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Book Review of Psychology in Legal Contexts, by Lloyd Bostock

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Psychology in Legal Contexts: Applications and Limitations, edited by Sally Lloyd-Bostock (London: MacMillan Press, Ltd.; Atlantic Highlands, New Jersey: Humanities Press, 1981), 246 pp., $30.00.

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This eclectically eccentric collection of essays professes to be, according to the dust cover, "an introduction to current work and thinking in psychology and law in [Great Britain]." That it may be, but if it has, in fact, met its self-set goal, its most important lesson may be that law and psychology in the empire are not all they should be.

This should not be read as a dismissal of the entire volume; there are some interesting essays, some provocative ones, and some informative ones. (There are also some irrelevant ones which seem to have arisen from the "I'm-doing-a-book-and-why-don't-you-write-me-a-chapter-on-whatever-you-want" school of editing.) The problem lies in what appears to be missing from the volume entirely: any thought as to how psychology may be employed in the courtroom in any and all aspects of public interest or civil rights law. This omission is the shocker, and is the memory that lingers on after the book is read.

The editor poses her central question—Does psychology have a practical contribution to make to the law?—in an opening essay, and concludes that "recent developments are extremely promising," that progress is being made, and that she expects "a much closer rapprochement between law and psychology" in the future. (p. xviii) The subsequent essays, unfortunately, do not bring much life to her promise.

The collection is really five barely-connected sections: one on the reliability of eyewitness evidence, one on confessions and police interrogation, one on the psychologist as expert, one on legal language and communication, and one pastiche

on "applications of psychology in areas of substantive law," a catchall title for five mostly unrelated pieces on child placement, interfamilial violence, gambling, traffic offenses and legislating sexual behavior. Too often, the value of the essays lies not in what they have to say about the topic purportedly central to the preparation of the book, but in their inclusion of what college professors used to call "cepts": isolated, interesting freestanding bits of knowledge. Thus, an essay on "Police Interrogation and Confessions" cites two scholarly authorities for the proposition that the "compulsion to confess" (first identified by Reik) is apparently more prevalent among Roman Catholics. (p. 49)[1] We learn from "Introducing Psychological Evidence in the Courts: Impediments and Opportunities" that, in English practice, while the Crown must divulge its medical experts' reports to the defendant, the obligation is unilateral: the defendant need not share *his* reports with the Government, and, aside from alibi, "is usually able to spring whatever surprises [he] likes." (p. 97)[2] An interesting but not particularly germane essay called "Is Legal Jargon a Restrictive Practice?" teaches that, in reading two sentences of equal word length, people take longer to read sentences with more prepositions in them. (p. 127) Perhaps the most provocative essay in the volume—a revisionistic critique of *Beyond the Best Interests of the Child* [3]—likens both lawyers and psychologists to Mayan high priests in the way they deal with knowledge/power issues in cases involving the disposition of unwanted children. (p. 149)[4] And so on.

Although these bits of information are interesting (and may be worth assimilating into our unconscious corpus of knowledge), they do not seem to answer the question posed initially by the author. Rather, they reflect a basic flaw of the book: it remains a disorganized collection of writings without a sorely-needed central focus. The *major* fault, though, is not the organization, but the lack of attention paid to the type of situation in which a new partnership

between law and psychology *is* being forged regularly in American courts and in which there is a new "rapprochement": cases involving the public interest.

In an earlier essay on "The Legal Status of the Psychologist in the Courtroom,"[5] the reviewer noted that psychologists were beginning to become "courtroom-oriented,"[6] and had thus started to testify in matters such as right to education,[7] right to habilitation,[8] and right to vote.[9] The prediction that these new roles would continue to expand has since been borne out: psychological testimony has been crucial in more recent cases involving the right of patients to work and to be paid for their work,[10] their right to be deinstitutionalized in adequate community facilities,[11] their right to due process in disciplinary decisions,[12] and the right of a mentally handicapped person to due process in any decision made as to whether or not she need be sterilized against her will.[13] Such contributions made by psychology to the law are of a very different type than those which study patterns of traffic offenses in an effort to determine if the perceived seriousness of the offense correlated positively with the offender's sex and age. (p. 203) One opens up new professional vistas as a reflection of the unique contributions psychologists can make to the courtroom process;[14] the other merely pours old wine into a slightly newer bottle.

It is not clear where the blame lies. It is entirely conceivable that there are no British counterpart decisions to the ones discussed above. If that is so, however, it would seem reasonable that the editor would either (1) discuss this phenomenon in light of the change in American practice, or (2) ask her contributors to analyze some of the recent American decisions and their implications for British practice. This is no xenophobic criticism, but is directed at the publishers: since an American distributor was chosen, the inference is that there is an expected American market. Without the type of analysis suggested above, that market, it is feared, will be somewhat lacking.

Notes

1. Eliasberg, *Forensic Psychology,* 19 So. Cal. L. Rev. 349 (1946); Hepworth & Turner, *Confessing to Murder: Critical Notes on the Sociology of Motivation,* 1 Brit. J.L. & Soc. 31 (1974).

2. This practice is, of course, different from that employed in many jurisdictions in this country. See, *e.g.,* N.J. Ct. R. 3:13-3, and Pressler, *Current N.J. Court Rules,* Comment to *R.* 3:13-3 (1981), at 421.

3. Goldstein, Freud & Solnit, Beyond The Best Interests of The Child (1973).

4. The essay, by law professor Michael King, argues cogently that the alterations in child placement decisions suggested by the Goldstein book radically exceed what Dean Pound characterized as *The Limits of Effective Legal Action* (27 Int'l J. Ethics 150 (1916)), and warns further of the dangers of overintrusiveness on the part of courts in dealing with such matters.

5. Perlin, *The Legal Status of the Psychologist in the Courtroom,* 5 J. Psychiatry & L. 41 (1977), *reprinted in* The Role of the Forensic Psychologist 26 (Cooke ed. 1980). An updated version appears in 4 Ment. Dis. L. Rptr. 194 (1980).

6. *Id.* at 49 (1977). The phrase appears in Brodsky & Robey, *On Becoming an Expert Witness: Issues of Orientation and Effectiveness,* 3 Prof. Psychology 173 (1972).

7. See, *e.g.,* Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972).

8. See, *e.g.,* Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), 334 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373 (M.D. Ala. 1972), 344 F. Supp. 387 (M.D. Ala. 1972), *aff'd sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

9. See, *e.g.,* Carroll v. Cobb, 139 N.J. Super. 439 (App. Div. 1975).

10. See, *e.g., Schindenwolf v. Klein,* 5 Ment. Dis. L. Rptr. 60 (1981).

11. See, *e.g.,* Halderman v. Pennhurst State School and Hospital, 446 F. Supp. 1295 (E.D. Pa. 1977), *aff'd in part, rev'd in part, and remanded in part,* 612 F.2d 84 (3d Cir. 1979).

12. See, *e.g.,* Davis v. Balson, 461 F. Supp. 842 (N.D. Ohio 1978).

13. See, *e.g., In re* Grady, 85 N.J. 235 (1981).

14. See Perlin, 4 Ment. Dis. L. Rptr., *supra* note 5, at 198.