

Law & Social Inquiry

Journal of the American Bar Foundation
Volume 18, Number 2, Spring 1993

The University of Chicago Press

Law & Social Inquiry

Journal of the American Bar Foundation

Published by The University of Chicago Press

| | |
|--------------------------|---|
| <i>Editors</i> | Arthur F. McEvoy Elizabeth Mertz Peter Siegelman |
| <i>Review Editor</i> | Howard S. Erlanger |
| <i>Associate Editors</i> | Karyl A. Kinsey Christopher L. Tomlins |
| <i>Managing Editor</i> | John Atkinson |

Editorial Board

Richard L. Abel, Professor of Law, University of California, Los Angeles
Ian Ayres, Professor of Law, Stanford University
Donald Black, Professor of Sociology, University of Virginia
Erhard Blankenburg, Professor of Sociology of Law, Free University of Amsterdam
John Braithwaite, Professor of Law and Sociology, The Australian National University
Jane F. Collier, Professor of Anthropology, Stanford University
Phoebe C. Ellsworth, Professor of Law and Psychology, University of Michigan
Eliot L. Freidson, Professor of Sociology, New York University
Lawrence M. Friedman, Professor of Law, Stanford University
Hazel Genn, Professor of Law, Queen Mary and Westfield College, University of London
Carol J. Greenhouse, Professor of Anthropology, Indiana University
Valerie P. Hans, Professor of Criminal Justice, University of Delaware
Earl Johnson, Jr., Associate Justice, California State Court of Appeal
Doreen McBarnet, Senior Research Fellow, Centre for Socio-Legal Studies, Wolfson College, Oxford
Carrie J. Menkel-Meadow, Professor of Law, University of California, Los Angeles
Laura Nader, Professor of Anthropology, University of California-Berkeley
Judith Resnik, Professor of Law, University of Southern California
Daniel Rubinfeld, Professor of Economics, University of California-Berkeley
Dietrich Rueschemeyer, Professor of Sociology, Brown University
Martin M. Shapiro, Professor of Law, University of California-Berkeley
Susan S. Silbey, Professor of Sociology, Wellesley College
David Sugarman, School of Law, Lancaster University
David M. Trubek, Professor of Law, University of Wisconsin
Barbara Yngvesson, Professor of Anthropology, Hampshire College
Michael Zander, Professor of Law, Department of Law, London School of Economics

Law & Social Inquiry

Volume 18, Number 2, Spring 1993

ARTICLES

- Ownership Rights and the Rites of Ownership** 227
Neal Milner
- “Business Unionism” versus “Responsible Unionism”:
Common Law Confusion, the American State, and the
Formation of Pre-New Deal Labor Policy** 255
Ruth O’Brien

REVIEW ESSAYS

- Among the Tribes of Shasta County** 299
Robert P. Merges
- Voluntarism Triumphant: Forbath on Law and Labor** 319
Carol Chomsky
- Law, Enterprise, and the Marketplace of Ideas:
Hovenkamp’s View** 337
Morton Keller
- Neoclassical Health Economics and the Debate over National
Health Insurance: The Power of Abstraction** 351
David M. Frankford
- Liberalism, Communitarianism, and Medical Ethics** 393
Baruch A. Brody

BOOK NOTES

409

Publication Policy

The American Bar Foundation is an independent research institute committed to socio-legal research. Consistent with its mandate to create and disseminate knowledge about law, the legal profession, and legal institutions, *Law and Social Inquiry: Journal of the American Bar Foundation* invites the submission of articles that make original contributions to understanding of socio-legal processes. *Law and Social Inquiry* publishes both empirical and theoretical studies from a variety of disciplinary perspectives. The analyses, conclusions, and opinions are those of the authors alone.

Manuscript Evaluation: *Law and Social Inquiry* is a refereed journal. Manuscripts that the Editors deem appropriate for the journal are evaluated by two or more reviewers with expertise in the relevant subject matter and methodology. Manuscripts produced by ABF research fellows are evaluated by the same process as outside manuscripts and are not accorded priority in publication.

Submission of Manuscripts: Manuscripts submitted to *Law and Social Inquiry* should be typed double-spaced and be accompanied by an abstract of not more than 150 words. The review process is anonymous; all identifying information should appear only on a separate cover sheet and not in the body of the manuscript.

Law and Social Inquiry does not accept multiply submitted articles. The Editors endeavor to make decisions promptly, usually about two months after submission.

Editing of Manuscripts: All manuscripts accepted for publication are edited for style by professional copyeditors in consultation with the author. Copyeditors do not check citations. Authors see edited manuscripts and/or proofs.

Reprints to Authors: Without charge, we provide authors with 25 reprints of their article or essay or of the Review Symposium in which the essay appears. Additional reprints may be ordered at author's expense. Article authors receive 3 copies of the issue in which their contribution appears; review essay and book review authors receive 1 copy.

Republication Rights: The Foundation normally permits authors to republish their manuscripts in books or use their manuscripts after publication, but *Law and Social Inquiry* has the right to first publication of edited manuscripts. The journal retains the right to republish manuscripts as reprints or as part of any reproduction of the issue or volume in which they appear, by any means, including without limit electronic means or microfilm.

Copying Beyond Fair Use: The code on the first page of a contribution in this journal indicates the copyright owner's consent that copies of the contribution may be made beyond those permitted by Sections 107 or 108 of the U.S. Copyright Law provided that copies are made only for personal or internal use, or for the personal or internal use of specific clients and provided that the copier pay the stated per-copy fee through the Copyright Clearance Center, Inc., 27 Congress Street, Salem, MA 01970. To request permission for other kinds of copying, such as copying for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale, kindly write to the Permissions Department, University of Chicago Press, 5801 S. Ellis Avenue, Chicago, IL 60637.

Comments and Responses: Comments on or responses to articles or review essays in the form of brief, scholarly statements will be published at the discretion of the Editors or Review Section Editor.

Send article manuscripts to:

John Atkinson
Managing Editor
Law and Social Inquiry
American Bar Foundation
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-6500

Send inquiries regarding
review essays to:

Howard S. Erlanger
Review Editor
Law and Social Inquiry
Institute for Legal Studies
Law School
University of Wisconsin
Madison, WI 53706
(608) 263-7405

Annual U.S. subscription rates:

| | 1 yr. | 2 yr. | 3 yr. |
|--------------|-------|----------|----------|
| Individuals | \$36 | \$66.25 | \$91.80 |
| Academic | \$29 | \$53.35 | \$73.95 |
| Institutions | \$59 | \$108.55 | \$150.45 |

Outside U.S. please add a postage charge of \$6.00 per year to the U.S. rates. **Canadians please add** 7% GST tax to above rates as follows: One-year rates: Individuals \$2.52; Academic \$2.03; Institutions \$4.13. Two-year rates: Individuals \$4.63; Academic \$3.73; Institutions \$7.59. Three-year rates: Individuals \$6.42; Academic \$5.17; Institutions \$10.53.

Single copies: \$14.75 for institutions, \$9.00 for individuals. Checks should be made payable to *Law & Social Inquiry*, University of Chicago Press, Journals Division, P.O. Box 37005, Chicago, Illinois 60637. (Fax: 312-753-0811.) Volumes 1-12 available from Fred B. Rothman & Company, 10368 West Centennial Road, Littleton, Colorado 80127. (303) 979-5657

Volumes available in microfilm from University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

© 1993 American Bar Foundation. All rights reserved.

Law and Social Inquiry: Journal of the American Bar Foundation (ISSN: 0897-6546) is published quarterly—winter, spring, summer, and fall—by The University of Chicago Press, 5720 South Woodlawn Ave., Chicago, Illinois 60637. Subscription agent for Japan: Kinokuniya Company, Ltd. Second-class postage paid at Chicago, Illinois and at additional mailing office.

POSTMASTER: Send address changes to: *Law and Social Inquiry*, P.O. Box 37005, Chicago, IL 60637.