# *From the Editor*

To delegalize or not to delegalize, that is the question. At least it is one of the questions dominating this issue of the *Law & Society Review*. Is law, as Max Weber saw it, an iron cage whose protective benefits can only be had at the expense of substantive justice? Or can law be reflexive, responding to the particularities of actual social relationships, as proposed by Selznick, Nonet, and others, without becoming arbitrary? How are the answers to these questions affected by the rise of the highly regulated welfare state and its more recent signs of crisis?

Each of the papers in this issue speaks in different ways to these basic questions. David Kettler leads off with a theoretical discussion of the apparent polarities mentioned above. With the entire concept of the welfare state under attack, Kettler points out, more is at stake than simply the distribution of monetary benefits. The role of law as a tool against entrenched disadvantage has itself become a target in the campaign against a "failed" welfare agenda. This campaign, which has assumed a variety of forms described by terms like delegalization, deregulation, and deinstitutionalization, is under way to "restore" autonomy to society's constituent groups as a means of reconstituting the democratic forms sacrificed to the welfare state.

Legal institutions cannot carry the responsibility of legitimation within present welfare state conditions because they base their judgments on notions of property and consequently suffer overload. Collective labor law has been proposed as an alternative model that would resolve the dilemma. But Kettler holds that the power of organized labor, which in large measure was the source of this alternative model, has itself been eroded by the very crisis to which it is tendered as a solution. Kettler concludes not by rejecting the possibility of a successful alternative development but by calling for an analysis based on a model more convincing than that of collective labor.

As if responding to Kettler's analysis, Miriam J. Wells presents a detailed case study of changing labor relations in California's agribusiness industry. She shows how categories introduced to farm workers through the law altered their self-concepts and actions in ways that benefited farm owners. She argues that with the law's distinctions between farm wage labor

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and independent sharecropping, farm owners in one industry were able to alter class relationships in ways that excused them from various labor law obligations to their workers. Although not a pure case of delegalization, the strawberry pickers' urge for independence and the owners' ability to use individual sharecropper contracts to disguise the perpetuation of their power over the pickers certainly makes Wells's study pertinent to the issues raised by Kettler. Yet the organized action of the pickers to litigate the terms of their relationship with the growers depended on the existence of extensive labor law to which they could appeal, once their lawyer had shown them an alternate legal view of their status. Does Wells's example therefore support the possibility of reflexive law, or is it evidence of the weakness of labor as a model for resolving the welfare state crisis?

Pat O'Malley attacks a different perspective on the delegalization issue, namely the argument that, far from dismantling the welfare state, delegalization is a means of dispersing the control mechanisms of the state so that it actually becomes more capable of promoting the interests of the dominant economic class. He analyses the development of the Australian Press Council as a case study for this dispersion hypothesis and finds the hypothesis inadequate. He shows that because of "the internal diversity of capital" in the newspaper industry, the Press Council was not even capable of representing a united version of the interests of capital invested in the industry. He found that the council promoted neither the process of state regulation nor the interest of press industry tycoons in preserving their autonomy by masquerading their arbitrary power under the cloak of a norm-regulated council. O'Malley concludes with a warning against generalizations about the conditions of regulation in late capitalist societies that ignore the variations in their patterns of regulation. Especially important is his argument that pro- and antiregulation sentiment may well be found on both sides of a struggle. Such ambiguities discovered in this case study, along with those found by Wells in the California strawberry industry, may help ground some of the theoretical issues raised by Kettler.

In yet another way, Cyril D. Robinson and Richard Scaglion address these issues with their analysis of whether communities can control their own police forces or whether police must be the agents of states. The authors' answer seems to be that the class-related origins of police functions and the continuing class-oriented basis of state systems makes community-controlled police implausible. Although the police emerge as

an instrument of the state and its dominant social class, policing actually creates a set of interests that conflict with each other and with those of the dominant class. A police counterculture thus stands opposed to both the state and the community. Like Wells and O'Malley, Robinson and Scaglion show both the face of domination in a law-regulated society and the fractures in the ediface that may allow law to be the vehicle for social change.

Neil Vidmar, responding to Craig A. McEwen and Richard J. Maiman's reply to his previous criticism of their work on mediation in Maine (volume 20, number 3), also speaks to the issue of delegalization. Clearly the whole question of mediation as an alternative to adversary procedure has arisen in the larger context of simplification. McEwen and Maiman argued that compliance with mediated settlements is higher than with adjudicated decisions because participation in dispute resolution gives each side an increased sense of control over the outcome. Vidmar's continuing criticism of this approach, as shown in the research he presents here, is that coercion may well enter into patterns of compliance with mediated settlements. He, like the others in this issue, warns that idealized descriptions of delegalized practices may mask new and uncharted forms of arbitrary domination.

Finally, reprinted here are the views of Susan Silbey and Austin Sarat on the sociological significance of the law and society movement. First presented to a luncheon crowd at the 1986 Annual Meeting of the Law and Society Association in Chicago, this paper examines the changing meaning of the term "critical" as it relates to our common (or not so common) enterprise. How might the original critical urge that made the law and society field a challenge to conventional ways of thinking about law be saved from the new critical charge that the positivist and empiricist consequences of that original urge have led us down a path of reification, making us the advocates of a new mystification based on science? If there is any hope of reconciling the indeterminacy asserted in critical legal theory with the necessity for empirical grounding asserted in the law and society movement, perhaps it lies in approaches such as Sarat and Silbey propose here or as David M. Trubeck explored in volume 20, number 4 of this journal.

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