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ANTI-SUBORDINATION AND THE LEGAL STRUGGLE OVER CONTROL OF THE "MEANS OF COMMUNICATION": Speaking in Tongues: Some Comments on Multilingualism

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SUMMARY: ... Olga Moya, for example, spoke movingly of her first day in school when she and several of her classmates were punished for lapsing into Spanish in a moment of crisis. ... For my own part, I would like to reflect a little on the choice of scholarly dialect and on how we both lose and gain when we choose to speak within the confines of an academic discourse. ... He made an important point: we should not be so quick to concede the efficiency rationales for English-only legislation. ... Because the touchstone of economic analysis is the concept of efficiency, an economist is likely to begin her analysis of distributive questions by considering the relative efficiency of various systems of property rights. ... Some argued that wage discrepancies stemmed from discrimination, while others economists suggested that they could be "explained" in terms of the preference of female workers for selling lower priced, non-commissionable items. ... When I begin to understand that what is "other" is sacred, then I know that English-only legislation is not just unfair to Spanish speakers, but that it also deprives me, as an English speaker, of something valuable that I can get in no other way. ...

[*983]

Introduction

I am honored to be here and especially grateful to all of you for the special sense of collegiality and friendship that I experience whenever I come to these meetings.

The topic is language, and I would like to begin my comments on this morning's papers by pulling together some of the threads of yesterday's discussion. Two themes in particular seem relevant.

The first, is the power of language not only to communicate, but also to exclude. Yesterday morning, we held a panel discussion in which the participants spoke about their first experiences with enforced bilingualism. Olga Moya, for example, spoke movingly of her first day in school when she and several of her classmates were punished for lapsing into Spanish in a moment of crisis. She also observed that many of these same students did not remain in school for very long.

The second is the power of language to shape identity and self expression. Yesterday morning, Yvonne Tamayo spoke about the many things she could say in Spanish but was unable to express in English. Berta Hernandez-Truyol made a similar point at the first plenary when she talked about how she often thinks in English but experiences her emotions in Spanish. And Madeleine Plasencia elaborated on the subject when she spoke about how languages are an integral element of who we are; how they shape not only our personal sense of self, but also our identity in the outside world.

Personal Dialects

I will begin, as the panelists did yesterday, with a few remarks about my own linguistic background. I share this as a way of acknowledging my own limited perspective on these matters. I was raised in an [*984] English speaking home. The language of my childhood had a lot of depth and subtlety when it came to abstract discussion, but it was also very limited. Most of my family expressed personal preferences in the abstract language of moral theory. Thus, if my mother wanted me to stop drumming on the table, she might say, "good girls don't do that kind of thing," or "you ought to refrain from that type of behavior." Requests were often met in terms of entitlements or fairness. One's parent might say, "it would not be fair to buy you an ice cream cone when I can't very well buy one for your sister." Even sibling rivalry had a firm and decisive answer. "Comparisons are odious!", was my father's frequent refrain. Statements of feeling: "I feel angry, upset, sad or tired," or requests, "I want to go home", or "I want to go out and play" were treated as inconsequential and annoying interruptions to real conversation. In this way, you might say, I learned to speak like a lawyer at my mother's knee.

By contrast, I was married for a long time to a man whose first language was not English but Greek. As a result, I learned Greek playfully as a language of love and affection.

When I was in graduate school, philosophy was primarily a study of language. I learned that every so-called natural language (such as English, Spanish or Greek as opposed to artificial languages like Cobal, Logic or Mathematics) consists of a number of different dialects. This helped me to understand that the dialects of a language are not confined to regional variations in accent and vocabulary. They also represent ways of speaking the same language in the context of different values and ways of life. And so, as an adult, I've come to understand that the lawyer-like language that I learned from my family is merely one dialect of what we call the English language. As such, it is both a very powerful tool and the source of many of my personal limitations. It was as if my Anglo ancestors had given me a magic wand that I could use to ace my way through a lifetime of standardized tests and academic rituals.

In non-academic areas, however, the limitations of my language are palpable. Language is not only a means of communication; it is also an incredibly powerful form of social control. The words of one's language draw a decisive boundary between what one can and cannot say. And I cannot say many things - things I would like to say; things that may of you take for granted. It is clear that my particular English dialect [*985] was a firm expression - for better and for worse - of the kind of person my Anglo ancestors had hoped I would become.

Scholarly Dialects

Each of the papers this morning has used a different scholarly dialect to examine the problem with English-only legislation. The result has been an interesting and informative discussion. For my own part, I would like to reflect a little on the choice of scholarly dialect and on how we both lose and gain when we choose to speak within the confines of an academic discourse. Before starting, I should say that, as a pragmatist, I am a pluralist about scholarly dialects. Life is multifaceted and complex. Genuine insight is hard to obtain - hard enough so that we should not handicap ourselves by deciding, in advance, that all knowledge must conform to the relatively rigid requirements of a single academic discourse. But, while it is good to have a choice of many tools, it is important to use them with awareness. When we talk in a particular scholarly dialect, we may gain insight and understanding, but we may also lose our ability to talk about other aspects of a problem - aspects that in other circumstances we might consider to be the crux of the matter. This is particularly true when we talk about language itself.

Language, by its very nature, is a distillate of human culture. Hidden within it are many of the values that animate those who speak it. We should be careful therefore, when we subject language to the rigors of an

academic analysis. n4 Whether the discourse analyzes language as an economic commodity, a badge of personhood, or a matter of practical politics, we should keep in mind that language is not an abstract object that can be readily disconnected from its cultural and spiritual dimensions.

Law and Economics

In this spirit, let's think about the law and economics discourse that Bill Bratton so skillfully wove into this morning's discussion. He made an important point: we should not be so quick to concede the efficiency rationales for English-only legislation. Whether English-only legislation is a matter of genuine efficiency or whether it is, as Bill suggests, simply a question of Anglo special-interest legislation makes a real difference to our understanding of the issue. Even so, we must remember that law [*986] and economics is a particular dialect and thus can only represent a partial perspective. Like every academic dialect, it will highlight certain aspects of the problem, but this will occur at the expense of doing a poor job of illuminating the rest. Thus, even under the best of circumstances, we should be careful not to place too much emphasis on questions of efficiency. We should remember the reasons for skepticism.

One reason to be skeptical is that economic analysis tends to assume that anything worth counting can be fully understood as an item of commerce. Thus, if we are talking about widgets, one assumes that every widget is a fungible commodity and that there is no serious obstacle to understanding the value of the widget solely in terms of its monetary value. n5 This assumption may work well for widgets, it might even work well for artificial languages such as those that are used in computer programming. However, it is less likely to work well as a way of analyzing the use of natural languages. Since natural languages construct identity and value, they are unlikely to be well understood by a discourse that limits the concept of value to fully formed and numerically quantifiable preferences.

A second reason for skepticism is that law and economics has traditionally offered very little insight into the real world disparities of power and wealth. One problem is that it tends to convert every question of distributive justice into a question of redistributive justice. Because the touchstone of economic analysis is the concept of efficiency, an economist is likely to begin her analysis of distributive questions by considering the relative efficiency of various systems of property rights. Thus, if fairness is to enter into the analysis, it must do so at a later stage when, for example, we consider whether the taxing system should play a significant role in redistributing income or capital. Yet since claims for redistribution inevitably raise objections about entitlements and expectations (not to mention the costs of redistribution), this move tends to undermine claims that are based upon notions of justice and fairness.

A third reason to be skeptical about the economics of linguistic regulation is the failure of economic thought to provide a framework for making meaningful distinctions between systematic forms of discrimination and the aggregation of individual preferences. For example, when women employees sued Sears alleging gender disparities in wages paid to sales personnel, it was possible for economists to argue on both sides of the issue. Some argued that wage discrepancies stemmed from discrimination, while others economists suggested that they could be "explained" in terms of the preference of female workers for selling lower priced, non-commissionable items. A similar ambiguity exists [*987] with respect to English-only legislation. Bill Bratton spoke about how discrimination against Latina/os has limited the incentives for Spanish speaking Latina/os to become bilingual. This might be true, but, from an economic perspective it is not obvious. As an alternative, an economist might argue that the choice to live in "enclave communities" and take lower paying, Spanish-speaking jobs reflects the cultural preferences of individual and autonomous players.

Deontic Theories of Personhood

In her presentation, Dru Cornell offered an analysis of English-only that is based upon Kantian conceptions of personhood. This sort of deontic theory is frequently understood as a more humanistic alternative to economic analysis. Thus, while the economist thinks of human beings as aggregations of preferences backed by dollars, the Kantian conceives of them as non-negotiable subjects of respect and value. It is this conception of personhood that permits Dru to make a case for respecting each person in their choice of linguistic expression.

The advantages of such an approach are obvious. In a Kantian world, the value to a person of speaking one's own language cannot be sacrificed to the overall efficiency of human communication. While this seems promising, it is important to note that, for Kant, respect for others is derived from the sense that they share what is most essential about ourselves. When Kantians respect the personhood of others, they are being fundamentally reverential to human sameness rather than human difference. What we can't get from Kant is the notion that what is sacred in you is fundamentally different from what is sacred in me; that someone who differs is - for that very reason - especially worthy of respect. On Kantian grounds, for example, I can see that it is wrong to promote English speaking at the expense of Spanish speakers. I can understand that it deprives them of something that, were I in their position, I too would value. But it takes something more than Kant to help me understand the poverty of my own English-only perspective. When I begin to understand that what is "other" is sacred, then I know that English-only legislation is not just unfair to Spanish speakers, but that it also deprives me, as an English speaker, of something valuable that I can get in no other way.

Conclusion

As part of her presentation this morning, Sharon Hom told a wonderful story about her son's attempt to author Penelope's diary and his ability to express what he imagined as her needs across great barriers of [*988] gender, race, culture, time, and history. Her story conveys a lot of what I find valuable in the concept of multilingualism.

Multilingualism offers an alternative to cultural imperialism. It seeks genuine communication rather than an understanding of others as partial replications of ourselves. Genuine communication is hard. It happens only when we commit ourselves to real flights of imagination and expression. And, to be successful, we must surround these efforts with an atmosphere of love and respect for one another. Because I believe this is possible, I think we should not get too caught up in what the economists call the cost of multi-linguism. Instead, we might explore the possibility that by paying close attention to what is said in other languages, we can heal the pains of our own limitation and partiality. In short, what we need to focus on is the gift of otherness, the opportunities of multi-linguism and the possibility that through difference we can find wholeness.

FOOTNOTE-1:

n1. The Structures of Latina/o Subordination: Intersections in Law and Life, Moderator: Olga Moya; Presenters: Laura Padilla, Yvonne Tamayo, and Rey Valencia; and Commentator: Donna Young.

n2. Between/Beyond Colors: Outsiders Within Latina/o Communities, Moderator: Pedro Malavet; Panelists: Roberto Corrada, Berta Hernandez-Truyol, and Rudy Busto; Commentators: David Cruz and Jenny Rivera.

n3. A friend of mine reading this comment said: "You must be exaggerating. People don't talk like that to their children." However, I am not exaggerating. In my community of origin, this

way of putting things was not necessarily perceived as cold or insensitive. It was simply the way people talked - not just my family but most of the people I knew in the rural area near Boston where I grew up.

n4. For example, in the past hundred years, Anglo-American philosophy has devoted much effort to relatively straightforward attempts at describing and analyzing natural languages. The difficulties of analyzing language are amply demonstrated by the puzzles and paradoxes that are offered by Wittgenstein as a commentary on this approach. See, e.g, his *Philosophical Investigations*.

n5. See, e.g., Margaret Jane Radin, *Market-Inalienability*, [100 Harv. L. Rev. 1849 \(1987\)](#).