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Symposium Foreword: Applied Feminism and Democracy

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FOREWORD:

APPLIED FEMINISM AND DEMOCRACY

The theme of the Fifth Annual Feminist Legal Theory Conference, held in March 2012, was Applied Feminism and Democracy. The goal was to spur dialogue and reflection on the conflicted relationship between feminism and democracy. Whereas feminism seeks to promote gender equality, democracy is founded on the idea of majority rule, and thus can replicate patterns of oppression. At the same time, democracy provides a fertile ground for new ideas and leaders to gain root and take hold. The three articles in this volume of the law review demonstrate both the promise and the perils of the democratic process for feminist advocacy, focusing on immigration, reproductive rights, and women's representation in political bodies. Thus, these articles provide valuable lessons for advancing a feminist agenda in the future.

In her Opening Remarks, Keynote Speaker Senator Barbara Mikulski vividly recounted her early years in the Senate, beginning in 1987 when she arrived as the first Democratic woman to be elected in her own right, and was regarded as a novelty. In describing how she achieved her success, Senator Mikulski credits the mentorship of a few supportive male colleagues who taught her how to navigate the formal and informal channels of power within the Senate.

Today the Senator herself is the mentor, holding power workshops for the newly elected women at the beginning of every term. Because there are pronounced ideological differences among the female senators, there is not a women's caucus in the Senate; rather the women think of themselves as a force that comes together to advocate for women's issues, particularly those involving women's health.

Senator Mikulski also talked about the importance of relationships in the Senate as a means of promoting civility. She established monthly women's dinners, out of which grew friendships that have stood the test of time. During disagreements about policy, she said, "We wouldn't be dainty; we would be fierce. But at the end of the day, the day would be over."

The Senator's advice to young lawyers in response to a question about domestic violence advocacy also stressed the importance of relationships. She urged her audience to use the power of grassroots

organizing to identify supporters, and then to move in concentric circles to develop those supporters into coalitions.

Finally, Senator Mikulski reminded those in attendance that, whether they will work in private practice, in government, or in the field of public interest, their skills as lawyers are needed in the community. She encouraged her listeners to do pro bono work of some kind, to be of service, to understand that we are all in this together.¹

Alizabeth Newman focuses on immigrant women who are victims of domestic violence in *Reflections on VAWA's Strange Bedfellows: The Partnership Between the Battered Immigrant Women's Movement and Law Enforcement*.² Feminists have queried whether a political system based on masculine notions of citizenship serves women. Yet the women that Newman focuses on have no claims to citizenship whatsoever, and any rights they possess are granted without their participation in democratic processes. Newman describes how battered immigrant women have been bestowed certain statutory rights despite their lack of political status and despite otherwise harsh restrictions on immigration enacted in the wake of welfare reform and post 9/11 politics. Battered immigrant women have protections from deportation and paths to citizenship under the Violence Against Women Act, and particularly the U visa provisions, which seek to keep batterers from using immigration laws as tools for controlling the women in their lives. On the one hand, the enactment of these provisions is a David v. Goliath triumph that resulted from tenacious organizing by a network of feminist and immigrant activists. On the other hand, as Newman explains, these protections come with conditions—immigrant women must comply with the demands of law enforcement if they are seeking these forms of relief. This compliance has costs; many immigrant women are fearful of law enforcement, and they must conform with preconceptions of victimhood to be "deserving" of relief. Moreover, the idea of a deviant batterer obscures attention to the structural causes of domestic violence.

Janel George focuses on the lack of reproductive rights for women of color in *Beyond a Beautiful Fraud: Using a Human*

¹ Senator Barbara Mikulski, Opening Dialogue, University of Baltimore's Feminist Legal Theory Conference: Applied Feminism and Democracy (Mar. 2, 2012), 42 U. BALT. L. REV. 211 (2013).

² Alizabeth Newman, *Reflections on VAWA's Strange Bedfellows: The Partnership Between the Battered Immigrant Women's Movement and Law Enforcement*, 42 U. BALT. L. REV. 229 (2013).

*Rights Framework to Realize the Promise of Democracy.*³ She argues that the mainstream reproductive rights movement in the United States has neglected women of color, poor women, and immigrant women. For these women, the right to abortion is meaningless without the means to exercise that right. Thus, George objects to the current feminist movement's emphasis on liberty, which is an individualistic approach to rights, rather than a broader conception of social justice. She argues that minority and poor women would be better served by a human rights framework that would secure preconditions for rights-bearing individuals, such as "access to regular affordable health care, the right to decide the number and spacing of children, access to linguistically and culturally appropriate services, freedom from coercive contraception, toxin-free workplaces, and clean living environments." George contends that the feminist movement's emphasis on abortion rights has ignored these barriers, because these are obstacles privileged women do not face. Accordingly, George proposes that the reproductive rights movement use a human rights framework, rather than an individual rights framework. A human rights approach treats all women equally without stigma and regardless of citizenship status, and it imposes an affirmative duty on the state to ensure that all women have the foundational rights necessary to exercise choice.

Finally, Rachel A. Van Cleave takes a comparative approach and examines the experience of Italian women to secure electoral quotas in *Luogo e Spazio, Place and Space: Gender Quotas and Democracy in Italy.*⁴ Her article reminds us that the underrepresentation of women in positions of power is not just a problem in the United States; women are struggling for substantive representation, or a claim to political space, throughout the world. In the United States, our constitutional conception of negative rights makes quotas for gender parity impossible. However, other countries, including Italy, have cognizable positive rights under which government has obligations to remove barriers to equality. Thus, as Van Cleave explains, various countries attempt to enhance substantive representation of women through reserved seat quotas, ballot representation requirements that require a certain proportion of women candidates, ballot placement mandates that ensure women's names are not at the bottom of the ballot, limitations on the

³ Janel A. George, *Beyond a Beautiful Fraud: Using a Human Rights Framework to Realize the Promise of Democracy*, 42 U. BALT. L. REV. 277 (2013).

⁴ Rachel A. Van Cleave, *Luogo e Spazio, Place and Space: Gender Quotas and Democracy in Italy*, 42 U. BALT. L. REV. 329 (2013).

percentage of candidates that can be of one sex, and the like. Van Cleave describes how Italian law marginalized women for many years by deliberately excluding them from public and political spaces and thereby giving men a monopoly on political power. Various forms of electoral quotas have been advocated to remedy this imbalance, and some have been upheld at the regional level. However, the Italian Parliament and the Constitutional Court have failed to secure such opportunities for women at the national level, and the result is that women currently make up only 20.6 percent of Italy's national legislature.

Van Cleave's comparative perspective, George's human rights framework, and Newman's focus on the global migration of women are all helpful in exposing how the political bargains we strike today can have future consequences. They also remind us that while American feminists have ideas and experiences to share with the world, we may learn equally from the challenges and ideas generated elsewhere. We hope these articles will spur your own thinking about how to advance gender equality at home and abroad.