FROM THE EDITOR

Living with the *Law & Society Review* for four years has been a strenuous and educational experience, somewhat like participating in a non-stop seminar with a continuously shifting cast of characters. I see the last issue under my editorship off to the printer with a mixture of gratification and relief. During this period the *Review* has prospered. In a time of widespread stringencies, its circulation has risen from 1,890 in June, 1972, to over 2,300 at present. In a period of increasing costs, we improved our printing arrangements and shifted to a more congenial format. Notwithstanding the proliferation of scholarly periodicals, the *Review* experienced a major increase in submissions. This has enabled (and compelled) an even more selective editorial policy, moving from publishing roughly one of each six manuscripts submitted to one in ten. An editorial process combining anonymous external review with intensive textual editing was made possible by the efforts of the Associate Editors and Student Editors here at Buffalo, the farflung members of the Editorial Advisory Board, and the hundreds of other scholars who generously served as reviewers. I am grateful to them and to the capable editorial secretaries and production editors who have helped produce the *Review*, and to the Baldy Fund and the State University of New York at Buffalo who have provided needed support. The officers of the Law and Society Association were consistently helpful. (Lest this convey an inaccurate picture of institutional formidability, let me stress that the paid staff of the *Review* consists of less than one "full-time-equivalent." The *Review* remains essentially a cottage industry which has managed to thrive in the interstices of institutional life.) Finally, I am deeply grateful to the authors who submitted manuscripts and patiently abided the review process. My pleasure in working closely with authors of many viewpoints is accompanied only by a sense of regret at the meritorious work that the *Review* was unable to accommodate.

I hope that the *Review* has prospered intellectually too. It continued to provide a forum for work on law from diverse perspectives. The individual contributions in these volumes add substantially to our knowledge of the legal process, provide critical assessment of what is going on in the field, and open up new lines of inquiry. Taken as a whole, they help the field move to a broader research agenda, more self-conscious inquiry, and more adequate theory. In particular, I think we have moved

toward placing law and society concerns in comparative focus and, in a period of increasing American self-absorption, we marked some progress toward making the *Review* more international in coverage and in contributors.

Several papers in this issue elaborate themes developed in recent volumes of the *Review*, while several others consider trends and prospects in social research on law. I had originally hoped to assemble for my final issue a set of papers that would comprehensively assess the state and prospects of the law and society field. On reflection it appeared far beyond the confines of a single issue to assess a field that is so fragmented and unevenly developing, without imposing on it an artificial symmetry. Abandoning any pretense to comprehensive disciplinary or subject matter coverage, I have contented myself with bringing together papers which seemed suggestive about where we are going, could be going and ought to be going. As such, it is only the beginning of a discussion which I and my successor hope to see carried on in future issues.[1]

Frank Upham's discussion of complex collective litigation in Japan ("Litigation and Moral Consciousness in Japan: An Interpretive Analysis of Four Japanese Pollution Suits") adds a new dimension to the exploration of litigation that has emerged as a central theme in recent volumes of the *Review*. (I find this theme congenial because its focus on parties helps us move away from the identification with the state and the adoption of a technocratic, manipulative perspective that has characterized so much study of the legal process, with results that are debilitating theoretically as well as practically.) Upham is concerned with the cultural meaning of litigation and the way in which such cultural meaning affects the use of formal legal processes. His inquiry suggests a variety of lines of comparison. His discussion of Japan invites comparison with the relationship between victimization, violence and litigation in other settings (cf. Fitzgerald, 1975). It also suggests interesting possibilities for detailed comparative analysis of cognate litigation (e.g. pollution, thalidomide) in diverse social settings. And it suggests that we compare the disparate ways in which formal legal rationality is domesticated and used in different cultural settings (cf. the Indian variant described by Kidder [1974] and Morrison [1974]).

1. Such a discussion seems especially timely in the light of the appearance within a brief period of several major synoptic accounts of the field by authors representing contrasting viewpoints, such as Friedman (1975), Unger (1976) and Black (forthcoming).

The study of law and society has often been beset by a kind of cargo cult mentality. The glitter of some exotic theory or technique arouses buoyant hope that its application will supply the key to what previously appeared intractable and opaque. In "Organizations, Decisions and Courts" Lawrence Mohr assesses the hopes for employing organization theory to understand courts and concludes that the results of such application will be modest. Rather than techniques for obtaining satisfying answers Mohr brings to us from organization theory a new and tantalizing question: how to account for the plurality of alternative processes of decision-making within a single institutional setting and for the shifts from one to another? A single institution processing disputes in very different fashion is something that has been noted in the literature (cf. Mather, 1973: Kidder 1974). Mohr brings it to the center of our awareness and suggests a new research agenda around this phenomenon, which is analogous to what sociolinguists call "code-switching" (cf. Hynes 1974:103). (That this question has hardly been formulated until now displays how we may be disabled by the habit of visualizing problems in terms of a "gap" between the "law on the books" and the "law in action." [cf. Abel 1973: 184])

This "code-switching" notion suggests questions on a macro-social as well as micro-social scale. One might ask, for example, how Mohrs' submodels apply to the Japanese pollution litigation described by Upham. Upham's account of cultures as comprehending alternative modes of responding to conflict suggests that cultures, like organizations, may contain rules for "switching" and that Mohr's list of contextual determinants might be expanded to include powerful cultural preferences for some choice processes.

Calling for a forthrightly evaluative sociology of law, Phillipe Nonet ("For Jurisprudential Sociology") argues that such cultural meanings are not only an essential aspect of the subject of study, but serve as the spur, guide and product of a properly jurisprudential sociology of law. His call for a repudiation of positivist pure sociology and for informing social research with jurisprudence is curiously mirrored by Colin Campbell and Paul Wiles' account of "The Study of Law in Society in Britain." Campbell and Wiles portray tension between policy-oriented socio-legal studies linked to positivist jurisprudence, and a fragmented sociology of law devoted to development of a larger theoretical understanding of law in society. Like Nonet they envisage a legal sociology connected to policy concerns and like

Nonet they seek to escape the confining frame of positivism. But the positivism that bothers Campbell and Wiles is determinedly applied; that which Nonet attacks is ostentatiously pure. If both seek a more comprehensive understanding of law in society, they seem to differ on whether legal learning offers a helpful guide for such understanding.

Malcolm Feeley ("The Concept of Laws in Social Science: a Critique and Notes on an Expanded View") calls for more attention to jurisprudence, not (as does Nonet) to explicate the evaluative dimension, but to enrich explanatory theory. Where Nonet seems to imply that we may arrive at an appreciation of the distinctively legal, Feeley suggests that jurisprudentially-informed inquiry may lead to dismantling the study of law as a phenomenon.

Feeley commends to us an expanded view of legal controls that will equip us to understand behavior in terms of "calculus of choice" models of the sort found in economics. But the structures environing the calculus of choice are problematic, as are the meanings which actors assign to alternatives. Mohr reminds us that we should attend to the ways in which the process of choice is a function of a broader setting; and Upham reminds us that the setting is constructed in part of the cultural meanings of the actors—which brings us back to Nonet's assertion that our inquiry is itself suffused with such evaluations.

If evaluation and policy are inevitably implicated in the study of the legal process, what is the *Law & Society Review's* distinctive focus and role? How is it different from the hundreds of journals that address issues of legal policy? At one time "law and society" inquiry might have been distinguished from legal scholarship by its refusal to assume that the most telling characteristics of the legal process are comprehended in legal learning. But this assumption is increasingly abandoned, at least tacitly, by legal scholars; few any longer believe that legal learning either offers an account of how the process works or provides a guide to action. The *Law & Society Review* embodies, it seems to me, a commitment not only to complement legal learning with an empirical dimension but to enlarge it by an independent and disciplined quest for explanation. But there are many modes of explanation and many bodies of explanatory learning. As the papers in this issue reveal, we differ about the bodies of learning we would look to and what we hope to find there. How can the study of law in society be informed by economics, organization theory, area studies, "pure" sociology

or jurisprudence—to mention only those that occur prominently in this issue? We have been able, if not content, to proceed eclectically. In these "From the Editor" pieces I have tried from time to time to relate the disparate articles that make up each issue of the *Review*. If they are not mere stray patchwork, neither are they pieces of an immense jigsaw puzzle destined eventually to come together into a single coherent design. Rather they seem fragments of different maps—maps drawn to different scale, plotted along different coordinates, and recording different features of the terrain—each telling us about a continent that is familiar but still unknown.

Or is it there at all? Is its appearance merely the reflex of our ignorance? Can there be a field of "law and society" if it is not held together by the normative vision of legal learning? Much law and society research has been devoted to describing the way in which the legal process is permeable where we wish it to be autonomous and resistant where we wish it responsive to our purposes. This mismatch of autonomy and dependence has its reflection in the more cerebral precincts of social research on law. We seem to pursue a field of inquiry whose ambit is defined by reference to a kind of learning that we reject as inadequate. In exposing the law's claims to autonomy and displaying its continuity with other aspects of social life, we seem to undermine the possibility of a coherent and self-contained field of inquiry which addresses it.

But law's failings as practice and inadequacies as knowledge may focus as well as fragment our inquiry. We address not some ethereal body of disinterested learning, but "a well known profession" and well known institutions, permeated and linked by a rich and complex culture. It would be surprising if that culture provided us with a limpid and cogent account of the process that it guides, expresses, supports and conceals. If the culture that infuses the legal process is indispensable to our understanding of it, it also erects formidable barriers to our understanding. For example, it constantly tempts us to regard the negative aspects of law as accidental and transient (cf. Trubek and Galanter, 1974).

Law is often portrayed as giving expression to the aspirations and values of a society (including the inevitable compromises and trade-offs among them). We might think of the legal process as giving embodiment not only to these elevated values, but to concerns and ambitions which are not so widely shared or openly avowed. If legal learning proclaims our aspirations, the legal

process as a whole gives voice, quietly, to the full range of our commitments. This duality of law underlies both the need and the possibility of an inquiry that looks at the complex interplay between law as culture and law as social process, an inquiry which must be sensitive to, but emancipated from, legal learning.

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