

THE REASONABLE MAN

The Law and Society Association reached another stage of development on July 1 when Professor James Wallace of the University of Denver College of Law assumed the new position of Executive Director and Carla Sykes of the same institution commenced her new role of Production Editor of the *Law and Society Review*. A significant level of interdisciplinary cooperation in research and teaching about law and society has been achieved in recent years by lawyers, political scientists, sociologists, anthropologists, and psychologists; and we expect that these administrative innovations within the Association will enhance our effectiveness in encouraging and sustaining such work.

The value, if not the indispensability, of the expertise students and professionals in the behavioral sciences can bring to the understanding and the reform of the legal system has become apparent as the low visibility and insularity of legal norms and institutions are being overcome at the public's insistence. A group of faculty and students at Northwestern will invoke such multidisciplinary expertise in a new research project on one of law's most pervasively utilized concepts, that of the "Reasonable Man."

The concept of the Reasonable Man is the traditional, basic standard for construing claims for damages based on negligence, insult, mental suffering, and defamation; as a guideline in evaluating defendants' conduct in criminal law cases; and as a key to the ascertainment of deviance, delinquency, and mental illness leading to institutional confinement. Its definition has been a product predominantly of judicial development through the common law, unrelated to research by behavioral scientists into the human psyche or the components of normality and abnormality.

The creation by the judiciary of the "Reasonable Man" — who, among other juridically derived ascriptions, is "the embodiment of all these qualities we demand of a good citizen," or "who exercises that dominant trait of mind that distinguishes reasonable man from other unreasonable beasts," or

whose conduct is "similar to that of all persons who are expected to take proper care of themselves," or who is "rational, just, fairminded, proper, sensible, sane, moderate" — raises questions that have been too long avoided and can be answered through cooperative research.

Does the Reasonable Man concept require a monolithic standard of evaluation for the conduct of a pluralistic population? Does it serve as a legal device for foisting the values of white, middle-class America on litigants? Is it a verbal facade for sanctioning through objective terminology the subjective responses of judges or jurors to particular litigants or their actions? Is it designed to compare the particular behavior of a defendant to a modal response, a prescribed response, or an ideal response? Who wins and who loses through application of the concept in torts and criminal law cases? How does it affect legal notions of mental health, especially of insanity and the presumption that "a person possesses a sufficient degree of reason to be responsible for his crimes?" Can it allow for cultural, ethnic, generational, or other diversity of values in gauging reasonableness? Is the concept — or can it be — a source of legal protection or redress for the disadvantaged and alienated?

There is need for systematic appraisal of the legal dimensions of the Reasonable Man, of the concept's application by juries and courts, its implications for the multiple components of American society, and its compatibility with the observations and findings of modern behavioral science. We know that at times the norm may be applied merely as a cloak for deep-rooted prejudices, as when the Alabama Supreme Court, in 1963, ruled it unreasonable for a black woman testifying in a criminal case to demand that she be addressed as "Miss Hamilton" rather than as "Mary." At other times judicial construction of the norm may exacerbate conflict, as when a seventeen-year-old was convicted in Illinois, under a disorderly conduct statute that equates "disorderly" with "unreasonable," for calling out "oink, oink, oink," to a group of policemen.

The theory underlying the concept should be measured against the meaning it acquires operationally. It would also be desirable to determine the concept's meaning in a sense expressed by Osgood in *The Measurement of Meaning*, by examining the process in the "behavior of a sign-using organism

which is assumed to be a necessary consequence of the reception of sign-stimuli and a necessary antecedant for the production of sign-responses.”

An obvious long-range need is to develop appropriate methodologies for integrating into the legal applications of the norm the conceptions, observations, and conclusions about reasonableness of the relevant branches of psychology and psychiatry.

I'd welcome any comments, suggestions or news about related research and interests from our members.

Victor G. Rosenblum,
President