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SPECIAL PERSPECTIVE

The Need for and the Role of Comparative and Cross-Cultural Perspectives in Behavioral-Science-and-Law Scholarship

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Behavioral-science-and-law scholarship suffers from the lack of many activities examining issues from a comparative or cross-cultural perspective. Although U.S. contributions tend to be the most insular, the problem applies to virtually all behavioral-science-and-law endeavors. This special perspective examines the trend in behavioral-science-and-law scholarship) presents data to support the allegation that there are few comparative/cross-cultural contributions) offers explanations for the situation, and advocates for the introduction of more comparative/cross-cultural efforts in the future.

THE PROBLEM

There is a paucity of comparative scholarship on behavioral-science-and-law issues. Despite the proliferation of behavioral-science-and-law activities during the past two decades (see, e.g.. Bull & Carson, 1995; Hess & Weiner, in press; Kagehiro & Laufer, 1992; Monahan & Walker, 1994; Small & Weiner, 1993; see generally, Melton, Huss, & Tomkins, in press; Ogloff, Tomkins, & Bersoff, 1996); despite the international membership of such organizations as the American Psychology-Law Society, the American Association of Correctional Psychology, the European Association of Psychology and Law (EAPL), the International Academy of Law and Mental Health, and the Law and Society Association; despite the fact that

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behavioral-science-and-law conferences attract participants from around the world (although most participants come from North America, Western Europe) and Australia/New Zealand, participants also come from Eastern Europe, Asia, and South and Central America); and despite the proliferation of behavioral-science-and-law journals with international editorial boards, most behavioral-science-and-law research and writing ignores an international or comparative perspective. The American behavioral-science-and-law community seems to be the most "guilty" of ignoring international and comparative perspectives (see Carson & Tomkins, 1996).

U.S. CULPABILITY

Both U.S.-based, behavioral-science-and-law journals and the work published in these journals reflect *the* focus on "America"—American authors, American issues, and American references/citations. By way of example, we will focus on *Behavioral Sciences & the Law;* although we restrict our finger-pointing to this journal, a similar claim could be made for *Law and Human Behavior* and probably for the other major, behavioral-science-and-law journals published in the U.S.

Consider the most recent issues of *Behavioral Sciences & the Law* (volumes 13 (1995) and 14 (1996), issues 1–4, and volume 15 (1997), issue 1). The nine *BS&L* issues covering Vol. 13(1) to Vol. 15(1) contained 61 articles. Nine special topics were examined. (*BS&L* is a special topics journal, though it also publishes Research Reports, Special Perspectives, and other kinds of articles as well.) The nine Special Topics were "Psycholegal Aspects of Death," "Behavioral Science Evidence in the Wake of *Daubert*" "Aging and the Law," "Psychological Testing and the Law," "Biomedical Innovation," and "Professional Liability." Fifty-four of the 61 articles were Special Topics articles. In addition, there were five Research Reports and two Special Perspectives. The 61 articles published in the journal reflect the array of activities and approaches (e.g., some empirical contributions, some conceptual contributions, some reviews of legal and/or psychological literatures) that generally characterize behavioral-science-and-law research and writing.

Of the 61 articles, over 90% of the first authors were affiliated with American institutions or agencies at the time of publication (57/61, though in one instance the first author had initiated his work in Canada before joining an American university for graduate school). Three of the four other articles had Canadian-affiliated first authors (in one instance, the first author initiated the work in Canada but was affiliated with a university in England at the time of publication); the remaining author was from Australia. Most of the articles focused exclusively on American behavioral-science-and-law perspectives, although many of the articles dealt with issues that are germane outside of the U.S. The only explicitly comparative project that was reported on during this period was from one of the first-author-from Canada articles (i.e., Peterson, Stephens, Dickey, & Lewis, 1996). An examination of the references reveals that the vast majority are from U.S.-based publications. (It is possible that some of the U.S. references were actually written by non-American authors.) Thus, as expected, it appears that American-authored articles almost universally use *only* North American (i.e., U.S. and Canadian) perspectives and references.

There are several possible explanations for the insular approach to behavioral-science-and-law scholarship reflected in the *BS&L* articles. It could be argued that an American-run journal is likely to attract contributions primarily from American (and Canadian) authors. It could be argued that the topics selected were focused on American issues and that they did not warrant an international or comparative perspective. It also could be argued that non-American publications are fewer and of more recent vintage (e.g., European behavioral-science-and-law journals have trailed U.S. journals by at least a decade in terms of numbers of journals, and the general interest in behavioral-science-and-law outside the U.S. seems to be about a decade—or more—behind what has been happening in the U.S. and Canada), so there is less of an opportunity to use non-American sources. Such arguments are lamentable in some instances, and inaccurate in others.

The fact that a journal is coordinated by Americans does not explain the lack of non-American contributions. American medical journals regularly publish work from non-U.S. researchers. What are medical journals doing to attract non-American publications that behavioral-science-and-law journals are not? Although one might wonder whether non-Americans are submitting manuscripts but not getting them published, the experience of one of us (AJT) does not bear out that hypothesis. *BS&L* is not receiving many manuscripts from non-U.S./Canadian authors. Assuming it is true that *BS&L* and other American, behavioral-science-and-law journals attract few non-American contributors, then it is a problem for the field. As attested by the numbers and the quality of presentations at EAPL meetings, there are many potential articles that could be published in American journals.

The foci of the Special Topics also do not adequately explain the dearth of authors and/or perspectives from outside the U.S. and an American legal case (the "Evidence in the Wake of *Daubert"* issue), all of the topics—even the *Daubert* issue—have relevance and applications outside the U.S./Canada, Each of the issues could have benefited from an international or comparative perspective.

The fact that there are so few references to non-American scholarship is not likely attributable to the availability (or lack thereof) of sources outside the U.S. As we will discuss below, Europeans regularly cite to works from Europe, Australia, and New Zealand, along with works from the U.S. and Canada. If Europeans can find these works, so could Americans.

The most likely explanation for the observed pattern is the insularity of Americans. This insularity permeates U.S. society. It is reflected in most Americans knowing only English and no other language, most Americans knowing little about non-American arts and culture, and so on. There is no reason to expect that Americans change their ways simply because they have become behavioral-science-and-law professionals.

The lack of international perspectives and/or comparative projects is disappointing. The lack is not attributable to ignorance of a comparative point of view. American law schools typically offer courses in international law and courses that examine American law in light of its English roots (e.g., property law). The European roots of American psychology routinely are explored in "History and Systems" courses. American social psychology has long had a tradition of thinking about issues from the viewpoint of the "Martian" who just landed in our midst. Yet, despite the exposures to non-American materials and despite the

traditions of looking outside the American context, most American behavioral-science-and-law scholarship focuses on American topics, uses American social scientific sources, and discusses only American Law.

OUTSIDE THE U.S.

Is it different elsewhere? For example, are European journals and European scholars as likely to be immersed in their own culture as are Americans? Would the author-affiliation pattern display the same kind of geographical bias represented in *BS&L*?

To compare the *BS&L* situation, we looked at a European journal similar to *BS&L.* The journal. *Expert Evidence,* is the first European journal specifically focusing on behavioral science and law issues. It is edited by two scholars from Britain, including one of the authors of this article (DC). We examined the 62 articles published in *Expert Evidence* since its inception in 1992.

The publication pattern was different for *EE* than for *BS&L.* Slightly over 60% of the first authors were based in the U.K. (38/62), which means that almost 40% of the first-authors were from outside the U.K. Eight were from other parts of Europe, nine were from the U.S., and seven from elsewhere. Put another way, roughly 25% of *Expert Evidence* articles were from outside Europe.

Clearly, *Expert Evidence* readers are more likely to be learning about *international* perspectives than readers *of Behavioral Sciences & the Law.* Moreover, citations to non-U.K. sources are commonplace in *Expert Evidence* (as they are for all other European-based journals that address behavioral-science-and-law issues). Indeed, citations are not simply to works from the U.K. or the U.S. Large numbers of articles include references from additional, albeit primarily English-language, sources.

What about comparative projects? Overall, articles in the issues of *Expert Evidence* were far more concerned with matters outside of the U.K. than articles in *Behavioral Sciences & the Law* were concerned with matters outside of North America, For example, five articles in a special issue of *Expert Evidence* (Volume 4, Issue 3) discussed an American judicial opinion *(United States v. Shonubi,* 1995). One article was a consensus statement reached by an international group of scholars (Lamb, 1994). Still, only five of the articles in *EE* could be described as "comparative" in that the article explicitly considered the laws of two or more countries (e.g., McCormack, 1993) or examined a behavioral-science-and-law issue across jurisdictions (e.g., Gatowski, Dobbin, Richardson, Nowlin, & Ginsburg, 1996; cf. Gatowski, Dobbin, Richardson, & Ginsburg, this issue).

These data—for whatever their worth—suggest that a European behavioral-science-and-law journal may be more likely to publish work from scholars outside the editors jurisdiction than an American journal. There appears to be a greater likelihood of finding an extra-jurisdictional citation/reference in a European journal than in an American journal. But our examination also revealed that truly comparative works are few in the behavioral-science-and-law literature. Why are there so few comparative projects?

A POSSIBLE EXPLANATION FOR THE LACK OF COMPARATIVE SCHOLARSHIP

A major barrier to comparative projects is the difficulty in such undertakings. The reasons why a particular country has developed a particular law, let alone its procedures, are complex, and simplistic applications of one jurisdiction^ practices or rules may not be at all fruitful. Cross-cultural studies can only be suggestive in many instances.

We believe that another important factor to explain the lack of comparative work is the pragmatic and practitioner orientation of behavioral-science-and-the-law studies. We think that behavioral-science-and-law research agenda has been substantially set by lawyers and the needs of courts.

A similar observation was made by Steadman and his MacArthur Mental Health Law Research Network colleagues (1993). They noted how perceptions of the issues in risk assessment have been shaped by courts' interests rather than clinicians' interests. And if the law is going to shape the research agenda, then we might anticipate that the resultant inquiry will be national, problem orientated, parochial even.

A related pragmatic concern is that comparative or international perspectives find a chilly welcome by the targeted legal community. A recent inquiry in the United Kingdom serves as a case-in-point (Rundman, 1993). Public disquiet with the number of high profile wrongful convictions led to the British government establishing a Royal Commission to examine the criminal justice system. They were officially encouraged to consider recommending adoption of a more investigatory trial system, as dominant in the rest of Europe. However the Royal Commission's consideration of the case for such a dramatic change was cursory. They thought it too radical a step given the weight of tradition, and the Commission felt that some of the claims for the investigatory system were overstated. Nor was, for example, the research on decision-making and common causes of error considered. But then there is little active debate about the respective merits of different trial systems (McEwan, 1992). Changing trial systems would be too radical, so it is most unlikely to occur and it is, therefore, not worth serious consideration.

In general, U.K. scholarship typically does not examine law and practice in Denmark, the Netherlands, or other European countries (unless the inquiry examines a specific law relating to the European Community). This is similar, of course, to the U.S.

It is interesting to note that to the extent there is an exception to the "lack of comparative scholarship^ criticism, the exception seems to emanate from "Commonwealth" countries. Canadian scholarship often compares Canadian rules and practices to the U.S. As a general matter, scholarship from Australia, Canada, and New Zealand often includes a comparison to Britain, to the U.S., and to other Commonwealth countries (see, e.g., Freckelton, this issue).

The Commonwealth situation suggests the possibility that under certain circumstances (perhaps circumstances of culture and of history), there is a greater likelihood (than in the absence of such circumstances) that behavioral-science-and-law scholars will undertake comparative efforts. However, even Commonwealth scholars are not producing a large corpus of comparative literature.

THE NEED FOR AND THE ROLE OF COMPARATIVE SCHOLARSHIP

As we have already conceded, comparative studies are not simple. Indeed the main role for comparative studies may be in stretching the imagination. It can remind us that there are a range of different ways in which particular issues can be conceived and tackled. How do other countries conceptualize the criminal responsibility of people with mental disorders? How do they ensure appropriate responses to their crimes? How have particular responses come to be perceived as "appropriate" by the different powerful interests groups?

Despite the problems in comparing different systems, different cultures, and so on, comparative research has great potential. Indeed, American legal scholarship regularly compares practices and laws across the States. International perspectives offer the possibilities of examining issues from a new, fresh perspective and it does so without the need to rely on Martians. Intel-nationalization offers the possibility of allowing researchers and commentators to consider alternative perspectives in dealing with problems. Indeed, a comparative approach to conceptualizing behavioral-science-and-law problems and their solutions prompts an advantageous broadening of horizons by forcing the consideration of additional ways of "doing business" and solving problems.

It is our position that a considerable amount of behavioral-science-and-law research and writing would benefit from a comparative perspective. Although we do not go so far as to argue that the bulk of it should be cross-cultural, the virtual absence of any of it is a significant omission. A comparative perspective might prompt one to wonder whether developments in American mental health/justice systems interactions have been driven by a legal agenda and whether behavioral scientists have been responding, perhaps too uncritically, to legal definitions of problems or to lawyers' pragmatic needs for assistance in trials. The defense of diminished responsibility, in England and Wales for example, involves expert evidence being given on the defendants "mental responsibility^ for his or her acts. Clinicians will give evidence on this issue even though the questions would be more appropriately posed to philosophers, moralists, and clerics. Perhaps we should be more open in recognizing the extent to which the agenda in law and behavioral sciences is being driven by reformist motives and concern to achieve what is perceived to be the best outcome for individual clients. The adversarial legal system has a very strong influence over the agenda.

Expert evidence issues provide a case in point. Expert evidence is something of great import to mental health professionals (see, e.g., Faust & Ziskin, 1988), and it is an issue apparently of great concern to legal systems throughout the world (e.g., Bernstein, 1996; Freckelton & Selby, 1995; Nijboer, 1992; Odgers & Richardson, 1995). Understanding expert evidence would be facilitated by analyses of the ways that different jurisdictions with their contrasting legal systems—for example, the use of investigatory rather than adversarial, judges as fact-finders—treat novel scientific information. Expert evidence issues may be influenced by the different legal tests that are used across legal systems—for example, differences in tests of a litigant's "capacity" across jurisdictions—and analyses of the nexus between legal tests, of opportunities for litigant participation in legal proceedings, and of how communities' norms of justice influence legal rules and practices could help develop a more sophisticated understanding of expert evidenced role in the complex legal systems in

which such evidence is used. At a minimum, differences provide valuable opportunities for comparative research. In each jurisdiction there is concern about the effects of lawyers' examination techniques on the presentation and understanding of expert evidence. There is also concern about the quality of the scientific evidence being offered and those speaking to it. These are not just local problems. Law may be national) but science is international.

We think that many of these issues could—and should—be addressed at a more international level. Behavioral-science-and-law scholarship can—and should—be targeted to issues of international law) international institutions) and to the international network of law commissions and similar bodies. Politicians and commentators are telling us that we live in a global economy; behavioral-science-and-law scholars operate in a global environment as well. Contributions can span numerous possibilities. Where are developing countries to get their expert evidence from? How will, and how should) the internet be used as a means of providing expert evidence? The Netherlands allows defendants to have second DNA samples tested in the laboratories of another country—what other kinds of expert information could equally profit from crossing borders?

We realize that there will be many problems in conducting comparative research. For example) differences in cross-examination styles between the U.K. and U.S. (though both involve adversarial systems) may result in a researcher's detection of differences that might be attributed to jurisprudential differences between the two systems. It is imperative to ensure the proper development of research protocols and interpretation of research data.

In conclusion) it is probably not overstating the case to accuse U.S. scholars of being the most myopic when it comes to adopting an international perspective. But then European scholars have had the advantage that they have simply had to look to North America if they wished to develop their interests. Americans) of course, cover so much geography and have such international importance when it comes to science and to law. Nevertheless) we believe that the trend toward globalization found in industry) politics) culture) and so on should be reflected in *some* behavioral-science-and-law inquiries) too. There is the potential for making important contributions if we increase the internationalization of perspectives in relevant research and writing. A more comparative approach also surely will help to redress the balance and allow behavioral scientists to shape the scholarship agenda more persuasively. We encourage members of the behavioral-science-and-law communities to keep international perspectives in mind.

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