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In This Issue

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This issue of *Law and Social Inquiry* presents seven research articles and a review symposium. Varying widely in substance, collectively the research articles traverse a crucial discussion in sociolegal studies—the relative importance of structural and institutional, as compared to social and cultural, factors in creating determinative contexts for legal phenomena "in action." Precisely the same discussion occurs in our review symposium. This issue, then, presents a range of substantive research that also, considered as a whole, canvasses the range of conceptual and analytical choices that scholars must make when engaging in research in the sociolegal field.

The discussion is opened in our first article, by David Thacher, which pursues "The Rise of Criminal Background Screening in Rental Housing" as a case study in the diffusion of actuarial social control. The case, Thacher tells us, suggests that actuarial techniques have spread more widely through the crime prevention field than sociolegal scholars have recognized. Actuarial techniques dedicated to identifying and isolating high-risk groups have displaced disciplinary efforts to diagnose and alter the behavior of individuals. The actuarial strategy has proliferated, says Thacher, not only because new discourses encourage it but also because new institutional structures facilitate it. He concludes that the growing availability of the collective institutional capacity that actuarial social control requires means that structural rather than cultural factors are increasingly shaping society's response to crime.

Our second article, "Judges and Juries: The Defense Case and Differences in Acquittal Rates," by Daniel Givelber and Amy Farrell, also speaks to the developing institutional-structural theme. Kalven and Zeisel's classic study, *The American Jury* (1966), concluded that juries were "in revolt" from the law when they acquitted when judges would have convicted. Givelber and Farrell reexamine the question of judges' and juries' respective fidelity to the law and evidence. They use data collected by the National Center for State Courts to examine jury decision making in four different communities, concentrating specifically on the influence on judge and jury of structural and institutional contexts—the defendant's evidence, his criminal record,

and his reason for refusing to plead. No data, they argue, can tell us definitively whether the judge is correct and the jury in error when they disagree, but the data analyzed in the present study can tell us whether the factors that move the jury and fail to move the judge are or are not consistent with the innocence of the accused.

Our third article, "Mutual Bonds: Media Frames and the Israeli High Court of Justice," by Bryna Bogoch and Yifat Holzman-Gazit, alters our perspective on institutional factors by investigating the relationship between a particular institution, the Supreme Court of Israel (sitting as the High Court of Justice) and a key sociocultural interpreter of its actions, the popular and elite press. Bogoch and Holzman-Gazit concentrate on a period marked by growing activism on the Court and an increasingly adversarial and critical media. They show that the more the coverage of the Court gains in prominence over time—especially in the elite press—the more the salience of the Court in public life is accentuated. In addition, the topics, the stages of Court proceedings, the petitioners, and the outcomes of cases covered by the press, as well as the generally uncritical reporting of the Court decisions, all help create a cultural-institutional frame for the Court in which it is understood as an autonomous and powerful institution that frequently opposes and restrains the government. Bogoch and Holzman-Gazit suggest that the relationship between media and Court benefits both: it reinforces the image of the media as a critical watchdog of the government and simultaneously legitimates the Court's expansion of power by strengthening its image as an apolitical and independent institution.

Bruce Hoffman's "Minding the Gap: Legal Ideals and Strategic Action in State Legislative Hearings," our fourth article, pursues the relationship between institutional action and sociocultural variables in a distinct way, through a variation on the classic sociolegal "gap" study. Hoffman points us to a recurring theme in sociolegal studies—how legal procedures function to reproduce social inequality by disadvantaging less powerful groups. Researchers seem less interested in how disadvantaged groups achieve occasional victories in legal settings. Hoffman's study shows how the gap between law's ideals and the institutional settings and legal procedures that instantiate them can actually open up opportunities for collective activity in the service of social change. Using transcripts of state legislative committee hearings in which birth activists seek certification or licensure for independent midwifery, Hoffman identifies and investigates the ways in which legal ideals structure interaction and rhetoric in legislative hearings. He finds that the ideals—equality before the law, norms of negotiation, public access, legislative responsiveness to constituents, procedural legitimacy—are structurally instantiated in ways that disadvantage less powerful groups. But this does not altogether close the realm of action; activists can be seen adapting to the contexts in which they encounter the instantiation of legal ideals by developing strategies to play the same ideals to *their* advantage.

Our fifth article, "Between *Mendez* and *Brown*: *Gonzales v. Sheely* (1951) and the Legal Campaign Against Segregation," by Jeanne M. Powers and Lirio Patton, also studies the relationship between institutional action, legal ideals, and cultural "frames." Three years before the U.S. Supreme Court's decision in *Brown*, Judge Dave Ling of the U.S. District Court of Arizona ruled—*Gonzales v. Sheeley* (1951)—that the segregation of Mexican American students in a separate "Mexican School" was unconstitutional. Powers and Patton trace the legal arguments deployed in *Gonzales* through two prior cases, *Mendez v. Westminster* (1946) and *Delgado v. Bastrop* (1948). In particular, they concentrate on how "racialism" (the social science critique of racism and legalism) shaped arguments in all three cases. Powers and Patton suggest that *Gonzales* was a departure from *Mendez* and *Delgado* because it was the first case in which a court made an unqualified argument against segregation. As important, the trajectory of the legal arguments across the three cases highlights how new cultural ideas about race were slowly incorporated into civil rights case law and how that process was also shaped by the institutional norms and practices of the legal system.

Our sixth article offers an extremely interesting variation on the relationship between "culture" and "law." To this point, all the articles in this issue have considered in one fashion or another how institutions produce outcomes and what influences the form of outcome produced. Charlene Elliott's "Purple Pasts: Color Codification in the Ancient World" takes a rather different approach. How is a phenomenon with considerable cultural significance—color—"captured" by law? Alternatively, how does law invest a phenomenon with cultural significance? Modern practice would point us to developments in intellectual property, which have opened the door for trademarking color alone or color per se. But color codification is not a new phenomenon. Elliott outlines the quest in antiquity to "trademark" (metaphorically) the color purple and to provide it with a clear "secondary" meaning. She highlights how language, literature, and sumptuary law were all deployed to infuse purple with the appropriate symbolism, and links contemporary debates to some of the historic moves to sequester color.

Our final essay, by Jens Meierhenrich, is entitled "Varieties of Reconciliation." Its substantive subject is the practice of reconciliation; one might also observe that it provides this issue with a fitting conclusion by, as it were, "reconciling" (in the sense of systematically organizing) the range of structural, institutional, cultural, and ideational concepts that have influenced research on reconciliation—and that as categories of analysis have, more generally, made themselves known to us in one form or another in the other articles presented in this issue. Meierhenrich notes how, in recent years, scholars from neighboring disciplines have emphasized the importance of conceptual rigor in designing, administering, and interpreting research in the social sciences. He draws upon this "new conceptualism" to analyze the much-discussed notion of "reconciliation" in cases of historic injustice. In

an effort at bringing structure to debate, Meierhenrich formulates a systematized concept of reconciliation based on the multitude of meanings contained in theory and practice. He distinguishes among varieties of reconciliation, organizing them into types and subtypes. While most varieties of reconciliation emanate from the same root concept, Meierhenrich finds the various outer layers of meaning do not overlap. This hampers not only our understanding of reconciliation but its promotion in the international system as well. Responding to methodological malaise, the article prescribes friendly amendments—conceptual modifications and refinements designed to increase measurement validation of reconciliation as a conceptual variable.

Our review section in this issue of *Law & Social Inquiry* is devoted entirely to a debate on Bernard Harcourt's recent *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (2006), which challenges the growing reliance on actuarial methods (notably profiling) in law enforcement—also the subject, readers will recall, of the issue's first research article. In the first of three invited commentaries on Harcourt's book, Ariela Gross places the rise of actuarialism in U.S. criminal law in the context of trends in other areas of law, as well as in penology. Gross suggests the move toward actuarial thinking cannot in fact be separated from race. Prediction has always involved racial profiling, and it is no accident that it does so. In contrast, Yoram Margalioth, our second commentator, argues that profiling is always efficient, that there is no theoretical flaw in reliance on actuarial methods as long as they are implemented properly. Our third commentator, Yoav Sapir, holds that Harcourt has identified an important, and not exclusively American, trend and that his critique should be pushed further into the theory of punlishment, where it is no less applicable to clinical prediction methods than to the use of actuarial ones. Bernard Harcourt concludes the debate with a restatement of his critique of actuarialism in the field of crime and punishment. Ranging from the heights of poststructuralist and critical race theory to the intricate details of mathematical economics and criminological analysis, the commentators have applied a variety of disciplinary lenses to the actuarial turn. Harcourt's reply to the three reviews intends both to debate the detail of their reactions and, in the process, provide a "reader's companion" to *Against Prediction*. As always, the issue concludes with our normal section of book notes.