From the Editor

At one time the Law and Society Association might have been loosely defined as "a group of people who subscribe to the *Law & Society Review*." Today the *Review* is properly described as the journal of the Association, for the Association has developed into a true fellowship of scholars, and publishing the *Review* is only one of the Association's activities. For more than a decade the Association was governed by a Board of Trustees that chose its own leaders and successors. Today the trustees and the president are elected by the membership at large. Early trustees meetings were often "piggybacked" onto meetings of the AALS or APSA—meetings that a substantial proportion of trustees were likely to attend in any event—and it was a triumph of intellectual interchange if some other social science association could be persuaded to add to its annual meeting a panel or two devoted to "Law and . . . ." Today the Association's trustees and president are elected by its members, and the Association holds well-attended annual meetings filled with more interesting research panels than any one person can accommodate. In addition, the Association supports an active executive office that regularly publishes a newsletter and participates with other social science associations in explaining the business of social science to the public and in seeking the support needed for the important work we do. All of this reflects the fact that for an increasing number of scholars the Law and Society Association has become a primary rather than secondary discipline affiliation.

If present trends continue, we will, no doubt, soon be able to purchase Law and Society life insurance or take Association sponsored cruises up the Amazon, stopping along the way for guided tours of the indigenous legal life. These dire prospects may be the final marks of professional institutionalization, but I prefer a more welcome harbinger of the Association's maturity. Herbert Jacob's article, "The Travails of Exploration: Trial Courts in the United States," which opens this issue of the *Review*, is a revised version of his Presidential Address to the Association's 1982 annual meeting. It is the first Presidential Address to be published in the *Review*, and as such it symbolizes the relationship of the *Review* to the Association. I hope and expect that it will start a tradition.

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Another sign of the growing maturity of law and social science is the theme that unifies the major articles in this issue: the authors' shared realization of the complexities that must be confronted by students of the legal system and their different reminders of the ways we may be misled when complexities are ignored.

Professor Jacob, in his Presidential Address, looks at the outpouring of work on trial courts during the past fifteen years. His review gives one a feeling for the complexity that abounds in but a single area of socio-legal inquiry. As Jacob tells us, the area is not one that has suffered from a lack of attention or even a lack of competent attention, but what we have learned pales in comparison to what we don't know. Jacob notes that if we were to map the terrain we seek to explore, vast areas—including most of what there is to know about civil courts—would remain uncharted. This is neither surprising nor an indictment of the work that has been done. If we may speak of a plethora of research on trial courts, it is only in comparison to other equally complex areas that have received less attention. Jacob's observations on trial courts apply to most areas of law and social science. Theories that can fruitfully guide research are only now being developed. Much remains to be done.

But not only is there a vast richness to the subjects that are regularly explored within the pages of this journal; there are subtle complexities within each area that affect what we can learn from the work being done. Professor Emerson in his article, "Holistic Effects in Social Control Decision-Making," calls our attention to the way in which decisions in particular cases may be affected by how those cases fit into a stream of past and anticipated decisions. Judgments are often inescapably comparative, and precedent, we are reminded, is both past and forward looking. Research that looks at cases but ignores caseloads may fundamentally misinterpret what is occurring. For example, when one parole officer revokes parole for a violation that another officer treats as inconsequential, the reason may lie neither in the characteristics of the parolee nor in the biases of the officers. The same violation may look very different and so appear to call for different treatment depending on how it relates to other violations that characterize an officer's caseload. Research that does not attend to context may be as misleading as quotations taken out of context. Analysis may proceed by attention to parts, but a global perspective may be required to give what we find meaning.

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Professor Nagel's article, "The Legal/Extra-Legal Controversy: Judicial Decisions in Pretrial Release," emphasizes a different kind of contextual effect. She notes that the influence of legal and extra-legal factors in judicial bail setting depends on which bail setting decision is modeled. The decision on whether to set bond or release on recognizance responds to different factors than the decision on bail amount when bail is set, and the decision to accept a cash alternative to a bail bond responds to still other considerations. Work that aggregates a multitiered decision-making process presents at best a partial picture of what is occurring, and it may present an inaccurate one. Professor Nagel also reminds us that it is no easy matter to capture legal concepts in empirical indicators. If the real world is complex, so are those ideas embodied in law.

Professors Paternoster, Saltzman, Waldo, and Chiricos in their article, "Perceived Risk and Social Control: Do Sanctions Really Deter?" call into question one of the standard techniques that social scientists use to reduce the complexity and expense of untangling causal relationships, namely, the assumption that cross-sectional data allow an adequate test of time-linked hypotheses. Working with panel data, the authors suggest that the negative association typically found between self-reports of past criminality and the perceived (current) likelihood of punishment represents an experiential rather than a deterrent effect. At least for the minor delicts the authors study, it appears that fear of getting caught has little to do with future criminality, but getting away with minor crimes reduces the fear of getting caught. Paternoster and his colleagues also point to another source of complexity: Their model suggests that one cannot understand the relationship of perceived punishment to criminal behavior unless one takes account of moral commitments and perceptions of informal sanctions. In other words, if fear of punishment is not analyzed in the context of other relevant perceptions, we are again likely to be misled. This study is particularly important, for if its results are replicated by others, a sizable literature must be called into question.

These articles, in emphasizing the complexity of the terrain we study and the need to spot and take account of relevant context, pose two problems for the researcher. The first is to develop a more sophisticated appreciation of our subject matter so that our research designs are more adequate to the explanatory tasks we set. The second is to decide what to make of previous research that overlooks those crucial factors

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that the authors of these and similar articles identify. Often the solution is neither to ignore nor to dismiss such research. Flawed research is not by that account valueless. If it were, few among us would have done anything worth preserving. Instead we must look at earlier research in the light of everything we know and decide what conclusions deserve to stand and what results may be fruitfully reinterpreted.

Two tendencies that are all too common—particularly in policy relevant research—should be avoided. The first is to cite all relevant research whose conclusions support the author's hypotheses. We must make quality judgments and some studies, however congenial their findings, do not merit citation. As science advances and we learn more about the objects of our study, even research that was at one time genuinely credible may fall into this category. The second tendency is to use methodological or other flaws as an excuse to dismiss studies that are inconsistent with favored results. At times complete dismissal is justified, but at other times studies we would like to dismiss are robust enough that the simple allusion to flaws is a way of ducking the researcher's responsibility to reconcile, explain, or acknowledge the inconsistent results of others. I don't know if tendencies to cite too readily or dismiss too quickly are more common in law and social science than in other areas. Probably they are not, but they may be more disquieting because of their uncomfortable similarity with the way that lawyers treat cases, articles, and—yes—even social science in their briefs. Partisanship may be inescapable in social science, but brief writing is not.

The other article in this issue is a Research Note by Virginia Hiday, entitled "Judicial Decisions in Civil Commitment: Facts, Attitudes, and Psychiatric Recommendations." Research Notes are vehicles for publishing concise analyses that exploit interesting data sets and report results that deserve to be brought to the attention of the law and social science community. Typically, the results reported do not justify extensive theoretical discussion, but they are theoretically important because of the way they fit in with other work in building or testing larger theories. Hiday's work is a good example of this genre. Her analysis of civil commitment decisions under North Carolina's "modern" mental health commitment law suggests that the "facts" of the case and psychiatric opinion influence but do not control judicial decisions on involuntary commitment, but she finds no evidence that judicial attitudes toward the mental health

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system or toward the respondent's race, sex, or age influence the commitment decision. Future research will have to determine to what extent Hiday's findings are location or time specific, and theories that explain variance in mental health commitments by judicial attitudes will have to contend with Hiday's results.

Finally, Lawrence Friedman reminds me that 1984 is the twentieth anniversary of the Civil Rights Act of 1964. It is also the title of Orwell's well-known book that has more than a few implications for how we perceive legal rights and the potential of official interventions. I have yet to receive manuscripts that treat either theme. Quality work that does so needs to be submitted soon if it is to appear in 1984. I would welcome such submissions.

Richard Lempert
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