FROM THE EDITOR-ELECT

The *Law & Society Review* enters its second decade with a record of considerable accomplishment. From a fledgling journal, aspiring to create both a new inter-disciplinary focus and a community of scholars, it has grown quantitatively and qualitatively: in size, circulation, and number of manuscripts submitted; and in the wealth of empirical data it reports, the sophistication and comprehensiveness of the theories it presents, and the variety of disciplines it encompasses. By any of these criteria, the *Review* has attained a position of prominence within the ever expanding ranks of social scientific journals. This is the signal achievement of my predecessors; my primary goal will be to maintain that level of performance.

I also have a number of ideas and projects for the further development of the *Review* which I would like to share with our readership, for only with your encouragement and support can any of them be attempted. First, I have identified a variety of possible topics for special issues or clusters of articles within an issue, each of which I believe to be a point of controversy and growth within the field of law and social science. The first of these—the delivery of legal services—will be the subject of a special, fifth number of Volume Eleven of the *Review*. The questions of who does, or does not, obtain access to what kind and quality of legal services, how, and why, what difference this makes, and how it may be changed, are clearly critical to an understanding of the contemporary American legal system. The other topics listed below are no more than tentative suggestions, offered to elicit your reactions; for only if they strike responsive chords can they, or should they, become foci of scholarly discourse.

One such focus might be the continuing effort to clarify and reassess the fundamental presuppositions of social scientific theories of law. It is probably inevitable that a field as young and immature as ours will be acutely self-conscious and questioning—a form of intellectual insecurity which I believe to be entirely healthy. Thus the economic analysis of law—itself little more than a decade old—has already stimulated a host of criticisms, internal and external, concerning the capacity of economic theory to illuminate legal phenomena, the choice among alternative economic theories, and the ideological foundation of contemporary economics. Similarly, criminology—though it can claim a more ancient and respectable pedigree—is currently

riven by a debate over alternative models of criminal law and-deviance, a debate which reflects controversies within the parent discipline of sociology where fissions, long dormant, began to be re-articulated more than a decade ago.

In both fields—economic theories of tort, contract, property, or taxation, and sociological theories of crime and punishment—the necessity for reappraisal has been thrust upon us by the competing, often strident, assertions of contending proponents—fast becoming schools. But these debates should alert us to the shakiness of our entire theoretical infrastructure, and the need to question ideological presuppositions everywhere. Thus it might be opportune to look closely and critically at some of the landmarks of the field and ask how they have influenced contemporary research and thought, and whether their theoretical formulations are in need of revision. (Any list would invite arguments about inclusion and exclusion; we each have our favorites, and these should be the starting point for reflection.) Equally, it might be instructive to look at books which, despite their obvious merits, failed to make their mark on the shape and direction of the field—for instance, Beutel's "bad check" study (1957), Rosenberg's study of pretrial conferences (1964), Hoebel's evolutionary framework for legal institutions (1954), or the early study of knowledge and opinion about law by Cohen, Robson and Bates (1958)—and ask why they stimulated no cumulative effort, whether of imitation or detraction, but were instead simply ignored. And perhaps we might also profit from a re-examination of our basic intellectual antecedents—the social theorists of the eighteenth, nineteenth, and early twentieth centuries: Montesquieu, Marx, Maine, Durkheim, and Weber.

If social scientific theories of law require constant reformulation, so do legal theories of social science. With the growing respectability of social science its findings and theories impinge upon the legal process with ever greater frequency, pervasiveness and intensity. Judges, legislators, administrators, lawyers, parole boards, probation officers, and other legal actors increasingly rely upon social science and social scientists in making decisions. To what extent is existing knowledge in the social sciences relevant to the decision of issues as they are framed by legal institutions? Can social scientists product knowledge that is *more* relevant? Can the questions posed to legal institutions be re-formulated so that they may be answered by social scientific knowledge presently available or readily obtainable? And if

they can be, should they be? Can legal decision makers be endowed with greater familiarity with existing knowledge at the same time as they are rendered more sophisticated in discriminating between relevant knowledge and data which is irrelevant, or simply false?

Another point of growth derives from the stimulus we receive when we broaden our geographic horizons. As the first editor of the *Review* whose primary social scientific affiliation is anthropology, I feel a particular responsibility to improve communication between students of American legal institutions and those studying legal institutions in other countries. Significant intellectual developments can be anticipated from such communication, for the variations in legal and other social institutions revealed by comparative study always permit the generation and testing of new and more powerful theories. Among the innumerable dimensions along which legal institutions vary, two stand out in my mind as unusually fertile. First, in all classical social theory western societies, and especially the United States, represent one pole in a dichotomy between traditional and modern, *gemeinschaft* and *gesellschaft*, mechanical and organic solidarity, and so forth. It is reasonable, therefore, to look at other societies, especially non-western ones, for instances of legal systems based on radically different principles of social organization. One such difference, which has become a focus for current research, is the degree of "access" to law—an omnibus concept that includes use of, membership in, or control over such diverse phenomena as the legal profession, courts, informal dispute institutions, the legislature, economic or political groupings, institutionalized patterns of exchange, regulatory bodies, etc. (e.g., Carlin and Howard, 1965; Mayhew and Reiss, 1969; Galanter, 1974).

A second area of divergence worthy of exploration is suggested by the relative stability of the United States—and many other western nations—when contrasted with the radical, political, economic, and social change occurring elsewhere in the world. The latter takes many forms—compare China, Cuba, Chile (under Allende and again today), contemporary Portugal, Tanzania, Sri Lanka, Angola, Mozambique, Argentina, India, Vietnam, Cambodia, and soon, perhaps, Italy, France, Spain, and Rhodesia—and assumes a multitude of political colorations—socialist, corporatist, proletarian, agrarian, racist, multi-racialist. A study of any of these might illuminate the broad issues of the contribution of law to, and the consequences

for law of, rapid social change, and in turn may help us to clarify the role of law in the relatively stable, liberal, democratic, capitalist societies.

The social scientific study of law outside the United States is by no means limited to these broad problems, however parochial our own concept of that scholarship may be. I would like to realize the aspirations of the *Review* to being an international journal which unites a world community of scholars, by breaking down the barriers of mutual ignorance, grounded in differences of language, theoretical framework, and topical interest. Perhaps we can do so by translations, by summaries of the state of research abroad, by syntheses of theoretical trends, and by reviews of major books published in other languages.

Although comparative legal sociology obviously has value in its own right, I hope it could also serve to sharpen our critical faculties when we return our scrutiny to American legal institutions. For there are direct domestic parallels to the issues identified above. First, research is expanding on the use which Americans make of their legal system, and of the innovative ways they devise for asserting rights and grievances—research which also points to needed reforms. And second, arising from a growing and pervasive dissatisfaction with the performance of all sorts of American legal institutions, there is a search for alternatives—many of them suggested by our newly acquired knowledge of institutions abroad: community treatment of criminals and the mentally ill to replace incarceration; mediation and arbitration to replace adjudication; direct negotiation between all interested parties to replace governmental regulation; ombudsmen in place of judicial review; and delegalization, paraprofessionalism, and self-help to replace the monopoly of the legal profession.

Our dissatisfaction concerns not only the inefficiencies and injustices intrinsic to legal institutions, but also our deepening perception of their incapacity to effect desired social change. Two ways of understanding this problem have been suggested. First, we might look at failed reforms. As one who has been repeatedly critical of scholarship which confines itself to a rediscovery of the "gap" between law and behavior, I am not urging that we merely *document* additional failures, but rather that we ask such questions as: how was the social problem defined in the first place; what alternative formulations were conceivable, which were advanced, and by whom; why was law selected as the instrument of change, and what other strategies were consid-

ered and rejected; why did the reform fail, and perhaps equally important, in what did it succeed, i.e., whose interests were advanced by the outcome, whether stasis or change—what latent functions did it serve; and finally, what can we learn from the experience. Examples abound—on one level, the failure to halt exclusionary zoning, to restrain damage to the environment or to provide equal educational opportunities; on another, the failure, and ultimate dismemberment, of the War on Poverty. I am sure you can all think of others.

The second approach to this issue of law and social change is more positive. What have been the consequences of the indubitable change in the consciousness of lawyers which transpired during the last decade? How differently do lawyers now conceive of their role? How is this conception affected by background, by law school experience, by the nature of the market for legal services, by work experience? What new institutional forms are available to lawyers who wish to play nontraditional roles, and how effective are each of these structures in advancing social change? Pursuit of both approaches will advance our understanding of the contribution which law, and lawyers, can make to social change.

In addition to pursuing some of the above themes, the *Review* can perform other functions. It can provide a forum for preliminary reports of research in progress. The structure of scholarly journals often obstructs the rapid dissemination of research results, by requiring that they be embodied in a polished article, and then placing that article at the end of a long waiting list of unpublished manuscripts. Scholars should not be compelled to dress up every singular discovery—however poorly it is yet understood, and however slight it may ultimately turn out to be—in the pretentious attire of serious scholarship: embedded firmly within the relevant literature, casting illumination upon alternative theories, substantiated with enormous methodological sophistication, and claiming grandiose implications for social policy. I would prefer to offer an opportunity to publish brief research notes—descriptive summaries, perhaps no more than five pages, of work in progress—in order to improve the flow of information, provide feedback at an early stage of analysis, and open communication between scholars who otherwise discover, years later, that they had been working on the project.

At the other extreme of abstraction I would also like to encourage tentative endeavors at synthesis. I am, myself, an

inveterate reviewer of books, preparer of syllabi, compiler of bibliographies—activities which I justify by a belief that they allow opportunities to begin making connections among diverse ideas and disparate data. Once again, publication of such speculative conjunctions would be greatly delayed, and quite possibly aborted, if they could not be presented as merely useful insight suggested by chance anecdote or convenient illustration, but instead had to await embodiment in the definitive theoretical statement, for which all essential evidence had been convincingly marshalled. Thus I would hope to publish review essays—not capsule reports of current literature, but critical evaluations of a field from the vantage point of one or more recent books, with perhaps a retrospective look at their scholarly precursors; reviews of sub-fields which lack the stimulus of new work—to inquire why such work is not forthcoming, and what direction it might profitably take; and annotated bibliographies in areas where theoretical development is even less advanced.

Obviously, the implementation of these projects depends largely on whether I have correctly sensed the legal issues that engage social scientists, and the social scientific interests of lawyers. If any of the topics mentioned coincides with your own thought and work, I invite you to write to me. Equally, if I have overlooked subjects of equal or greater merit—and of course I have—I welcome correction and emendation. The role of editor is much more reactive than proactive. I can synthesize, coordinate, respond. But the *Review*, and the development of our field, is the joint product of the community of scholars.

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