# FROM THE EDITOR

The papers in this issue—two studies of the delivery of legal services, a longitudinal view of plea bargaining, an elaboration of deterrence theory, and an analysis of the role of courts in Spain—extend, in varied and interesting ways, some of the perspectives explored in our recent issues on Litigation and Dispute Processing.

The two essays on the delivery of legal services, Leon Mayhew's "Institutions of Representation: Civil Justice and the Public" and Philip Lochner's "The No Fee Legal Practice of Private Attorneys" complement one another strikingly. Mayhew attempts to reconceptualize the delivery of legal services in terms of the way in which alternative organizations of the profession institutionalize certain kinds of claims and mobilize clients correspondingly. Lochner's portrayal of the networks linking lawyers with clients and of the flow of information and services along these networks provides a vivid instance of the kind of organizational outreach that Mayhew postulates. These studies demonstrate that the 'problem' of legal services is not adequately comprehended as a problem of deprivation and unmet needs, to be solved by supplying deficiencies. Instead it is a problem of structural biases and institutional design, rooted in the fundamental organization of the legal profession and of the society.

Though remote from these essays in its subject matter, Michael Geerken and Walter Gove's "Deterrence: Some Theoretical Considerations" displays some affinity to them in intellectual stance. It attempts to restate deterrence theory as a system of information rather than as a system of threats: in which outcomes vary with the differentiated distribution of information, which in turn reflects the size and heterogeneity of the society. As in the case of legal services, we are invited to consider actors not as controlled by rules or threats, but as trying to cope amid a differentiated and socially organized distribution of opportunities.

This concern to disaggregate and specify the impact of local conditions on a differentiated population making choices reappears in Milton Heumann's "Plea Bargaining and Case Pressure: Some Clarifications." On the basis of a long historical view, he argues that plea bargaining cannot be explained merely as a product of gross institutional conditions (case pressure) but in terms of the strategic possibilities which enfold the participants.

Each in its fashion, these studies catalog a variety of factors

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that act to limit the effect of formal legality: the strategic situation of the parties (Heumann); the absence of organization to institutionalize legal claims (Mayhew); and of networks to mobilize their holders (Lochner); and inefficiencies built into a regime of rules and sanctions by the very size and differentiation of the society (Geerken and Gove). José Juan Toharia's "Judicial Independence in an Authoritarian Regime: The Case of Contemporary Spain," details another order of constraints upon legality. His portrayal of the coexistence of an independent judiciary and an authoritarian regime in Spain shows us legality limited not by interstitial decision-making, deficiences in organizing implementation, or trade-offs among competing institutionalizations, but by deliberate curtailment and restriction of its sphere by the state.

Wherever legality flourishes, it is accompanied by such limiting devices, which permit the accommodation of powers and interests that cannot be bent to it. This does not imply that there are not vast differences in the consequences of one form of limitation compared to another. To understand these differences among the various species of constraint on the scope of legality seems an appropriate task of law and society scholarship. We should, in a world in which brute power and nescience seem destined to play a large role, be concerned with how the limited stock of legality may be deployed so that it does not augment, celebrate or conceal them.

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