From the Editor

The longer I serve as editor, the more frustrated I feel at turning down good or promising manuscripts. Whether there has been a change in my own standards or a change in submissions, my overall impression is that I have had to turn away an increasing number of high quality papers. I have dealt with this by reducing the type size in volume 22 and exceeding the page limits by a bit. The result in this issue should be obvious just by the feel of it—it is longer.

In editing the papers in this issue, I have come to see some connections which might not be immediately obvious to you as you scan the table of contents. This is not to say that everything "fits." Nor would I claim that the only significance these articles have involves the issues which I see them sharing—each piece has its own complexity and its own variety of audiences.

Nevertheless, I call your attention to some shared elements in the first five papers. In these, we see five dramatically different ways of studying what goes on in criminal courts. Method, however, is not the only feature differentiating these studies. Each also approaches the courts with a unique set of questions. I find it intriguing to attempt synthesis among such divergent views since they are all presumably studying the same "elephant."

The first of these is an ethnography of a "criminal" court that leaves the reader with the impression of a very different kind of institution. Barbara Yngvesson shows us the handling of "garbage" criminal complaints filed by citizens (not police) in a mid-sized city. Such complaints arise from community tensions with which court officials are intimately familiar. She shows how court clerks use their position in the court and community to regulate unique kinds of troubles arising from each type of neighborhood. Like good khadis, these clerks interweave law, community wisdom, and subcultural values to assert and maintain their own visions of social order within the various elements of community that appear at court.

Compare this ethnographic vision, with its emphasis on the role of subculture and context, and the level of analysis Douglas Maynard brings to the plea bargaining process. Painting with a much finer brush, Maynard proposes the existence of stable and predictable narrative structures within which court personnel work out stories that serve to establish the terms of plea bargains. He identifies functionally different negotiation patterns between public defenders, prosecutors, and judges by analysis of their stories. In a sense, his work reduces some of the shadow involved in

LAW & SOCIETY REVIEW, Volume 22, Number 3 (1988)

https://doi.org/10.1017/S0023921600028590 Published online by Cambridge University Press

"bargaining in the shadow of the law" in criminal court by showing how the process depends on a specialized set of understandings among plea bargaining shadow boxers. Obviously the "community of understanding" to which Maynard refers is not the same as that which Yngvesson identifies with. Yngvesson's research makes me wonder whether narrative structures have equal effect under all criminal court circumstances. What is the relationship between the knowledge court personnel have of their community and the skill they have in courtroom story telling?

Next we have Jonathan Casper, Tom Tyler, and Bonnie Fisher examining the effects of procedural justice in real criminal court settings. In answer to critics of laboratory-based procedural justice research, Casper *et al.* have shown that convicted felons do indeed show significant levels of concern about procedural justice. That is, when asked in a variety of ways about whether they were satisfied with what happened to them in the course of their experiences with the criminal justice system, convicted felons showed that they were at least as strongly influenced by issues of procedural fairness as by the absolute or relative severity of their sentences. Casper *et al.* were obviously approaching the courts with a very different set of issues than those of Yngvesson and Maynard. Still, if procedural justice is to be provided to those charged with crimes, it must be through the actions of people such as those studied in the first two articles. One of Casper *et al.*'s most intriguing discoveries was that felons who had plead guilty in a plea bargaining arrangement had a stronger feeling of having been fairly treated than those who went through a formal trial. Somehow the formal protections of law prove less satisfying to criminal defendants than the less formal procedures of bargain justice. Perhaps the processes discovered in the first two articles offer some insight into why this might be.

The fourth paper looks at juvenile court decisions and whether to detain juveniles prior to adjudication of their cases. Russell Schutt and Dale Dannefer look for evidence on the extent to which protectionist sentiment continues to influence such decisions. Unlike previous efforts to tap this issue, their own work produces clear evidence of protectionist sentiment among juvenile court judges. They conclude that adding variables concerning the socioemotional status of juveniles at the time of hearings to previously used variables in multivariate analysis produces their results. Thus we have a different kind of glimpse into the operations of criminal court and once again the puzzle emerges—What connection could there be between this kind of statistical confirmation of a central tendency and the previous three ways of studying the same institution? Yngvesson, for example, shows a highly flexible operation involving parochial forms of knowledge and value that might never appear in the generalizing processes of regression analysis. Or again, how does the protectionist sentiment found by

https://doi.org/10.1017/S0023921600028590 Published online by Cambridge University Press

Schutt and Dannefer find concrete expression? Could it emerge through the storytelling processes Maynard has shown? And how do juveniles who have been "protected" feel about the fairness of their treatment?

Next comes Simon Singer and David McDowall with a classic impact study, again involving criminal courts. They present an analysis of the "crackdown" on juveniles in New York where new laws redefine children as adults for particular kinds of crimes. Carefully controlling for a variety of threats to validity, their quasi-experimental analysis indicates no evidence to support the claim that the treatment of juveniles as adults reduces juvenile criminal activity in those categories of crime. One has to wonder whether activities of court personnel, such as those described in the first two articles in this issue, have any bearing on these results.

In Mark Cohen's paper, we shift from offenders and court personnel to a look at crime victims. Cohen takes concepts from jury decisions in personal injury cases as a basis for recalculating the cost of crime to both victims and society as a whole. He adds concepts like pain and suffering and fear to the equations of overall cost and finds that current estimates are but a fraction of the results he gets. Cohen has his own interpretation of the implications of higher estimates for government policy. I am sure some readers will have their own divergent interpretations.

Carroll Seron takes us into an examination of the role of magistrates in U.S. federal courts. Her concern is with the effects of increased administrative rationalization, technological innovation, and the move towards less formal modes of dispute management because some have worried that the courts are becoming mere bureaucracies. In looking at magistrates in particular, she finds that the fear of bureaucracy is only partly justified. While magistrates in some courts do fit the pattern of workers in a bureaucratized agency, other courts use magistrates in both prebureaucratic ways (as additional judges) and postbureaucratic ways (as members of creative management teams). Issues of autonomy and flexibility thus are not settled in the federal courts but clearly the bureaucratic pattern is only one of several that are emerging.

We conclude this issue with a very different kind of paper—one which does not easily fit with the rest in this issue but which clearly speaks to a wide range of issues in our field. Piers Beirne and Alan Hunt have carried out the very difficult task of discovering V. I. Lenin's views on law. Since Lenin, the activist, never took the time to write a comprehensive analysis of law, Beirne and Hunt have had to cast a wide net over his speeches, letters, and articles in order to construct a portrait of Lenin's thoughts. They have also struggled to avoid imposing an order on Lenin's words which would go beyond the sometimes fragmentary (tied to a historically specific event) nature of his analysis. They reveal a man

https://doi.org/10.1017/S0023921600028590 Published online by Cambridge University Press

struggling, in the context of day-to-day decision making, with a wide range of law and society issues such as the value of formal v. informal procedures, the significance of bureaucracy and of constitutions, and the proper role of the masses. The authors conclude, among other things, that Lenin's failure to deal systematically with some of these issues led, tragically, to many of the excesses of the Stalinist era. Beirne and Hunt succeed in showing something none of the individual documents apparently shows—Lenin's doubt and uncertainty about the value of law. As you will see, Lenin never seems to have shown the slightest doubt in his written words.

Robert L. Kidder
August, 1988

https://doi.org/10.1017/S0023921600028590 Published online by Cambridge University Press