Editors Eugene Borgida and Susan Fiske have compiled an excellent book on the current state of the knowledge of psychological science applied to the legal system. The main goal of Beyond Common Sense: Psychological Science in the Courtroom is to assess whether scientific psychologists have an understanding of human thoughts, feelings, and behaviors that can aid legal decision makers. The chapters meet this goal by addressing whether several research areas of psychological science meet the Daubert v. Merrell Dow Pharmaceuticals (1993) test of scientific validity and whether these research findings go above and beyond commonsense understandings.

The book is divided into three parts. Part I is devoted to psychological research on stereotyping, prejudice, and discrimination as they relate to the law; Part II is devoted to
seven other well-established areas in psycholegal research (e.g., eyewitness identifications, false confessions, polygraph testing); and Part III consists of expert legal, policy, and scientific commentary on Parts I and II.

This book had me hooked from the moment I read the foreword by Mahzarin Banaji and kept me interested through the end of the last commentary by Linda Hamilton Krieger. There were numerous highlights, including a description of the origins of affirmative action and an analysis of its effectiveness in reducing discrimination based on gender, race, and ethnicity (Part I); a review of the state of the knowledge on pretrial publicity (Part II); and an excellent explanation of the importance of behavioral realism in the context of antidiscrimination law (Part III).

The contents of this book are not just informative but timely. For example, Ward Connerly, the California businessman and political activist known for his work on California Proposition 209 (Attorney General of California, 1996) and the Michigan Civil Rights Initiative (Michigan Civil Rights Initiative Committee, 2006) is currently working to end affirmative action in Arizona, Colorado, Missouri, Nebraska, and Oklahoma. Reading Crosby and Dovidio's chapter on affirmative action would greatly help voters understand how affirmative action addresses implicit biases and reduces disparities.

The commentaries evoke two weaknesses (and frustrations)—not of the reviewed research per se, but of the current status of psychological science in the legal system. First, research experts are often excluded from testifying on the ground that jurors do not need assistance with common knowledge. But as the science chapters make clear, many of the robust findings in psycholegal research are counterintuitive. Given all that psychological scientists know about the prevalence of erroneous beliefs, cognitive biases, and the extralegal factors that influence jury decision making, it is imperative that psychological scientists do a better job of acquainting judges and lawyers with the relevant research. Second, in general (but with notable exceptions) scientific psychologists have done a poor job using the methods of psychological science to answer the questions most relevant to legal and policy decision makers.

One of the commentators, David Faigman, previously noted that “while science attempts to discover the universals hiding among the particulars, trial courts attempt to discover the particulars hiding among the universals” (Faigman, 1999, p. 69). In the current book Faigman questions whether empirical research findings can be applied to a specific case and suggests, as one improvement, research paradigms that test reliability rates among experts. Wells (2005) also recommended several strategies for increasing the utility of psychological research for legal policy, such as including policy-relevant dependent variables (e.g., financial costs, public safety effects).

In summary, this book is excellent and is highly recommended for the general public, students, and legal and psychological practitioners and researchers. Borgida and Fiske make it very apparent that scientific psychologists have an understanding of human thoughts, feelings, and behaviors that can aid legal decision makers. However, if this aid is to be
realized, the training of researchers in communicating with legal actors and in conducting policy-relevant research must become priorities for the field of psychology and law.

References


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