

Law & Social Inquiry

Journal of the American Bar Foundation
Volume 19, Number 1, Winter 1994

The University of Chicago Press

Law & Social Inquiry

Journal of the American Bar Foundation

Published by The University of Chicago Press

<i>Editors</i>	Arthur F. McEvoy Elizabeth Mertz Peter Siegelman
<i>Review Editor</i>	Howard S. Erlanger
<i>Associate Editors</i>	Karyl A. Kinsey Robert L. Nelson Christopher L. Tomlins
<i>Managing Editor</i>	John Atkinson
<i>Editorial Coordinator</i>	Rozanne Caldwell

Editorial Board

Richard L. Abel, Professor of Law, University of California, Los Angeles
Ian Ayres, Professor of Law, Stanford University
Donald Black, Professor of Sociology, University of Virginia
Erhard Blankenburg, Professor of Sociology of Law, Free University of Amsterdam
John Braithwaite, Professor of Law and Sociology, The Australian National University
Jane F. Collier, Professor of Anthropology, Stanford University
Phoebe C. Ellsworth, Professor of Law and Psychology, University of Michigan
Eliot L. Freidson, Professor of Sociology, New York University
Lawrence M. Friedman, Professor of Law, Stanford University
Hazel Genn, Professor of Law, Queen Mary and Westfield College, University of London
Carol J. Greenhouse, Professor of Anthropology, Indiana University
Valerie P. Hans, Professor of Criminal Justice, University of Delaware
Earl Johnson, Jr., Associate Justice, California State Court of Appeal
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
Daniel Rubinfeld, Professor of Economics, University of California-Berkeley
Dietrich Rueschemeyer, Professor of Sociology, Brown University
Martin M. Shapiro, Professor of Law, University of California-Berkeley
Susan S. Silbey, Professor of Sociology, Wellesley College
David Sugarman, School of Law, Lancaster University
David M. Trubek, Professor of Law, University of Wisconsin
Barbara Yngvesson, Professor of Anthropology, Hampshire College
Michael Zander, Professor of Law, Department of Law, London School of Economics

Law & Social Inquiry

Volume 19, Number 1, Winter 1994

ARTICLES

Do Lawyers Cause Adversarial Legalism? A Preliminary Inquiry 1
Robert A. Kagan

Rights, Relationality, and Membership: Rethinking the Making and
Meaning of Citizenship 63
Margaret R. Somers

"FROM THE TRENCHES AND TOWERS"

"From the Trenches and Towers": An Introduction 113

The Impropriety of Plea Agreements: A Tale of Two Counties 115
David Lynch

Commentaries

A Wake-Up Call from the Plea-Bargaining Trenches 135
Stephen J. Schulhofer

The Impropriety of Plea Agreements: An "Anthropological"
View 145
Robert Weisberg

REVIEW ESSAYS

Still "Learning Something of Legislation": The Judiciary in the
History of Labor Law 151
Catherine Fisk

Review Commentaries

Institutions, Antinomies, and Influences in Labor Governance 187
Karen Orren

Rethinking Questions of Culture and Institutional Power:
A Reply to Fisk 195
Victoria Hattam

The Presence of the Past: Voluntarism, Producerism, and the
Fate of Economic Democracy 201
William E. Forbath

Review Rejoinder

There Is Still So Much to Learn from Legislation 217
Catherine Fisk

Watch the Woodchopper, Wait for the Fire: Hayden on Yugoslav Workers' Courts	223
Carol J. Greenhouse	
<i>Review Reply</i>	
When Woodchips Become Shrapnel: The Reification of "Culture" by Law	243
Robert M. Hayden	
Growing a Constitution: Reconciling Liberty and Community in Israel and the United States	253
Donna E. Arzt	
Negotiation, Lawyering, and Adjudication: Kritzer on Brokers and Deals	275
Theodore Eisenberg	
<hr/>	
BOOK NOTES	301

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 edited manuscripts and/or proofs.

Reprints to Authors: Without charge, we provide authors with 25 reprints of their articles or essays or of the Symposium in which their contributions appear. Additional reprints may be ordered at the author's expense. Authors receive 1 copy of the issue in which their contributions appear.

Republication Rights: The Foundation normally permits authors to republish their manuscripts in books 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.

Copying Beyond Fair Use: The code on the first page of a contribution in this journal indicates the copyright owner's consent that copies of the contribution may be made beyond those permitted by Sections 107 or 108 of the U.S. Copyright Law provided that copies are made only for personal or internal use, or for the personal or internal use of specific clients and provided that the copier pay the stated per-copy fee through the Copyright Clearance Center, Inc., 27 Congress Street, Salem, MA 01970. To request permission for other kinds of copying, such as copying for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale, kindly write to the Permissions Department, University of Chicago Press, 5801 S. Ellis Avenue, Chicago, IL 60637.

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:
The Editors
Law and Social Inquiry
American Bar Foundation
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-6500

Send inquiries regarding
review essays to:
Howard S. Erlanger
Review Editor
Law and Social Inquiry
Institute for Legal Studies
Law School
University of Wisconsin
Madison, WI 53706
(608) 263-7405

Annual U.S. subscription rates:

	1 yr.	2 yr.	3 yr.
Individuals	\$36	\$66.25	\$91.80
Academic	\$29	\$53.35	\$73.95
Institutions	\$59	\$108.55	\$150.45

Outside U.S. please add a postage charge of \$6.00 per year to the U.S. rates. **Canadians please add** 7% GST tax to above rates as follows: One-year rates: Individuals \$2.52; Academic \$2.03; Institutions \$4.13. Two-year rates: Individuals \$4.63; Academic \$3.73; Institutions \$7.59. Three-year rates: Individuals \$6.42; Academic \$5.17; Institutions \$10.53.

Single copies: \$14.75 for institutions, \$9.00 for individuals. Checks should be made payable to *Law & Social Inquiry*, University of Chicago Press, Journals Division, P.O. Box 37005, Chicago, Illinois 60637. (Fax: 312-753-0811.) Volumes 1-12 available from Fred B. Rothman & Company, 10368 West Centennial Road, Littleton, Colorado 80127. (303) 979-5657

Volumes available in microfilm from University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

© 1994 American Bar Foundation. All rights reserved.

Law and Social Inquiry: Journal of the American Bar Foundation (ISSN: 0897-6546) is published quarterly—winter, spring, summer, and fall—by The University of Chicago Press, 5720 South Woodlawn Ave., Chicago, Illinois 60637. Subscription agent for Japan: Kinokuniya Company, Ltd. Second-class postage paid at Chicago, Illinois and at additional mailing office.

POSTMASTER: Send address changes to: *Law and Social Inquiry*, P.O. Box 37005, Chicago, IL 60637.

Acknowledgments to Reviewers

The editors wish to thank the following reviewers whose careful evaluations and helpful recommendations have greatly assisted us in selecting manuscripts for Volume 18 of *Law and Social Inquiry*. We are grateful for their willingness to provide their expertise in furthering our efforts to ensure the publication of high-quality contributions to sociolegal scholarship.

Richard L. Abel

James J. Heckman

Mark Osiel

John Braithwaite

Wolf V. Hydebrand

Susan Philips

Charles L. Briggs

David Kairys

J. Mark Ramseyer

Lloyd Burton

Linda Kerber

Leonard Rubinowitz

Bruce Carruthers

Herbert Kritzer

Joseph Sanders

Barbara A. Curran

Jane E. Larson

Martin Shapiro

Michael Grossberg

Nancy Matthews

Michael Silverstein

Terence Halliday

Charles McCurdy

Robert Steinfeld

Joel F. Handler

Jon Newman

Susan Sterett

Hendrik A. Hartog

Barbara Welke