From the Editor

As the Law and Society Association celebrates its 25th year, it is worth looking back at the contents of the first issue of the *Review*. The *Review* has seen many changes, not surprisingly in view of what Friedman (1986: 766) calls the "loose, wriggling, changing subject matter" that is law. For example, new areas of inquiry not addressed in early issues of the *Review* have generated extensive bodies of research. We have spent much needed effort studying disputing (see, e.g., *Law & Society Review*, Vol. 15, No. 3/4); empirical studies of procedural justice abound (e.g., Casper, Tyler, and Fisher, 1988); and the current concern with language (e.g., O'Barr and Conley, 1985) and the structure of discourse parallels the recent cognitive direction of other social science research. Methodological techniques have exploded: The first issue of the *Review* contained a total of three tables, the most elaborate of which used percentages, a far cry from the structural equations and probit analyses found in recent issues. Significant typologies (e.g., naming, blaming, and claiming (Felstiner, Abel, and Sarat, 1980–81); repeat-players versus one-shotters (Galanter, 1974)) have ordered and focused our observations. Yet despite these contributions (for other achievements, see Macaulay, 1984), the insights and continuities from the first steps in the law and society movement are striking.

A first insight we now take for granted is that law can be understood only in context, that meanings extracted from the literal letter of the law warrant healthy skepticism. In the past 25 years that skepticism has deepened and broadened, but a surprising number of submissions to the *Review* are still doctrinal studies that lack even a whisper of society to illuminate the meanings of law. What we take as obvious in what we do is not so obvious that it has captured the academic or legal world as a whole.

A second early concern was with balancing interests in the criminal and civil law. Carlin, Howard, and Messinger (1966) in the article that opened the first issue of the *Law & Society Review* ended their first paragraph by explaining they would emphasize the civil instead of the criminal because sociologists had previously given the civil side so little attention. In the interim, research on the criminal side has continued to grow and work on the civil side has also expanded substantially. Our goal at the *Review* now is simply to publish the best research available on both civil and criminal topics in law and society. At the same time, there are still civil arenas that are surprisingly underrepresented. For example, personal and procedural rights receive substantial attention, but

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we see little work on real or intellectual property, although both have clear implications for understanding social control. We also cross the apparent boundaries between criminal and civil law more easily now. For example, concerns with deterrence initially showed up as simple impact studies. We have now broadened the inquiry to examine perceptions of legal obligation and the power of the state to control, and researchers study taxpayer behavior as well as street criminality, although we have not yet examined in a significant way illegality in the board room. We are also beginning to inquire *who* is deterred and *why* and to turn the question on its head and ask why it is that people generally behave consistently with legal rules.

A third theme that can be traced to the early days of the law and society movement is the self-conscious questioning of the form of the enterprise. In that first issue of the *Review*, Auerbach (1966: 92) responded to the way Skolnick defined the primary task of the sociologist of law with the disparaging evaluation, "I can think of no more fruitless task," and complained that Skolnick's horizon was too limited. Skolnick (1966: 110) in turn replied that Auerbach's horizon revealed no principle or perspectives for orienting research. What is important here is not the particular sources of their disagreement, for our conflicts over the most appropriate way to do sociolegal research have changed. What *is* important is the reappearance of debate, rather than passive acceptance of a unified paradigm, that echoes through current writing about sociolegal research (see, e.g., Trubek and Esser, 1989).

Finally, there has been a change in the place of policy issues in the law and society movement. Friedman (1986: 778) reports the impression of his colleague William Simon that law and society is associated with the Progressive-New Deal tradition of the regulatory welfare state and is intensely concerned with practical policy. Friedman stresses the theoretical, nonpractical orientation of law and society. There was, early on and into the 1970s, a hope that studies of law and society could inform policy debate and bring about better governmental decisions, although many scholars were drawn to law and society at least as much by their interest in understanding as in influencing a major system of social control. Certainly most researchers however motivated believed that good research could be used to assist the disadvantaged. Now, we hear at least two additional concerns raised about the policy link. Sarat and Silbey (1988) evoke the traditional concern that meliorist policy adjustments fed by research will undermine the efforts to produce major structural change. Lempert (1989) warns us that if researchers make inflated claims about what has been learned from a single piece of research, policy makers who embrace those results uncritically can do substantial damage. A startling continuity permeates both recent and early work: Despite what we have

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learned about the difficulty of affecting policy, we assume that research will influence policy decisions.

This issue of the *Review* echoes and emphasizes many of these themes. Jack Tweedie illustrates the importance of context in determining the extent to which apparently identical legal rules are enacted. In Scotland and England, statutes have been introduced that mandate parental rights of school choice; the language in the statutes is nearly identical, but the resulting opportunities to exercise choice have been dramatically different in the two locations. Tweedie's work, however, extends beyond a simple demonstration of difference; he also explores the conflict between protecting individual rights and collective interests, providing a textured picture of how and why social programs can fall short of legislative promise.

Steven Klepper and Daniel Nagin, in an innovative study of tax compliance, expand the traditional boundaries of research on deterrence by examining how perceptions of the enforcement process shape decisions on compliance. One of their most intriguing findings may reveal why much previous research has failed to find a deterrent effect for severity of punishment. They suggest that some persons may be deterred by *any* prospect of criminal prosecution, and such persons are therefore insensitive to escalations in penalty when the risk of punishment is non-zero. In addition to expanding our theoretical horizons, Klepper and Nagin demonstrate an impressive methodological versatility, combining economic methods of analysis with an experimental simulation.

William A. Taggart's article and Malcolm M. Feeley's response to it assess the legislative effects of court-ordered prison reform, looking at a recent controversial area of friction at the boundary between governmental branches. Taggart examines changes in the correctional budgets of states following court-ordered reform of prison conditions. He attempts to explain why court action produced budgetary changes in some states and not in others. In contrast, Feeley argues that correctional budgets may not adequately reveal the changes produced, and he suggests a regional and historical explanation for the differences that occur. Together the two articles incidentally demonstrate the difficulty in doing law and society research: The multiple manifestations of legal change generally suggest the desirability of collecting both qualitative and quantitative data, of examining the behavior of multiple measures.

The studies by Robert M. Hayden and Martha A. Myers on the surface bear little resemblance to one another. Hayden's observations about the different reactions of Yugoslavian and Illinois citizens to mandatory seatbelt laws reflect the interest of an anthropologist in cross-cultural differences (again, stressing the crucial role of context) in the relationship between citizens and their formal legal structure. Myers' analysis of sentencing patterns is a detailed quantitative investigation of the impact of legislation ap-

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parently aimed at significantly increasing the penalties for drug offenders in Georgia. Both studies, however, go beyond the traditional finding that legal change may not produce behavioral change consistent with manifest purpose. Both examine the symbolic role of law that Abel (1980) has criticized law and society researchers for ignoring.

The final article in this issue both extends and enriches Phillips' (1987) analysis of lynchings and executions of blacks in North Carolina in the period between 1889 and 1918. Phillips had reported some evidence that lynching and executions were substitutable responses to the deviant behavior of blacks. When E.M. Beck, James L. Massey, and Stewart E. Tolnay add to Phillips' data, expand the time period for North Carolina and compare their expanded results with new data from Georgia, they find little evidence to support a substitution hypothesis. Moreover, based on an examination of the different nature of the alleged offenses that led to lynchings and executions, they offer new suggestions for understanding the links and distinctions between these two methods of social control. The work of Beck and his colleagues demonstrates the substantial ability of replications not simply to repeat the past but to capitalize on earlier work and add new insights.

Shari S. Diamond
June, 1989

REFERENCES

ABEL, Richard L. (1980) "Redirecting Social Studies of Law," 14 *Law & Society Review* 805.

AUERBACH, Carl A. (1966) "Legal Tasks for the Sociologist," 1 *Law & Society Review* 91.

CARLIN, Jerome E., Jan HOWARD, and Sheldon L. MESSINGER (1966) "Civil Justice and the Poor: Issues for Sociological Research," 1 *Law & Society Review* 9.

CASPER, Jonathan D., Tom TYLER, and Bonnie FISHER (1988) "Procedural Justice in Felony Cases," 22 *Law & Society Review* 483.

FELSTINER, William L.F., Richard L. ABEL, and Austin SARAT (1980–81) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming. . .," 15 *Law & Society Review* 631.

FRIEDMAN, Lawrence M. (1986) 'The Law and Society Movement," 38 *Stanford Law Review* 763.

GALANTER, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Review* 95.

Law & Society Review (1980–81), Special Issue on Dispute Processing and Civil Litigation, Vol. 15, No. 3–4.

LEMPERT, Richard (1989) "Humility Is a Virtue: On the Publicization of Policy-Relevant Research," 23 *Law & Society Review* 145.

MACAULAY, Stewart (1984) "Law and the Behavioral Sciences: Is There Any There There?" 6 *Law & Policy* 149.

O'BARR, William M., and John M. CONLEY (1985) "Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives," 19 *Law & Society Review* 661.

PHILLIPS, Charles D. (1987) "Exploring Relations Among Forms of Social

https://doi.org/10.1017/S002392160003142X Published online by Cambridge University Press

Control: The Lynching and Execution of Blacks in North Carolina, 1889–1918, 21 *Law & Society Review* 361.
SARAT, Austin, and Susan S. SILBEY (1988) "The Pull of the Policy Audience," 10 *Law & Policy* 97.
SKOLNICK, Jerome H. (1966) "Social Research on Legality: A Reply to Auerbach," 1 *Law & Society Review* 105.
TRUBEK, David M. and John ESSER (1989) " 'Critical Empiricism' in American Legal Studies: Paradox, Program, or Pandora's Box," 14 *Law & Social Inquiry* 3.

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