

IMPORTANCE OF LANGUAGE IN THE LEGAL FIELD

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ABSTRACT

Only recently has language sparked widespread interest in comparative law. This is surprising considering that language is the most vital tool for a lawyer and that most comparative law requires the knowledge of a foreign tongue. However, the concept of "language" has much broader implications, which prompts us to consider whether and how much a particular language might affect a particular law. This question has lately been raised about modifications made to the legal systems of developing nations that were formerly a part of the British Empire when the native language took the place of English after obtaining independence. Additionally, some European authors have conducted more extensive research on the connection between language and law.

INTRODUCTION

A convenient place to start a deeper investigation is with Roscoe Pound's observation, who, like Kantorowicz, referred to the law as a "Wortwissenschaft," or "science of words."¹ What possibly might this mean? When we analyze how crucial rhyme, rhythm, and verses were for the ancient European laws, we get near to the solution. When we take into account the significance of technical legal jargon in assessing the reception of foreign legislation, another hint is given. By using the "law French" in England—the tongue spoken by courts and solicitors in the Middle Ages—Maitland gives a good illustration of this.

The "English law was tough and impervious to foreign influence because it was highly technical, and it was highly technical because English lawyers had been able to make a vocabulary to define their concepts, to think sharply as the man of science thinks."² We should also take into account how rhetoric and law were closely related at the outset of modern European legal culture. Two volumes, *The Legal Imagination* by James B. White and *Law, Language and Ethics* by William R. Bishin and Christopher D. Stone, point us in the same path. This leads us to the crux of the issue: What impact does language have on the law? Is our language's structure related to the structure of the law? Or, to put it more

¹The Legal Quotient, <https://thelegalquotient.com>, last visited on September 15, 2023

²Oxford LibGuides, <https://libguides.bodleian.ox.ac.uk>, last visited September 17, 2023

precisely, does a certain language produce a certain law? Let's first reflect on the role of language in human thinking generally before we attempt to answer these thought-provoking topics. This analysis dates back to Adam and Eve. According to the Bible, "Adam gave names to all cattle, and the birds of the air, and to every beast of the field" in the beginning. Man recognizes the world around him through language, and language gives him the ability to understand and define reality. The power he gains comes from language. Similar assertions about God are made in the Bible, but in the opposite order: God cannot be named, grasped, or subdued. Similar concepts can be found in the ninth song of the Odyssey. Odysseus responded, "Nobody is my name; everybody calls me Nobody," when the Cyclops, the "cruel and tempestuous one," asked him what his name was. Similar themes are present in Richard Wagner's "Lohengrin" as well.

You shouldn't ever wonder where I came from as the Fahet or worry about my name and style. We may also include the opening sentence of St. John's gospel: "In the beginning was the Word." Also, keep in mind that the "word" has the highest position in the creation hierarchy in all religious mythology. This helps us understand the influence of language. The Bible contains a wealth of additional instances that show the importance of language. The Bible claims that God's spoken word caused the world to be created. "And God said, let there be light." Then God had to pronounce the "flat," "let there be a firmament amid the waters." The fact that the Holy Spirit, the "creator spiritus," on Pentecost revealed himself through the "miracle of language" and that all Christian churches of the Lutheran denomination consider themselves to be established on the "word" of the Scriptures fits within this context.

Given this, it is no longer surprising that the term "verb" actually means "word," even if it refers to activity. The fact that "poet" is a Greek word that means "creator" also fits into this line of reasoning. All of this ties in well with what linguists say about creativity serving as the foundation of language: Even the tiniest toddler is capable of creating and comprehending language that he has never heard before. We can construct and comprehend essentially an infinite number of phrases. Written language allows for the creation of national constitutions, the enactment of laws and statutes, and the implementation of private contractual agreements. Speaking is an essential component of the legal procedure. Whether it be the questioning of plaintiffs and defendants, the evidence of witnesses, the pleadings by solicitors, or the instructions from a judge to a jury, one need only glance at the courtroom. The legal ramifications of language continue to go well beyond courtroom interactions. They also apply

to interactions between law enforcement and suspects, conversations between attorneys and their clients, the use of covert recordings by law enforcement, and illegal speech acts like offering a bribe, making a threat, or making defamatory statements. It only takes a moment of reflection to realize how crucial language is to the legal industry. The majority of the scholarly research on the subject of how language and the law interact, however, dates from the 1980s.

PERSONAL HISTORY

In the early years of that decade, I first learned about the subject. I was looking through some textbooks that belonged to my wife at the time—she was a law student. I could see that those pages included a gold mine of concerns, not just about the law but also dealing with language use. Perhaps it shouldn't come as such a surprise that I find legal terminology fascinating. After all, I work as a linguist for a living. I was interested in conducting some research because I was curious to learn more about this field of study, but I wasn't sure where to start. The word "forensic linguistics," which would later become one of the names for what would eventually bloom into a thriving science, had not yet been coined. Additionally, there was no professional organization or magazine specifically focused on the interface between language and law at the time. (The International Association of Forensic Sciences is a current professional organization. *International Journal of Speech, Language, and the Law*, formerly known as *Journal of Forensic Linguistics* (IAFL).) I was one of four grantees who were encouraged to complete the first-year program, go to other classes and seminars, and start a personal research project to achieve these objectives. The idea of "the corporation as a person" was discussed in one of the lectures in a civil procedure course, therefore I chose to make that the subject of my research.

AMBIGUITY AND MISCOMMUNICATION

A term might have more than one meaning or definition according to a dictionary, and if there is no context to indicate which sense is meant, the word will be considered ambiguous. We examine three judicial decisions that the law identifies as having ambiguity in Chapter 1. One of them involves a chicken purchase agreement. A "chicken," in the buyer's opinion, is a young bird fit for broiling or frying but not for stewing. According to the seller, a "chicken" can be any eligible animal of the species, regardless of age. Which definition will be accepted by the court? Another scenario involves two distinct ships that happen to share the same name, a fact that the protagonists of this argument, who are also a buyer and a seller, appear

to be unaware of. The buyer anticipated that the merchandise would be loaded onto a "Peerless" ship leaving in October, but the seller loaded it onto a different "Peerless" ship leaving in December. The later cargo was rejected by the buyer. Which Peerless should the court interpret as part of the agreement? Once more, hens are involved in the third case. According to the Interstate Commerce Commission, which oversees the movement of manufactured goods across the states, "frozen eviscerated chickens" fall under this heading. The Department of Agriculture believes that even though the birds have been processed, they are still legitimate agricultural products of the kind that are exempt from the ICC's shipping regulations.³ Will the court rule on whether frozen eviscerated chickens are manufactured goods or raw agricultural materials? The term "ambiguity" has a more narrow definition in linguistics than it does in legal and public language, where it frequently refers to a construction that is ambiguous, uncertain, or hazy. Although the three court cases do serve as examples of "ambiguous words" in this broad sense, the cases' actual differences from one another will become clear when considering them in the context of a specific type of misunderstanding.

MYTHS RELATING TO THE NAME

As was already mentioned, the usage of names is most closely related to the power of language. To address someone by name signals their presence. Let's start with the Bible once more: "I have called you by your name - you are mine!" The phrase "In the name of the Father" is used by Catholics when making the sign of the cross, and Christ warned his apostles, "for wherever two or three of you come together in my name, I will be present among them."⁴ The name is the person himself; it creates their genuine existence.

In religious ceremonies, we see many more hints of this. The Catholic mass's transubstantiation words ("hoc est corpus mess") even evolved into the magical phrase "hocus pokus." The language we use every day contains many instances. For instance, "nameless fear" is an uncontrollable fear. We tell them to "don't touch it," "don't talk about it," etc. Language serves as both a tool for understanding the world and a tool for identifying it. It is a mental tool that helps the mind make sense of what it sees. This brings us back to the beginning of the Bible when the light was produced by the first divine word ("a/ lux"). We can see the world through language.

³India, <https://www.india.gov.in>, last visited September 17, 2023

⁴Bible Gateway, <https://www.biblegateway.com>, last visited September 16, 2023

LANGUAGE AS A PRODUCT OF LAW

The ability of language to express ideas and be understood is particularly crucial for the law. Legal concepts are almost non-existent outside of language. It has been said by one commenter that "all law is spun on the loom of language." Because its legal notions can only be expressed in and through language, positive law is at least bound to language. Law is referred to as "jurisdiction" and is stated in a "verdict" (Latin: "uerinn dicere"). One shouldn't, however, go so far as to claim that there is no law outside of language. Such a claim is false given the presence of customary law. Customary law frequently does not express itself verbally but rather expresses itself in specific circumstances.

When examining the etymological roots of both expressions, the close relationship between law and language is confirmed. The Latin term for "lexicon" originally meant "law," but when combined, it takes on the sense of "word." This gives the word its initial impression. Now let's compare "lex" and its genitive "legis" or its nominative plural "leges" to the Greek word "logos," which denotes both "word" and, as logic, "idea." In fact, "legein," a popular term, implies, among other things, "to speak." The relationship between language thought, and the law becomes readily apparent when the terms "lex," "logos," and "legein" are combined. Last but not least, the word "right" shares similarities with the German word "Rede" and the ancient English word "wright," both of which signify "constructive worker." The fact that in prehistoric periods the development of language was a requirement for the establishment of norms can presumably be used to explain these common foundations. Therefore, it is possible to claim that positive law is nothing more than a thought that was given verbal expression.

WORDS AND MIND

We now have a solid foundation for confronting the topic of whether a given language dictates the structure of a certain law after realizing the significance of language to human understanding in general and to the law in particular. Again, we'll start by going over how language affects our thoughts in general. The German philosopher and poet Johann Gottfried Herder first responded positively to our query in the eighteenth century with his book *Abhandlung uber den Ursprung der Sprache* (Discussion on the Origins of Language), and Wilhelm von Humboldt responded positively to it again in the nineteenth century with his book *Über die Verschiedenheit des menschlichen Sprachbaus und ihren Einfluss auf die*

geistige Entwicklung des Menschengeschlechts. Language, in von Humboldt's opinion, is a tool for both describing and discovering reality. The linguistic differences reveal a distinctive "Weltansicht" (worldview). Our thoughts are guided by language into specific patterns.

In the "Whorfian Hypothesis," Lee Whorf emphasized the significance of language structure about the structure of human thinking, following Edward Sapir. He saw that language is the foundation of all human thought. Every language is an expression of logic, a synthesis of law, language, and thought, which shapes our thoughts in a significant but not always conclusive way. Every language is a vast pattern system, unique from others, in which are culturally ordained the forms and categories by which the person not only communicates but also analyses nature, ignores or neglects different types of relationships and phenomena, channels his reasoning, and constructs the house of his consciousness, according to Whorf.

Examples: Comparing German and English law makes it simple to see how a certain language has influenced a given body of law. Because German law frequently uses infected words, the ending of the previous word frequently relates to the next, defining it earlier. The past participle and verb in dependent sentences both stand after phrases in German, which is another distinctive feature of the language. These characteristics call for planning, and the majority of sentences are written so that the listener may determine the meaning of the words in the latter portion of the sentence before reading it. As a result, learning German is a continuous exercise in linguistic building. The fact that German law is more "constructed" and "technical" than Anglo-American law is hardly surprising.⁵ Following this discussion, it is not surprising that the Japanese author Noda uses the structure of the Japanese language to explain Japanese law in his book *Introduction to Japanese Law*. He argues that the inability of the Japanese language to communicate logical relationships hurts Japanese law. The blunter statement made by some authors is that "logic has no place in Japanese thought."

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IMPLICATIONS FOR COMPARATIVE LAW

The comparative lawyer finds these outcomes worrisome. What happens when a law that is based on language is translated into another language? It is possible that a certain language can only communicate certain legal ideas and that the boundaries of our particular language are the boundaries of our legal reasoning if the structure of a particular language plays a

⁵Anglo-British Law & History, <https://users.ssc.wisc.edu>, last visited September 17, 2023

significant role in determining our thinking.' It is at least possible that translating certain basic legal principles into another language causes them to change. The change in the legislation could be more significant the further distant the linguistic structures are from one another. This is due to the possibility that the linguistic dynamics of the language could steer a legal norm in an unforeseen way when it is introduced into a different language setting. We do not yet fully understand the extent to which language has an impact on the law.' Language undoubtedly isn't adequate to explain everything in the law because the scope of the law is greater than any one explanation or cause. The common nature of all humans may likely weaken all of these particular variables, as language is simply one among many. Therefore, although not impossible, the "principle of relativity" makes comparative law more challenging. Any comparative lawyer who wants to study the relationship between language and law more thoroughly must, however, take legal linguistics seriously.

IMPLICATIONS FOR THE MW THEORY

The relationship between language and law is crucial for everyone interested in learning more about how the law works generally, not only comparative attorneys. When we take Chomsky's idea of the deep structure of human languages into account, this becomes clear." Chomsky claims that "proto-human-grammar," the deep structure of language, is passed down genetically. The next concern is if similar deep mechanisms exist in the legal system. Perrott did genuinely come up with this notion. He hypothesizes that there may be "a natural law in DNA-Code" — conceptions of the law that are passed down genetically.

"All positive legal systems may be merely the surface manifestations of a single deep structure to law, universal to all mankind, knowledge of and skill with which is genetically transmitted to all humans, and which imposes on us a variety of fundamental duties." We cannot fully explain Perrott's theory or go over all of its advantages and disadvantages, but such a description is not required. Given that language has an impact on law, if language has a genetic structure, then the same is, at least in part, true for the law. A language's genetic makeup is subsequently transferred to law. This theory could provide insight into the impact of law on behavior and the motivations for legal compliance. It is reasonable to believe that the legal language aims to match our internal systems. The words are meant to resonate with us. The structure, rhythm, and tone of the language of the law urge us to internalize the law, just as the beat of music compels us to follow and the sound of the drum commands the soldier to march. A genetic-cultural sensitivity is used in the language for legal purposes. We

comply with the law voluntarily as part of who we are; we do it because we want to, not because we have to. It represents a "Wollensordnung" (internal order) as opposed to a "Sollensordnung" (external order).

CONCLUSION

This brings us full circle to our original questions. We comprehend the rationale behind the old rules' frequent use of rhyme and rhythm: a law that is only transmitted orally must be and is significantly more sensitive to language. Additionally, internalization is prioritized more when authorities have less ability to enforce the law through external controls. Only if it is adhered to voluntarily and as a result of an internal impulse can the law be successful. Similar mechanisms are well-known to us thanks to church music. They serve to internalize the creed and guide the singers towards the faith rather than having the confession of the creed as their primary goal. The law operates similarly. It is not considered "our law" but rather something foreign when legislation does not adhere to the language sensibilities of our civilization. Positive legislation cannot foster legal mindedness without supportive language. It is at this point that "language and law" assume a crucial role in both the operation of contemporary legal systems and the continuation of legal cultures. The law continues to be based on the "magic" of words. It plays a key role in the legal systems of contemporary Western civilizations.



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