

# Language and Law

---

A resource book for students

Allan Durant  
and Janny H.C. Leung

First published 2016

ISBN: 978-1-138-02558-5 (hbk)

ISBN: 978-1-138-02557-8 (pbk)

ISBN: 978-1-315-43625-8 (ebk)

## Chapter C1

---

### Perception of Legal Language

(CC BY-NC-ND 4.0)

DOI: 10.4324/9781315436258-24

## C1

**PERCEPTION OF LEGAL LANGUAGE**

From a linguist's descriptive point of view, all language varieties are equal; value judgements are irrelevant. In wider society, however, some varieties are commonly associated with strong expressions of attitude, either of liking or dislike. This phenomenon is perhaps most focused linguistically on accents, especially contrasts between urban and rural accents (since either may be perceived as harsh, mellifluous, grating, etc.). Such attitudes may also be directed towards whole dialects and generational language styles. The rush to linguistic judgement or prejudice merges into wider social attitudes directed towards other semiotic phenomena, including clothing styles, behaviour and cultural tastes. Attitudes towards language variation can also contribute to the relative social prestige of a variety, even if perceptions underpinning the attitude in question are based on stereotypes of speakers, places or professions rather than linguistic facts.

Expressions of feeling are especially animated in relation to the variety we have described as legal language. Around this variety – for all its internal variation and substantial change over time – circulates a great deal of criticism, scorn and campaigning for reform. There is also a substantial literature of parody and wider satire. In this unit, we examine such critical representations of legal language. What features, we ask, have become so conventionalised that, even used selectively and transferred to other subject matter, they still give rise to particular respect, dissatisfaction or amusement? Discussion of these aspects of legal language will connect our description of the variety's characteristics, history and functions to a wider social context of beliefs, attitudes and continuing controversies.

**Attitudes and perceptions**

Attitudes towards different accents have been studied in fields cutting across linguistics and psychology (Giles 1970; Giles and Coupland 1991). Few scholarly studies have been published of attitudes towards professional varieties in particular, however. Criticism of legal language is nevertheless common not only among laypeople, but even among legal scholars and legal professionals, who in some cases are also authors of parodies and satire of the language they themselves use professionally.

As regards English in particular, here is Tiersma:

One of the great paradoxes about the legal profession is that lawyers are, on the one hand, among the most eloquent users of the English language while, on the other, they are perhaps its most notorious abusers. Why is it that lawyers, who may excel in communicating with a jury, seem incapable of writing an ordinary, comprehensible English sentence in a contract, deed, or will?

(Tiersma 1999)

Note Tiersma's strong polemical terms, including 'notorious abusers' and 'incapable'.

- ❑ Sometimes it is difficult to decide whether, in a given context, the widely used phrase ‘talking like a lawyer’ is a compliment or an insult. Keeping Tiersma’s comments above in mind, can you see reasons why these two apparently opposite perceptions should be so closely connected with one another?

### **Linguistic perception and social comment**

As with accent perception, linguistic value judgements often get confused with social judgements in which references made to language are merely symptomatic: the opinion is about professional practice, rather than about the language used by that profession. Among the most widely quoted polemical descriptions of legal language are the following:

#### **Swift, *Gulliver’s Travels***

Here is Jonathan Swift (1667–1745), satirising lawyers in his reversal of social roles between humans (presented as ‘Yahoos’) and horses (‘Houyhnhnms’) in the fourth part of *Gulliver’s Travels* (1726):

There was a Society of Men among us, bred up from the Youth in the Art of proving by Words multiplied for the purpose, that *White is Black* and *Black is White*, according as they are paid. To this Society all the rest of the People are Slaves.

This society of men (the legal profession):

hath a peculiar Cant and Jargon of their own, that no other Mortal can Understand, and wherein all their Laws are written.

#### **Bentham, *Works***

Writing in an idiom that combines analysis and satire, here is the philosopher Jeremy Bentham (1748–1832) assessing lawyers’ claims regarding the degree of precision they achieve through their use of language:

For this redundancy – for the accumulation of excrementitious matter in all its various shapes . . . for all the pestilential effects that cannot but be produced by this so enormous a load of literary garbage, – the plea commonly pleaded [is] . . . that it is necessary to *precision* – or, to use the word which on similar occasions they [lawyers] themselves are in the habit of using, *certainty*.

(Bentham, *Works*, Bowring edition, 1843: 260; for discussion, see Mellinkoff 1963: 261–6)

#### **Dickens, *Bleak House***

Here, in his celebrated indictment of the ineffectiveness of mid-nineteenth-century English law as embodied in the Court of Chancery, is a description of members of the High Court by Charles Dickens (1812–1870) as:

tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horse-hair warded heads against walls of words.

(*Bleak House*, 1852–1853: Chapter 1)

### ★ Activity

- ❑ In these brief quotations (inevitably presented here out of context), what aspects of legal language seem most to incite the author's dislike? How closely interwoven are those features with supposed non-linguistic characteristics of the legal profession?

Equally polemical literary comment against alleged excesses of legal language can be found throughout dictionaries of quotations (including specialised dictionaries of legal quotations), as well as in anthologies such as Brian Harris's *The Literature of the Law* (1998) or Daniel White's *Trials and Tribulations: An Appealing Anthology of Legal Humour* (1989).

### **Judicial comment**

As suggested above, lawyers themselves make (and choose to publish) withering criticisms of inappropriate or excessive drafting of documents, incomprehensible legislation, and over-oratorical courtroom speeches.

Here are two widely quoted examples:

- ❑ In a speech in Washington, DC (11 May 1929), the eminent and influential US judge Learned Hand suggested that 'There is something monstrous in commands couched in invented and unfamiliar language; an alien master is the worst of all. The language of the law must not be foreign to the ears of those who are to obey it.'
- ❑ In a case concerned with terms of a lease, leading UK judge Mr Justice Hoffmann (now Lord Hoffmann) found the flood of words in the lease so 'torrential' that he felt there might be some justification in a submission that he should set aside the normal principle of legal interpretation that requires account be taken of every word.

### ★ Activity

- ❑ How important is it, in reading such criticisms of legal language (whether by legal professionals or others), to distinguish not only the targets of satire or polemic, but also the aims? For example, is it possible to tell whether criticisms are motivated by linguistic conservatism (e.g. as a critique of falling standards in legal drafting) or by appetite for reform?

### **Parody and stereotype**

One (potentially risky) way into exploring a controversial linguistic variety is to examine exaggerated versions of it found in caricature. Often such representations accentuate characteristics used by writers as a kind of shorthand, because those characteristics are assumed to be perceptually salient among likely readers. Such characteristics can be tested against naturally occurring data; comparing such

stereotypes with actual data often suggests that the conventional perceptions are highly inaccurate.

The two types of data are not incompatible if used *as starting points* in analysis. Taking account of caricature may even help clarify the relationship between features of a variety that are believed sufficient to prompt a predictable response from readers or listeners and other features that are scarcely noticed or not noticed at all. In the following extract, we consider the power and effects of caricature and myths about language by considering two well-known parodies of legal discourse.

### ***'I give you my orange'***

Our first parody is a celebrated humorous imitation of legal language written in 1835 by Arthur Symonds, in a book called *The Mechanics of Law-Making*. Symonds' caricature of the language of conveyancing documents develops the idea that legal language could not tolerate someone making a simple gift by just saying or writing five words: 'I give you my orange'.

If expressed in legal language, the speaker in Symonds' parody is presented as needing to say or write this:

I hereby give you all and singular, my estate and interest, right, title, claim and advantage of and in my orange, with all its rind, skin, juice, pulp and pips, and all right and advantages therein, with full power to bite, cut, suck and otherwise eat the same, or give the same away as fully and effectually as I am now entitled to bite, cut, suck or otherwise eat the same orange, or give the same way, with or without its rind, skin, juice, pulp, and pips, anything hereinbefore, or hereinafter, or in any other deed, or deeds, instrument or instruments of what nature or kind soever, to the contrary in any wise, notwithstanding.

(Symonds 1835: 75)

Note that this 114-word extract consists of just one sentence. Write a paraphrase, dividing that sentence into as many shorter sentences as you need to express the meaning. As you do this, note which expressions or ideas are difficult – or even impossible – to restate.

- Make a list of features that are prominent in this caricature that you associate with legal style. The overall performative speech act is clear: 'I (hereby) give'. Beyond that, you will find it difficult to categorise and restate exactly what is going on.
- Think first in terms of vocabulary (including length of words, mix of word classes such as adjectives, nouns and verbs, as well as differences between apparently ordinary or everyday words and terms confined to a restricted, legal circulation).
- Now look at word order, and choice of grammatical constructions (which you will see more clearly when you try to rewrite).
- What about rhetorical devices (e.g. reinforcing repetition, use of lists)?
- Now ask yourself: how does difficulty in understanding exactly what is being said contribute to the overall satirical effect?

**Activity** 

This famous passage is discussed in many works; a useful description of its jargon features can be found in Butt (2013: 250–1).

### ***'The sky is blue'***

Our second parody of legal language is by Daniel R. White, who worked as a corporate lawyer in Washington, DC before turning to creative writing; it can be found in his anthology *Trials and Tribulations: An Appealing Anthology of Legal Humour* (1989). In a short essay 'The sky is blue', White creates a scenario in which a junior associate in a law firm is taken to task by a senior colleague for saying 'The sky is blue'.

The theme is basically the same as with 'I give you my orange': a simple proposition judged to be inadequate as a legal statement. This time, however, we will not quote the passage. Instead, you are presented with a paraphrase. So now you have to concentrate not on choice of particular words or grammatical forms, which have been changed, but on the effect created by more abstract rhetorical strategies:

For a lawyer, the senior colleague explains, 'The sky is blue' is not an adequate proposition. The first qualification needed is that the sky must be described only as 'generally' blue, since it may not always be blue. Also, it can only 'appear' rather than categorically be that colour. The proposition must also be defended against possible challenges, including that the sky might not be blue in other parts of the world. So: particular places must be specified, for instance in a list. And what about the meaning of 'sky'? 'Sky', the older colleague explains, cannot be simply assumed as something you see when you look up, since there may be other things you see that are *not* sky. In any case, the sky will only be visible if you are outside. So those aspects need to be incorporated into the statement, as well as the times at which the perception is possible (presumably during the day, since for instance stars, the colleague points out, are not blue). The senior partner complains that the proposition 'has more holes in it than Swiss cheese'.

#### Activity

- Describe the main characteristics of legal discourse that White draws attention to in the story (at least as you have experienced it in this paraphrased treatment).
- What characteristics of 'lawyerly' thought, speech patterns and rhetorical moves does White emphasise?
- How separable, or interwoven, do the following aspects appear to be in this passage: (i) ways of using language; and (ii) the purposes for which particular uses of language have developed or been designed?
- The passage is clearly intended to be humorous. But are there characteristics attributed to legal language that you would want to defend – as being desirable or even essential in particular contexts of use?

never to use one word where ten will do; never to use a small word where a big one will suffice; never to use a simple statement where it appears that one of substantially greater complexity will achieve comparable goals; never to use English where Latin, *mutatis mutandis*, will do; and always to qualify virtually everything . . .

(White 1989: 246)

Extrapolating from features of style to overall effect, White concludes, 'If a layperson can read a document from beginning to end without falling asleep, it needs work'. What point do you think White is making in this concluding comment, given the seriousness of legal language in its social effects?

Finally, compare the two parodies of legal language we have presented. Keep in mind that you are engaged in a thought-priming activity here, rather than searching for correct answers. Fuller description of legal language varieties is presented elsewhere in Thread 1 and in Threads 2 and 3.

- How far do the two passages point towards similar idiosyncrasies or excesses? Do any major differences between the targeted characteristics stand out?
- The two passages were published over 100 years apart. Is the degree of similarity or difference you see between the two passages surprising?

Activity 

## REFORMING LEGAL LANGUAGE

C2

In this unit, we discuss claims and counterclaims that surround proposed reforms of legal language. We show why making changes to legal language is difficult by presenting a practical task based on an early English statute, and conclude with observations about current 'plain language reform' proposals.

### Legal language and its critics

Units A2 and B2 trace the formation of legal English through complicated contact between French, Latin and English, and links processes of language change not only to political developments, but also to the formation of a community of practice – lawyers – who subscribe to a number of principles about their professional language use:

- standardisation and consistency of documents in the face of contextual variability;
- resilience of legal documents in the face of challenge by other lawyers involved in adversarial proceedings; and
- decontextualisation in document drafting, so that legal documents can be interpreted in different situations arising in later periods (see Butt 2013 for discussion of drafting principles based on these linguistic norms).