



Language, Meaning and the Law

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Preface: The Scope of the Book

This book is concerned with approaches to language, meaning and interpretation that have been discussed within the legal context. Though many of these approaches are frequently formulated in a manner unique to law, they have been shaped by constant dialogue with philosophy, political theory, sociology, literary studies and linguistics. The aim of this book is *not* to improve how lawyers deal with words and their meanings (which is not to say that no improvement is possible), but to use law to reflect on the nature of language, its role within social life, and the theories with which legal theorists and practising lawyers, linguists and philosophers attempt to make sense of it. The underlying presumption is that in looking from the outside at this complex of problems, opinions and ideologies, we gain insights of wider significance for the study of language in general.

Where there is discussion of linguistics in this work, the reference is to mainstream or so-called ‘core’ linguistics, for which I take the writings of Saussure and Chomsky as representative. Given the diversity of recent developments in linguistics, it is not possible to qualify each generalisation, but the ‘systems theory’ view of language remains a very powerful influence within the discipline, even where the realist assumption is made that no two speakers speak exactly the same language. Specialist topics in forensic linguistics and applied sociolinguistics of law are not covered in this work, except where they relate to the meaning and interpretation of legal language/texts and the role of ‘ordinary language’ in the legal context. Forensic linguistics is concerned with how linguistics can be applied in an evidential or expert witness capacity, or in defence of the language rights of groups who are especially disadvantaged by the language culture of the legal process. It deals with issues such as legal interpreting and translation; the comprehensibility of legal documents, of jury instructions and of police communication with suspects and the general public; issues of age, gender, race within the discourse of the legal system; discourse analysis of the language of judges; plagiarism and the authenticity of documents. Many of these areas are specialisations in their own right, such as forensic phonetics and acoustics in speaker identification. There exist a number of excellent textbooks in this area, and the reader is referred to the further reading section at the end of the book.

Where general terms such as ‘law’, ‘judge’ or ‘statute’ are used, the context should be understood to refer to common law jurisdictions. ‘English law’ is a term of art which covers the legal system of England and Wales: Scotland is a separate jurisdiction with distinct legal terminology and procedures. It is important to keep in view the diversity of legal cultures, traditions of legal theory, and the anthropological question of the nature and boundaries of law, even if these issues lie largely outside the scope of this book. On this point the anthropologist Mary Douglas (1921–2007) offers this cross-cultural observation: ‘A theory of justice has to be balanced between theories of human agency, on the one hand, and theories of community on the other’ (Douglas 1987: 126).

The book is organised as follows. A short introductory section, ‘Parables of Language and Law’, presents underlying conceptions of language within the Western tradition, evoking ideas which resonate through discussions of law and language. Part I (Theoretical Frameworks) offers a general but highly selective survey of relevant theoretical domains; Part II (Selected Topics) offers discussion of more specific areas, namely dictionaries, legal control of interpretation and representation, and trademark law. Part III (Key Issues) presents ‘bite-size’ discussions of theoretically contentious issues. The conclusion (Part IV) looks at the comparative semiotics of language, law and money in terms of ‘fixity’ and ‘motion’. The appendices provide further discussion materials and a selection of classroom-style exercises. The reference section is preceded by a brief guide to further reading.

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Introduction: Parables of Language and Law

In Genesis (II: xix), this account is given of the origin of human language:

And out of the ground the Lord God formed every beast of the field, and every fowl of the air; and brought them unto Adam to see what he would call them: and whatsoever Adam called every living creature, that was the name thereof.

In William Blake's (1757–1827) painting *Adam Naming the Beasts* (1810), the Adam figure gazes forwards, right arm raised in a gesture of benediction, his left hand caressing the serpent's head, as the animals file pass behind him. This evokes a moment of linguistic perfection, in which Adam assigns labels to the world without even needing to gaze upon it, a process innocent of interpretation and dispute. The names are natural names, and the things are given in nature by God. At Babel, this innocence is shattered (Genesis XI: i–ix):

And the whole earth was of one language, and of one speech. And it came to pass, as they journeyed from the east, that they found a plain in the land of Shinar; and they dwelt there. [. . .] And they said, Go to, let us build us a city and a tower, whose top may reach unto heaven; and let us make us a name, lest we be scattered abroad upon the face of the whole earth. And the Lord came down to see the city and the tower, which the children of men builded. And the Lord said, Behold, the people is one, and they have all one language; and this they begin to do: and now nothing will be restrained from them, which they have imagined to do. Go to, let us go down, and there confound their language, that they may not understand one another's speech. So the Lord scattered them abroad from thence upon the face of all the earth: and they left off to build the city.

The attempt to understand human linguistic diversity and the existence of mutually incomprehensible languages has been one of the primary challenges of the Western intellectual tradition. The Babel episode offers an explanation

in terms of divine punishment. At Babel, language was dramatically set adrift; it entered time and history, and the vicissitudes and contingencies of the human realm. Babel signifies that the human condition is one of perpetual linguistic and conceptual disorder, and that attempts to establish regimes of cooperation organised through language must struggle to master that disorder.

Harris and Taylor (1989: 44) make a link from the building of the Tower of Babel to the 'builder's language' imagined by Ludwig Wittgenstein (1889–1951) in the *Philosophical Investigations*. In imagining this language, Wittgenstein was illustrating Augustine's account of language learning (Wittgenstein [1953] 1978: 2). As a child Augustine had learned the names attached to objects in the following manner: 'When they (my elders) named some object, and accordingly moved towards something, I saw this and I grasped that the thing was called by the sound they uttered when they meant to point it out.' From the choreography of body and voice around the objects, 'I gradually learned to understand what objects they signified', and then how use those names 'to express my own desires' (Wittgenstein [1953] 1978: 3).

Let us imagine a language for which the description given by Augustine is right. The language is meant to serve for communication between a builder A and an assistant B. A is building with building-stones: there are blocks, pillars, slabs and beams. B has to pass the stones, and that in the order in which A needs them. For this purpose they use a language consisting of the words 'block', 'pillar', 'slab', 'beam'. A calls them out; – B brings the stone which he has learnt to bring at such-and-such a call. – Conceive this as a complete primitive language.

This language, while it might be said to consist of a set of names, is actually a set of commands, or rather resists reduction to either of these labels. Interestingly, even this minimal primitive language is used in a hierarchical society. A legal theorist might ask: where is the law, or what is the nature of the sovereign power, that requires that B must do as A says? The sovereign within legal theory is frequently an off-stage force which animates the legal universe and is not directly exposed to the gaze.

An essential feature of the builders' language is that it is 'non-reflexive', that is, it does not refer to itself. A modern theorist might express this by pointing to the lack of 'meta-linguistic' resources in the language: there is no conceptual space for the 'negotiation of meaning'. The builders' language is an endlessly recycled set of name-commands, and does not accrue a shared memory of past interactions: it has no history. The builders' world is a totalitarian one in which language, command and obedient act are perfectly coordinated. Therein may lie a clue to its hold over the builders: perhaps authority lies in the language itself and there is no need of law, since in the imaginary domain of this primitive language, there is no room to think outside its categories and therefore no escape from the compulsion it exercises.

The Adamic language is a form of language that lies outside that coercive domain but also outside history, and it is not clear whether this ideal space can be found, or recreated, in our fallen communicational order. The entry of language into history is thus understood as a fall from an innocent relationship to a world of things where naming was not contaminated by coercion. This ideal haunts modern theorizing about language. At Babel, human cooperation is possible because of that shared language, which means that humans by their joint endeavours can dream of touching the divine. In Wittgenstein's 'language game' of building (which both stands for, but also intentionally misrepresents, the boundless family of 'language games' that make up ordinary language), coercion is the central element that ties the names to things, and that coercion is enacted through language as a system of commands.

An alternative reading of the expulsion from Eden and the confusion of Babel is one of liberation into authentic identity, either of the group or the individual. In the section immediately preceding the Babel episode, the sons of Noah and their sons in turn divide up the earth after the flood: 'every one after his tongue, after their families, in their nations' (Genesis X: ii). Conceptual order is provided by cultural and linguistic diversity. As between languages there may be disorder or at least difference; within each language there is coherence and a world of cultural meaning, a 'world view'. The linguist Einar Haugen (1906–94) entitled a book on bilingualism *Blessings of Babel* (1987), and the blessings he evokes are those of ordered ethno-linguistic diversity, not of disorder and chaos. On this view, order and meaning are found at the level of a people (*ethnos*) and its culture, and the coherence of language is found in its role as constituting that culture.

The liberation of language from things was a potential source of creative energy for the individual. For Samuel Taylor Coleridge (1772–1834), a symbol 'always partakes of the Reality which it renders intelligible; and while it enunciates the whole, abides itself as a living part in that Unity, of which it is the representative' (Coleridge 1816: 36–7). In an 1800 letter to William Godwin (1756–1836), Coleridge wrote 'I would endeavour to destroy the old antithesis of Words and Things: elevating, as it were, Words into Things and living things too' (cited in Richards 1968: 12). A further way to understand Babel as liberation is thus to suggest that it was language itself that was liberated at Babel, as it developed autonomy and power of its own, and was now set free from its natural bond to things. Human beings were destined to struggle against its hold over their imagination, but those who accepted the challenge could seek to harness and shape its dynamic disorder into a higher, meaningful order.

The liberation of language from things brought with it the danger that 'language unbound' could establish its own worlds of meaning, its own forms of life, and induct human beings into them. Humankind would be confined by shackles of which it was only dimly aware. Language was a second-order reality, a perhaps necessary but unreliable witness to the nature of world.

Many philosophers have thus seen it as their task to interrogate language, and, by unmasking the distortions of language, to maintain a conceptual link between language and reality, so as to anchor language as far as possible in the world of the real.

The view that words were a second-rate substitute for things was satirised in Jonathan Swift's *Gulliver's Travels*, where scholars in the Grand Academy of Lagado resolved that 'since words are only names for things, it would be more convenient for all men to carry about them such things as were necessary to express the particular business they are to discourse on' (Swift [1726] 1960: 150). In the Western tradition, love of language and of its ability to serve the imagination ('logophilia') co-exists with fear and mistrust of language and its autonomous power ('logophobia'). One form this logophobia has taken in the modern West has been the cooption of Eastern philosophy as therapy for the perceived sclerosis of language and thinking. In Jack Kerouac's novel *Dharma Bums*, the narrator meets his mentor, Japhy, after spending time meditating in the woods (Kerouac 1959: 15):

But now I wanted to tell him all the things I'd discovered that winter meditating in the woods. 'Ah, it's just a lot of words', he said sadly, surprising me. 'I don't wanta hear all your word descriptions of words words words you made up all winter. Man I wanta to be enlightened by actions.'

Words are a secondary and inferior supplement to actions, they are second-rate pseudo-actions.

Fear and mistrust of language frequently go together with fear and mistrust of law ('jurisphobia'). Law is the tower that language built. The opening paragraphs of Charles Dickens's (1812–70) *Bleak House* describe a fallen world. London is drowning in a sea of fog and mud, and 'at the very heart of the fog, sits the Lord High Chancellor in the High Court of Chancery'. There the lawyers were (Dickens [1853] 1971: 50),

mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horsehair warded heads against walls of word; and making a pretence of equity with serious faces, as players might.

In his introduction to the novel, the critic J. Hillis Miller reads the jurisphobia of *Bleak House* not primarily as a call for social reform but as the expression of the universal condition of humanity. Language and interpretation are the essence of the fall: 'The villain is the act of interpretation itself, the naming which assimilates the particular into a system, giving it a definition and a value, incorporating it into a whole.' Interpretation is the 'original evil' (Miller

1971: 22, 34). This fallen state is 'irremediable'; language alienates the person, and personal names 'assimilate him in terms of something other than himself'. The social sickness is a symptom of 'the ineradicable human tendency to take the sign for the substance' (Miller 1971: 3–4). The categories of language, like social institutions, do violence by forcibly assimilating the individual into an alien symbolic order (Miller 1971: 22). J. Hillis Miller sees law as a pathology of language. *Bleak House*, he argues, is 'woven of words in which each takes its meaning not from society outside words, but from other words' (Miller 1971: 30).

This way of reading the novel undercuts its surface meaning as a work of social criticism. When the novel's narrator observes that '[t]he one great principle of the English law is, to make business for itself', and that this is the key to understanding law as a 'coherent scheme' rather than 'the monstrous maze the laity are apt to think it is' (Dickens [1853] 1971: 603), this appears to make reference to social reality outside the novel. This suggests faith in the novel as moral map, and therefore in the ability of language to represent not only the world as it is, but, by implication, the world as it should be. Orwell, who wrote that 'if thought corrupts language, language can also corrupt thought', none the less believed that 'the decadence of language is probably curable' (Orwell [1947] 1972: 367). Orwell's critique of language was informed by belief in its 'realist' potential, that is, its ability to represent the world.

The moral of Babel is that, on being expelled from the God-given domain of truth and representation, language entered the domain of human responsibility in which 'there is no connection between word and world unless we put it there' (Hogan 1996: 9). Once it is no longer underwritten by divine authority, the ability of language to depict reality or provide points of shared orientation is constantly in question. There is no single authority which stands outside language and controls it, nor is there a consensus as to how to describe and characterise the world. This raises the question of whether human cooperation through language is only conceivable as a form of coercion, whether it is only through the exercise of power that order can be imposed on the conceptual chaos of language and its relation to the world. Similar issues arise in relation to secular law and the nature of law's authority, once it is no longer justified by reference to divine authority. With both language and law, theorists have none the less tried to locate a single source of order, regularity, coherence, authority or sovereignty. Alternatively, foundational claims have been attacked as being in bad faith, as fictions or myths which maintain a false autonomy, or mask an underlying indeterminacy.

Part I

Theoretical Frameworks
