FROM THE EDITOR

The first two articles in this issue, David Greenberg's "The Incapacitative Effect of Imprisonment: Some Estimates" and Reuel and Shlomo Shinnar's "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," focus on the incapacitative effects of imprisonment on crime. They appear to differ widely in their respective estimates of the power of the incapacitative effect, in their assessments of current capability to predict recidivism, and in their views of incapacitation as a justification for punishment. They seem to concur, however, in restoring to the criminal justice system a central role in the drama of social response to crime. For the Shinnars this is because criminal justice institutions are the crucial vortex in which the incapacitative effects they depict are powerfully amplified or diminished. For David Greenberg, who as I read him would abandon instrumentalist punishment policies in favor of criteria of fitness to the crime, the criminal justice system also occupies center stage, but as moral arbiter rather than as safety engineer.

Forrest Dill's "Discretion, Exchange and Social Control: Bail Bondsmen in Criminal Courts" gives us a glimpse of the micro-politics of incapacitation. It is one of the rare studies of the less visible supporting roles in the judicial process. Dill's portrayal of criminal justice institutions as characterized by discretionary exchanges among multiple centers of judgment suggest that these institutions may be incapable of either the relentless engineering efficiency or the moral leadership called for.

The Greenberg and Shinnar papers concern punishment as policy, designed to produce certain effects. Steven Spitzer's "Punishment and Social Organization: A Study of Durkheim's Theory of Penal Evolution" asks about the linkage between the basic structural features of a society and the patterns of punishment found in it. He finds that severity is associated with societal complexity, at least in the non-industrial societies that comprise his sample. We may wonder whether this carries over into societies where law is characterized by pervasive dissociation between authoritative prescription and everyday usage and where punishment in practice is linked in subtle ways to the ebb and flow of theories about punishment. As forms of pun-

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ishment change, does punishment itself play a different role in producing order in society?

The exchange between Richard Danzig and Michael Lowy ("Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner") and William Felstiner ("Avoidance as Dispute Processing: An Elaboration") can be seen as a search for alternative bases of social order. From the common ground that disputes typically proceed without invocation of coercive official force, they diverge over whether mediative intervention or unlateral avoidance is the predominant and appropriate mode in American society. If mediation and avoidance can be thought of as alternatives to the criminal process, there are some curious connections between them. Avoidance is in a way the mirror image of incapacitative imprisonment. If we imagine a scale from total mobility to total immobilization, we may think of imprisonment as solving problems by moving troublesome individuals to the immobility end. Felstiner depicts avoidance as solving problems for individuals located well toward the mobility end of the scale. He seems to differ sharply from Danzig and Lowy about the distribution of American social relations along the scale, and about the need, feasibility and cost of devising means of consensual control in the middle ranges of the scale.

These differences, like those between Greenberg and the Shinnars, stem in part from divergent readings of fact, but only in part. They are in some measure differences about the kind of society the heart approves. If such questions do not admit of unequivocal technical answers, neither can they be solved by speculative insight. It is in the confused middle ground of disputed measures and fragmentary explanations entwined with goals at once embraced and suspected that the great questions of law and society lie.

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