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Book Review: Psychology and the Law

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BOOK REVIEW

Dwight G. McCarty, *Psychology and the Law*: Prentice-Hall, Inc., New Jersey, 463 Pp., 1960.

The lawyer of our time is charged with difficult and at times with grave responsibilities toward society; these responsibilities, for the most part, cannot effectively be met by being "just a lawyer." As an eminent jurist once remarked:

The lawyer . . . occupies a peculiar position in human affairs, and from that position stem certain common experiences. The lawyer stands on middle ground. His sphere is swept by all the currents of life, especially its cross-currents. He is brought into contact with all kinds of people. He is the private go-between, the public intermediary, the international diplomat. The boundaries of all classes, all trades, and all professions. He is doctor and priest, yet he is necessarily more of a philosopher than the doctor of medicine and more of a scientist than the priest of religion. In analyzing human emotions he is a psychologist; in playing upon human emotions he is an artist; in marshaling facts to support his theses he is a logician. In business he is a statesman; in statecraft he is a business man; in politics he is a humanist. In all things he is a moralist. But in adjusting his principles to the arts of his profession he is a consummate sophist. He is a philosopher gone to market; a poet gone to court; a mental warrior fighting for peace.¹

No statement could more poignantly express the principle that law is greatly dependent upon extra-legal disciplines for its effective functioning. Law is not an isolated profession, but rather is a spear that cuts through practically every other aspect of learning. Legal educators, jurists and attorneys are becoming increasingly aware of the need to be skilled in areas "outside the law." Accordingly, and as a link in this constructive chain of thought, Mr. McCarty has provided an instructional guide and informational medium in the field of legal psychology to assist members of the legal profession in becoming more nearly "professionals in versatility."² In short, this book is recommended to any lawyer who wishes to make his profession more meaningful to him in the light of psychological superimposition on legal relationships.

The format of this work and its usefulness to the practitioner may be readily gleaned from its interesting and thought provoking "Table of Contents." For example, chapters such as "Detecting the Liar," "Facial and Bodily Expression," "Knowing the Client," "Psychology and the Law of Evidence," and "Bias," provide plenty of grist for the

¹ Wilkin, Preface to Wilkin, *Eternal Lawyer* at XI (1947).

² Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL ED. 28, 30 (1948).

legal mill. The author's thesis is that modern psychology is the very lifeblood of a lawyer's practice. Accordingly, he states:

Human nature is the riddle of the universe. It is the constant factor in the affairs of life, and yet the ever varying element, as it changes with the individual—a paradox that seems never to be resolved. The question of human nature [therefore] becomes the problem of every human transaction.³

In a chapter entitled "Motive," Mr. McCarty states that "motives define the problem and determine the conditions of its solution so that the problem has been solved when the motivating conditions have been satisfied." Justice Holmes said many years ago, "The law is made to govern men through their motives. . . ."⁴ What are the forces that motivate activity in all the myriad affairs of life? Why does one judge sentence an offender to fifteen years of imprisonment while another judge, in a practically identical situation, imposes only a five year sentence? Mr. McCarty provides searching answers based on human motives. His study assists one to better understand human behavior as circumscribed by law.

Consciously and unconsciously, there is a tendency at times to evaluate human beings, when no previous contact has been made. How reliable is such a judgment? The author, in his chapter on "Facial and Bodily Expression," gives the reader some insights into this fascinating, yet highly beguiling, study.

A large aspect of the same subject, perhaps, is his chapter on "Bias." There the reader is soon made aware of the basic premise that individual action is influenced to a great degree by ingrained tendencies. Man does not sit serenely at the center of things and coolly decide which of the given ideas and positions he shall choose. In all situations, there are influences at work guiding that decision, whether or not he is conscious of the fact. The lawyer is therefore alerted to the fact that he must never lose his perspective of man in spite of human failing and unfathomable circumstances.

The chapter entitled "Responsibility and the Criminal Law" is probably one of the most stimulating and informative chapters in this book. Here, the author traces the history of criminal responsibility in relation to insanity from the early common law "counting-twenty-pence" test of Fitzherbert⁵ down to the "McNaghten" rule⁶ and further on down through the historic case which has caused widespread comment in our era—*Durham v. United States*.⁷

³ McCARTY, *PSYCHOLOGY AND THE LAW* 5 (1960).

⁴ Holmes, *The Common Law*, p. 61 (1881).

⁵ Referred to by HAWKINS, 1 *PLEAS OF THE CROWN* 2, fn.; and Slaundeforde, *Pr. Reg.* 34.

⁶ 10 Clark & Finnelly 200, 8 Eng. Rep. 718 (1843).

⁷ 214 F. 2d 862 (1954).

In this chapter, the author also discusses the early classic case of *Pike v. New Hampshire*⁸ and its far-reaching effect in our own era. In that memorable case, Justice Doe of the New Hampshire Supreme Court argued that the McNaghten formula was false and should be rejected. In addition, the early—yet bold—New Hampshire Supreme Court discarded the “right and wrong” test of the McNaghten rule. Whether the defendant had a mental disease and whether the act was the product of that disease were facts to be determined by the jury from medical evidence.

Mr. McCarty points out that this was a precedent-shattering opinion. It laid down no rule or formula as to insanity, but left those questions to the jury to be based on the medical testimony of experts. But for some reason the decision did not take hold and remained unheralded for some eighty-five years until the *Durham* case of our own era brought it into legal prominence.

The *Durham* case, which in substance held that an accused is not criminally responsible if his unlawful act was the product of mental disease, opened the door to new thinking on the subject. For under this rule the psychiatrist can testify to the facts from the medical standpoint, unhampered by any hard and fast legal requirements.

The full impact of the *Durham* rule that is now slowly beginning to unfold is that there is no restriction to any one set of symptoms, nor is there any narrow “test” to be applied. The jury, under this “old-new rule,” as any jury in any criminal case, has the right to hear all the competent evidence and find the facts based on this evidence.

The author points out:

This is a long step forward in correlating the psychiatric and legal views. Being that the law is interested in the criminal responsibility, and the psychiatrist is interested in the mental condition, by freely showing the facts as to that mental condition, the jury can determine the legal responsibility of the defendant.

Actually, the *Durham* case and its recognition of the New Hampshire rule of the early *Pike* case, with its realistic approach, has made the first important break in the long battle to modernize the law of insanity *vis-a-vis* twentieth century thinking on the subject.⁹

Closely aligned to the trail blazing decision in *Durham v. United States*, Mr. McCarty has set forth two thought provoking chapters dealing with the modern view regarding the treatment of prisoners in criminal cases. The chapters entitled “The Psychiatric Examination of

⁸ 49 N.H. 399 (1871).

⁹ For an excellent discussion of the *Durham* case see Douglas, *The Durham Rule: A Meeting Ground for Lawyers and Psychiatrists*, 41 IOWA L. REV. 485 (1956).

Prisoners" and "Disordered Personalities" supply the reader with much valuable information and food for thought in the field of criminal responsibility. Certainly, it would seem to be a step in the right direction to have anyone who is indicted for a crime submitted to a psychiatric laboratory for examination before trial.

"Knowing the Client" is the most valuable chapter in this book because it alerts the lawyer once again to the important fact that each client is to be treated as a distinct individual and in accordance with his own unique personality. The author points out that there are still some general principles—which he discusses in detail—which are most important to heed and to apply at nearly all times and in nearly all cases. And above all, the lawyer is warned that if he is to maintain the undiminished respect of his client, he must so train himself as to be the master of the situation at all times.

Throughout the book, one discovers a thread of heightened feeling and respect for the noblest of professions—the law. The author, a practicing attorney for over half of a century, has merged his vast erudition with his extensive experience to produce a compact and handy reference tool in the field of inter-personal and psychological-legal relationships. The author's style of writing lures the reader to his last chapter where he explains that ethical considerations can be no more excluded from the administration of justice than Polonius from Shakespeare's play "Hamlet."

The book is replete with interesting, stimulating and well-annotated sources. He draws examples from the field of legal psychology, some of which serve the purpose of refreshing a lagging recollection.

Undoubtedly, many readers will find that the author could have dwelt upon many other areas of law, but remembering that this is one of the few works in this field, the author is to be commended for his "pioneering" efforts. He has done his job well in seeking to blend within the law a practical psychology with a lofty, yet basic, morality to govern human conduct within the total framework of the law.

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