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# Preface

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## PREFACE

*Michel Rosenfeld\**

This symposium issue of the *Cardozo Law Review* which coincides with the English publication of Jürgen Habermas's *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*,<sup>1</sup> represents the culmination of an extraordinary interdisciplinary and intercontinental intellectual journey. The papers published in this issue were first presented at a conference held at the Benjamin N. Cardozo School of Law on September 20 and 21, 1992, in which Jürgen Habermas and thirty-two scholars from the United States, Germany, and many other countries, representing the fields of law, philosophy, sociology, and political science engaged in two days of intense, open, and wide-ranging discussion on virtually every major subject addressed by Habermas in his seminal book. *Between Facts and Norms* represents "a monumental achievement . . . reminiscent, by virtue of its systematic and comprehensive nature, of Max Weber's sociology of law and of Hegel's philosophy of law"<sup>2</sup> which will undoubtedly generate fruitful intellectual debate for several generations. The Cardozo conference, which took place at the time of the publication of the original German version of *Between Facts and Norms*,<sup>3</sup> thus constitutes the first in-depth discussion of Habermas's book, and in view of the prominence of the participants, the broad range of views which they represent, and the scope and quality of their contributions, is likely to frame the debate over Habermas's highly original and provocative theories of law and democracy for the foreseeable future. Moreover, this symposium issue also includes the lengthy, in-depth *Reply to Symposium Participants, Benjamin N. Cardozo School of Law*<sup>4</sup> written by Habermas after the conference which contains many further elaborations of some of the most salient issues tackled by Habermas in his book, and thus amounts to a veritable companion volume to that book.

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<sup>1</sup> JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* (William Rehg trans., 1996).

<sup>2</sup> Michel Rosenfeld, *Law as Discourse: Bridging the Gap Between Democracy and Rights*, 108 HARV. L. REV. 1163, 1164 (1995) (footnotes omitted) (book review).

<sup>3</sup> JÜRGEN HABERMAS, *FAKTIZITÄT UND GELTUNG: BEITRÄGE ZUR DISKURSTHEORIE DES RECHTS UND DES DEMOCRATISCHEN RECHTSSTAATS* (1992).

<sup>4</sup> Jürgen Habermas, *Reply to Symposium Participants, Benjamin N. Cardozo School of Law*, 17 CARDOZO L. REV. 1477 (1996).

The publication of this symposium issue comes at the end of a long and productive collaboration which began over five years ago, and which included the participation of a large number of dedicated contributors. Obviously, the most important contribution was that of Jürgen Habermas himself, who graciously agreed during a visit that I paid him in Frankfurt in December 1990 to participate at a conference on his (then) not yet completed book on law. During the conference itself, Habermas delivered the keynote address, which is published in this issue,<sup>5</sup> to a huge overflow audience. During the rest of the conference, which was, by and large, only open to participants, Habermas spent very long hours closely listening to, and thoroughly responding to, the thirty-or-so presentations made on various aspects of his book, in an intense and most enriching dialogue. Finally, subsequent to the conference, in the summer of 1994, upon receiving all the papers which had by then been completed, Habermas generously agreed to provide the written reply that is included at the end of this issue.<sup>6</sup>

The many participants who were not sufficiently proficient in German could not have taken part in the conference if it had not been for the herculean efforts of Bill Rehg to complete a draft of his translation of *Between Facts and Norms* in time for circulation prior to the conference. Rehg also deserves much gratitude for his translation of *Paradigms of Law* and of Habermas's *Reply* to which he kindly turned as soon as the original was completed.

Next, I wish to thank Andrew Arato who co-organized the conference, worked on it from the very beginning, and was very instrumental to its success. Special thanks are also due to Dick Bernstein for his early support and wise counsel, and to Tom McCarthy for his many excellent suggestions.

On the basis of the outstanding organizational and editorial work they performed in connection with the two-volume *Hegel and Legal Theory* symposium issue,<sup>7</sup> the subsequent symposia issues focusing on Jacques Derrida,<sup>8</sup> and the issue on Niklas Luhmann,<sup>9</sup> the editorial boards and staff of the *Cardozo Law Review* have gotten

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<sup>5</sup> Jürgen Habermas, *Paradigms of Law*, 17 CARDOZO L. REV. 771 (1996).

<sup>6</sup> Jürgen Habermas, *Replik auf Beiträge zu einem Symposium der Benjamin N. Cardozo School of Law*, 17 CARDOZO L. REV. 1559 (1996). For the English translation, see *supra* note 4.

<sup>7</sup> Symposium, *Hegel and Legal Theory*, 10 CARDOZO L. REV. 847 (1989).

<sup>8</sup> Symposium, *Law and the Postmodern Mind*, 16 CARDOZO L. REV. 699 (1995); Symposium, *Deconstruction and the Possibility of Justice*, 11 CARDOZO L. REV. 919 (1990).

<sup>9</sup> Symposium, *Closed Systems and Open Justice: The Legal Sociology of Niklas Luhmann*, 13 CARDOZO L. REV. 1419 (1992).

everybody used to their high standards. Even by that measure, however, the contribution by members of the *Law Review* to the present project was truly remarkable. The huge task of organizing the conference, coordinating the entire project, and editing and producing this issue was handled by five consecutive editorial boards and their respective staffs. Although many of the numerous people involved deserve special recognition, it is only possible to single out a few among those who are most responsible for the success of the entire project. Lisa Fishbone, the Executive Editor of the *Law Review* in 1991-92, was superb in the planning, organization, and overseeing of the logistics of the conference. Thanks to her level-headed and highly competent leadership, things ran very smoothly. Vanessa Ferber and Adam Chernichaw, who were Articles Editors in 1993-94 and 1994-95, respectively, unselfishly shepherded the project in the interim years, with the knowledge that they would not directly partake in the joy of seeing their work come to full fruition. Nevertheless, their contribution was important and is much appreciated, as was that of Steve Washington, the Editor-in-Chief in 1994-95, who also actively advanced the project during his tenure.

The bulk of the work and the responsibility for this issue fell on the shoulders of the current Editorial Board and staff of the *Law Review*. In spite of the unusual complexities and time pressures that are inevitable in a project of this magnitude, the diligence, competence, and dedication of the entire team have been truly exemplary. Mia Warren, the Editor-in-Chief, deserves special praise for her good judgment, outstanding leadership, and undaunted perseverance in the pursuit of excellence. Finally, the Editorial Board would like to thank staff members Andrew S. Burchill, Jonathan R. Gross, and Jeremy E. Novak for their able assistance.

It would not have been possible to organize an international conference of this magnitude without receiving significant financial support. Fortunately, the conference was able to count on the generous financial support of the Jacob Burns Institute for Advanced Legal Studies at Cardozo, the Goethe House/German Cultural Center, and The Friedrich Ebert Foundation.