

Law and Linguistics

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Introduction

Amongst the several areas of linguistics that have emerged or have gained significance during the previous century is the field of forensic linguistics, or the interface of Law, Linguistics and Communication. This is essentially the perspective of a linguist. We can also say, and it is equally true that the newly emergent field lies within the purview of legal scholarship. However, as is often the case, the truth lies somewhere in between: the new field belongs to both law and language, and to several other specializations like literature, psychology, communication, and various social sciences. Law and linguistics could be the parents of legilinguistics, and other fields enumerated above, the foster parents, but just like a human child does not just belong to either of the parents or foster parents, and is an individual so is the new field under consideration.

Nomenclature

The issue of naming the new baby is still a vexed one. However, the author would prefer to go with Tiersma (2009, p. 13) who notes that ‘...there is no single descriptive label for the disparate activities that relate in some way to language and the law.’ According to him the term ‘Legilinguistics’ may be used to characterize this emergent field, as is used by the journal ‘Comparative Legilinguistics’

Realization of Closeness of Law and Language

Tiersma (2009, P. 9) identifies the interdisciplinary field of language and law, as an emerging area and goes on to say, ‘It’s hard to know when exactly the study of language and law began. But there has always been a

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close relationship between these two fields, even if that relationship has not always been formally acknowledged.' Gibbons (1999, P. 156) only goes on to buttress the above view of the proximity of law and language when he says, 'Law is language.', and goes a step further and habitates the study of the language of the law within the broader ambit of Linguistics. Hiller and Bernhard (2002, p.182) have used more poetic imagery in conveying the idea of interdependence of law and language by stating 'the general idea today is that law turns on the loom of language, that it is part of a social rhetoric and of an ongoing discussion of a society within itself.'

Tiersma (1986) prepared the ground for the formalization of interaction between law and language by noting 'Language and law interact in a number of ways, the most obvious of which is that laws are expressed in language. Lawyers often look at language to determine the meaning of specific statutes. In such a relatively artificial context, words are chosen and interpreted with unusual care. But elsewhere, the law must interpret utterances of a more spontaneous sort, where the actual meaning of a word or phrase is not always found in a standard dictionary and a grammar text. This especially holds true when the law must give legal effect to the utterances of private individuals. The interpretation of private utterances is an important part of contract law, particularly in the area of offer and acceptance. Courts attempt to discover whether the parties have assented to an agreement by examining their words and deeds. There is no standard verbal formula or prescribed conduct which invariably signifies assent. On the contrary, the case law suggests a great variety of ways to reach agreement.'

Similarly, Mertz (1992) in her review essay points out that 'Scholars who study the social constitution of law have increasingly come to appreciate the importance of language in legal processes.' Lawson (1995, P 995) observes that 'Law and linguistics ought to be natural partners. Modern statutory and constitutional interpretation' increasingly focuses on the generally accepted public meaning of legal language.' Bhatia (1987) points out that 'linguists and applied linguists have also begun to recognise the enormous potential of the language of the law as one of the richest

resources of linguistic data. In the past decade or so there has been a spate of scholarly investigations of language use in a wide variety of legal contexts.' While Shuy (1986, p 61) supports the ongoing effort, and says that 'although the application of linguistics to legal issues is still very new, this is clearly an area which demands linguistic knowledge and skill.'

An effort has been made to show the link between law and linguistics in the following lines: 'Legal theorists have traditionally made a fairly extensive use of the philosophy of language. It has frequently been argued that linguistic philosophy is a valuable heuristic tool for the elucidation of general questions concerning the institutional nature of law and the meaning of key legal terms. At a more substantive level, linguistic methodology may also aid in the practical endeavour of explaining the intricacies of rule interpretation and rule application.' (Goodrich, 1984). Further, he goes on to '...suggest that the time is ripe for a thorough reassessment of the role of linguistics in legal theory'. Morawetz (1973) has forwarded a very interesting comparison between law and language: 'Examples of open practices are particular legal systems and particular languages. Traffic rules and rules of grammar and usage are standing rules. Stopping at a red light or using "table" in successful communication are not moves within a game which has a formal beginning and end. Further, no citizen and no user of English is expected to know all the particular rules which govern behavior within the practice in order to be regarded as a participant. No exhaustive account of the first-order rules of a legal system or of English can be given. Even if such a listing could be given, the rules in their application would be unlike those of chess or baseball because they have, as Hart has argued, open texture. Rules of law have open texture if no statement of them can anticipate very possible problematic application. Similarly no statement of the rules of English can be anything but an approximation of usage. Laws change, and there are even rules within the practice which instruct officers of the practice how to make such changes. Furthermore, law and language are both cooperative enterprises, at least as long as the rules are followed.' In the same vein Fajans & Falk (1998.) are surprised that 'Although law is all talk and text, bar and academy alike show surprisingly little interest in linguistics.' Thus a feeling amongst a wide range of scholars has been building up that the

interaction of law and language is a close one and perhaps it needs habitation of its own.

The Birth of an Idea: Some History

The birth of an idea (or a discipline) is generally difficult to ascribe to a particular moment, more so because it can hardly be traced to a single person or a single thought. It is usually a culmination of human learning, and understanding up to a given point. It is not to suggest that the arrival of a new discipline or a branch of learning is a mechanical happening like a chemical reaction. It is rather more like a happy accident waiting to occur when all the ingredients for it are present. We can think in terms of a fire ready to kindle when a combustible substance, and air are present, and just a spark is required. However, several authors have attempted to trace the origin of a distinct recognition of law and language as an entity.

One of the early writers in the field, Danet (1980, p 447) reviews the development of the field in the following words: 'In the last five years, a new field of social science research has emerged whose topic is the interrelations between language and law. Social scientists, lawyers, and linguists are attempting to hurdle disciplinary barriers in order to study how language relates to the functions of law in society. This work is being carried out mainly in the United States and Britain, though a number of researchers in continental European countries such as Sweden, Germany, and Austria have also become involved. Though law and language have generally been treated separately in the past, they share certain features: both are rule-governed symbolic systems that are uniquely human and essential to the fabric of society.' She further specifies the origin of the field, and says, 'Students of law in society first began to take an interest in language in the 1970s.' Ainsworth (2006) also notes that 'In recent years, a growing number of linguists have begun to focus their scholarly attention on the intersection of language and law.'

Morrill & Facciola (1992, p 201) have not only noted the appearance of the interdisciplinary field of law and language, but have also connected the development with communication. 'A new field of inquiry into law and language emerged during the past decade. Early linguistic scholarship focused on the evolution and style of written legal language,' while current

research on law and language addresses verbal communication during case processing. By drawing attention to verbal communication, researchers have recognized that the study of language-in-use can shed light on the functioning of legal institutions generally and specifically on the sources of disputant success in pursuing their grievances.'

Gibbons (1999) pointed out that Forensic Linguistics can be a term used for characterizing the field under discussion, but has, at the same time, noted that there is no unanimity in the use of the term. He says that some scholars include all the issues concerning legal language and communication under the term, for example, the issues of disadvantage before the law due to limited linguistic competence, attempts at improving legal communication, interpretation and translation of legal proceedings and documents, rights of linguistic minorities to use their language, the right of an accused to maintain silence and resolving the issue of language crimes, e.g., of offensive language, determining the intention, vilification etc. According to him, '...more often forensic linguistics may be interpreted in a narrower sense of the field of the provision of linguistic evidence.'

Linguists provide their services to law in two main ways: first, in determining the authorship or source and second by resolving the issue of meaning and communication. The knowledge of Linguistics is especially important for voice identification or characterization using several features of the voice especially the vowel formants. Other dimensions include handwriting and print identification, style analysis including identifying the author using the technique of 'stylometry' or calculating the frequency of occurrence of certain words and structures in the language sample under study. Likewise, for establishing the authorship or source of a sample of language an analysis of grammar or syntactic structure can be carried out. Similarly, discourse analysis and sociolinguistics can be of help in understanding the dialects, sociolects and registers

Establishing the Field

There are a couple of scholarly associations which work in the field of Law and Linguistics such as International Language and Law Association, International Association for Forensic Phonetics and Acoustics, International Association of Forensic Linguists. A couple of journals are also being published in this area like The International Journal of Speech,

Language and the Law, International Journal for the Semiotics of Law, Language in the Judicial Process (an online journal). In addition, some conferences are held for the development of this area like the Biennial Conference of the International Association of Forensic Linguists. The establishment of associations, publication of journals and the Conferences being held clearly point out that this discipline is establishing its roots day by day.

Legal Education, Courtroom Practice, Communication and Plain English

Foregoing is a more academic approach while Lord Denning (1979, p. 60) takes a more application orientated path when he says that ‘... to succeed in the profession of the law, you must seek to cultivate command of language. Words are the lawyer’s tools of trade.’, and further points out, ‘...sometimes you may fail—without your fault—to make yourself clear. It may be because of the infirmity of the words themselves.’ (p. 60)

Kelkar (1983) holds the view that there are two ways of making a legal text perform in one’s own favour –by disputing the interpretation or, more radically, by disputing the text itself. He sees ‘the vested interest of the men of law themselves in consolidating their position and indispensability by making the penetration of legal mysteries difficult if not impossible – which leads them to put a premium on obscurity in the name of precision, to put a premium on a less widely known language like Latin in Medieval Europe or English in contemporary India’ as a hazard of legal language.

Effective use of language in the courtroom encompassing the communicative aspect of language use cannot be overlooked. Linguistics can, for example, contribute a lot to the semantic firmness and structural aspects of the sentences used in the language of law. This is what the advice of Lord Denning (1983, p. 63) to the students of law in the following words can be seen as: ‘You should use plain, simple words and sentences which all your hearers and readers will understand. You should avoid the roundabout expressions and use instead the direct thrust.’

Likewise, Kelkar (1983) observed that the language of law may not always be understandable to a lay man and that is a repetitive theme in various scholarly works, and a reality of life. The study of the phenomenon of legalese, or difficult to understand legal jargon, and ways to convert it into

ordinary language has taken the form of a movement called the 'Plain English' movement.

Dr. Paul Ekman, a psychologist, who studies aspects of communication like the nonverbal communication of emotions by means of momentary facial expressions, or 'micro-expressions' writes in his blog, while describing the T.V. serial 'Lie to me', and its lead actor Dr. Lightman based upon his research work, 'How the Lightman Group spots lies is largely based on findings from my research. Because it is a drama not a documentary, Dr. Lightman is not as tentative about interpreting behavior as I am. Lies are uncovered more quickly and with more certainty than it happens in reality. But most of what you see is based on scientific evidence. Each show also provocatively raises the complex psychological and ethical issues involved in perpetrating and uncovering lies.' It can be well argued that verbal, non-verbal, as well as paralinguistic communication forms should be given a respectable place in legilinguistics.

Conclusion

New areas of scholarship continually arise as a stage of development of human knowledge and also as per the needs of the society at a particular point in time. 'Language of the law' is a field of study, though not very clearly canonized, as can be discerned by the fact that there is no consensus even on the name of the field, but by now well recognized. Over the past few (three to four) decades the need for an application of the principles of linguistics to study the language of law is something that is more and more within the ambit of the possible given the theoretical and technological advances in linguistics and developments in jurisprudence.

India now enjoys a strong consumer movement similar to the movement that had led to the origin of the plain English movement in USA. The field of arbitration and mediation within law are witnessing phenomenal growth in India, with their growth tied to the growing importance of plain language and techniques of effective communication.

There is also a vigorous interest of scholars in the relationship between law and literature. This is the time to contemplate whether the overall field of law and language can accommodate this or not. There are certainly some overlapping aspects like the study of style, discourse, and interpretation of

law, but the opinion has not yet crystallized upon the issue. Tiersma (2009, P. 25) takes a stand when he states, ‘...but it seems to me that law and literature—as a whole—cannot simply be considered as a branch of language and law. There’s a close relationship, of course, but it is one between two equal categories, rather than category and subcategory.’

Whatever this field ultimately comes to be known as, it should be broad enough to include the various interactions between law and language, which can be in using language as evidence in solving crimes by characterization of language production (voice, handwriting, signs and symbols) in physical terms and in more subtle stylistic terms; in using language more effectively in the courtroom, and the legal documents (including plain language, and communication skills); in disambiguating the language, as many a time the issue before the court is reduced to a matter of language and its possible interpretations; in studying human limitations and degrees of incompetence in language processing; in exploring the issues of language and human rights; in determining language torts and crimes; in studying the relations between language of law and its verbal, nonverbal and paralinguistic aspects, and possibly in seeking a relationship between law and literature. It is amply clear that in this exploration of law and language relationships would have to rely heavily on the established principles of the field of linguistics. This width is essential for a sufficiently wide range of specialists to work together and enrich the field, and also for bringing together a sufficiently large number of approaches and perspectives.

Tiersma (2009, p. 21) takes a rather cautious approach regarding the future of law and language when he says, ‘Whether a growing appreciation of the role of language in understanding legal issues will energize the field of language and law is harder to say.’ But Gibbons (1999) has taken a more optimistic approach and predicted that ‘...the language and the law field may be about to experience more explosive growth, and that several broad academic introductions and texts may be available soon in the field.’

References

- Ainsworth, Janet. 2006. Linguistics as a Knowledge Domain in the Law, *54 Drake L. Rev.* 651
- Asprey, Michele, M. 2009. *Plain Language for Lawyers*, 3rd ed. Delhi: Universal law publishing Co. Pvt. Ltd.
- Bhatia, V. K. 1987. Language of the Law. *Language Teaching*, 20.Pp. 227-234 .
- Danet, Brenda. 1980. Language in the Legal Process. *Law and Society Review*, 14, 3. 445-564.
- Denning, Lord.1979. Command of Language. In *The Discipline of Law*. London: Butterworths.
- Ekman, Paul. 2009. Lie Catching and Microexpressions. In Martin ,Clancy W.(ed.). *The Philosophy of Deception*. Oxford University Press.
- Fajans, Elizabeth & Falk, Mary R. 1998. Linguistics and the Composition of Legal Documents: Border Crossings, 22. *Legal Studies Forum* 697
- Gibbons, John. 1999. Language and the Law. *Annual Review of Applied Linguistics*, 19. Cambridge: Cambridge. University Press. Pp. 156-173.
- Goodrich, Peter. 1984. The Role of Linguistics in Legal Analysis. *The Modern Law Review*, Vol. 47, No. 5, pp. 523-534. Blackwell Publishing.
- Goodrich, Peter. 2004. Satirical Legal Studies: From the Legists to the Lizard. *Michigan Law Review*, Vol. 103.
- Hiller, Jack A. and Grossfeld, Bernhard. 2002. Comparative Legal Semiotics and the Divided Brain: Are We Producing Half-Brained Lawyers? *The American Journal of Comparative Law*, Vol. 50, No. 1. Pp. 175-200. American Society of Comparative Law.
- Kelkar, Ashok R. 1983. Communication and Style in Legal Language. *Indian Bar Review* 10:3. July –September 1983. Pp. 363-78.
- Labov, William. 1972. *Language in the Inner City*. Philadelphia: University of Pennsylvania.
- Lawson, Gary S. 1995. Linguistics and Legal Epistemology: Why the Law Pays Less Attention to Linguists than it Should. *Washington University Law Quarterly*.
- Mertz, Elizabeth. 1992. Language, Law and Social Meanings: Linguistic/Anthropological Contributions to the Study of Law [Review essay]. *Law & Society Review*, 26(2):601-33. Pp. 413-446

Morawetz, Thomas. 1973. The Rules of Law and The Point of Law. *University of Pennsylvania Law Review*, Vol. 121, No. 4. Pp. 859-873.

Morrill, Calvin & Facciola, Peter C. 1992. The Power of Language in Adjudication and Mediation: Institutional Contexts as Predictors of Social Evaluation. 17 (2). *Law & Social Inquiry*. Pp. 191-212.

Shaw, G.B. 1916. *Pygmalion*. New York: Brentano.

Shuy, Roger W. 1986. Language and the Law. *Annual Review of Applied Linguistics*, Vol. 7. Cambridge: Cambridge University Press.

Tiersma, Peter M. 1986. The Language of Offer and Acceptance: Speech Acts and the Question of Intent. *California Law Review*, Vol. 74, No. 1, pp. 189-232. California Law Review, Inc. Stable.

Tiersma, Peter. 2001. The Rocky Road to Legal Reform: Improving the Language of Jury Instructions. *Brooklyn Law Review*, Vol. 66:4. Pp 1081-1118.

Tiersma, Peter M. 2009. What is Language and Law? And Does Anyone Care? In Olsen, Frances, Lorz, Alexander & Stein, Dieter. *Law and Language: Theory and Society*. (eds). 2008: Loyola-LA Legal Studies Paper No. 2009-11.

