

EMERGING TRENDS IN PSYCHOLOGY AND LAW RESEARCH

An editorial overview

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Now is an excellent time to be doing research at the intersection of psychology and law. In the last few years, both the legal system and the legal academic community have taken more and more interest in the empirical findings of cognitive and social psychologists. Much of this interest has been provoked by the large number of convicted people who have been exonerated by DNA evidence. Examination of their cases reveals that most are associated with one (or more) of the following problems: bad eyewitness testimony, a false confession, or flawed forensic evidence. These issues are ones that psychologists have been investigating for years. For those of you new to this area, we recommend Elizabeth Loftus's foundational work on so many areas of memory, Gary Wells's work on eyewitness identification, Saul Kassin's work on false confessions, and Reid Hastie's work on jury decision making. All have written for both psychological and legal audiences.

The idea for this special issue grew out of a symposium held at the 2008 Annual Meeting of the Psychonomic Society in Chicago. The goal of that symposium was to bring together scientists who are currently doing research connected to the legal field in ways that have not previously been recognized by most cognitive psychologists. The symposium included five speakers (Busey, Diamond, Dror, G. Loftus, and Spellman), all of whom agreed to write for this special section (most with co-authors). We then solicited articles from three additional scholars (Blumenthal, Feigenson, and Hill), who address other legal topics that could give rise to and benefit from more psychological research. The eight primary authors have, among them, six psychology PhDs and five law degrees. Some have positions in psychology departments, some in law schools, and some in both; all are engaged in crossing disciplinary lines.

Perception and Memory

One way psychologists can directly interact with the legal systems is to testify as expert witnesses. With increasing understanding of the factors that produce false convictions has come an increase in the number of psychologists who have been allowed to testify as experts on issues involving perception and memory. In "What Can a Perception-Memory Expert Tell a Jury?" Geoff Loftus distinguishes between the various types of evidence that psychologists can discuss, from general principles of perception and memory (e.g., the role of attention and stress) to factors that can be assessed quantitatively (e.g., the effects of illumination and distance on perception). He describes what an expert witness, testifying in court, can say about these issues.

We suspect that another area in which psychological experts may be called to testify in the near future is the one Neal Feigenson describes in his article "Visual Evidence." Courts have long admitted photographs and films as evidence, but the current malleability and availability of those forms, plus the emergence of new forms of visual evidence (e.g., simulations and animations), has perplexed the legal system. What use, and what harm, can the explosion of available visual evidence have? This article describes the small existing research on the effects of visual evidence and details the sorts of variables that could usefully be investigated.

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Fingerprint Experts

A recent report by the National Research Council evaluated various types of forensic testimony. It found flaws in many of the procedures used to provide such evidence, and also called for further research and increased funding in areas that address the psychological processes behind forensic examinations. The report had much to say about fingerprint evidence, the focus of the next two articles. In “The Nature of Expertise in Fingerprint Examiners,” Tom Busey and Francisco Parada address the question of how training and experience change the way people process fingerprints. They use data from behavioral studies, eyetracking, and electrophysiological recording and find differences between novices and experts that could explain differences in performance. In “The Vision in ‘Blind’ Justice: Expert Perception, Judgment, and Visual Cognition in Forensic Pattern Recognition,” Itiel Dror and Simon Cole look at fingerprint examiners from a judgment and decision-making perspective. Fingerprint identifications are not made in a vacuum; typically, the examiner has preexisting reasons to believe (or not believe) that there will be a match. This article shows how the “objective” science of judging fingerprint similarity is influenced by the same phenomena as other judgments—top-down knowledge, motivation, and so on. Together, these articles illustrate how psychology permeates the interpretation of fingerprint (and, by analogy, other forensic) evidence and describe various roles psychologists can play in improving practice in these fields.

Juror and Jury Decision Making

The next two articles are in the realm of jury decision making, and so, although they are cognitive in basis, also have a “social cognition” component. In “Credible Testimony In and Out of Court,” Barbara Spellman and Elizabeth Tenney describe the extensive research on how people misuse different kinds of cues—especially confidence—when assessing the veracity of others. They then demonstrate that mock jurors prefer testimony from well-calibrated witnesses (rather than just confident witnesses) when calibration information is made available. These findings have several implications for improving courtroom rules of evidence.

In “The Promise of a Cognitive Perspective on Jury Deliberation,” Jessica Salerno and Shari Diamond describe some of the findings from the Arizona Jury Project—a study of how real juries deliberate about real cases. They illustrate many ways in which the jury’s deliberation—that is, the group discussion—plays an important role in what is eventually decided. They chide current experimentalists for studying *juror* rather than *jury* decision making and give suggestions as to fruitful avenues of research in the jury context.

From a Legal Point of View

The final two articles have in their titles words that often appear in legal scholarship but rarely appear in psychology research: tax and property. Although these articles are framed by legal issues, the authors demonstrate how each is imbued with classic concerns of the cognition and social cognition literatures. In “What Cognitive Psychologists Should Find Interesting About Tax,” Claire Hill (the Director of the Institute for Law and Rationality at the University of Minnesota Law School) describes how standard rational choice theory cannot explain why people choose to pay income tax. Rather, she looks to how people are influenced by other factors, such as perceptions of the fairness of the tax and of the efficiency of the government; she also describes how people’s views and behavior may be manipulated by the government’s use of framing effects and other cognitive techniques. In “Property Law: A Cognitive Turn,” Jeremy Blumenthal shows how property law—a topic studied by every first-year law student in the United States—is an area ripe for research. Property may be concrete (e.g., your house) or abstract (e.g., money, a copyright). How do people conceive of property, and how do those conceptions develop? What is the relation between property, money, and happiness? And is there any basis for the massive hype surrounding the importance of home ownership in the United States (and the massive tax and other breaks given to home owners)? Each of these articles has suggestions for research that could have serious implications for public policy.

Directions

We hope you can see that research in “Psychology and Law” is not narrow and not “just” applied. Rather, many basic issues of psychological science underlie decisions about legal public policy and police and courtroom procedure. It has been our experience that courts and professional societies welcome input from psychologists, as long as they perceive that such research is done fairly and impartially. However, just as one theory can only be replaced by a better theory, current practices will only change when superior alternatives are proposed. Given the calls for research (and increased funding) from the courts and the National Academies, now is an excellent time to be doing such research.