Law & Social Inquiry

Journal of the American Bar Foundation Volume 27, Number 1, Winter 2002

The University of Chicago Press

Law & Social Inquiry

Journal of the American Bar Foundation
Dedicated to the Study of Law,
Legal Institutions, and Legal Processes
Published by The University of Chicago Press

Editors John Hagan (on leave, 2001-2002)

Laura Beth Nielsen Victoria Saker Woeste

Review Editor Howard S. Erlanger

Associate Editors Ronit Dinovitzer

Mary R. Rose

Manuscript Editors Susan F. Messer

Sandy L. Pittman

Editorial Coordinator Valerie Z. Brown

Editorial Board

Richard L. Abel, Law, University of California, Los Angeles

Richard Bernstein, Law, New York Law School

John Braithwaite, Law and Sociology, The Australian National University

Tom Burke, Political Science, Wellesley College

Marianne Constable, Rhetoric, University of California

Susan Coutin, Criminology, Law and Society, University of California, Irvine

Eve Darian-Smith, Law and Society Program, University of California, Santa Barbara

John J. Donohue, Law, Stanford Law School

Lee Epstein, Political Science and Law, Washington University

Sarah Gatson, Sociology, Texas A&M University

Carol J. Greenhouse, Anthropology, Princeton University

Sally Hadden, History, Florida State University

Valerie P. Hans, Criminal Justice, University of Delaware

Mona Lynch, Administration of Justice, San Jose State University

Jennifer Mnookin, Law and History, University of Virginia Law School

Frank Munger, Law, SUNY Buffalo Law School

Joseph Rees, Public Administration and Policy, Virginia Polytechnic Institute and State University

Judith Resnik, Professor of Law, Yale University

Daniel Rubinfeld, Economics, University of California at Berkeley School of Law

Michael Saks, Law, Arizona State University

Peter Siegelman, Professor of Law, Fordham University Law School

Susan Sterett, Associate Professor of Political Science, University of Denver

Joyce Sterling, Law, University of Denver College of Law

Mark Suchman, Associate Professor of Sociology, University of Wisconsin, Madison

John Sutton, Professor of Sociology, University of California, Santa Barbara

Neil Vidmar, Professor of Law, Duke University

Law & Social Inquiry

Volume 27, Number 1, Winter 2002

ESSAYS IN HONOR OF JAMES HECKMAN, 2000 NOBEL LAUREATE	
James Heckman's Contributions to the Study of Law, Economics, and Public Policy Austan Goolsbee	1
An ABF Perspective on James Heckman and His Scholarship Bryant G. Garth	5
James Heckman as a Law and Society Scholar: An Appreciation Peter Siegelman	11
The Search for Truth: In Appreciation of James J. Heckman John J. Donohue	23
Honoring James Heckman's Contributions to Economics: Identification, Heterogeneity, and Economic Models Steven D. Levitt	35
ARTICLES	
A Positivist Account of the Rule of Law Frank Lovett	41
Constructing a Common Language: The Function of Nuremberg in the Problematization of Postapartheid Justice Stéphane Leman-Langlois	79
REVIEW ESSAYS	
Franz Kafka's Outsider Jurisprudence Douglas E. Litowitz	103
What We Do When We Do Law and Popular Culture Jessica M. Silbey	139
Constructing Paternalist Hegemony: Gross, Johnson, and Hadden on Slaves and Masters Mark Tushnet	169
BOOK NOTES	189

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 26 of *Law and Social Inquiry*. We are grateful for their willing contributions of expertise and judgment, which help to maintain *LSI*'s high standards for scholarly work in socio-legal studies.

Lisa Aldred Elizabeth Bernstein John Borneman Elizabeth Boyle Kitty Calavita Jane Collier John Comaroff Barry Cushman Eve Darian-Smith Karol DeZwager Brown David Dyzenhaus Jennifer Earl Ted Eisenberg Stephen Ellman Jeremy Elkins Daniel Ernst Catherine Fisk Katherine Franke Bryant Garth Terry Glavin Risa Goluboff Kent Greenawalt David Greenberg Lisa Hajjar Terence Halliday Joel Handler Angela Harris John Heinz

Laura Kalman Jack Katz **James Kettner** Heinz Klug Andrew Koppelman Felicia Kornbluh Pnina Lahav Ron Levi Ann Lucas Stewart Macaulay Patrick Macklem Heidi Malm Peter Manning Greg Matoesian Doug Maynard Sally Merry Linda Meyer Naomi Mezev Neil Milner Michael Musheno Laura Beth Nielsen Victoria Nourse William Novak Rogelio Perez-Perdomo Richard Perry Robert Post Edward Purcell Jill Quadagno Annelise Riles

Dorothy Roberts Gerald Rosenberg Joshua Roth James E. Ryan Joseph Sanders Joachim Savelsberg Ben Schneider Stuart Scheingold Stephen Schechter Kim Scheppele Regina Schuller Susan Sterett Susan Stevens Leanna Stiefel Arthur Stinchcombe Lynn Stout Stephen Sugarman John Sutton Brian Tamanaha Louise Trubek Mark Tushnet Melvin Urofsky Paula Wagoner Jean Wallace Suzanna Walters Barbara Wester G. Edward White William Wiecek Norma Wikler Stephanie Wildman

Vicki Jackson

Robert Kagan

Publication Policy

The American Bar Foundation (ABF) is an independent research institute committed to sociolegal research. Consistent with its mandate to create and disseminate knowledge about law, the legal profession, and legal institutions, and individuals' interactions with legal systems, Law and Social Inquiry: Journal of the American Bar Foundation invites the submission of manuscripts that make original contributions to the understanding of sociolegal processes. Law and Social Inquiry publishes both empirical analyses and theoretical studies from a variety of disciplinary perspectives. The analyses, conclusions, and opinions presented in Law and Social Inquiry 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: Law and Social Inquiry uses the author/date citation system, as described in The Chicago Manual of Style, 14th Edition. You may obtain our style guidelines via surface mail by writing to us at: Editorial Coordinator, Law and Social Inquiry, American Bar Foundation, 750 N. Lake Shore Drive, Chicago, Illinois 60611; or from our Web site at: http://www.journals.uchicago.edu/LSI/. 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 copy editors in consultation with the author. Copy editors do not check citations. Authors see edited manuscripts and/or proofs.

Off-Prints to Authors: Without charge, we provide authors with 25 off-prints of their articles, essays, or exchanges (but not symposia) that appear in *Law and Social Inquiry*. Additional off-prints 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 percopy fee through the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. To request permission for other kinds of copying, such as copying for classroom use without charge, 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, 1427 S. 60th Street, Chicago, IL 60637-2954.

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 & 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 & Social Inquiry
Institute for Legal Studies
Law School
University of Wisconsin
Madison, WI 53706
(608) 263-7405

For further information via the Internet—

Web site: http://www.journals.uchicago.edu/LSI/

E-mail: lsi-abf@abfn.org

Law & Social Inquiry is available for full-text search on the LEXISTM/

NEXIS™ and WESTLAW™ on-line services.

Annual U.S. subscription rates:

	1 yr.	2 yr.	3 yr.
Individuals	\$39	\$71.75	\$99.45
Academic	\$36	\$66.25	\$91.80
Institutions	\$68	\$125.10	\$173.40
Student	\$29	\$53.35	\$73.95

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 \$2.73; Academic \$2.52; Institutions \$4.76. Two-year rates: Individuals \$5.03; Academic \$4.64; Institutions \$8.76. Three-year rates: Individuals \$6.97; Academic \$6.43; Institutions \$12.14.

Single copies: \$21.00 for institutions, \$13.75 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: 773-753-0811; E-mail: subscriptions@press.uchicago.edu) Volumes 1-12 available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209. (800) 828-7571.

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

© 2002 American Bar Foundation. All rights reserved.

Law & 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, 1427 S. 60th Street, Chicago, Illinois 60637-2954. Subscription agent for Japan: Kinokuniya Company, Ltd. Periodicals postage paid at Chicago, Illinois and at additional mailing office. **POSTMASTER:** Send address changes to: Law & Social Inquiry, P.O. Box 37005, Chicago, IL 60637.

Essays in Honor of James Heckman 2000 Nobel Laureate in Economics
