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Book Review. Burtt, H. E., Legal Psychology

Jerome Hall

*Indiana University School of Law*

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BOOK REVIEWS


Current debates about the element of uncertainty in the judicial process suggest a rather entertaining possibility when the thought occurs of the developments to come when the dispute rises above the legal cauldron within which it now boils and spreads out to the world outside the court room. What will happen when greater attention is given to the facts while they were in the very process of becoming, long before there was any case in court, and a thousand and one psychological forces and phenomena had their play and interplay between the various people who were destined to become parties litigant and witnesses—and their world of reality or illusion, of will or idea, of objectivity or subjectivity, of fact or fancy or all of these?

A discussion of Dr. Burtt's book is in point. Unfortunately his "initial motive" in writing this book was the "need for a textbook" for a university course. Textbooks and dogma have been wedded too long to expect originality in this type of production. Accordingly, persons with any sophistication whatever in subjects psychological will find little to recommend in this work. The law student without background in the social sciences and the lawyer, who some rare day turns scholastic, should find Dr. Burtt's book very valuable. And, after all, these latter persons are the ones to whom Dr. Burtt has directed his writing.

The book falls naturally into three unrelated divisions with a fourth one which is an indiscriminate conglomeration. The author first concerns himself with those topics which are dealt with in all conventional introductions to general "introspective" psychology, namely, sensation, perception, attention, memory and suggestion. The treatment of all these topics is purely orthodox, a plain restatement of James or Angell. Dr. Burtt makes these topics relevant to law by calling attention to them as sources of error in testimony. Faulty perception, memory, etc., must be understood if testimony is to be properly evaluated. When one considers the many limitations upon all of the processes involved, accuracy becomes an ideal rather than a reality. Enormous individual differences in vision, peculiarities in reactions to motion and sound, condition our observation. We react to stimuli in various manners depending upon their intensity, novelty, motion, size, contrast and interest. If a witness has actually paid a high degree of attention to and has been able to observe a series of facts accurately, it by no means follows that his testimony will necessarily be reliable. For he may not remember what he saw and heard. All the limitations upon his memory dependent upon the principles of association, contiguity and similarity of the facts, frequency, recency, primacy, and the presence of concomitant emotional reactions will greatly condition the witness's testimony. Forgetting apparently occurs in greatest degree immediately after the experience so that it is important to secure the testimony at once and, if possible, reduce it to writing. Old age, infancy, mental abnormalities and imagination are only a few other conditioning factors. The wish may supply the thought. In unusual circumstances people have failed to recognize
very near relations. The case is reported (p. 97) of the finding of a man's body in a canal and the wife's immediate and erroneous recognition of her poor husband. And, another, of a woman who had committed suicide being "recognized" both by her husband and mother-in-law!

If our witness has to some extent escaped the ogres that make accurate observation and memory so difficult, is it then certain that his testimony will be proportionately accurate? Alas, by no means. For he, like all other individuals, is suggestible in some degree. It is almost inevitable that this will affect his testimony somewhat. The courts recognize this factor in dealing with children and mental defectives. Conversations with every person in and out of court, and indeed, the full body of experience to which the witness was subjected from the time of observation should be known to estimate and differentiate what he actually saw or heard from what was suggested to him. Finally, the method of obtaining the testimony of the witness is important. On this factor the psychologists have made some worthwhile experiments which tend to demonstrate that free narration by the witness gives the least complete but the most accurate results, that replies under direct examination are more complete but less accurate, and that testimony under cross-examination is about as complete as under direct but still more inaccurate.

There are a number of pertinent observations upon judge and jury. Judges have their bias and their mental attitudes, the effect of which has been noted generally, and was recently demonstrated, for example, by Professor Walton Hamilton in his article on Mr. Justice Brandeis. Lady jurors, it seems, are more "loyal to their opinions" than are the men. Once they have made up their minds, no amount of discussion will produce any marked change. Confessions may be produced by extremely suggestive devices such as the rubber hose or the empty stomach employed in the third degree. Certain individuals are abnormal and their confessions purely pathological. Dr. Burtt has here made some use of the research of Hutchins, Slesinger and C. T. McCormick, though it is significantly in point that in an analysis of psychological error no reference is made to Freud's "Psychopathology of Everyday Life."

The second division of the book contains a rather interesting account of various "lie detectors", including association tests and mechanical appliances which measure differences in breathing and blood pressure during examinations. These experiments have not progressed far enough to warrant their use in the courtroom although much assistance can be gotten from them by the police in the detection of crime.

The third division of Dr. Burtt's book deals with the subnormal and the insane. By comparison with the work of any of the recognized psychiatrists, the summary given is grossly incomplete. His whole analysis of criminal psychology is pitifully inadequate in light of the contributions of Drs. Healy and Glueck, for example, or the recent stimulating work of Alexander and Staub, which was reviewed in the April issue of this review. Dr. Burtt then restates the conventional position of the eugenists, giving the usual Jukes', Edwardse's and Kallikak illustrations without even a suggestion of the recent challenges of the facts or of the problematic nature of the whole field.
The last part of the book contains opinionated and commonplace remarks on punishment and crime prevention. Here again Dr. Burtt might have learned much from Alexander and the psychiatrists. A final chapter deals with trade-mark infringement.

Any sound research into the problems mentioned above should serve as a challenge to bench and bar to become more fully conscious of the psychological factors that determine human activity. Whether emphasis is placed upon the "ideal" element in law or upon the "realistic" basis of the judicial process, it has become impossible to neglect the extra-legal data any longer. The judge, who is inevitably a witness of what goes on in the courtroom, should be a trained, experienced and sophisticated observer. It is encouraging to find social scientists adapting their data to the needs of the lawyer. As yet, however, it can hardly be said that the social scientists have an adequate appreciation of the lawyer's problems. The technical difficulties are perhaps too numerous. The burden is accordingly upon the legal profession, and primarily upon the jurist and the teacher to proceed with their research and their writing in the social sciences so that all valid data can be utilized in the administration of law.

Columbia University.

JEROME HALL.


"Maryland's tendency in matrimonial matters has been characterized throughout three centuries by a marked conservatism." This statement appears at the beginning of the pamphlet under review, but judging from the bulk of legal material in Maryland dealing with this subject the conservatism was not on the part of the people in availing themselves of the machinery for the adjustment of matrimonial differences, once such machinery was set up.

The pamphlet represents part of the work done by the Institute of Law of Johns Hopkins University on the judicial system of Maryland. It is understood that other bulletins will follow dealing with some of the procedural problems in connection with this particular phase of the judicial system.

The work opens, as any discussion on divorce law necessarily must, with an historical survey of the problem. The author has painted a very complete picture of this phase of the subject by virtue of his tireless search into the early records of Maryland divorce law. As pointed out by the bulletin, no judicial machinery was set up in Maryland for the granting of divorces until quite a late date, but divorces were granted very frequently by the legislature and alimony without a divorce was given at an early time by courts of equity.

The attention of the reader is next directed to the statutes in force in Maryland on the subject of divorce. Inasmuch as this collection is supposed to be exhaustive, references should have been made to the amendment of Article 16, Section 37, by Chapter 451 of the 1931 session laws, and the new section (Article 16, Section 39 A) added by Chapter 220 of the 1931 session laws. Article 16, Section 38, provides that a divorce a vinculo matrimonii may be granted for any cause which, by the laws of this state, render the marriage null and void ab initio. The section just referred to makes all the statutory material on incestuous marriages, bigamous marriages, and age of marriage relevant to any collection of divorce statutes. Such