

### REJOINDER TO PROFESSOR SPALDING

Professor Spalding's response to my review is marred by some egregious errors -- e.g., his confusion of the concepts of "hypothesis" and "value," which are used interchangeably and often incorrectly. He also indulges in intemperate and inappropriate language, as I believe a careful reading of my review and his reply will show. I hope, however, that the handful of readers whose interest is piqued by this debate are not simply entertained by its rhetoric, but are moved to go and study Professor Spalding's book. If they do, I would ask them to bear in mind the following statements of value (in the sense of subjective, untestable assumptions and preferences) which I brought to my criticism of his book:

1. The exegesis of legal doctrine is only worthwhile if the doctrine has some bearing upon behavior we wish to understand -- i.e., if the content of the rules is one of the variables necessary to understand that behavior.
2. The development of a specific policy to solve a narrowly defined social problem, and the construction of general theory, are alternative foci which always diverge to some extent. Every scholar must constantly choose to emphasize one at the expense of the other.
3. More important than either of these decisions is the question of how we may gain the fullest understanding of legal phenomena. In my review I wrote that "Students of the American legal system increasingly realize that it is impossible to understand that system without paying attention to unofficial or informal legal processes, as well as to the society in which they operate." Professor Spalding quotes this remark, apparently to indicate his disagreement with it. He asks me for citation of authority. Unfortunately, the question of appropriate method, unlike the question of "what the legal rule is," cannot be answered by citation. It must instead be answered by every scholar as he poses problems and seeks to solve them. In trying to understand legal phenomena in Kenya and the United States, I have examined such phenomena in conjunction with other social institutions, sought illumination from comparative

material, and drawn upon the theories of social science.<sup>1</sup> I believe that Professor Spalding's book -- a good one -- would have been better had he done the same.

Richard L. Abel

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<sup>1</sup>"A Comparative Theory of Dispute Institutions in Society," 8(2) Law and Society Review (Winter 1974) (forthcoming); "Law Books and Books About Law," 26 Stanford Law Review 175 (1973); "Case Method Research in the Customary Laws of Wrongs in Kenya - Part I: Individual Case Analysis; Part II: Statistical Analysis," V(4) East African Law Journal 247 (1969), VI(1) East African Law Journal 20 (1970) (an abridged version appears in 17 American Journal of Comparative Law 573 (1969)).