From the Editor

There are, we all know, fashions in research. Methods or topics are "hot" for a period of time. Then the research community seems to lose interest in them, and its practitioners move on to other subjects and approaches. There are many reasons why a topic emerges as the focus of widespread scrutiny. First and foremost, or so I shall assume, is the perceived value of research on a particular topic, which is a function of its inherent scientific interest and its perceived social importance. These qualities also attract the attention of funding agencies and the largess they can dispense, which further stimulates attention to the area. Finally, it helps if the matter is easily researchable, a condition that is enhanced if data are easily collected or widely available and if there are clear paradigms for the generation and testing of hypotheses. Where these conditions are all present, one can be sure that research will proceed apace. For a time, at least, the attraction process will feed on itself, for research attention will not only validate perceptions of interest and importance, but it will also induce granting agencies to allot more money to the topic and will generate accessible data sets and refinements of paradigms that will make the topic yet more "researchable."

During the past decade research on deterrence has been in fashion. Numerous scholars from various disciplines have explored the questions of how, whether, and to what extent the threat of punishment deters. While this burgeoning interest reflects, no doubt, the influence of each of the factors mentioned above, the effects of one are particularly intriguing. This is the researchability of the topic.

Deterrence research has been easy to do. The bulk of the work has been guided by a clear theoretical paradigm and some simple methodological assumptions. The paradigm, which goes back to Bentham and Beccaria, assumes that humans are rational creatures who individually seek to maximize pleasure and minimize pain. If so, the conclusions that punishment deters crime and that deterrence increases with the perceived certainty and perceived severity of threatened punishment should follow. In one way or another most deterrence research tests these "certainty" and "severity" hypotheses.

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Two methodological assumptions have facilitated tests of these hypotheses. The first is that official indicators of certainty and severity, such as arrest rates, incarceration rates, and average terms of incarceration, correlate closely with average perceptions of certainty and severity across jurisdictions and over time. The second is that self-report data may be trusted in a variety of ways. Individual judgments of the certainty and severity of punishment associated with deviant acts are assumed to be on a more or less common underlying scale. Reported past deviance is assumed to correlate highly with actual past deviance, and estimates of likely future deviance are thought to reflect accurately relative probabilities of future deviant behavior. Perhaps most importantly, cause is assumed to run from perceptions of punishment to reported past or contemplated future behavior, rather than the other way around.

These assumptions have given rise to two styles of research. The first examines aggregate data for deterrent effects of increasingly severe and certain punishments which persist when various other variables that might explain crime are taken into account. As Professor Cook (1980) has shown, the nature and quality of the available data place fundamental limits on this approach. The second style of research works with self-report data and seeks to correlate reported perceptions with reported or anticipated behavior. It seeks to qualify or specify the deterrence relationship by demographic characteristics and by perceptions of informal sanctions. This approach is limited by the fact that only minor crimes are common enough to be investigated through self-reports and by the possibility that criminal experience leads to perceptions of certainty and severity rather than the reverse (Paternoster *et al.*, 1983). While research of both types commonly reports modest but real effects attributable to certainty and slighter and more questionable severity effects, neither tradition tells us much about how laws come to deter beyond the obvious fact that criminal sanctions constitute a threat of future pain.

In "The Paradoxical Impact of Criminal Sanctions: Some Microstructural Findings," which opens this issue, Sheldon Ekland-Olson, John Lieb, and Louis Zurcher take a different approach to the deterrence problem. They spent six years in the field interviewing and observing middle-level narcotics dealers. As a result they can tell us something about how the law comes to deter. It appears that a key mediating variable is the social organization of the potential targets of enforcement

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efforts. To the extent that drug dealers can buffer each other from the full consequences of arrest and conviction, the law is less terrifying than it might be. To the extent that relationships among dealers are vulnerable to disruption by enforcement efforts, deterrence should increase.

Consider arrest from the dealer's perspective. An arrest is not feared simply because it presages more serious sanctions. Dealers know that arrests do not always stick, and that if they do, serious sanctions do not necessarily follow. However, even when an arrest does not stick, it can destroy fragile business relationships so that a valued source of income is, at least temporarily, lost. This kind of fear does not, of course, lead dealers to abandon their chosen careers, but it does give them an incentive to structure their transactions and, indeed, their lives to lower the probability of arrest. This may, for example, involve reorganizing sales activities to eliminate "risky" deals. If this happens, narcotics sales are likely to diminish but so is the probability of arrest. At the aggregate level, sales and arrest data across jurisdictions or over time may be directly related and so run counter to the deterrence hypothesis, yet substantial, albeit partial, deterrence may have occurred. The aggregate data mislead because the probability of arrest is taken as a proxy for the threat of arrest and the possibility that deviance will be reorganized in the light of the threat is not acknowledged.

It is also the case that different ways of policing the narcotics trade may yield similar arrest rates yet have different implications for the apparent riskiness of deals or the meaning of arrest. Thus, the creation of informers through plea bargaining may yield as many arrests as "sting" operations, but the latter tactic may make drug dealers especially wary of selling to strangers and so may do more to limit drug trafficking.

As I said once in the pages of this journal, progress in understanding how the criminal law comes to shape behavior and deter crime depends on the close examination of social and organizational variables like those that Ekland-Olson and his coauthors consider (Lempert, 1981-82). Work that attends to such variables promises to be considerably more insightful than research which is content to play yet another change on the simple individualistic paradigm that has to date dominated deterrence research. Attention to social and organizational variables should yield richer models that tell us more about

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how humans respond to the threats of penal law and carry greater promise of informing the fight against crime.

But understanding the social and organizational dimensions of deterrence requires an understanding of the contexts in which law is applied and the ways in which law enforcement organizations operate, perhaps on a law-by-law basis. As the six years that Ekland-Olson and his coauthors spent researching their topic attest, the requisite understanding is often not easily acquired. Thus, if the new perspective on deterrence that I called for and that Ekland-Olson, Lieb, and Zurcher offer is the most fruitful way of proceeding, deterrence will become a less easily researchable topic in the future. It remains to be seen whether the promise of enhanced scientific and social returns makes research on deterrence yet more fashionable or if as such research becomes more time consuming, more expensive, and more difficult, social scientists turn to other areas of investigation.

Deterrence is also treated by John Scholz in his article "Cooperation, Deterrence, and the Ecology of Regulatory Enforcement." Scholz's concern is not, however, with understanding processes of deterrence. Instead he is concerned with understanding the larger process of administrative regulation and specifying those conditions that determine the stance which a regulatory agency should take toward the companies it regulates. Drawing on recent advances in evolutionary game theory, Scholz develops a formal model which shows (a) that cooperative regulatory strategies are typically in the interest of both the regulatory agency and its regulatees, (b) that given certain plausible states of the world evolution in the direction of agency-regulatee cooperation may be expected, and (c) that despite the virtues of cooperation there are likely to be situations when the wise agency should adopt a punitive, deterrence-oriented strategy. As with many formal models, one must pay close attention to assumptions and mathematics in order to fully understand and appreciate the results derived. Readers interested in problems of administrative regulation will find that such attention is amply rewarded. Even readers not especially interested in administrative regulation have much to learn from Scholz's use of game theory to illuminate contingencies of legal compliance.

Three of the remaining four articles, or half the articles in this issue, are by European authors. This is not due to any special outreach efforts on my part. It instead reflects the

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international character of the Law and Society Association, the general esteem in which the *Review* is held around the world, and the fact that socio-legal research is flourishing in many countries. Manuscripts from countries other than the United States and Canada are regularly received, and readers may look forward to seeing additional articles by non-North American authors in the future.

The first of these articles, "Individual Differences in Judicial Behavior: Personal Characteristics and Private Law Decision-Making" by Peter van Koppen and Jan ten Kate, illustrates a special virtue of comparative research. Van Koppen and ten Kate investigate the relationship between judicial characteristics and decisions rendered by giving nine case protocols to a sample of Dutch judges and evaluating their decisions in the light of personal data that the judges also provided. In the United States the presentation of a written stimulus to judges accustomed to deciding cases after hearing oral presentations would call the external validity of the study into question. In the Netherlands, judges are used to deciding simple civil cases on the basis of written submissions. Thus, while the study is still a simulation, one feature which would make the simulation unreal for a U.S. judge does not exist.

The other European authors are Erhard Blankenburg and Gunther Teubner. Their articles are entitled "The Poverty of Evolutionism: A Critique of Teubner's Case for 'Reflexive Law'" and "Autopoiesis in Law and Society: A Rejoinder to Blankenburg." As the titles imply, Blankenburg is responding to Teubner's article "Substantive and Reflexive Elements in Modern Law," which appeared in Volume 17:2 of this journal, and Teubner is replying to Blankenburg. However, the articles are substantially more than an exchange of views about a particular article and in this lies much of their value. Blankenburg's critique is concerned with evolutionary theories generally, and he properly questions the idea of progress implicit in most such theories. Teubner extends his earlier work by incorporating ideas from cybernetics and biology. In doing so, he clarifies the sense in which law, according to his model, is self-referential and tells us more about the way in which he thinks self-referential systems like law should function.

The remaining article in this issue is by Dale Dannefer. It is entitled "'Who Signs the Complaint?' Relational Distance and the Juvenile Justice Process." In this article Dannefer explores the relationship between the identity of the

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complainant (almost always the police or a parent) when juveniles are charged with status offenses and the fate of the youth involved. He finds support for what he calls the "relational resource" hypothesis. Youth accused of status offenses fare more poorly at several decision points in the juvenile justice system when a parent is the complainant than they do when the police have brought charges. This is further evidence of the importance of parental support to youth confronting the juvenile court. The more general point is, as Dannefer tells us, "that in explaining legal sanctions it may be necessary to consider the different role configurations of complainant and accused."

Richard Lempert
June 1984

REFERENCES

COOK, Philip J. (1980) "Research in Criminal Deterrence: Laying the Groundwork for the Second Decade," in N. Morris and M. Tonry (eds.), *Crime and Justice: An Annual Review of Research*, Vol. 2. Chicago: University of Chicago Press.

LEMPERT, Richard (1981-82) "Organizing for Deterrence: Lessons from a Study of Child Support," 16 *Law & Society Review* 513.

PATERNOSTER, Raymond, Linda E. SALTZMAN, Gordon P. WALDO and Theodore G. CHIRICOS (1983) "Perceived Risk and Social Control: Do Sanctions Really Deter?" 17 *Law & Society Review* 457.

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