From the Editor

The master issue for the law and society field for the early 1990s may have been best described by the "crossing boundaries" metaphor that has been adopted, with variations, in the past few years as the theme of the programs of a number of professional associations whose members contribute to law and society scholarship. Apparently, in contrast to the recent past when issues of diversity and identity drew attention to differences of perspective, conflicts between cultures, the incoherence of authority, and the politics of interpretation, a move is being made to find and define the central enterprise that draws scholars together in the law and society field while avoiding the imperialism of particular perspectives or theories. The metaphor of crossing boundaries suggests respect for the boundary—for difference and for plural meanings, for integrity in separateness—and suggests a search for a concept of coherence that does not require a permanent bridging, merging, and unifying of starting points for understanding.

One of the most difficult boundaries to work with has been the boundary between personal, moral, and normative discourse on one hand and descriptive empirical discourse on the other. Because of this perceived boundary, much tension has arisen from the differences between the humanities and the social sciences. Some would work across this boundary by saying that interpretation prefigures observed behavior—communities must be imagined in order to be lived. Others, working the boundary from another point, would say that a lived community is a precondition for any meaningful exchange about moral order, personal reflection, or imagination. Some would deny there is a boundary, saying instead that there is a distinction between the individual (the source of imagination and interpretation) and the group (which may be incoherent, yet ordered) that constitutes not a boundary but an irreducible condition of existence.

Many of the contributions in this issue of the *Review*, in addition to their particular concerns, reflect work along the boundary between moral or political philosophy and empirical research, between prefiguring interpretation and structural stabilities, between the apparent preconditions for and the nature of order. This issue presents discussion of the theory of republican criminology and of the recently published major work on law by Jürgen Habermas, both of which involve explicit attempts to theorize simultaneously about moral choice and the

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behavior of institutions. Further, articles by Erhard Blankenburg and Tom Tyler also bear on the nature of moral community and its relationship to particular types of legal structure. These two articles are all the more relevant because the authors reach very different conclusions about the importance of the legal order in constituting a society, Tyler suggesting that concrete procedural practices are a precondition for the tolerant political order in American society, Blankenburg demonstrating that the strong cultural similarities between The Netherlands and Germany are perfectly compatible with sharply contrasting legal processes.

The issue begins with an article and two comments that draw attention to an important emerging reconceptualization of the role of criminal justice—republican criminology. Readers unfamiliar with republican criminology may want to begin by reading the comment by John Braithwaite and Philip Pettit, who have been centrally involved in the development of this new perspective. The article by Stuart Scheingold, Toska Olson, and Jana Pershing discusses the role of victim advocacy in the legislative process that led to the adoption of the Washington State Community Protection Act. The statute provides for registration with the police and notification of the local community when a criminal meeting the statutory definition of "sexual predator" is released into a community. Republican criminology envisions an important role for both the victims of crime and offenders in reconstituting the moral community, but as the authors of this article show, the legislative process as now constituted in Washington (and elsewhere) diverts victim advocacy to its own political and administratively defined ends regardless of the republican, reconstitutive sentiments expressed by some victim advocates. The comments by John Braithwaite and Philip Pettit and by Katherine Daly question whether analysis of an unreformed legislative process is a "test" of republican criminology, while conceding that the research sheds light on contingencies that republican theory cannot ignore. Daly further comments on the importance of attending to related questions raised by feminist theorists about the criminal justice process that she says are not well framed or answered adequately by the research.

Erhard Blankenburg describes an elegantly designed study of legal process in neighboring European states that have strong cultural similarities, including similar formal legal cultures. While The Netherlands and Germany have many cultural, economic, and legal ideological similarities, the construction of their legal processes and the statistical profile of litigation in The Netherlands and the neighboring German province of Northrhine-Westphalia are strikingly dissimilar. Blankenburg describes the consistent pattern of differences across a wide variety of private and public law legal processes, suggesting that we have often been too quick to assume that legal behavior (such as litigation)

is a direct expression of general culture. He argues instead that a variety of institutional forms are compatible with a particular culture and can have a pronounced effect on legal behavior.

Tom Tyler presents a study of the impact of procedural justice on beliefs about the legitimacy of legislative outcomes. This study attempts to resolve the contention between conflicting views of the importance of procedural justice for public support for national political institutions (see Gibson 1989, 1991; Tyler & Rasinski 1991; Mondak 1993). On the basis of two survey-based experimental studies, Tyler's research helps resolve questions about causal ordering of attitudes about procedural justice and about legitimacy of particular substantive legal or legislative outcomes that had been raised with respect to previous research. His conclusion is that procedural justice is an important legitimizer of legislation in a plural society.

Mark Cooney, in his article "Evidence as Partisanship," argues that our understanding of the availability, quality, and reception of legal evidence can be deepened by attending to the social status of parties. The argument is developed to show that a party's status affects the participation of others instrumental to the gathering and production of evidence. While high social status is particularly significant to the success of evidentiary processes, other dimensions of status are also important, including the relational distance between a party and witnesses, which is inversely related to credibility. Cooney's theory, like similar theories of Donald Black on which he draws, provides a simple, yet powerful conception that explains a pattern across many phases of criminal and civil legal process.

Loretta Stalans and Karyl Kinsey examine a seldom-explored aspect of legal culture, namely, the descriptions of legal encounters that are shared with others. Drawing on a study of tax audits, the authors examine reports conveyed by audited taxpayers to others about the outcome and process of being audited. The authors are initially concerned about possibility that bias is introduced in the process of reporting to others—that the accounts selectively or inaccurately report particular features of the audits. They conclude that biases are indeed introduced because of the pressure to maintain self-image. The authors also consider a particularly important and interesting further question: whether the biases introduced by the reporting of encounters contribute to the level of societal support for the legal process.

This issue presents a review essay by James Bohman of a major new work by Jürgen Habermas. *Faktizität und Geltung* (soon to be published in English under the title *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*) is the long-awaited statement by Habermas on the place of law in his theory of democratic political institutions. Bohman provides a lucid description of this immensely complex work, examining its diver-

gence from Habermas's earlier statements of his theory, and he offers a brief but important critique. Habermas has been an important figure in Europe for decades, but he is becoming increasingly important in North America as well, in part because his work blends commitment to moral and political premises as well as to empirical theory. Three brief comments that appear with Bohman's essay, by Kenneth Casebeer, David Abraham, and Jonathan Simon, illuminate Habermas's increasing importance in the law and society field by examining his contributions from three perspectives, respectively, his reception by American law and society scholars, his relationship to contemporary politics, and the relationship of his work to that of Foucault.

References

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