

From the Editor

The early social scientific effort to understand law and the legal system is largely associated with attempts at grand theory. The names of Durkheim and Weber, in particular, stand out, but Maine, Pashukanis, Timascheff, and others all offered encompassing perspectives. The renewed interest in law and social science, which began in the United States in the 1950s and came to flourish in the sixties and seventies, has had just the opposite character. It has been largely an empirical enterprise. In tracing the rebirth of social scientific interest in law and the legal system, one speaks not of theories but of studies; for example, Schwartz's (1954) research into the legal orders of two Israeli communities, Ball's (1960) study of rent control violations in Honolulu, and Macaulay's (1963) inquiry into non-contractual relationships among businesses.

Recently, however, perhaps as a sign of the growing maturity of law and social science, grander theories have again begun to appear. In the United States this has taken the form of both original syntheses—here I am thinking of such names as Unger, Nonet and Selznick, and Black—and writings that build explicitly on the work of such past and contemporary European theorists as Marx, Gramsci, Habermas, Luhmann, and Lukács.

This issue of the *Review* reflects this renewed interest in broad theory. It begins with an article by Gunther Teubner which seeks to extend the evolutionary theory of Nonet and Selznick by contrasting their vision of the modern legal order with the visions of Habermas and Luhmann and finding in the contrast the stuff of a new synthesis. It concludes with a debate between David Greenberg and Allan Horwitz on the merits of Donald Black's attempt to order what he calls "the behavior of law."

The thrust of the first article and that of the concluding set are as dissimilar as the theories they are dealing with. Teubner thinks that Nonet and Selznick are on the right track in explaining how the dominant character of Western legal systems has changed over the years, but he argues they have failed to appreciate the complexity of contemporary developments and so have lumped two rather different phenomena into one concept. In making this argument, Teubner is engaging in what Bellah (1982) has called "practical

social science.” Normative and even prescriptive concerns, while not the sum of the enterprise, are an inextricable part of it. Teubner identifies a new type of law, reflexive law, which he believes is emerging as the dominant liberal legal response to the contemporary crises of advanced industrial societies. But in doing so Teubner conveys the feeling that he believes reflexive law *should be* the dominant response to these crises. To paraphrase Bellah (1982: 38): This work is not a mere passive reflection. Like works of the greatest scientific value such as *Democracy in America* or *The Division of Labor*, it is also designed to *persuade* the public of certain desirable policies.

Greenberg, on the other hand, does not approach Black’s theory with the goal of building on Black’s insights. His criticism is total. One leaves Greenberg with the message that those who look to Black’s *The Behavior of Law* for either a promising research agenda or a theoretical structure with which to organize the data of law and social science do so at their peril.

Donald Black was invited to respond to Greenberg’s critique, but he felt that given the scope of Greenberg’s attack it would be more fitting if someone else were to take on the burden of reply. Black suggested Allan Horwitz, who agreed to undertake the task despite the severe time constraints he knew he would face. In transforming a critique into a debate, he does us all a service. If Greenberg’s criticism is total, Horwitz’s defense is equally sweeping. He sees Black’s perspective as by far the most promising set of organizing principles for contemporary law and social science, and he believes that Greenberg’s views are in important ways outmoded.

The terrain covered by Greenberg and Horwitz is far from the descriptive and normative concerns which so interest Teubner. The debaters are interested in the structure of scientific theories that seek to order legal phenomena, the outcomes that such theories should explain, the viability of concepts we might work with, and the empirical adequacy of the particular propositions that Black advances. I leave it to you, the reader, to decide between the positions that Greenberg and Horwitz advance just as I leave to you the question of whether we are entering into an era of reflexive law and, if so, whether this is a desirable direction. My concern is that we develop theory within our discipline. Theory progresses both by works that build on existing theories and by

those that attack and defend them. It is for their contributions to theory that I have chosen to publish these articles.

The remaining two articles in this issue are fine empirical studies. The first, by Colin Loftin, Milton Heumann, and David McDowall, is an investigation into the effects of Michigan's "felony firearms" statute, a law which mandates a two-year sentencing increment for those who use guns in the commission of certain felonies. Perhaps the most interesting aspect of this article is that its conclusions rest both on the rigorous analysis of statistical data (using Tobit, probit, and ARIMA models) and on the insights gained from in-depth interviews. Were one of these resources lacking, the article would be fundamentally incomplete. To my mind this technique of combining "hard" and "soft" approaches to the data is often well-suited to socio-legal research and in many instances is crucial to understanding what is going on. The legal system is also well-suited to this approach, for it generates reams of data and crucial actors are frequently willing to be observed or to answer questions.

The second article, by Mary Baker, Barbara Nienstedt, Ronald Everett, and Richard McCleary, uses a structural equation model, based on a two-wave survey of the population of Phoenix, Arizona, to suggest that the effects of a media-generated crime wave are almost the mirror image of what the fear of crime literature would predict. The most important general contribution of this article is to question the model specifications used in prior research on the fear of crime. It now appears that to understand why some people fear crime more than others, we must simultaneously account for both perceptions of crime rates and confidence in the police.

Both the empirical articles in this issue use data analytic techniques that are on the forefront of modern statistical methodology. Some readers and potential contributors may be wondering whether the use of such techniques is now a "must" in articles presenting empirical data. It is not. What I shall attempt to require is that statistical techniques be appropriate to the data, not that they achieve some degree of what is often mistakenly called "sophistication." Modern statistical techniques often will be appropriate, for they allow us to more richly model causal arguments, and they offer functional forms that should be attended to when assumptions of linearity are questionable. But, by the same token, information is always lost when one moves to more aggregated forms of analysis, and simple tabular analyses may on occasion be more revealing

than complicated regressions, or they may be all that the data reasonably allow. Finally, there is a difference between the analysis and the presentation of data. Data should be presented so that its import can be readily understood. Often more advanced but less familiar statistical techniques may be used to check for certain relationships in the data, but, if these relationships do not exist, their non-existence may be noted in a footnote and the presentation can proceed with a more familiar format.

This issue of the *Review* is the second under my editorship, but it is the first to be edited and produced in Ann Arbor. I have become aware in very short order that producing an issue of the *Review* is a team effort that begins when an article is submitted for publication and ends only when an issue has been bound and mailed. A number of people outside Ann Arbor are important to this process. These include: Jim Wallace, the Executive Director of the Law & Society Association; Gene Hallberg, who handles the production process at Joe Christensen Bros., our publishers; the members of the *Review's* Editorial Board, whose names you see on our masthead; and the large numbers of you who have been or will be called on to referee manuscripts we are considering. However, the participation of this group is episodic. The day-to-day work of keeping up with submissions, reaching editorial decisions, and preparing manuscripts for publication is done by the team members in Ann Arbor. Allow me to introduce them to you.

My associate editor and an invaluable source of advice and second judgments is Colin Loftin. Colin is an assistant professor in the Sociology Department and a faculty associate in the Center for Political Studies, Institute for Social Research, University of Michigan. He teaches statistics and criminology and is currently doing research on social control and violent crime in Detroit between 1926 and 1980.

The production editor of the *Review* is Peg Lourie. Peg is responsible for everything that happens from the time a manuscript is accepted and finally edited by me until the time that the printer receives a final okay to publish an issue. She is a whiz at spotting small changes in style and grammar which pay large dividends of clarity and elegance. Peg has taught in the English Department and directed the Women's Studies Program at the University of Michigan. Her work in sociolinguistics permits her to tolerate, however

unenthusiastically, my belief that some infinitives are meant to be split.

Finally, the *Review's* editorial secretary is Joyce Reese. Joyce does almost everything. From the time a manuscript is received until the time it is sent to the publisher, it is in her keeping. She oversees the review process, handles correspondence with authors, alerts me to those manuscripts which await decision, and contributes to the editing and galley reading. Joyce is a graduate of the University of Arizona with a B.A. in anthropology and a minor in music.

Editing, we have found out, is hard work. But so far it has been fun.

Richard Lempert
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