Law & Social Inquiry

Journal of the American Bar Foundation

Formerly the American Bar Foundation Research Journal Volume 14, Number 1, Winter 1989

Law &

Social Inquiry

Journal of the American Bar Foundation

Editor Review Editor Associate Editors Terence C. Halliday Howard S. Erlanger John J. Donohue, Susan P. Shapiro

Journal Manager

John Atkinson

Editorial Board

Richard L. Abel, Professor of Law, University of California, Los Angeles Morris Arnold, U.S. District Judge for the Western District of Arkansas Donald Black, Professor of Sociology, University of Virginia Erhard Blankenburg, Professor of Sociology of Law, Free University of Amsterdam Jane F. Collier, Professor of Anthropology, Stanford University John L. Comaroff, Professor of Sociology and Anthropology, University of Chicago Jacques Commaille, Directeur, Centre de Recherche Interdisciplinaire de Vaucresson Phoebe C. Ellsworth, Professor of Psychology, University of Michigan William M. Evan, Professor of Sociology, University of Pennsylvania Eliot L. Freidson, Professor of Sociology, New York University Lawrence M. Friedman, Professor of Law, Stanford University Mary Ann Glendon, Professor of Law, Harvard University Earl Johnson, Jr., Associate Justice, California State Court of Appeal Stanley N. Katz, President, American Council of Learned Societies Felice J. Levine, Director, Law and Social Sciences Program, National Science Foundation Robert J. Levy, Professor of Law, University of Minnesota Richard S. Markovits, Professor of Law, University of Texas Doreen McBarnet, Senior Research Fellow, Centre for Socio-Legal Studies, Wolfson College, Oxford Carrie J. Menkel-Meadow, Professor of Law, University of California, Los Angeles Laura Nader, Professor of Anthropology, University of California-Berkeley Judith Resnik, Professor of Law, University of Southern California Carol M. Rose, Professor of Law, Northwestern University Martin M. Shapiro, Professor of Law, University of California-Berkeley David Sugarman, School of Law, Middlesex Polytechnic David M. Trubek, Professor of Law, University of Wisconsin Barbara Yngvesson, Professor of Anthropology, Hampshire College Michael Zander, Dean, Department of Law, London School of Economics

Law & Social Inquiry

Journal of the American Bar Foundation Volume 14, Number 1, Winter 1989

REVIEW SYMPOS	UM: Critical E	mpiricism and	Sociolegal Studies
Essay:			

"Critical Empiricism" in American Legal Studies: Paradox, Program, or Pandora's Box? David M. Trubek and John Esser	3
Comment: The End(s) of Critical Empiricism Hendrik Hartog	53
Comment: Critical Empiricism William C. Whitford	61
Essay: Room for Manoeuver: Toward a Theory of Practice in Critical Legal Studies Rosemary J. Coombe	69
Comment: Room to Maneuver (f)or a Room of One's Own? Practice Theory and Feminist Practice Vicki Schultz	123
Concluding Comment: Room for Manoeuver: Paradox, Program, or Pandora's Box? Boaventura de Sousa Santos	149
REVIEW ESSAYS	
A Comparative Perspective on Settlement and Bargaining in Personal Injury Cases Herbert M. Kritzer	167
The Supreme Court's Third Century: Legitimacy, Bureaucracy, and Institutional Change Joel B. Grossman	187
BOOK NOTES	207

Publication Policy

The American Bar Foundation is an independent research institute committed to socio-legal research. Consistent with its mandate to create and disseminate knowledge about law, the legal profession, and legal institutions, *Law and Social Inquiry: Journal of the American Bar Foundation* invites the submission of articles that make original contributions to understanding of socio-legal processes. *Law and Social Inquiry* publishes both empirical and theoretical studies from a variety of disciplinary perspectives. The analyses, conclusions, and opinions are those of the authors alone.

Manuscript Evaluation: Law and Social Inquiry is a refereed journal. Manuscripts that the Editors deem appropriate for the journal are evaluated by two or more reviewers with expertise in the relevant subject matter and methodology. Manuscripts produced by ABF research fellows are evaluated by the same process as outside manuscripts and are not accorded priority in publication.

Submission of Manuscripts: Manuscripts submitted to *Law and Social Inquiry* should be typed double-spaced and be accompanied by an abstract of not more than 150 words. The review process is anonymous; all identifying information should appear only on a separate cover sheet and not in the body of the manuscript.

Law and Social Inquiry does not accept multiply submitted articles. The Editors endeavor to make decisions promptly, usually about two months after submission.

Editing of Manuscripts: All manuscripts accepted for publication are edited for style by professional copyeditors in consultation with the author. Copyeditors do not check citations. Authors see both edited manuscripts and proofs.

Reprints to Authors: Without charge, we provide authors with 25 reprints of their article or essay or of the Review Symposium in which the essay appears. Additional reprints may be ordered at author's expense. Article authors receive 3 copies of the issue in which their contribution appears; review essay and book review authors receive 1 copy.

Republication Rights: The Foundation normally permits authors to republish or use their manuscripts after publication, but *Law and Social Inquiry* has the right to first publication of edited manuscripts. The journal retains the right to republish manuscripts as reprints or as part of any reproduction of the issue or volume in which they appear, by any means, including without limit electronic means or microfilm. **Comments and Responses:** Comments on or responses to articles or review essays in the form of brief, scholarly statements will be published at the discretion of the Editors or Review Section Editor.

Send article manuscripts to: Terence C. Halliday	Send inquiries regarding review essays to:
Editor	Howard S. Erlanger
Law and Social Inquiry	Review Editor
American Bar Foundation	Law and Social Inquiry
750 N. Lake Shore Drive	University of Wisconsin Law
Chicago, IL 60611	School
(312) 988-6500	Madison, WI 53706
	(608) 262-2240

Law and Social Inquiry: Journal of the American Bar Foundation is published quarterly.

		3 Years
\$30.00	\$54.00	\$76.00
\$25.00	\$47.00	\$64.00
\$47.00	\$87.00	\$117.00
	\$30.00 \$25.00	\$25.00 \$47.00

Overseas subscribers add \$6.00 per year.

Reprints: \$3.50 each, subject to availability (quantity discounts applicable for orders of 10 or more).

Single copies: \$10.00; available from Fred B. Rothman & Company, 10368 West Centennial Road, Littleton, Colorado 80123. (303) 979-5657 © 1989 American Bar Foundation.

Law and Social Inquiry: Journal of the American Bar Foundation (ISSN: 0897-6546) is published quarterly—winter, spring, summer, and fall—for \$30.00 per year, by American Bar Foundation, 750 N. Lake Shore Drive, Chicago, IL 60611. Second-class postage paid at Chicago, IL. POSTMASTER: Send address changes to: Law and Social Inquiry: Journal of the American Bar Foundation, 750 N. Lake Shore Dr., Chicago, IL 60611.

From the Editor

We wish to thank the following reviewers whose careful evaluation and helpful recommendations have greatly assisted us in selecting manuscripts for the 1987 volume of the American Bar Foundation Research Journal and the 1988 volume of Law and Social Inquiry. We are grateful for their expertise in furthering our efforts to ensure the publication of high-quality contributions to sociolegal scholarship.

> **Richard Abel** Andrew Abbott Ian Ayres Donald Black Kristin Bumiller Lyle Calvin Charles Cappell Ross Cheit Nancy Cott Barbara Curran Yves Dezalay George Ellard William Evan Thomas Eovaldi Malcolm Feelev Kathleen Gerson Robert Gordon William Gormley Michael Grossberg Christine Harrington John Heinz Suzette Hemberger Milton Heumann Michael Hindus Donald Horowitz John Irwin Robert Kagan Iamie Kalven Duncan Kennedy Reinier Kraakman Samuel Krislov Allan Lind

Susan Long William Long Stewart Macaulay Lawrence Marshall Alistair McGuire Errol Meidinger Sheldon Messinger Roger Michener Neal Milner John Newman Nancy Pennington Stephen Pepper Joseph Pleck Nancy Reichman Deborah Rhode Charles Rosenberg Rosalyn Rosenberg Robert Salisbury Lucy Salver Austin Sarat Theodore Schneyer John Scholz **Clifford Shering** Charles Silver Pablo Spiller Neil Vidmar Matthew Weait Joanna Weinberg David Weissbrodt Steven Wheatley Charles Wolfram