From the Editor

From a humanitarian and historical perspective, it is no surprise that the death penalty is of compelling interest to American scholars. Execution is an extraordinary form of punishment, both terrible and final. That a society would require the life of a citizen to be taken as a consequence of an all-too-fallible process of administering justice is difficult for some to imagine. Moreover, the United States is the only industrialized Western democracy that still permits imposition of the death penalty (Haas & Inciardi 1988b:22).

Symposium: Research on the Death Penalty

Submissions to the *Review* during the past 18 months have included a steady stream of work on the death penalty. In spite of the Supreme Court's turn away from empirical research in death penalty cases, law and society scholars continue to explore the administration of the death penalty and its role in our society. The articles in this symposium were selected from the regular submissions to the *Review* and reflect current work in this active field.

Frank Zimring's introduction to the symposium examines the close relationship between the evolution of empirical research on the death penalty and the Supreme Court's death penalty policy. He comments on the contribution of each of the articles to a field of study that is moving away from a litigation frame of reference toward a wider variety of theoretical perspectives. To set the stage for Frank's comments I offer a brief summary of landmark Supreme Court decisions and a few examples of the outpouring of law and society research that accompanied them.

Empirical research on the death penalty has been heavily influenced by Supreme Court policymaking. Even before the Supreme Court expressed serious concerns about the arbitrary and discriminatory administration of the death penalty under existing laws in *Furman v. Georgia* (1972), empirical research focused on assumptions about deterrence and fair administration (see, e.g., Sellin 1959; Wolfgang & Reidel 1973). In response to *Furman*, empirical research flourished addressing issues raised but not resolved by the Justices, including the deterrent effect of the death penalty (see Lempert 1981; Dike 1982; Blumstein et al. 1978) and racial discrimination in the adminis-

Law & Society Review, Volume 27, Number 1 (1993)
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https://doi.org/10.1017/S0023921600019939 Published online by Cambridge University Press

tration of the death penalty (see Baldus et al. 1983; Radelet 1981; Jacoby & Paternoster 1982; Gross & Mauro 1989). Similarly, in 1968 the Supreme Court had suggested that empirical evidence might have a bearing on the constitutionality of "death-qualifying" jurors (i.e., the practice of excluding from juries persons with reservations about applying the death penalty) (*Witherspoon v. Illinois* 1968). Research addressing the effects of death qualification on the likelihood of convicting a defendant flourished after the *Witherspoon* decision (see Goldberg 1970; Bronson 1980; Cowan et al. 1984; Fitzgerald & Ellsworth 1984; Finch & Ferraro 1986).

In 1976, the Supreme Court's moratorium on the death penalty ended with a declaration that it was willing to reconsider state statutes that sufficiently guided the discretion of those who applied the penalty (*Gregg v. Georgia* (1976). Since its decision in *Gregg*, the Court has steadily broadened its permission to employ the death penalty.

Decisively, a more conservative Supreme Court in its most recent decisions has rejected social science research on empirical questions that the Court itself had previously suggested might lead to limitation or invalidation of the death penalty. In 1987 the Court rejected an equal protection challenge, brought by a black man convicted of murdering a white man, alleging racial discrimination in Georgia's capital sentencing process (*McCleskey v. Kemp* 1987). Among other forms of support for the claim the plaintiff cited David Baldus's Kalven Prize–winning study (see Baldus et al. 1983) establishing statistically significant racial disparities in capital sentencing in Georgia. Justice Powell, writing for the majority (p. 292), concluded that demonstrations of statistically significant racial bias were constitutionally irrelevant, insisting that petitioner McCleskey "prove that the decision maker in *his* case acted with discriminatory purpose." In a case decided the year before, the Court also rejected the results of a multitude of empirical studies on the bias of death-qualified jurors, challenging all the significant implications of the research and all but ruling out the relevance of any future studies (*Lockhart v. McCree* 1986).

After more than two decades of conducting research guided by the hope of influencing the Supreme Court's death penalty decisions, the change signaled by *Lockhart* and *McCleskey* has forced scholars to chart new courses and, in doing so, to think about the role research will play in public discourse about the death penalty. As the articles and comments in this symposium show, scholars have responded with research that is more deeply critical, more theoretically informed, and more broadly concerned about the culture and politics of the death penalty.

Because empirical research on the death penalty is at a critical crossroads, I asked Frank Zimring in his introduction to this

https://doi.org/10.1017/S0023921600019939 Published online by Cambridge University Press

symposium to reflect on the impact of the Supreme Court's decisions on death penalty research. His examination finds that between *Furman* and *McCleskey* the Supreme Court had a profound effect on research, narrowing not only the questions asked by researchers but also the inferences that were drawn from research. Thus, in Zimring's view, the Supreme Court's rejection of empirical research should be viewed as liberating. As he shows us in his comments on each article, the work in this symposium moves beyond prior research, breaking new ground in ways that enrich and broaden understanding of the death penalty in American society.

A New Methodology for Examining Regulatory Impact

In the concluding article in this issue, Wayne Gray and John Scholz present an important new method for analyzing the impact of regulatory interventions. Using data on OSHA inspections and fluctuations in accidents, Gray and Scholz describe problems of inference that have impeded analyses of the effects of inspections, such as OSHA's selection of plants for inspection (e.g., targeting particular industries), the regression of high accident rates toward the mean independent of inspection, and the possibility that OSHA uses the recent injury history of a plant to target inspections. The Chamberlain technique permits simultaneous modeling of the effects of these factors and an estimate of the effect due to inspections alone. The authors provide an accessible introduction to the application of the Chamberlain method and a technical appendix containing a detailed derivation.

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https://doi.org/10.1017/S0023921600019939 Published online by Cambridge University Press