

American
Bar
Foundation

research journal

Volume 1986 • Fall • Number 4

SYMPOSIUM ON THE LAWYER'S AMORAL ETHICAL ROLE

**The Lawyer's Amoral Ethical Role: A Defense, A Problem,
and Some Possibilities**

Stephen L. Pepper

Comments by David Luban and Andrew L. Kaufman

Rejoinder by Stephen L. Pepper

ARTICLES

**When Is Justice Fair? An Integrated Approach to the
Outcome Versus Procedure Debate**

Jean M. Landis & Lynne Goodstein

Participation and Rules—The Functions of Zoning

Eric H. Steele

REVIEW SYMPOSIUM ON WEITZMAN'S DIVORCE REVOLUTION

Essays by Marygold S. Melli, Herbert Jacob, and Martha L. Fineman

Response by Lenore J. Weitzman

REVIEW SYMPOSIUM ON CRITICAL LEGAL THEORY

Essays by Costas Douzinas & Ronnie Warrington and by Alan Freeman

REVIEW ESSAYS

Garland on *Foucault's Discipline and Punish*

Carstensen on *McCraw's Prophets of Regulation*

Schneyer on *Mann's Defending White-Collar Crime*

BOOK NOTES

INDEX TO VOLUME 1986



Editors

Terence C. Halliday
Rayman L. Solomon
Research Fellows
American Bar Foundation

Managing Editor

Bette H. Sikes

Review Section

Editor

Howard S. Erlanger
Professor of Law and Sociology
University of Wisconsin

Editorial Assistant

Forrest Martin

EDITORIAL ADVISORY BOARD

1986

Richard L. Abel, Professor of Law, University of California, Los Angeles
Carl A. Auerbach, Professor of Law, University of Minnesota
Milton Heumann, Professor of Political Science, Rutgers University
Robert L. Rabin, Professor of Law, Stanford University
Maurice Rosenberg, Harold R. Medina Professor of Procedural Jurisprudence, Columbia University
School of Law
Richard D. Schwartz, Ernest I. White Professor, Syracuse University College of Law
Jerome H. Skolnick, Professor of Law, Jurisprudence, and Social Policy, University of California,
Berkeley
Robert B. Stevens, President, Haverford College

1987

David F. Cavers, Fessenden Professor of Law, Emeritus, Harvard University
Malcolm M. Feeley, Professor, University of California School of Law, Berkeley
James Willard Hurst, Vilas Professor, Emeritus, University of Wisconsin, Madison
Norval Morris, Julius Kreeger Professor of Law and Criminology, University of Chicago
Nelson W. Polsby, Professor of Political Science, University of California, Berkeley
Dietrich Rueschemeyer, Professor of Sociology, Brown University
Rita J. Simon, Dean, School of Justice, American University

1988

Morris Arnold, U.S. District Judge for the Western District of Arkansas
Erhard Blankenburg, Professor of Sociology of Law, Faculty of Law, Free University of Amsterdam
Eliot Freidson, Professor of Sociology, New York University
Lawrence M. Friedman, Marion Rice Professor of Law, Stanford University
Mary Ann Glendon, Professor of Law, Harvard University
Robert J. Levy, Julius E. Davis Professor of Law, University of Minnesota
Doreen McBarnet, Senior Research Fellow, Centre for Socio-Legal Studies, Wolfson College, Oxford
Carrie Menkel-Meadow, Professor of Law, University of California, Los Angeles
Judith Resnik, Professor of Law, University of Southern California
Barbara Yngvesson, Professor of Anthropology, Hampshire College

SYMPOSIUM ON THE LAWYER'S AMORAL ETHICAL ROLE

- The Lawyer's Amoral Ethical Role: A Defense, A Problem,
and Some Possibilities** 613
Stephen L. Pepper
- The Lysistratian Prerogative: A Response to Stephen Pepper** 637
David Luban
- A Commentary on Pepper's "The Lawyer's Amoral Ethical Role"** 651
Andrew L. Kaufman
- A Rejoinder to Professors Kaufman and Luban** 657
Stephen L. Pepper

ARTICLES

- When Is Justice Fair? An Integrated Approach to the Outcome
Versus Procedure Debate** 675
Jean M. Landis and Lynne Goodstein
- Participation and Rules—The Functions of Zoning** 709
Eric H. Steele

REVIEW SYMPOSIUM ON WEITZMAN'S *DIVORCE REVOLUTION*

- Constructing a Social Problem: The Post-Divorce Plight of
Women and Children** 759
Marygold S. Melli
- Faulting No-Fault** 773
Herbert Jacob
- Illusive Equality: On Weitzman's *Divorce Revolution*** 781
Martha L. Fineman
- Bringing the Law Back In** 791
Lenore J. Weitzman

REVIEW SYMPOSIUM ON CRITICAL LEGAL THEORY

- Domination, Exploitation, and Suffering: Marxism and the Opening of
Closed Systems** 801
Costas Douzinas and Ronnie Warrington
- The Politics of Truth: On Sugarman's *Legality, Ideology and the State*** 829
Alan Freeman

REVIEW ESSAYS

Foucault's *Discipline and Punish: An Exposition and Critique* 847
David Garland

Law and Economics Through History: McCraw's *Prophets of Regulation* 881
Peter C. Carstensen

**Getting From "Is" to "Ought" in Legal Ethics: Mann's
*Defending White-Collar Crime*** 903
Ted Schneyer

BOOK NOTES 921

INDEX TO VOLUME 1986 935

Publication Policy

The role of the American Bar Foundation is to create and disseminate knowledge about law and the workings of the legal profession and legal institutions. With that purpose in mind, the *American Bar Foundation Research Journal* invites the submission of articles. The *Journal* publishes articles on the legal profession, the provision of legal services, the operation of legal institutions, trends and policy developments in the law, and related topics. Recognizing that a variety of disciplines and approaches can contribute to knowledge of the legal system, the *Journal* strives to be multidisciplinary and publishes empirical, doctrinal, and theoretical analyses. The analyses, conclusions, and opinions expressed are those of the authors and not those of the American Bar Foundation, its officers and directors, research staff, or others associated with the Foundation's work.

Manuscript Evaluation: To ensure informed publication decisions, the *Journal* employs a refereed publication process. Articles that the Editors deem potentially appropriate for the *Journal* are normally evaluated by two or more reviewers chosen on the basis of their familiarity with the subject matter and the research methods. Manuscripts produced by scholars affiliated with the Foundation are evaluated by the same process as outside manuscripts and are not accorded priority in publication.

Submission of Manuscripts: Manuscripts submitted to the *Journal* should be typed double spaced and be accompanied by an abstract of not more than 150 words. Because an author's identity will not be disclosed when a manuscript is sent to reviewers, the author's name, credentials, institutional affiliation, and any acknowledgments should appear only on the cover sheet or other separate pages.

The *Journal* does not accept multiply submitted articles. The Editors will make publication 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 manuscript and proofs.

Reprints to Authors: Without charge, the *Journal* provides 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 authors' 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 in the *Journal*, but the *Journal* 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, Rayman L. Solomon
Editors
American Bar Foundation
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-6500

Send inquiries regarding
review essays to:
Howard S. Erlanger
ABF Research Journal
University of Wisconsin Law School
Madison, WI 53706
(608) 262-2240

The *American Bar Foundation Research Journal* is published quarterly.

SUBSCRIPTION RATES:	1 Year	2 Years	3 Years
Individual rate	\$30.00	\$54.00	\$76.00
Academic	\$25.00	\$47.00	\$64.00
Institutions (including libraries)	\$40.00	\$76.00	\$102.00

Overseas subscribers add \$6.00 for each 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

The *American Bar Foundation Research Journal* (ISSN: 0316-9486) is published quarterly, 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: *American Bar Foundation Research Journal*, 750 N. Lake Shore Dr., Chicago, IL 60611.

Cite as 1986 A.B.F. Res. J. 000