

Volume 14 No. 2

Winter 1980

LAW & SOCIETY REVIEW

The Journal of the Law and Society Association

Contributors:

Alfred Blumstein
Ralph Cavanagh
Stevens H. Clarke
Jacqueline Cohen
James L. Gibson
Roger Handberg
Harold F. Hill
Gary G. Koch
Bruce H. Mann
Austin Sarat
Thomas M. Uhlman
N. Darlene Walker

LAW & SOCIETY REVIEW

POLICY

The *Law & Society Review* welcomes articles and research notes by lawyers, social scientists, and other scholars that bear on the relationship between society and the legal process. The *Review* is published by the Law and Society Association, an international group drawn primarily from the legal and social science professions, whose purpose is the stimulation and support of research and teaching on political, social, and economic aspects of the law.

MEMBERSHIPS

Members of the Law and Society Association receive the *Review* as a perquisite of membership. Dues in the Association are:

Student (nonvoting)	\$10.00	Contributing	\$ 50.00
Regular	\$20.00	Sustaining	\$100.00
Joint	\$25.00		

Contributions to the Law and Society Association are tax exempt.

FREQUENCY AND SUBSCRIPTIONS

The *Law & Society Review* (ISSN 0023-9216) is published quarterly each year: Fall, Winter, Spring, and Summer by the Law and Society Association, 200 West 14th Avenue, Denver, Colorado 80204. Second class postage is paid at Denver, Colorado, and additional mailing offices.

POSTMASTER: Send address change form 3579 to: *Law & Society Review*, 200 West 14th Ave., Denver, Colorado 80204.

Subscriptions may be entered on either a calendar year or a volume basis. Each volume consists of approximately 640 pages (plus index). Nonmember and institutional rates for a one-year (quarterly publication) subscription are \$35.00 (\$37.00 outside the U.S.A.). Special two- and three-year rates are available on request. *Single copies* of the current issue may be obtained from the Association at \$8.75 each. Single copies of back issues are available at \$10.00 each, except for Volume 3, Nos. 2 and 3 (combined issue), Volume 7, No. 4, and Volume 13, No. 2, which are \$15.00 each, and Volume 11, No. 2 (Special Issue), which is \$2.00 (\$3.00 outside U.S.A.).

Direct communications to: Executive Office, Law and Society Association, University of Denver College of Law, 200 West 14th Ave., Denver, Colorado 80204.

MANUSCRIPTS

All manuscripts should be submitted in triplicate. Text should be double-spaced with ample (1¼ inch) margins. Footnotes should also be double-spaced, numbered sequentially, and appended to the end of the article. A *style sheet* is available on request. For appropriate guidelines on the use of nonsexist language, see, *inter alia*, "Guidelines for Nonsexist Language in APA Journals" in *The American Psychologist*, June, 1977, pp. 487-94.

Manuscripts will not be returned to authors unless a stamped, self-addressed envelope is enclosed. Manuscripts should be sent to:

Joel B. Grossman
Editor, *Law & Society Review*
7113 Social Science Building
University of Wisconsin
Madison, Wisconsin 53706

Articles appearing in this journal are abstracted and indexed in *ABC POL SCI*, *Abstracts on Criminology & Penology*, *Historical Abstracts* and/or *America: History and Life*, *Index to Legal Periodicals*, *International Bibliography of the Social Sciences*, *Political Science*, *Government & Public Policy Series*, *Social Science Index*, and *Sociological Abstracts*.

The *Law & Society Review* gratefully acknowledges the generous assistance of the College of Letters and Science, the Law School, and the Kemper Knapp Bequest Fund of the University of Wisconsin, Madison, which have provided funds for the support of its editorial office.

The *Law & Society Review* is published by the Law and Society Association.

© The Law and Society Association, 1980

All Rights Reserved

LAW & SOCIETY REVIEW

VOLUME 14, NUMBER 2 WINTER 1980

CONTENTS

ABOUT THE AUTHORS	185
RATIONALITY, LEGAL CHANGE, AND COMMUNITY IN CONNECTICUT, 1690-1760 BRUCE H. MANN	187
SENTENCING OF CONVICTED OFFENDERS: AN ANALYSIS OF THE PUBLIC'S VIEW ALFRED BLUMSTEIN and JACQUELINE COHEN	223
JUVENILE COURT: THERAPY OR CRIME CONTROL, AND DO LAWYERS MAKE A DIFFERENCE? STEVENS H. CLARKE and GARY G. KOCH	263
COURT CURBING, COURT REVERSALS, AND JUDICIAL REVIEW: THE SUPREME COURT VERSUS CON- GRESS ROGER HANDBERG and HAROLD F. HILL, JR.	309
"HE TAKES SOME OF MY TIME; I TAKE SOME OF HIS": AN ANALYSIS OF SENTENCING PATTERNS IN JURY CASES THOMAS M. UHLMAN and N. DARLENE WALKER	323
ENVIRONMENTAL CONSTRAINTS ON THE BEHAVIOR OF JUDGES: A REPRESENTATIONAL MODEL OF JUDICIAL DECISION MAKING JAMES L. GIBSON	343
THINKING ABOUT COURTS: TOWARD AND BEYOND A JURISPRUDENCE OF JUDICIAL COMPETENCE RALPH CAVANAGH and AUSTIN SARAT	371

LAW AND SOCIETY ASSOCIATION

OFFICERS

PRESIDENT: Lawrence M. Friedman, Stanford Law School

PRESIDENT-ELECT: Herbert Jacob, Political Science, Northwestern University

SECRETARY: Felice Levine, National Science Foundation

TREASURER: Stephen L. Wasby, Political Science, SUNY, Albany

EDITOR, *Law & Society Review*: Joel B. Grossman, Political Science, University of Wisconsin, Madison

EXECUTIVE OFFICER: James E. Wallace, University of Denver College of Law

BOARD OF TRUSTEES

- Class of 1980**
- Carl Auerbach, Law, University of Minnesota
 - Milton Heumann, Political Science, University of Michigan
 - Richard O. Lempert, Law, University of Michigan
 - Stewart Macaulay, Law, University of Wisconsin, Madison
 - H. Laurence Ross, Sociology, SUNY, Buffalo
 - Harry N. Scheiber, History, University of California, San Diego
 - Lee Teitelbaum, Law, University of New Mexico
 - Barbara Yngvesson, Anthropology, Hampshire College
- Class of 1981**
- Marc Galanter, Law, University of Wisconsin, Madison
 - Robert W. Gordon, Law, University of Wisconsin, Madison
 - John P. Heinz, Law, Northwestern University
 - Robert Kagan, Political Science, University of California, Berkeley
 - Richard Markovits, Law, University of Texas
 - Lynn Mather, Political Science, Dartmouth College
 - Constance Perin, Harvard University
 - Austin Sarat, Amherst College
- Class of 1982**
- Ilene Nagel, Law, Indiana University
 - Bliss Cartwright, Law, SUNY, Buffalo
 - Jonathan D. Casper, Political Science, Stanford University
 - Shari Seidman Diamond, Psychology, University of Illinois, Chicago Circle
 - William L. F. Felstiner, Social Science Research Institute, University of Southern California
 - Jack P. Gibbs, Sociology & Anthropology, Vanderbilt University
 - June L. Tapp, Institute of Child Development, University of Minnesota
 - Jerome H. Skolnick, Center for the Study of Law and Society, University of California, Berkeley
- Ex Officio**
- Immediate Past Editor:**
- Richard L. Abel, Law, UCLA
- Past Presidents:**
- Harry Ball, Sociology, University of Hawaii
 - Charles D. Kelso, McGeorge School of Law, University of the Pacific
 - Samuel Krislov, The Brookings Institute, Washington, D.C.
 - Victor G. Rosenblum, Law, Northwestern University
 - Richard D. Schwartz, Law, Syracuse University
 - Robert B. Yegge, Law, University of Denver

Editor:	Joel B. Grossman
Associate Editors:	Stewart Macaulay/Jack Ladinsky
Editorial Secretary:	Edith P. Wilimovsky
Production Editor:	Amelia Kritzer
Research Assistant:	Pamela Solberg

EDITORIAL ADVISORY BOARD

Uendra Baxi, Law, University of Delhi
Ilene Bernstein, Law and Sociology, Indiana University
Erhard Blankenburg, International Institute of Management, Berlin
Alexander Brooks, Law, Rutgers University
Colin Campbell, Law, Queens University
Bliss Cartwright, Law, State University of New York, Buffalo
Masaji Chiba, Law, Tokyo Metropolitan University
Joaquim de Arruda Falcao, Law and Sociology, Cidade Universataria, Brazil
Giuseppe de Federico, Political Science, Università de Bologna
Jaime Fuster, Law, University of Puerto Rico
James Gibson, Political Science, University of Wisconsin, Milwaukee
P.H. Gulliver, Anthropology, York University, Toronto
John Hagan, Sociology, Erindale College, University of Toronto
Jan Hellner, Law, Stockholm University
Donald Horowitz, Washington, D.C.
Morton Horwitz, Law, Harvard University
J. Woodford Howard, Jr., Political Science, Johns Hopkins University
J. Willard Hurst, Law, University of Wisconsin, Madison
Alvin Klevorick, Economics, Yale University
Herbert Kritzer, Political Science, University of Wisconsin, Madison
Arthur A. Leff, Law, Yale University
P.S.C. Lewis, Law, All Souls College, Oxford
Wallace Loh, Law, University of Washington
Maria Los, Sociology, University of Sheffield
Barry Mahoney, Vera Institute of Justice, London
John Monahan, Social Ecology, University of California, Irvine
Sally Falk Moore, Anthropology, University of California, Los Angeles
Philippe Nonet, Sociology, University of California, Berkeley
Robert Rabin, Law, Stanford University
Wallace Rudolph, Law, University of Puget Sound
Stuart Scheingold, Political Science, University of Washington
Kees Schuyt, Law, Catholic University, Nijmegen, The Netherlands
Jean Van Houtte, Centrum voor Rechtssociologie, University of Antwerp

FORTHCOMING IN THE REVIEW

In Volume 14:3 Special Issue on Sociolegal Research (Richard Abel, Issue Editor)
Francis G. Snyder, "Law and Development in Light of Dependency Theory"
John Hagan, "The Legislation of Crime and Delinquency"
Martin S. Shapiro, "Appeal"
Harry N. Scheiber, "Federalism and the Legal Process: Historical and Contemporary Analysis of the United States"
Neil Vidmar, "Social Psychological Processes Underlying Attitudes Toward Legal Punishment"
Brenda Danet, "Language and the Legal Process"

In Volume 14:4

KWIC Index for Volumes 1-14
Brenda Danet, Kenneth Hoffman and Nicole Kermish, "Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure"
Douglas Rosenthal, "Comment on 'Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure'"
Martha A. Myers, "Predicting the Behavior of Law"
Roy B. Flemming, C. W. Kohfeld and Thomas M. Uhlman, "The Limits of Bail Reform: A Quasi-Experimental Analysis"
Robert T. Roper, "Jury Size and Verdict Consistency: 'A Line Has to be Drawn Somewhere?'"
George E. Marcus, "Law in the Development of Dynastic Families Among American Business Elites: The Domestication of Capital and the Capitalization of Family"

In either Volume 15:1 or 15:2 the *Review* will publish a special issue on Civil Justice Research. It will be funded by a special grant from the Federal Justice Research Program, U.S. Department of Justice and will include a variety of articles emanating from the Civil Justice Research Project at the University of Wisconsin. David M. Trubek, director of the Project, will also serve as issue editor. Comments on the papers prepared by scholars outside the project will also be included.

The editors of the *Review* have also decided to include in the special issue one or more additional articles on dispute resolution and the civil justice system. Manuscripts submitted for possible inclusion in this open competition section of the issue should be received in the editorial office, in triplicate, not later than October 1st, 1980.

The proposed contents of the Special Issue on Civil Justice Research, is as follows:

Introduction and Background

David M. Trubek, "Understanding Courts in Context: An Introduction to the Civil Litigation Research Project"
Maurice Rosenberg, "Civil Justice Research and Civil Justice Reform"
J. Willard Hurst, "The Functions of Courts in the United States, 1950-1980"
Marc Galanter, "Conceptualizing Civil Justice"

The Economics of Civil Disputes

Earl Johnson, Jr., "The Economics of Legal Practice in Civil Disputes"
Neil Komesar, "Households and Firms: An Economic Framework for Studying Disputes"
Frank M. Gollop and Jeffrey C. Marquardt, "A Microeconomic Model of Household Choice: The Household as a Disputant"

Disputes and Dispute Transformation

William L. F. Felstiner, Richard L. Abel and Austin Sarat, "The Emergence and Transformation of Disputes"
Daniel G. Coates and Steven D. Penrod, "The Social Psychology of Disputing"

Approaches to the Empirical Investigation of Courts in Context

Richard Miller, "Defining and Finding Individuals' Disputes"
Herbert Kritzer, "Methods for Studying Dispute Decision-Making: A Case-Focused Approach"
Charles Wellford, "A Census of Civil Disputes"

Commentaries on the Civil Justice Research Papers
[To be commissioned]