From the Editor

While the research methods represented in this issue of the *Law & Society Review* vary quite broadly, the papers share a historical, or longitudinal, perspective. With the exception of the last paper by Sally Ewing, which deals with history by addressing several debates over the correct way to understand Weber, each of the articles uses its own unique method for teasing new insights out of archival data. The four research papers also share a common interest in the relationships these data reveal among "haves," "have nots," and some aspect of the legal system.

Charles David Phillips leads off the issue with a time-series analysis of lynchings and legal executions of blacks during a critical transitional period of race relations in North Carolina. His initial hypothesis—the functionalist view that formal and informal methods of social control are substitutes for each other—proved to be only partially correct. His data show lynching and execution as complementary prongs of the Southern white majority's campaign to repress the black minority. Only after the triumph of the white strategy, culminated by the disenfranchisement of blacks, did the relationship between lynching and execution begin to take on the patterns of complementarity that support the functionalist theory of substitutability. Putting both phases together, however, leads Phillips to view his results as supportive of a conflict perspective, since the entire episode demonstrates the mobilization and execution of a successful struggle for domination.

Erika S. Fairchild's work on women police in Weimar Germany reminds us that issues we think of as unique to our own immediate experience have precedents from which we may be able to learn. She focuses on one of the many institutional reforms with which the Germans experimented in what now seems like a fragile moment in their history. By following the brief but meteoric professional career of one woman, Fairchild shows how German reformers struggled simultaneously with the issues of women's roles and the deterrent versus rehabilitative approaches to police work. While the collapse of the experiment stemmed from both internal strains and the rise of Nazism, the ideas it generated may be worth rescuing from the black hole of the failed dreams of that era.

LAW & SOCIETY REVIEW, Volume 21, Number 3 (1987)

https://doi.org/10.1017/S002392160001879X Published online by Cambridge University Press

The next paper gives us, at last, a solid start in testing Marc Galanter's thesis about why the "haves" come out ahead. Stanton Wheeler, Bliss Cartwright, Robert A. Kagan, and Lawrence M. Friedman take this thesis into the deep recesses of state supreme court archives and come out with an analysis that generally supports it but shows that it can and should be further developed. They are able to demonstrate the value, perhaps even the necessity, of refining the "haves" thesis by distinguishing different kinds of repeat players, positions in legal battle (appellant versus defendant), levels in the clarity of role dominance, and periods in history.

By using both archival and interview data to compare four case histories, Neal Milner raises another set of issues that affect "have nots" in the legal system: the interplay between legal strategy and the mobilization of lay participants. All four cases deal with attempts to obtain the right for institutionalized mental patients to refuse treatments such as psychotropic drugs. Each example shows a different constellation of factors affecting the inclusiveness of rights won, time required to win them, degree of patient control over the strategy making, and involvement of professionals. Reading this piece in concert with the article by Wheeler *et al.*, we can see that Milner is raising questions about what it means to "come out ahead." Among other things, he is telling us that the readily quantifiable "victories" recorded in court archives may not correspond to the ideas of success and failure that "have not" litigants bring to or develop during their legal adventures.

Finally, in contradiction to recent readings of Weber, Sally Ewing writes that Weber has much more to offer in understanding sociolegal history than we have suspected. As one part of her argument, she shows that Weber did not have an "England problem" (that is, a contradiction between claiming that formal legal rationality was necessary to the formation of capitalism and observing that capitalism arose first in England where only substantive legal rationality had developed). She reads Weber as having expected different social spheres (law and economy) to follow their own autonomous paths to rationality rather than being linked in a single process of rationalization. Capitalism needed the calculability that a formal legal system could provide. However, Ewing states, we have misunderstood Weber by not realizing that he saw both civil and common law systems as capable of providing sufficient calculability to launch the capitalist era. Habermas's mistake, says Ewing, was to ignore Weber's distinction between capitalism's need for a legitimating legal ideology (best served by the substantive jus-

https://doi.org/10.1017/S002392160001879X Published online by Cambridge University Press

tice of the common law system) during its early phases and the decline of that need as it matured. The instrumentalism of formal legality could thus take over and become associated with the later phases of capitalism.

This issue thus combs history with fine- as well as coarse-toothed instruments. Each paper in its own way reveals both the power and the limitations in approaching history at a particular level of inclusiveness.

Robert L. Kidder
April 1987

https://doi.org/10.1017/S002392160001879X Published online by Cambridge University Press