of psychologists.

Goals: Approximate Truth vs. Approximate Justice

- The primary goal of the law is to regulate human behavior.
- The primary goal of psychological science is to provide a full and accurate explanation of human behavior.
- The psychologist's ultimate goal is to integrate or assimilate conflicting findings into one refined view of the truth rather than choosing between alternative views.
- Lawyers are less interested in ascertaining the objective truth about a topic and more concerned with winning against their adversary.

Law Deals with Absolutes & Psychology Deals with Probabilities

- Lawyers think in terms of "either-or:"
- Psychologists are not comfortable reasoning in absolutes: they prefer to think in terms of likelihoods & probabilities.
- Judgments made by Psychological Scientists are not Dichotomous (like guilty or not guilty); they are probabilistic.
- Lawyers have difficulty with such inconclusive responses because they need a final resolution to a dispute – render a final, unambiguous decision.
- In contrast, uncertainty is intrinsic to the scientific process. No single research study is ever conclusive, and no finding is truly definitive.

The Law Is Based On Authority & Psychology Is Based On Empiricism

- Whereas law advances through the accumulation of rulings produced by courts, psychology advances through the accumulation of data collected by scientists.
- Psychology is much more egalitarian & democratic than the Law.
 - Any researcher can conduct a study that challenges a prevailing theory of human behavior.
 - If the data is compelling the theory must be modified.
- In contrast, the legal system is explicitly hierarchical – e.g., if a court of appeals overrules the decision of a lower court, the lower court must accept the ruling.

PATHWAYS FOR PSYCHOLOGISTS TO INFLUENCE THE LEGAL SYSTEM

Expert Testimony

- **Daubert v. Merrell Dow Pharmaceuticals, Inc (US Supreme Court, 1993)**: held that judges must serve as “gatekeepers” for scientific testimony.
- **Four Criteria for deciding if scientific testimony should be admitted:**
 - The testability or falsifiability of the theory or technique
 - Whether the scientific findings have been subjected to peer review
 - Whether there is a known rate of error
 - Whether the conclusions are generally accepted in the relevant scientific community
- **Justice Rehnquist** complained that the *Daubert* decision obliged judges to become “amateur scientists,” a role beyond their training and expertise.
- **Kovera & McAuliff (2000)** found that methodological quality of research did **not** influence judges’ evaluation of the research’s quality or their decision to admit the evidence (N = 144 judges).
- **3 Roles Possible Roles Of Expert Psychological Witnesses:**
 - **The Conduit-Educator**: strives to present a full and accurate picture of the current state of psychological knowledge.
 - **The Philosopher-Advocate**: The expert allows personal values to shape testimony and gives testimony that involves clever editing, selecting, shading, exaggerating, or glossing over.
 - **Hired Gun**: The expert essentially “sells out” and intentionally shape their testimony to help the side of the hiring attorney.
 - Hagen argues that these “witchdoctors or “self-styled psychoexperts” are often motivated by the money they receive for their testimony or by a missionary-like zeal to promote a particular cause (Hagen, 1997).

Expert Testimony

- **The Ethical Guidelines for Expert Witnesses** conform rather closely to **Sak's Conduit-Educator Role**.
 - ...psychologists realize that their public role as “expert to the court” or as “expert representing the profession” confers upon them a special responsibility for fairness and accuracy in their public statement (Roesch, Hart, & Ogloff, 1999, p. 434).
 - Psychologist must not, “. . . participate in partisan attempts to avoid, deny, or subvert the presentations of evidence” (Roesch, Hart, & Ogloff, 1999, p. 434).
 - When “. . . their own personal values, moral beliefs, or personal relationships with parties to a legal proceeding interfere with their ability to practice competently . . . they are obliged to decline participation or limit their assistance in a manner consistent with professional obligations” (Roesch, Hart, & Ogloff, 1999, p. 434).

PATHWAYS FOR PSYCHOLOGISTS TO INFLUENCE THE LEGAL SYSTEM

- **CROSS-DISCIPLINARY TRAINING**
 - Expertise in one discipline (Law or Psychology) with a basic knowledge in the other is probably sufficient.
 - Direct experience either through observation of processes or involvement in them
- **AMICUS CURIAE BRIEFS**
- **BROAD DISSEMINATION OF RESEARCH FINDINGS**
- **INFLUENCING LEGISLATURES AND PUBLIC POLICY**
 - One of the best examples of this is Wells work with eyewitness testimony which we will cover later this semester.

LABORATORY VS. FIELD EXPERIMENTS:

Neisser's (1976) Call For Ecological Validity

- Neisser (1976) argued that cognitive research should be carried out in real-world settings wherever possible, to ensure what he called “**ecological validity.**”
- By this Neisser meant that research findings should be demonstrably true in the real world, and not just under laboratory conditions.

Critics of Neisser's call for Ecological Validity

- **Banaji & Crowder (1989)** have argued that **field studies** of memory have produced few dependable findings, because the experimenter has so little control of **extraneous variables**.
 - Internal validity:
 - random assignment
 - confounding or extraneous variable
- They also concluded that research finding obtained in a real-world setting cannot be generalized to other setting because the same variables cannot be assumed to apply.
 - External validity

Working Together?

- Applied research can often be carried out under controlled laboratory conditions (e.g., **eyewitness testimony**).
- Although field experiments are not perfectly controlled, they are still better than not carrying out field research at all.
- One possible way to address methodological problems is to combine both field and laboratory research directed at the same phenomenon.
 - Where we find agreement between the 2 types of studies we have more reasons to find the results convincing.
 - Convergent Validity: different research (measures, methodology, designs) give similar results.