

## Psychology and Law

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## PSYCHOLOGY AND LAW

Before entering on a treatise of the relations that exist between psychology and law it is necessary to briefly explain the scope and basis of psychology. Psychology is that science which investigates the higher problems of inner life; it is that science which deals with the mental faculties of man and especially of his highest faculty, the soul. It examines the efficiency and accuracy of the senses of man. It scrutinizes carefully the retentivity and reliability of memory. The various mental phenomena are analyzed and tested by what is known as experimental psychology. Though as yet a new science, experimental psychology has disclosed mental functions which are of the greatest importance in practical life. Especially is this true if we consider that perception and memory, feeling and emotion, attention and volition, and so on, are the chief factors of our daily life which enter into every one of our enjoyments and duties.

The fields of practical life which come into close touch with experimental psychology may be said to be education, medicine, art, economics and law. The educator has appropriated the suggestions that systematic experiments on memory and attention have revealed to his pedagogical helps. The physician has accepted the aids that this science has given to an understanding of nervous and mental diseases or in the understanding of pain and of mental factors in its treatment. The artist realizes that his instinctive creations may well be supplemented by the psychologist's study of color and form, of rhythm and harmony, of suggestion and aesthetic emotion. Even the business world begins to understand that the experiments of psychology can indicate best how the energies of mill-hands can reach the best results, how advertisements ought to be shaped, and what belongs to ideal salesmanship. Education, medicine and art have adapted the benefits of experimental psychology to their respective fields. The legal profession, alone, has as yet not recognized the advantages afforded in the administration of law through the appliance of discoveries and factors revealed by experimental psychology. The lawyer and the judge welcome the medical and the handwriting expert but the psychological expert is a stranger in the court room.

Law deals with the practical problems of life. As stated above experimental psychology has disclosed mental functions which have a direct bearing on practical problems of life. From this it is evident that the relations between psychology and law are intimate and co-extensive. To enter upon the different and various phases in which these two sciences support each other would entail a discussion which time and space do not permit. The object of this paper is to show the importance and significance that the disclosures of experimental psychology have on the law of evidence. And especially shall the discussion be limited to the subjects of illusion and memory in regard to witnesses in legal trials.

There had been a automobile accident. One of the witnesses who swore "to tell the turth, the whole truth and nothing but the truth," declared that the road yas dry and dusty, that there were two or three men on the road, and that the automobile was rushing very rapidly. The second winess swore that it had rained and that the road was muddy, that there were a large number of men, women, and children on the road, and that the automobile was moving slowly. Both witnesses were highly respectable gentlemen neither of whom had the slightest interest for changing the facts as he remembered them. In another case it was of the greatest importance for the court to know the time that elapsed between a whistle signal and the subsequent noise of an explosion. It was necessary for the court to know whether the time was long enough to walk a certain distance which required about half a minute. Of two unbiased witnesses one swore that the time that elapsed was ten seconds, while the other was certain that it was more than a minute. In a poisoning case some members of the family testified that the beverage had a sweet taste, others that it was tasteless, and still others that it had a disagreeable sour faste. In a fourth case one witness testified that he saw at the seashore in the moonlight a woman with a child while another witness was not less sure that it was a man with a dog.

There is no need of heaping up further illustrations from actual cases. Contradictory evidence of this kind has to be sifted every day in our legal trials. It may be stated here that the above cases did not demand any technical knowledge; they involved only direct observations and impressions which did not require any special acquaintance with the matter. Nor did they involve intentional deception or mental disease. They were unintentional

mistakes of the sound mind. It is generally taken for granted that we all perceive our surroundings uniformly. In case there were only twenty men in a hall no one could have seen one hundred. In case the road was muddy, no one could have seen it dusty. In case the man was shaved no one could have seen his beard. But do we really all perceive the same thing, and does it have the same meaning to us in our immediate absorption of the surrounding world? Experimental Psychology answers this question.

The late Professor Munsterberg of Harvard writes of some very interesting experiments which he performed with his class in Psychology in that institution. At the beginning of an ordinary lecture he asked his class to write down conscientiously and carefully answers to a number of questions referring to that which they would see or hear. The answers as he himself states showed that every one had done his best. At first he showed them a large white sheet of cardboard on which fifty little black squares were pasted in irregular order. He exposed this five seconds and asked the students how many black spots were on the sheet. The answers varied between twenty-five and two hundred. The answer, over one hundred, was more frequent than that below fifty. Then he showed a cardboard which contained only twenty such spots. The replies ran up to seventy and down to ten. Here were highly trained, careful observers, whose attention was concentrated on the material, and who had full time for quiet scrutiny. Yet in both cases there were some who believed that they saw seven or eight times more points than others saw. Should we be disinclined to believe in the sincerity of two ordinary witnesses of whom one felt sure than he saw two hundred persons in a hall in which the other found only twenty-five, when even highly trained students are subject to similar illusions?

Further experiments were performed in regard to perception of time, in regard to the estimation of rapidity, and in regard to sound. The answers in each case fluctuated widely. The district attorney when he asks for the time that elapsed between the shot and the subsequent cry, expects a reliable reply. And when an attorney inquires as to the speed of an automobile or a train he expects a reliable answer. In respect to the experiment to sound it may be of interest to note that of one hundred students only three recognized the sound as that of a tuning-fork. These experiments serve as a warning against blind confidence in the

observations of the average normal man and reinforce the demand for a more careful study of the individual differences of witnesses. We all know how influential the mind of the witness is in legal trials. The State devotes its fullest energy to the clearing up of physical happenings but it never asks the psychological expert to determine the value of that very influential factor, — the mind of the witness.

Thus far we have considered only illusions. Now we shall consider memory. It is well to note here that in the ordinary legal trials the testimony that is offered is based mainly on memory. If men are subject to such vast differences in individual perceptions and direct observations how much greater must be the errors that creep in unintentionally when such impressions are based on events which happened at some past time when the mind of the witness was not specifically concentrated on the facts about which he is to testify? In memory in spite of the best intentions a whole series of confusions, of illusions, of forgetting, of wrong conclusions from associations and of yielding to suggestions are mingled with the actual facts upon which the witness is to report. Not every sworn statement is accepted as absolute reality. Contradictions between witnesses are too familiar. But the instinctive doubt refers primarily to veracity.

The public in the main suspects that the witness lies, while taking for granted that if he is normal and conscious of responsibility he may forget a thing, but it would not believe that he could remember the wrong thing. The confidence in the reliability of memory is so general that the suspicion of memory illusions evidently plays a small role in the mind of the jurymen, and even the cross examining lawyer is mostly dominated by the idea that a false statement is the product of intentional falsehood. All this is a popular illusion against which modern psychology must seriously protest.

The administration of an oath is partly responsible for the wrong valuation of the evidence and the popular illusions in regard to evidence. Its seriousness and solemnity suggest that the conditions for complete truth are given if the witness is ready not to lie. Of course, everyone knows that the oath helps in curbing misstatements. It not only suppresses the intentional lie, but it focuses the attention on the details of the statement. It excludes the careless, hasty, chance recollections, and stirs the deliberate

attention of the witness. He feels the duty of putting his best will into the effort to reproduce the whole truth and nothing but the truth. No psychologist will deny this effect. He will ask only whether the intention alone is sufficient for success and whether the memory is really improved in every respect by increased attention. Our functions do not always run best when we concentrate our effort on them and turn the full light of attention on the details. We may speak fluently, but the moment we begin to give attention to the special movements of our lips and of our tongue in speaking and make a special effort to produce the movements correctly, we are badly hampered. Is it so sure that our memory works faultlessly simply because we earnestly want to behave well? We may try hard to think of a name and it will not appear in consciousness; and when we have thought of something else for a long time, the desired name suddenly slips into our mind. May it not be in a similar way that the effort for correct recollection under oath may prove powerless to a degree which public opinion underestimates?

Some years ago a painful scene occurred in Berlin, in the University Seminary of Professor Von Liszt, the famous criminologist. The Professor had spoken about a book. One of the older students suddenly shouts, "I wanted to throw light on the matter from the standpoint of Christian morality!" Another student throws in, "I cannot stand that!" The first starts up, exclaiming, "You have insulted me!" The second clinches his fist and cries, "If you say another word ——" The first draws a revolver. The second rushes madly upon him. The Professor steps between them and, as he grasps the man's arm, the revolver goes off. General uproar. In that moment Professor Liszt secures order and asks a part of the students to write an exact account of all that has happened. The whole had been a comedy, carefully planned and rehearsed by the three actors for the purpose of studying the exactitude of observation and recollection. Those who did not write the report at once were, part of them, asked to write it the next day or a week later; and others had to depose their observations under cross-examinations. The whole objective performance was cut up into fourteen little parts which referred partly to actions, partly to words. As mistakes there were counted the omissions, the wrong additions and the alternations. The smallest number of mistakes gave twenty-six per cent of erroneous statements; the largest was eighty per cent. The

reports with reference to the second half of the performance, which was more strongly emotional, gave an average of fifteen per cent more mistakes than those of the first half. Words were put into the mouths of men who had been silent spectators during the whole short episode; actions were attributed to the chief participants of which not the slightest trace existed; and essential parts of the tragi-comedy were completely eliminated from the memory of a number of witnesses.

There was, a few years ago at Göttingen in Germany a meeting of a scientific association, made up of jurists, psychologists, and physicians, all, therefore, men well trained in careful observation. Somewhere in the same street there was that evening a public festivity of the carnival. Suddenly in the midst of the scholarly meeting, the doors open, a clown in highly colored costume rushes in in mad excitement, and a negro with a revolver in hand follows him. In the middle of the hall first the one, then the other, shouts wild phrases; then the one falls to the ground, the other jumps on him; then a shot, and suddenly both are out of the room. The whole affair took less than twenty seconds. All were completely taken by surprise, and no one, with the exception of the President, had the slightest idea that every word and action had been rehearsed, before hand, or that photographs had been taken of the scene. It seemed most natural that the President should beg the members to write down individually an exact report, inasmuch as he felt sure that the matter would come before the courts. Of the forty reports handed in, there was only one whose omissions were calculated as amounting to less than twenty per cent of the characteristic acts; fourteen had twenty to forty per cent of the facts omitted; twelve omitted forty to fifty per cent, and thirteen still more than fifty per cent. But besides the omissions there were only six among the forty which did not contain positively wrong statements; in twenty-four papers up to ten per cent of the statements were free inventions, and in ten answers — that is, in one-fourth of the papers, — more than ten per cent of the statements were absolutely false, in spite of the fact that they all came from scientifically trained observers. The scientific commissions which reported the details of the inquiry came to the general statement that the majority of the observers omitted or falsified about half of the processes which occurred completely in their field of vision.

It is not necessary to tell more of these dramatic experiments. There are many points, for instance, in which the results seem still contradictory. In some cases it was shown that the mistakes made after a week were hardly more frequent than those made after a day. Other experiments seemed to indicate that the number of mistakes steadily increases with the length of time which has elapsed.

Again, some experiments suggest that the memory of the two sexes is not essentially different, while the majority of the tests seem to speak for very considerable difference. But we may consider here another point which is more directly connected with our purpose. A well-known psychologist showed three pictures, rich in detail to a large number of boys and girls. They looked at each picture fifteen seconds and then wrote a full report of everything they could remember. After that they were asked to underline those parts of their reports of which they felt so absolutely certain that they would be ready to take an oath before court on the underlined words. The young people put forth their best efforts, and yet the results showed that there were almost as many mistakes in the underlined sentences as in the rest. This experiment has been often repeated and the results make clear that this happens in a smaller and yet still surprising degree, in the case of adults also.

Still another phenomenon may be of interest here. According to Professor Munsterberg, there are different types of memory, which in a very crude and superficial classification might be grouped as visual, accoustical, and motor types. There are persons who can reproduce a landscape or a painting in full vivid colors and with sharp outlines throughout the field, while they would be unable to hear internally a melody or the sound of a voice. There are others with whom every tune can easily resound in recollection and who can hardly read a letter of a friend without hearing her voice in every word, while they are utterly unable to awake an optical image. There are others again whose sensorial reproduction is poor in both respects; they feel intentions of movements, as of speaking, of writing, of acting, whenever they reconstruct past experience. In reality the number of types is much larger. Scores of memory variations can be discriminated. Now we should not ask a short-sighted man for the slight visual details of a far distant scene; yet it cannot be safer to ask a man of the accoustical memory type for optical recollec-

tions. Yet this is done, and done every day in our legal trials. No one on the witness stand is today examined to ascertain in what direction his memory is probably trustworthy and reliable; he may be asked what he has seen, what he has heard, what he has spoken, how he has acted, and yet even a most superficial test might show that the mechanism of his memory would be excellent for one of these four groups of questions and utterly useless for the others, however solemnly he might keep his oath.

*PETER M. HUIRAS, '19.*

