

Preface

Interdisciplinary scholarship in the area of Law and Psychology Law has grown in volume, variety, and sophistication in the last 10 years, so much so, that the area has become a mainstay of graduate training in the doctoral programs in psychology both in applied areas (clinical forensic psychology) and research based academics (experimental psychology and law). Researchers and commentators study and explore topics of risk assessment, psychopathy, forensic evaluation, children as witnesses, children as victims, jury decision making, eyewitness identification, and false confessions, just to name a few. There are regular meetings of the American Psychology-Law Society, the Law and Society Association, and the American Psychological Association that include dozens and dozens of papers, talks, posters, and symposia that explore many facets of these and other topics that examine the psychology of law, psychology in the law, and the law as a regulator of psychological practice.

This book is different! It is at least as much a Law and Psychology volume as it is a Psychology and Law volume. We apply the approach of Social Analytic Jurisprudence (see Chapter 1 this volume) to examine some current and controversial topics at the intersection of Law and Psychology. Social analytic jurisprudence begins with an analysis of legal doctrine, carefully looking for assumptions that the law makes about human behavior and proceeds with a psychological analysis of the law to identify theories, research results, and methodologies that are most suitable to address empirical issues in the law. Finally, researchers apply the powerful research methodologies of the social sciences to test theoretical answers to empirical questions. In this book, we use Social Analytic Jurisprudence to examine current legal doctrine in several areas of law that are controversial, timely, and that shape the decision-making of a diverse array of people in their everyday lives. The contents of this work hold important implications for judgments made by law enforcement officers, judges, attorneys, school officials, employers, workers, criminals, and litigants as they contribute (for better or worse) to social systems in which they (and all of us) function as we work, study, and engage in common social exchanges. After an introductory chapter, which

frames the control of discrimination and prejudice as problems of legal decision-making, the book analyzes in four sections investigative profiling, affirmative action, workplace discrimination (sexual harassment), and hate motivated crime as examples of legal decision-making concerns. Each section contains a legal analysis of the problem followed by a description of the social science related to that area and finally a commentary on the integration of the two themes.

Following the social analytic framework, each of four units includes three chapters.¹ First is a chapter that explores the behavioral assumptions that make up an area of law analyzed from a policy and decision making perspective. Next, comes a chapter reviewing and evaluating current research in the area, carefully plotting the relationship between empirical results, human decision-making, and public policy. Rounding out each unit is an analysis and synthesis chapter in which commentators evaluate the main points made in the first two chapters and examine them in juxtaposition, pointing out areas of conflict and controversy and areas of agreement. In some cases, the commentaries spark additional theoretical analyses that contribute to a more thorough understanding of the area. The purpose of the analysis and synthesis chapters are to find areas in which the perspectives of the law and social science show significant unresolved tension, areas of agreement, and areas in which important issues are left unexamined. The final chapter in the book extends the earlier decision-making models that chapter 1 applies to profiling and affirmative action to workplace discrimination and ultimately hate crime.

The topics represent problems related to discrimination and prejudice that the law addresses by directly or indirectly guiding the decision making of professionals (judges, lawyers, police officers, employers, school officials) as well as, lay people engaging in the task of conducting their daily lives (students, employees, automobile travelers, and citizens in the community). The sections pertain to timely controversies in the ways in which we educate ourselves, earn our livelihoods, raise our families, and resolve our disagreements. These controversies arise out of tensions between our idiosyncratic values, beliefs, and attitudes about social reality and the legal principles and philosophies that shape law and legal process. In today's post 9/11 world, such conflicts are very difficult to resolve in a way that ensures, at the same time, the autonomy of the individual and the welfare of the community. The major premise of this volume is that the resolutions of these conflicts are powerful forces that shape the decisions that we make in our everyday lives. By examining these four current controversies in law and social life from the perspective of law, psychology, and models of human decision making, this volume develops a unique approach to understanding the role that law plays in the way we learn, work, socialize, and regulate ourselves.

Several people and institutions contributed greatly to this volume. The papers were the product of the 2005 Spring Program of Excellence Conference at the University of Nebraska at Lincoln. For this annual conference, the Law and Psychology Program, an interdisciplinary unit, which includes members of

¹ The section on workplace discrimination integrates the law and social science of sexual harassment research into three integrative chapters.

the Department of Psychology and the College of Law at the University of Nebraska at Lincoln, invites prominent legal and social science scholars to travel to Lincoln and interact over a 5 day period. The “think tank” begins with a two day symposium during which colleagues present papers, discuss the contents of the presentations, and debate in a conference format the ideas that they have been working on and for which they have gained national prominence. Following the two-day symposium are a series of less formal discussion sessions during which psychology faculty, graduate students, law professors and law students discuss, debate, and analyze the contents of the original papers and commentaries. This book is the result of the 2005 “think tank.” Two other volumes will be forthcoming under the Springer label that will be the result of the 2006 and 2007 conferences.

Organizing and hosting a weeklong conference with invited guests from all over the country is a challenging enterprise by itself. This project was even more challenging because we pulled together 14 chapters based upon the contents of the meeting and organized them into this volume. The project was supported with a University of Nebraska Program of Excellence Grant awarded to the Law and Psychology Program. I am grateful and indebted to the Program of Excellence at the University whose trust and financial support was crucial to the completion of this project. I thank the committee and the University for its continued support of the Law and Psychology Program. The conference itself and this book required the dedicated work of a number of administrators, graduate students, and faculty members in both the Department of Psychology and the Law College at UNL. I thank all of them for their contributions to this project but I would especially like to acknowledge the assistance and cooperation of David Hanson (Chair of the Department of Psychology) and Steven Willborn (Dean of the College of Law). Most importantly I am grateful to Evelyn Maeder (graduate student at UNL) who made all the arrangements for the conference and who worked hard to assist in obtaining the final manuscripts for this book. Finally, the project was co-product of the four editors working diligently from the beginning to the completion of the effort. I am especially grateful to my co-editors and colleagues (Brian Bornstein, Bob Schopp, and Steve Willborn) for the time and effort that they put into this project. It has been a pleasure for me to work with all of them.

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Social Consciousness in Legal Decision Making

Psychological Perspectives

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(Eds.)

2007, XIV, 284 p. 17 illus., Hardcover

ISBN: 978-0-387-46217-2