

# University of Michigan Journal of Law Reform

---

Volume 33

---

2000

## Legal Language in the Age of Globalization: Prospects and Dilemmas

Patricia Fernández-Kelly  
*Princeton University*

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Law and Society Commons](#)

---

### Recommended Citation

Patricia Fernández-Kelly, *Legal Language in the Age of Globalization: Prospects and Dilemmas*, 33 U. MICH. J. L. REFORM 443 (2000).

Available at: <https://repository.law.umich.edu/mjlr/vol33/iss3/10>

This Afterword is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

**LEGAL LANGUAGE IN THE AGE OF GLOBALIZATION:  
PROSPECTS AND DILEMMAS**

---

Patricia Fernández-Kelly\*

To appreciate the significance of the preceding articles, it is necessary to consider their implications in a broad context. As territorial borders become more and more permeable to the movements of capital, and as advanced technology joins even the most remote geographical areas, people throughout the world face new provocations and opportunities. Fears of cultural obliteration are being met with revitalized expressions of resistance. In the new global landscape, language plays a paramount role. The putative universality of English, for example, parallels the multiplication of vernacular idioms evolving as part of attempts to preserve cultural integrity. Yet, the counterpoint between cultural homogenization and differentiation also heightens the need for impartial systems of communication. It is in this respect that the language of law and legal scholarship becomes an indispensable resource. As the contributions in this Symposium make resoundingly clear, legal language, with its pauses, sounds, elisions, and pronouncements, is critical to the maintenance of social divisions. Its reconstitution should be equally central to the building of connections between disparate cultures.

Professor Margaret Montoya offers a timely account of the political economy of language.<sup>1</sup> In unequal exchanges of power, she contends, what is not said is as important as that which is spoken.<sup>2</sup> Dominance speaks while submissiveness remains quiet. But, there are exceptions. Nothing is more terrible than the silence of the oppressor in the face of the plea by the oppressed. Professor Montoya begins to make sense of the modalities of speech and silence that guide inequitable social transactions. At every step of the way, culture is implicated in the process. The legal cases discussed in her article are instructive not only because they expose the arrogance of judges and prosecutors, but also because they reveal the way in which inattention to cultural differences thwarts the proper

---

\* Lecturer in Sociology and Faculty Associate, Princeton University Office of Population Research. Ph.D. 1981, Rutgers University.

1. See Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847 (2000), 33 U. MICH. J.L. REFORM 263 (2000).

2. See *id.* at 5 MICH. J. RACE & L. at 852, 33 U. MICH. J.L. REFORM at 268.

administration of justice.<sup>3</sup> One question, however, remains unanswered in Professor Montoya's compelling rendition: What is the proper way to incorporate cultural discrepancies into legal narratives without betraying the universal criteria upon which the law must rest?

The question is important for several reasons. Cultural distinctiveness plays in a twofold plane. It may shield individuals and groups from extreme oppression, providing them with referents for self-identity and the hope of rectification. On the other hand, it can also lead to insularity, prejudice, and violence, as clearly illustrated by numerous "ethnic cleansing" movements throughout the world. The exaltation of cultural difference outside of context opens paths for the opportunistic use of ad hoc definitions to justify actions that deviate from desirable norms. How far can legal concepts extend to incorporate cultural difference before exploding into a multitude of particular exemptions? It is true that equal representation under the law becomes a mockery when class, race, and ethnicity are not taken into consideration. Conversely, fair representation cannot take place without the application of universal criteria.

In denouncing injustice, critical scholars often forget that the words used to expose social malevolence can easily become instruments to perpetuate disarray and authoritarianism. A careless embrace of cultural difference poses potential dangers as fearsome as the neglect of cultural variation. From the point of view of the law, the key dilemma is how to name the forces that subvert equal representation, while simultaneously preserving uniform concepts and procedures. Unfortunately, the solution does not depend on transmutation within legal systems, but rather on the transformation of the structural arrangements that maintain economic, political, and social inequalities.

The use of language is also central to Professor Gema Pérez-Sánchez's lucid examination of the subconscious grammar of the authoritarian state.<sup>4</sup> She explores the true meaning of homophobic legislation in Spain under the fascist dictatorship of Francisco Franco.<sup>5</sup> Three aspects of her article have far-reaching repercussions. First, through an examination of legal documents and

---

3. See generally *id.*

4. See Gema Pérez-Sánchez, *Franco's Spain, Queer Nation?*, 5 MICH. J. RACE & L. 943 (2000), 33 U. MICH. J.L. REFORM 359 (2000).

5. See generally *id.*

cultural manifestations, Professor Pérez-Sánchez pinpoints the reasons why control over sexuality is important to the maintenance of dictatorial regimes.<sup>6</sup> Stipulations about the proper interaction between men and women are central to the articulation of coercive class systems and political repression. Male homosexuality, with its intimations of boundless experimentation and contempt for dimorphic gender definitions, presents an actual and symbolic threat to anti-democratic regimes.<sup>7</sup> Under Franco's dictatorship, this menace was addressed by adopting juridical definitions that equate homosexuals to vagrants and delinquents, thus erasing the specific features of homosexuality and making it a common crime.<sup>8</sup> The same process has been replicated many times in other parts of the world.<sup>9</sup>

Second, Professor Pérez-Sánchez shows that the official fixation over homosexuality under Franco's dictatorship reflected anxieties about the position of Spain within the larger European community.<sup>10</sup> Seen with disdain and mistrust by other nations, Spain assumed a feminized position in the larger geopolitical landscape.<sup>11</sup> Part of Franco's ideological response was to stress the virility of his political system, which included an accentuation of the stigma and persecution imposed upon gay men.<sup>12</sup>

Finally, Professor Pérez-Sánchez's article illustrates the role that gender plays in state formation. Gender is invoked continuously in the operations of governance, not only as a metaphor, but also as a criterion for the allocation of political and economic resources.<sup>13</sup>

As the articles in this Symposium demonstrate, critical scholarship is at the forefront of uncovering the explicit and concealed meanings of language. In making legal speech the focus of its endeavors, it reaches beyond limited disciplinary boundaries and benefits all of us in the social sciences.

---

6. *See generally id.*

7. *See id.* at 5 MICH. J. RACE & L. at 970, 33 U. MICH. J.L. REFORM at 386.

8. *See id.* at 5 MICH. J. RACE & L. at 959-66, 33 U. MICH. J.L. REFORM at 375-82.

9. *See id.*

10. *See id.* at 5 MICH. J. RACE & L. at 986, 33 U. MICH. J.L. REFORM at 402.

11. *See id.* at 5 MICH. J. RACE & L. at 955, 33 U. MICH. J.L. REFORM at 371.

12. *See generally id.*

13. *See generally id.*

