

YOUNG WRITER'S CORNER

A REVIEW OF LEGAL LANGUAGE: A NEW DIRECTION FOR LEGAL COMMUNICATION

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Abstract. The definition of language being the vehicle of communication underscores the importance of mutual intelligibility in every communicative discourse. The advent of computer mediated communication has revolutionized communicative systems and practices in terms of attracting a wider audience and unrestricted accessibility. However, legal language seems distant from this practice as it still adopts a purist stance in terms of its drafting and composition aside from being patriarchal and sexist.

Keywords: law, legal language, linguistics, law and gender, plain English, and modern civilization

INTRODUCTION

There exists a symbiotic relationship between language and the law because the framing and the understanding of the law is only possible through the process of language. A succinct exploration into the inextricable relationship between law and language is expressed by Vogel, Hamann, &Gauer, (2018:1) when they opined that ‘law exists solely in and through language.’ The prepositions «in» and «through» reiterate Anesa (2012) and Gozdz-Roszkowski (2011) viewpoints that language is the nucleus of the law used to achieve legal processes and activities.

Legal communication is hinged on the instrumentality of language, a perspective metaphorically captured by Fletcher (2003) when he posits (as cited in Anesa, 2012) that law is the game of baseball while the ball and bats is the language used to play baseball. This vivid conception helps to understand Galdia (2009) theorizing that language is the precondition, prerequisite, and exclusive essence of the law. The primacy of language in legal drafting and communication implicitly suggests that the citizens of any country governed by the law need to acclimatize themselves with such law as «ignoratus of the law is inexcusia»-ignorance of the law is not excused. On the contrary, there exist huge communication gap between legal experts and the regular language users when it comes to legal communication and discourse (Crystal and Davy, 1969; Mellinkoff, 1963; Williams, 2005 among others). One plausible explanation to this inaccessibility which has created legal apathy is that colonized countries through their legal practitioners still preserve the legal language unicorn of their colonizers which suggests subtle shackles of linguistic imperialism as it is expected that an independent nation should be able to articulate their own laws in a mutually comprehensive language. (Tiersma, 2008).

UNDERSTANDING LEGAL LANGUAGE

Legal language is usually perceived with negative connotations because it appears specialized, elevated, and technical especially its written form. Labels such as legal lingo and legalese have been used to describe the legal register and its constructions partly because of its incomprehensibility to the non legal experts. Other lexis used to accentuate the convoluted nature of legal register are «technolect» (Mattila, 2006); «sociolectal status» (Water, 1999); «monolithic entity» (Goodrich, 1984); «professional monopoly» (Mellinkoff, 1963) all reinforcing the viewpoint that legal composition and communication is meaning exclusive to non-members of the legal fraternity. In the same vein, Gozdz-Roszkowski (2011) described legal language as sublanguage due to its unconventional constructions usually characterized with the occurrence of non-standard grammatical rules and unusual frequent occurrence of grammatical items like nominalization, the modal shall, and passive forms. Furthermore, studies (such as Crystal and Davy, 1969; Danet, 1985 among others) on legal linguistics have asserted the convoluted nature of legal language which have made mockery of conventional linguistics. The use of archaic words, passive constructions, prepositional strings, redundant phrases etc. have made the ordinary language users see the law as a sacred linguistic unicorn meant for the privileged learned counsel which is meant to induce awe and respect. Hence, reinforcing the assertion that legal language represents a deviant language with inherent linguistic patterns totally asymmetrical from everyday language of communication.

Inquiries have been made to explain the rationale for such obfuscated language which explains the influence of colonialism, religion, and history on legal composition. Tiersma (2008) avers that colonialism and religion are the key influencers on legal compositions. She explains that colonized countries usually adopt the legal system (with its legal language) of its former colonizers as evident in the case of India, Malaysia, and some African countries who use English, French, Portuguese terms respectively. Furthermore, the religious inclinations of a country are reflected in their legal language as seen in the case of Indonesia, Persia who use legal terms derived from Arabic. Similarly, there is the influence of French, Latin and Anglo Saxon in the legal language of most countries as a result of retaining or borrowing some of these terms. This affirms Stanojevic (2011) conception that legal language is the product of historical events. While colonial, religious, and historical residues could be accommodated in legal language the willingness of legal practitioners to keep preserving the legal language unicorn suggest the linguicide activities of colonialism. However, this monopolistic exercise has received negative reactions from different quarters.

Movements like plain English movement repulse the exclusive intelligibility of legal language which Mellinkoff (1963) describes as being characterized by «pomposity and wordiness.» A stalwart of the movement (Williams 2011; 2015) has called for the review of legal language to attract wider readership and audience. Also, the canvass for the simplicity of legal language is geared to aid litigations and reduce cases of slander and libel usually attributed with the misinterpretation of the law as a result of the complexity of legal language (Onyemachi, 2010). Another accusation leveled on legal language is being male chauvinist especially in its linguistic constructions. Gender neutral writing seems alien to legal language which explains its sexist

and patriarchal composition. Ezeifeka&Osakwe (2013) note that there is an extensive use of the generic masculine noun and the pronoun reference 'he' for both the male and female sexes which still explain the reliance of the law on old form. Sanni (2017) relates to this viewpoint in the Nigerian legal hemisphere which shares certain resemblance with the world legal system. He observed that aside the exclusive masculine pronominal «he “ used to refer to both sexes, female lead justices are addressed as 'learned brother' by their male supporting justices'. More so, whenever the designation 'appellant' 'accused' etc. are not used the masculine pronominal «He» is used to refer to them not minding their sexes. He avows that referring to female justices with the masculine nominal item 'brother' in place of 'sister' suggest that the seat of reasoning reside only in male men and whenever females demonstrates wisdom and good judgment she is referred to as a man as the traditional woman is incapable of giving sane verdicts. This perspective is challenged with the appreciable number of female justices in the world but legal writing suggests otherwise which is a clarion call for its review. This further lends credence to the viewpoint that the legal system is patriarchal and anti-female aside its complicated and convoluted written communication.

CONCLUSION

Legal language represents an example of areas that remains unevolving in terms of its drafting and compositions especially in former colonized nations. It depicts the sacred discipline that extols and preserves the legal language unicorn of erstwhile colonizers as not only are there residues of colonialism in its linguistic constructions, the linguistic thumbprints of the colonizers seems malignant beyond obscurity. With the advent of computer mediated communication which seems to have revolutionized communication in terms of its accessibility and simplicity, it appears that the legal profession exhibits a purist stance to avoid the contamination of its pious ancestral linguistic ritual of legal communication. However, if the goal of the law is indeed the unrestricted accessibility of citizens to their constitutional rights to information and non-relegation of any sex, then simplified legal communication and gender neutral writing would be its goal and advocacy.

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