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## Symposium: Language, Law, and Compulsion - Introduction and Acknowledgements

Editorial Board

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# Symposium: Language, Law, and Compulsion

## Introduction and Acknowledgements

In this issue we feature edited versions of many of the papers given at the symposium the journal sponsored in February, 1989, entitled "Language, Law, and Compulsion." We asked panelists to examine not only the most obvious instances of compelled speech, such as eliciting a confession, but also the ways in which language is used to constitute narratives that shape individual and national life.

Several hundred people attended the four panel sessions held on February 3 and 4 at the Yale Law School and the Whitney Humanities Center. We also sponsored a screening on the evening of February 3 of the documentary *The Thin Blue Line*, followed by a discussion with the film's director, Errol Morris.

We have retained the original division by panels in our publication of the papers and responses delivered at the symposium. Some of the papers have been revised extensively, others are drawn from tapes made during the conference sessions. (Several conference participants were unable to include their papers in this section. They made important contributions to the symposium itself and we should acknowledge their participation. They are John Boswell, Bruce Ackerman, D.A. Miller, Paul Gewirtz, and Patricia Williams.)

The first panel, *Swearing Attachment*, was designed to examine the contemporary significance and enduring meaning of different types of oaths. We asked, "How do these ceremonies of speech serve to create and foster attachments between self and other? How do we 'constitute communities through words which bind?'" Cass Sunstein used the example of flag salutes to show how oaths often seek to resolve societal conflicts or

discontinuities, and Lief Carter discussed marriage ceremonies and other official oaths of allegiance. Sanford Levinson's response led to a lively debate about whether the words themselves or the relations between the people who say them constitute communities.

In organizing the panel on *Constitutional Narratives*, we assumed that beyond codifying a structure of government, constitutions provide a narrative for unifying national identity. Panelists offered critical readings of the widely divergent narratives they found in the U.S. Constitution. Elaine Scarry's powerful argument for a basic rethinking of the Second Amendment was taken as strong evidence by Peter Brooks for his point that these narratives do not have lives of their own but are grounded in specific moments, which then have stories told about them. Gayatri Spivak, meanwhile, called for investigations across cultures as an alternative to primary focus on a particular constitution or founding moment.

"The state can make its subjects speak, but it cannot guarantee the truth of their words," we said in the overview for the panel on *True Confessions*. Louis Michael Seidman investigated the notion of truth and its relation to the Fifth Amendment protection against self-incrimination. Robert Burt, by contrast, provided a reading that challenged the notion of confession as a solitary act. Anita Sokolsky used examples from popular culture to describe the compulsion inherent in confession.

The *Rhetorics of the Judicial Opinion* panel asked participants to examine the judicial opinion as a literary form, looking at its characteristic structure and rhetoric. Robert Ferguson explored four impulses that mark the genre: the monologic voice, the interrogative mode, the declarative tone, and the rhetoric of inevitability. Judith Resnik then reminded us that appellate court opinions are not the only voices in the legal world, and sought a deeper understanding of "the judicial opinion" by looking to the writings of the lower courts.

American national politics contributed some unexpected themes that ran consistently through the panels. The 1988 presidential campaign made the use of flags and flag salutes particularly appropriate examples in many of the *Swearing Attachment* and *Rhetorics of the Judicial Opinion* papers. Certainly the bicentennial of the Constitution and the comments of a recent Attorney General gave a timely dimension to the panelists' discussions of the "framers" and their "intent." Participants called again and again for recognizing the place of contingency in our readings of "timeless" truths.

We would like to express our deep appreciation and thanks to several people and institutions at Yale who made it possible for the journal in the first year of its existence to put on a major conference of this kind. In particular, we thank Peter Brooks, director of the Whitney Humanities Center, who marshalled significant resources in co-sponsoring the conference and was invaluable in providing suggestions and helping to arrange

for panelists' participation. Guido Calabresi, Dean of Yale Law School, has been a partisan of this journal since its inception, and he demonstrated his confidence once again through his generous support and the Law School's co-sponsorship of the symposium. Benno Schmidt, the President of Yale University, gave important assistance to the project. We also want to recognize the essential contribution of former editor-in-chief Elizabeth Wilkins, who coordinated the planning of the symposium and ensured that the event happened at all.

In presenting the papers, responses, and in some cases the questions asked by audience members during this symposium, we hope to recreate the excitement of exchange and creative disputation that the participants felt during the two days of the conference.

The Editors

