This volume derives from an exploratory conference whose participants sought to learn about differences between the United States and other Western countries in how and what scholars, practitioners, offenders, and the general public think about legitimacy in the criminal-justice system. The papers initially commissioned for the conference dealt with European countries but were augmented by papers on a number of Latin American countries, South Africa, and Slovenia.

This speculative venture has had a valuable payoff. We have learned that systematic scholarly interest on legitimacy is mostly American; that not much systematic research or theory building has occurred elsewhere; that problems of legitimacy are important everywhere; and that a number of plausible, testable hypotheses can be formulated that can guide future inquiry. Put differently, the comparative and cross-national study of legitimacy is an important, policy-relevant subject in need of a research community to do the work.

The papers are centrally concerned with two questions: whether structural differences between countries' legal systems generate different levels of perceived legitimacy in the eyes of citizens generally and those accused of crimes particularly, and whether the views of majority and minority groups differ substantially.

Neither question can be answered with much confidence. There are no comparative or cross-national literatures. The best that can be done is to commission papers on individual countries and through them try to look across national boundaries.

The scholarly literatures on procedural justice and legitimacy are distinctly American. It would be an exaggeration to refer even to nascent literatures in other
English-speaking countries, continental Europe, or elsewhere. Why that is the case is a third important question.

My guess is that the answer centers on the United States' distinctive constitutional scheme premised on notions of limited powers of government and entrenched rights of citizens, compared with the étatist traditions of Europe, including Britain, and much of the rest of the world. Concepts of vested substantive rights against the state and procedural protections against state intrusion were probably predicates to the development of a theory of procedural justice and a research agenda aiming to understand the effects of alternative ways of implementing procedural protections. This American hegemony will not last because these differences between the United States and Europe are eroding. Within Europe, the application of the European Declaration of Human Rights and the decisions of the European Court of Human Rights are creating stronger substantive rights and procedural protections. That, however, is a work in progress and is unlikely yet to have fundamentally affected the sensibilities of practitioners or the agendas of researchers.

It is possible, however, to tease out from the essays in this volume and from related literatures some hypotheses relating to the two main questions. Before doing that, I need to bound the term "legitimacy" as I use it here. I am concerned with two conceptions: perceived legitimacy of state institutions and processes, particularly the courts and the police, in the eyes of the public at large; and the perceived legitimacy of courts and police in the eyes of people who have direct dealings with them.

The first of these, a "Caesar's wife's" notion, is the prevalent European conception of legitimacy and results in emphases on transparency of process, accountability of decisionmakers, and complete separation of justice-system processes from political influence.

The second, the prevalent American conception, is more particularist and focuses on how people's experiences in the criminal-justice system affect their perceptions of it.

Whether people in general regard institutions and their operations as legitimate is germane to confidence in government, cooperation with government, and willingness to participate in public life. Whether suspects and defendants believe that police and courts are legitimate is germane to their general satisfaction with their criminal-justice experiences, their willingness to accept decisions adverse to their interests, and their willingness to cooperate with agents of the state. The literature tells us that the extent to which perceived legitimacy in either sense is higher or lower turns on such factors as whether rules are seen to be fairly and consistently applied, whether people are given opportunity to have their say, whether citizens' claims are given respectful consideration, and whether decisionmakers are seen to be fair and impartial.

A number of testable hypotheses emerge from the essays in this volume and relevant literatures:

First, perceived legitimacy of the police, public confidence in the police, and citizens' willingness to cooperate with police, especially among disadvantaged minor-
ity groups, are likely to be higher when police interact with citizens in ways that are respectful, unbiased, and nonviolent. As the essays in this volume on Argentina, France, Germany, Mexico, Slovenia, and South Africa attest, these conditions often are not met, especially in relation to minority groups.

Second, perceived legitimacy, public confidence, and willingness to cooperate may be higher among minority groups in the context of the courts than in that of the police. Although people in general express greater confidence in the police than in the courts, minority respondents express less confidence in the police and are much more likely to believe police to be brutal or dishonest. Research on courts also shows lower levels of minority satisfaction with them, but differences between blacks and whites are much less than the differences in levels of confidence of the two groups in the police.

Third, perceived legitimacy, public confidence, and citizens’ willingness to cooperate in court proceedings are likely to be higher for all groups when prosecutors and judges are nonpartisan career civil servants than when they are partisan, politically elected or selected, and nonprofessional. The strongest evidence for this comes from Dutch studies, and the underlying logic should apply to other countries.

Fourth, hypotheses become harder to formulate after that. There are good a priori reasons to suppose that features of criminal courts in European civil law systems achieve greater legitimacy in the eyes of defendants than do equivalent features of Anglo-Saxon common law systems. The former are characterized by professional judges and prosecutors, traditions in most countries that a guilty plea is by itself an insufficient basis for a conviction and a requirement that every case be tried, requirements that judges explain sentences in writing in every case, automatic rights to appeal convictions with, in many countries, a right to a trial de novo on appeal. The latter are characterized by politically selected and attuned officials, assembly-line case processing, plea bargaining as the predominant form of case disposition, oral statements of reasons for sentences, and limited rights of appeal.

Each of the features listed for European justice systems is on its face more likely to imply fair consideration, even-handedness, and impartiality than are the features listed for Anglo-Saxon countries. But because there are significant differences between countries within broad civil law and common law categories, and because a system’s formal structure and putative procedures and values do not necessarily predict how cases are handled, useful hypotheses are most likely to be available at national or subnational levels.

MINORITY GROUPS, THE POLICE, AND LEGITIMACY

Problems of police legitimacy are similar everywhere: interactions among police culture and structure, overrepresentation among offenders of members of some minority groups, young men’s high levels of testosterone, and cultural differences
appear to contribute to comparable conflicts arising between police and young minority men and to relatively low police legitimacy in the eyes of minority groups. Survey evidence in the United States has for years shown that blacks have considerably less confidence in the police than do whites, have considerably lower confidence in police honesty, and are three times more likely to believe that police brutality is common. The evidence is less extensive in England, but there, too, Afro-Caribbeans have less confidence in the police than do whites, and are less likely to believe that police respect the rights of suspects.

The American literatures on legitimacy and procedural justice suggest that even-handedness, impartiality, respectfulness, and a chance to say one's piece are predicates of greater perceived legitimacy than when those characteristics are absent or not followed. If that is true, it would be astonishing if perceptions of police legitimacy held by some minority groups were not lower than those of majority populations. Disproportionately, many members of minority groups live disadvantaged lives; commit crimes; are stereotyped by others as deviant; are arrested, convicted, and imprisoned; and have emotionally charged encounters with the police. If police officers are as or more racially or ethnically biased as other members of their subgroups in their countries, as one would expect them to be, the prospects are high that minority suspects will be treated unfairly, or in ways they perceive as unfair. Many of the essays in this volume confirm these speculations. Police relations with minority groups in South America, France, and Slovenia are fraught with tension, stereotyping, imputed bad motives, and misunderstanding.

MINORITY GROUPS, THE COURTS, AND LEGITIMACY

It is likely that courts, by contrast, more often than the police behave in ways that are conducive to perceived legitimacy, though this no doubt varies widely from place to place, between countries, and within them. Most of the chapters in this volume focus on police issues. Only a few—those on Germany, France, and the Netherlands—touch on the judicial system experiences of minority suspects. The scant evidence they adduce does not suggest the existence of large disparities in court outcomes, even though higher minority arrest rates produce large disparities in imprisonment rates. Values of equal treatment characterize most Western judicial systems, and conditions giving rise to emotional confrontation are many fewer in the court system than with the police.

It would be surprising if perceptions of court illegitimacy were as great as those of police illegitimacy. The only European study on this point that I know of, done in England by Roger Hood and Stephen Shute (Shute, Hood, and Seemungal 2005), bears this out. Three-quarters of white suspects felt fairly treated by the English courts and slightly less than three-quarters of nonwhites felt this way. Though there
was a difference of a couple of percentage points, the main message was that there was very little difference.

PARTISANSHIP, POLITICS, AND PROFESSIONALISM

Given these observations, there are plausible a priori reasons to suppose that continental civil-law systems achieve higher levels of perceived legitimacy in the eyes of suspects than do Anglo-Saxon common law systems. Comparatively speaking, though, the difference between court systems that are and are not directly linked to partisan politics may be more important—a series of ingenious studies by Jan de Keijser and in his colleagues in the Netherlands suggests just this (Eiffers and de Keijser 2006). Research in the English-speaking countries indicates that very large percentages of lay people believe that judges are too lenient, even though this belief is based on substantial underestimates of the severity of sentences judges imposed, and even though survey respondents often support sentences less harsh than judges impose.

De Keijser and his colleagues wanted to learn whether Dutch citizens thought judges too lenient (they did), whether citizens would impose harsher sentences than judges did (unlike in the English-speaking countries, they would), and whether judges knew their sentences were perceived as too lenient by citizens and were in fact less severe than citizens would impose—the answer to both questions was yes. Perhaps the most interesting question was whether laypeople believed that judges should pay more attention to their, the laypersons', punishment preferences and change the sentences they imposed accordingly. They did not. They wanted judges to exercise their own best judgment.

The best way to understand de Keijser's findings is that citizens have confidence in the integrity and independence of the judiciary and want judges to make the decisions, in individual cases, that they believe to be the most appropriate, irrespective of what the citizenry might think. This implies a high degree of trust in the judiciary. Dutch judges and prosecutors are not elected, nor are they selected on partisan political bases. Most are career officials. Most subscribe to the notion that they should be, and should be seen to be, virtuous, in the sense of being completely impartial and completely nonpolitical. Contrast this with the American system of partisan elections and media-cultivating officials, or the English system of criminal justice bureaucracies headed by partisan politicians who openly undertake to influence the outcomes of individual cases.

In most of continental Europe, judges and prosecutors are career civil servants who self-select into those career lines as university students and progress along career ladders in which they are socialized to hold the professional values of independence, impartiality, nonpartisanism, and professionalism. If de Keijser's findings generalize to other European countries, the implication is that continental legal systems may foster greater legitimacy in the eyes of citizens than do the United States' and England's. If true, this is ironic, because a primary rationale of American
partisan selection methods, and England’s recent descent into penal populism, is the assertion that public confidence will be greater if citizens believe officials are accountable to public opinion.

CIVIL-LAW AND COMMON-LAW COUNTRIES

Plausible hypotheses can be developed that various procedural features of continental civil-law systems should be perceived by suspects and defendants as more legitimate than corresponding features of common-law systems—for example, in civil law, the requirement that a trial take place in every case versus disposition of most cases by guilty pleas and plea bargains. Many features of American criminal court processes would probably shock most officials and citizens alike in Europe, for example, federal “real offense sentencing,” in which defendants are punished for alleged crimes of which they were acquitted, or the common practice of conditioning a plea bargain on the defendant’s agreement to waive rights to appeal questionable practices.

It is not easy to design genuinely cross-national comparative research to delve into these matters. It is somewhat easier to imagine laboratory research on narrow procedural differences. The difficulty, however, even if practicable projects can be undertaken, will be to disentangle the effects on perceived legitimacy of particular practices and procedures from the effects of differences in the independence and nonpolitization of court systems.

Fortunately, we now have a volume that raises these questions. A European literature on legitimacy in relation to police and courts may be nascent, but genuinely comparative inquiry into the nature and effects of differences in legal systems is nonexistent, a reality that this project has exposed.

REFERENCES
