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## Introduction

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## EXCLUDED VOICES: REALITIES IN LAW AND LAW REFORM

### Introduction

*If we continue to speak the same language to each other, we will reproduce the same story. Begin the same stories all over again. Don't you feel it? Listen: men and women around us all sound the same. Same arguments, same quarrels, same scenes. Same attractions and separations. Same difficulties, the impossibility of reaching each other. Same . . . same. . . . Always the same.<sup>1</sup>*

This Symposium is about how differences in opinions, motivations, and language can construct social and political ideas that may form the basis for law reform. It is about language's power to shape perceptions of the world.

The term "differences" normally is associated with conflict or disagreement.<sup>2</sup> The differences expressed in this Symposium, however, provided the participants with the opportunity for a positive exchange and for an exploration of how sexual, racial, and class-based distinctions in legal language affect law reform. This unique discourse gave traditionally marginalized voices a forum to express and critique strategies for resolving some of the problems that women, people of color, and others who are either economically or culturally disadvantaged encounter.

Our values are conditioned and shaped by the environment in which we live. As sociological studies have shown, wealth, political identity, and access to power are transferred from generation to gen-

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1. Irigaray, *When Our Lips Speak Together*, 6 SIGNS 69, 69 (1980).

2. The term "differences" is defined as the "1. condition, quality, fact or instance of being different . . . 3. the state of holding a differing opinion; disagreement . . . 4. a dispute, quarrel." WEBSTER'S NEW WORLD DICTIONARY 393 (2d ed. 1982).

eration as though they were a ceremonial gavel.<sup>3</sup> The dominant group enjoys a privileged and highly advantageous position. Those in this group have the power to shape the world and promote their interests by creating a body of language and knowledge, and a system of beliefs that "lock out" minority groups. By manipulating language to create self-serving labels for social conditions, the elite ignore the repressive conditions under which society's less influential groups suffer.

The dominant language defines what is acceptable in any given situation. As a first year law student, I encountered the effect of a dominant language. I am a black woman. One day as I strolled around my dormitory, I overheard a conversation among four white women law students regarding my ability to perform in law school. The conversation proceeded as follows: "I feel sorry for Benita. She is not going to make it in law school; she doesn't have what it takes." They had decided without ever having spoken to me that I could not survive law school.

After hearing a voice that sounded familiar, I approached one of the women and asked, "Did you say that I can't survive law school?"

She responded, "Yes, Benita, I did say that. It's true. The reason is simple. You don't have the same mastery of the English language as I do."

Recognizing the ethnic differences between us, these women suggested that "access" to the legal profession, and perhaps the ability to effect change in our society, depended upon the language commonly spoken by whites. Because we did not speak the same language, we were not equals. My access to power and social equality was therefore conditioned upon my willingness to assimilate or adopt the language of the more privileged group. Yet social equality evokes more questions than answers. What is equality? Does it mean the right to assimilate into American society or the right to express one's distinct

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3. According to political scientist Kenneth P. Langton, "Political socialization . . . refers to the way society transmits its political culture from generation to generation. This process may serve to preserve traditional political norms and institutions . . . [or] can be a vehicle of political and social change." K. LANGTON, *POLITICAL SOCIALIZATION* 4-5 (1969).

Another commentator stated that:

In allocating income, wealth, status, knowledge, occupation, organizational position, popularity, and a variety of other values, every society also allocates resources with which an actor can influence the behavior of other actors in at least some circumstances. . . .

Extreme inequalities in the distribution of such key values as income, wealth, status, knowledge, and military prowess are equivalent to extreme inequalities in political resources.

R. DAHL, *POLYARCHY* 82 (1971).

cultural values without being penalized for it? Should social equality allow a medley of voices and ideas to become part of the discourse?

Women, minorities, and the disadvantaged are excluded from the process of formulating the legal principles that constitute the normative order of our society.<sup>4</sup> Social problems and their solutions often mirror the values and ideas of the dominant group to the exclusion of the diverse ideas and experiences of minority groups.<sup>5</sup> The dominant group has constructed a legal system that alienates these citizens by being unresponsive to their needs. The excluded groups, therefore, have been deprived of an adequate forum to express their own experiences and raise social consciousness about their plight.<sup>6</sup> This Sympo-

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4. One observer explained why professional institutions participate in affirmative action programs:

Acceptance of the environmentalist explanation for the comparatively poorer performance of minorities in higher education (as in other areas of activity) inevitably raised severe moral issues. On the one side, the professional schools' heavy reliance on academic criteria disproportionately screened out minorities from admission. On the other, minorities as a group scored less well on academic measures through no fault of their own but because of a multitude of disadvantages imposed on them by society. Taken together, these considerations became the basis for minority groups to assert a strong moral claim of unfair treatment, of denial of equal educational opportunity.

A. SINDLER, BAKKE, DEFUNIS, AND MINORITY ADMISSIONS 112 (1978).

The women and minorities who enter the legal profession can be made to feel insignificant and powerless to effectuate change in legal institutions. I recall vividly my first week of law school and my strong desire to acquire the skills necessary to make things happen for the black community. I was in a state of awe, like most other incoming students. My uneasiness was magnified, however, by the mixed signals I received from other blacks in my community. Some said that to study law would be to study the history of oppression of black people in this country. They said that by entering law school, I became a partner in the conspiracy to repress my people. They constantly reminded me that the way I chose to apply my new knowledge would determine the extent to which my community would welcome me back at the end of my studies. When I arrived on campus, there were other reminders of the responsibility that I owed my culture. My white teachers and classmates only sought my opinion when the conversation bordered on race sensitive issues. They would ask, "How does it feel . . . ?" I concluded that they thought of me in terms of my skin color, but held little regard for the intellectual promise that I might demonstrate. Four years of legal education transformed my urge to become a skilled attorney and improve my community into feelings of disillusionment and frustration.

5. See Edelman, *The Construction of Social Problems As Buttresses of Inequalities*, 42 U. MIAMI L. REV. 7, 7 (1987) ("The conditions that are defined as problems at any time are not facts, but social constructions that reflect and reinforce established beliefs about the self, the other, and the social setting in which we live.").

6. As Professor Edelman noted,

Problems come into discourse and therefore into existence as reinforcements of ideologies, not simply because they are there or because they are important for well-being. They signify who is virtuous and useful and who is dangerous or inadequate, which actions will be rewarded and which penalized. They constitute people as subjects with particular kinds of aspirations, self-concepts, and fears, and they create beliefs about the relative importance of events and

sium represents a search for excluded voices, and ideas—a vital link in the chorus of American voices.

Murray Edelman, in *The Construction of Social Problems as Buttresses of Inequalities*, focuses on how the construction of social problems reflects the ideological and social identity of decisionmakers. He examines the ways in which the government and the media shape and implant the language and interpretation of established political ideologies, and buttress forms of discrimination based on class, race and sex.

Carrie Menkel-Meadow explores the social impact of the entry of women into the legal profession in her article, *Excluded Voices: New Voices in the Legal Profession*. She analyzes how the legal profession has excluded women and how feminists have attempted to break the barriers and assist in formulating and interpreting the law.

Isabel Marcus explores the development of divorce law reform in New York in her article, *Reflections on the Significance of the Sex/Gender System: Divorce Law Reform in New York*. She examines how the construction of divorce law through concepts of “sex/gender” has served throughout history to depersonalize the legal existence of women in marriage and to enhance the privileged position of the dominant male culture.

Kristin Bumiller, in *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, discusses the tension between the differing feminist constructions of rape by focusing on themes of sexuality and power. Her article analyzes the construction of rape in the context of social movements and in the context of a rape trial. She also examines rape trials in which defense attorneys attempted to shift the blame from the defendant to the victim.

Allen Hunter examines “Middle America” in *The Role of Liberal Political Culture in the Construction of Middle America*. Professor Hunter discusses Middle Americans’ ideological opposition to perceived threats by blacks, feminists, and homosexuals. He describes how economic crisis, sociocultural change, and public policy have led Middle Americans to feel politically disempowered and culturally marginalized. Middle Americans feel excluded from the political culture due to liberal court decisions, executive orders, and legislation which have challenged their assumptions about human nature, morality, gender and racial relations.

Patricia Williams, in *Spirit-Murdering the Messenger: The Dis-*

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objects. They are critical in determining who exercises authority and who accepts it.

*Id.* at 8.

*course of Fingerpointing as the Law's Response to Racism*, analyzes how in reacting to incidents of racial violence, the language of public officials reflects their private presumptions about race and class.

In this Symposium, those participants unwilling to communicate in the dominant language were encouraged to speak in a voice they found most comfortable. This included redefining words in order to empower the excluded and to break the barriers of silence associated with the construction of legal language. It also included the repositioning of words within the text of Symposium papers to shift power and meaning to those persons who sensed an unwillingness to connect or communicate in the dominant language.<sup>7</sup>

It is essential that the disempowered (or excluded) voices redefine and reposition words to alter the dominant group's response to their needs. If we accomplish this, our language will no longer be the same. Our "differences" will provide the ammunition for social change. Social practices, relationships and institutions will develop new meanings. Perhaps then we will prevent history from repeating the oppression that has plagued women, minorities, and the disadvantaged.

BENITA RAMSEY\*

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7. One commentator states,

Language conveys a certain power. It is one of the instruments of domination. . . . [T]he language of theory—removed language—only expresses a reality experienced by the oppressors. It speaks only for their world, from their point of view. Ultimately a revolutionary movement has to break the hold of the dominant group over theory, it has to structure its own connections. Language is a part of the political and ideological powers of rulers. . . . We can't just occupy existing words. We have to change meanings of words even before we take them over.

S. ROWBOTHAM, *WOMAN'S CONSCIOUSNESS, MAN'S WORLD* 32-33 (1973).

\* The success of this Symposium is attributable to the leadership and support of Dean Mary Doyle, Professor Martha Fineman, and those students who made it happen.