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Book Review: A Sociology of Language

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A Sociology of Language

By Joyce O. Hertzler

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> Communication is not an end in itself. It is, in fact, the elemental social process — the social technique upon which all social processes depend. Its elemental significance rests upon the fact that without it there can be no semantic transfer.

If the premise that communication is the touchstone of all social interaction is to be accepted and understood in depth, then language, the primary vehicle of communication, must be analyzed in terms of its sociological nexus. Such is the thesis of Professor Joyce O. Hertzler, in his book entitled, *A Sociology of Language.* Professor Hertzler engages in an extensive examination of the interplay between language systems and social systems in order to demonstrate the importance of language as a molder and motivator of society.

The book offers the reader a general orientation to the study of language and communication. However, the tone of *A Sociology of Language* suggests that a greater understanding of language and its sociological ramifications is necessary.

It is the purpose of this book review to consider some of Professor Hertzler's theories concerning the general relationship of language and society in order to relate them to the more specific issues contained in the relationship between language and law. In the following pages the general suggestion will be raised that there is a need for research in the area of law and communication: in the language of the courts as it affects the pronouncement of rules, in the language of the profession as it affects the client, and in the language of the law student as it affects his own peculiar socialization process of "legal professionalization."

The Language of the Courts

In Professor Hertzler's analysis of the relationship between language and society, one of the chief functions ascribed to language is its role as an agency of social control — "that is, its role in regulating, directing, adjusting and organizing the social conduct of individuals and groups in the interest of effective societal operation. Social control becomes impossible without a linguistic system."

If one adopts the proposition that the ultimate and official social control system is the legal system, and that the final arbiters of social control are the courts, then one is led to inquire into the relationship between language and the courts in order to determine

whether the task of social control is effectively being carried out. The elements of social control described by Professor Hertzler require the use of language in order that they may be communicated to society.

> The right kind of language is basic: (1) in understanding the prohibitions and requirements of behavior, (2) in presenting rules and directives, (3) in articulating public opinion behind these sanctions, and (4) in conducting the formal and informal agencies for administering and enforcing the sanctions.

The utilization of language by the courts as a function of social control is manifested by the pronouncement of rules of law. The observations made by Professor Hertzler seem to assume that some kind of stability underlies the rules and that the decisions of those vested with the power of social control are in some way predictable for a given state of facts. These assumptions follow the traditional philosophy of jurisprudence, which would reject speculation on or search for ultimate origins of sense experience. The principle of *stare decisis* demands stability and predictability in the law, and the traditionalist courts would look to the language of the past as precedent for the resolution of present conflicts in society.

Yet we must be aware that society itself is not always stable and that its norms are constantly changing to meet the times. The legal realists as long ago as the turn of the twentieth century raised grave doubts concerning the underlying stability and predictability of the legal process of social control. Their thesis maintained that law (as an expression of social control) is what the courts say it is from case to case. Predictability of pronouncements of social control to the legal realists was impossible without a clear understanding of the empirical facts underlying both the case at issue and the public policy of the times.

Although legal realism may have overstated its case somewhat in an effort to shatter the notion of dogmatic predictability in the legal system, it did give rise to a healthy skepticism concerning the "rule of law" and its place in the social control process. The word or rule should not stand alone as a symbol of behavioral control. Professor Hertzler discusses the importance of the word as a symbol for society, yet his observations are equally applicable to the symbolic importance of the rule of law.

> The importance of a symbol does not lie in its intrinsic properties; the symbol stands for, refers to, indicates *something else*. It is a representation of conceptualized things, actions, occurrences, qualities, or relationships — a surrogate or substitute, not the object or happening itself.

In the same way in which a word is a representation of conceptualized things and relationships, so also is a rule of law a conceptual representation of social attitudes and policies. The key to

predictability in the social control process lies in the empirical examination of the underlying social concepts which give rise to the rule expressed in a given decision. Without an analysis of these concepts, there is a further danger that through a semantic "process of abstraction" a rule of law may be generalized to such an extent that it is applied almost indiscriminately to a conflict. Such an application may in fact *prevent* the solution of a problem. Professor Hertzler notes that words as symbols tend to canalize perception and response, focusing attention only on some aspects of things or events and not on others. This may also be true for rules.

Some of the fundamental causes of this process of abstraction are engrained in legal method. Law students are taught to "brief" cases, to boil them down, presenting the facts, the issue, and the holding as the distilled ingredients of the controversy. Then they are asked to abstract from this distillate a "rule of the case," a general principle that will magically apply to all "similar" controversies. The fact of the matter is, however, that most controversies are not truly similar. Society is composed of individuals. Thus, when conflicts arise, they are *individual* conflicts, sociologically distinct from any other controversy, past, present, or future.

Given the notion of the uniqueness of every controversy, a *caveat* is posed for both the legal profession and society when one makes an isolated statement about what the law *is*. We cannot be certain about the basis of such a statement, and we do not know its factual or social referent. The rule standing alone is ambiguous, and, just as the general semanticist searches for the experiential referent of a word, so must we find empirically the sociological referent of the rule.

Language and law are both tools of society, and unless there is an awareness of how and why these tools are used, they have little meaning.

The Language of the Profession

The subject of "special" languages of the language community is considered in rather general terms in *A Sociology of Language,* and the problem of estrangement of special groups from society by virtue of their language is discussed. The legal profession is clearly capable of inclusion among the special classes of society, and "lawyer's talk" is distinct from the language of the lay community to a great extent. In an analysis of the relationship between language and the legal system, the problem is to isolate both the positive and negative effects of lawyer's talk with respect to the client. Given the capacity of a special language to isolate its speakers from the

general language community, is there a concurrent benefit to be derived in the lawyer-client communication situation?

In order to resolve this question, it is first necessary to understand the purposes of a special language. Professor Hertzler suggests that three general functions of special languages are readily discernible: (1) to mystify the ignorant, (2) to hide the special group's lack of knowledge and their unsolved problems, and (3) to cover up personal and emotional involvements. He suggests that one function of the language of the legal profession is that of concealment and defense, when he writes, "Some of the professions affect some terminology to enhance the mysteries of their craft. There is the solemn verbosity of lawyers . . . who thereby are able systematically to conceal their actual thoughts and feelings."

While there may be some truth to the observation that one function of lawyer's talk is for purposes of camouflage, this alone does not serve to answer the central issue. The answer lies partly in the awareness of what might be called the multiordinal aspect of all language. Words, including the words of lawyers, are incomplete symbols — their meaning is unknown until the context in which they are used is understood. The lawyer in court would indeed be expected to use his special language for a different purpose than the lawyer who is counselling a client, even though the words may sound the same in both situations. It must be realized that the lawyer-client situation carries with it a variety of role expectations on the part of the lawyer. A client seeking a divorce might require that the lawyer assume the role of psychologist or family counselor. Similarly, a corporation-client may require a businessman's role of the attorney. Each choice of roles demands an appropriate choice of language from the lawyer.

One of the primary functions of the lawyer's technical language is as a means of "conceptual shorthand." One word for the lawyer, such as "estoppel" or "due process" can serve to communicate a highly abstract and complex legal principle. Lawyer's talk, therefore, must of necessity be sufficiently specific for the articulation of a legal proposition, yet at the same time flexible enough to relate the proposition to reality in terms which the listener can comprehend. Otherwise, as Professor Hertzler notes, the lawyer becomes the victim of his own verbiage, rendering his language far more obscure than the abstract legal principles which it states.

Another aspect of the language of law, discussed earlier in the context of the language of the courts, is its function of social control. This same function can be performed by lawyer's talk in the counselling situation. The special language of law can create an aura of authority for the lawyer. In the normal lawyer-client situation, it is

assumed that the client has come to his attorney because he has a problem which only a lawyer can solve. The client looks to the attorney for advice, for some sort of answer. Thus, it is generally the lawyer who has the power to control the communication situation by his use of the language. Professor Hertzler refers to this power as "word grip."

> The verbal act — an utterance in the form of a word or a phrase, or a sequence of these — coupled with the manner in which it is uttered, is capable of setting in motion a force which influences, even controls, persons and situations. "Words are acts . . . and they function as acts."

Lawyer's talk can serve a useful persuasive function in a counselling situation; a function which ultimately depends for its success on the lawyer's skill in its use, based on an awareness of the relationship between language and social reality.

The lawyer-client situation presents an aspect of communication not always found in the study of the language of the courts in the case reports. This is the concept of "feedback," that is, the interplay of the communication of ideas between people. In the study of legal rules, the emphasis is predominantly on the written form contained in the statutes and case reports. There is no interplay of ideas to indicate that the rule contained in the written form has been *communicated* in a meaningful sense. The lawyer-client situation, however, provides an opportunity for the lawyer to test the value of his special language as a vehicle for the communication of rules through the principle of feedback. When a lawyer employs his lawyer's talk in a given counselling situation, his experiential frame of reference may be entirely different from that of his client, yet the abstract language spoken may trigger a response in the client based on his own experiential frame of reference. The abstract legal terminology may be open to a variety of interpretations by the client, yet communication will not be achieved.

Through the process of feedback, the alert lawyer can analyze the responses of his client to his use of lawyer's language in an attempt to make certain that their frames of reference converge. It may be that, since each person has somewhat different experiential referents for his environment, a complete "meeting of the minds" can never be achieved. However, once the lawyer becomes aware of the difficulties inherent in language, he can at least approximate "total communication" with his client.

Finally, the special language of the legal profession, by virtue of its capacity to exclude the non-speaking layman, has the ability to breed solidarity among its own members. Professor Hertzler

observes that this exclusive-inclusive effect is shared in common by all special language groups.

> The special language assists in keeping the distinction between member and non-member clear, and identifies the members of the in-group in contrast to the out-groups, setting them definitely apart from all others. Closely related to this is the fact that the special language has *a cohesive, solidarity-producing effect among its speakers.* It symbolizes the strength of the ties between them and serves as a "prop to in-groupness."

In terms of the legal profession, lawyer's talk seems to be a sort of double-edged sword. On the one hand, legal terminology and the misuse thereof may become as meaningless to the layman as jabberwocky, thereby confusing the clients the attorney seeks to serve. On the other, lawyer's language properly used can operate efficiently as both a persuasive communication vehicle with the client and also as a contribution to the sense of solidarity necessary for the maintenance of a profession.

THE LANGUAGE OF THE LAW STUDENT

The examination of the language of the law student as he undergoes the peculiar socialization process of "legal professionalization" is essential to the understanding of the relationship between language and law, since the way in which this future lawyer, legislator or judge utilizes the language will ultimately affect both the language of the profession and the language of the courts in the articulation and analysis of rules.

The entering law student comes from a variety of sociological backgrounds. He has already undergone a socialization process conditioned by his own particular environment, and therefore his language referents would be presumably well formed by the time he enters law school. Yet, in his first year of legal study, he must undergo a totally new socialization process, and this requirement must undoubtedly affect his use of language. The freshman law student soon learns that he is expected "to think and act like a lawyer." This new role expectation thrust upon the law student must carry with it the notion that part of the role of thinking and acting like a lawyer is talking like a lawyer. Once exposed to the legal terminology in his casebooks, the student soon learns (or think he learns) how lawyers talk. However, it has already been indicated that the way lawyers talk must be considered in terms of social reality. Professor Hertzler points out that

> every language . . . unavoidably has a tangential philosophical, more specifically, *a logical aspect,* if it is to serve its fundamental communicative purposes. This involves, first, the relationship of linguistic forms to facts. The user of the language must be concerned

> with validity, the extent to which his statements conform to reality, or else he is prating untruth, gibberish, or nonsense.

As the student progresses through his first year of legal studies and into his second and third, he may mellow somewhat in his eagerness to fulfill his new role expectation. He probably outgrows the notion that "to talk like a lawyer is to be a lawyer," yet some of its effects will probably remain with him and be reflected in his language. He has learned that such words as "estoppel," "battery," and "due process" are useful additions to his legal vocabulary, and his experiential frame of reference for such terms lies probably within the pages of his casebooks, not in the social reality to which he was previously accustomed. Thus, his communication to others of such concepts may be devoid of any sociological nexus in reality, possibly understandable to his fellow students and the profession, but probably totally meaningless in a real sense to his future client.

Once the law student has learned his new legal language, he may be unconsciously confined by it in his future activities. The notion that perceptions of the world on the part of any given group are controlled, to a great extent, by the language of the group is known as the "Sapir-Whorf Hypothesis." Professor Hertzler describes it as follows:

> As human begins live in the objective world and the world of social activity, they are "very much at the mercy of the particular language which has become the medium of expression for their society." . . . The "social patterns called words" affect even our simple acts of perception. "We see and hear and otherwise experience as we do because the language habits of our community predispose certain choices of interpretation."

The language community of the law student is, to a great extent, the law school. If his perception is confined and conditioned by the language of his casebooks and peers, the effect may be a perpetuation of his isolation from social reality. Perhaps this is one reason why the attorney just graduated from law school finds that the rules he learned in law school "don't work the way they were supposed to" in practice.

The challenge presented to legal education is obvious: to bridge the linguistic gap between the law student on the inside and society on the outside. Student practice programs in some law schools do much in this respect, but an exposure to the elements of language and communication theory as it relates to the social world is also necessary.

Given the general orientation to the relationship between language and society described in *A Sociology of Language,* together with an awareness of the problems involved when this concept is

applied to the relationship between language and law, the need for continuing research in the area of law and communication is obvious.

The awareness that much of the language of law is in the written form of cases, statutes and administrative rulings might mislead the researcher into a notion of finality in the law, which would make any search for predictability somewhat easier. The written form of language seems less amenable to change. Yet, the fact that every problem that confronts the court or the lawyer has its roots in a unique sociological frame of reference suggests that a routine rhetorical treatment of it is not entirely adequate in a communication sense. An empirical approach is called for in such situations.

It may very well be that an empirical approach to legal language is impossible or impractical in some cases. The rhetorical use of language may prove beneficial to maintain some sort of stability in the rules, which is necessary for a system of social control, and important for cohesiveness in the profession. Law and language, however, are inextricably bound to a social nexus, and the fact that law cannot be separated from human behavior calls for at least an awareness of the sociological referent of the language and the rule.

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