

# Usage and role of language in legislation and law

Ahmed Salem Abushaala

phd.candidate

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**Abstract-** One of the greatest abilities humans have is this — Language. For so long, people have treated words as mere labels for objects, and languages as different ways to string words together to convey thoughts, feelings, and concepts. But language is more than that. Because of it, we can exchange complex thoughts and ideas with one another, whether it be spoken aloud or written in ink. It's also through language that we're able to trigger emotions, imagination, and action. There are more than 7,000 that exist today! And all these languages differ from one another in all kinds of ways; they all have different sounds, vocabularies, and structures. Speaking, writing and reading are integral to everyday life, where language is the primary tool for expression and communication. Studying how people use language - what words and phrases they unconsciously choose and combine - can help us better understand ourselves and why we behave the way we do.

**Index Terms-** humans.feelings.communication.language.words

## I. INTRODUCTION

Human language does not share the certainties of formal language. Words, the primary symbols of human language, are usually vague and often multiple in their meaning. Moreover, as words are combined into larger units of language, possible syntactic ambiguities and meanings expand exponentially. Parts of speech that can be attributed to words can be uncertain.

In the Brown Corpus of English, for example, up to 40% of words used in the corpus have ambiguous meanings.<sup>1</sup> However, probability of use can predict labels with 97% accuracy. This is similar to the agreement among human annotators. This, however, is only the first level of ambiguity. Parsing the English language into grammatical phrases introduces potentially exponential possible parsings as sentences grow. Again, probabilistic techniques are used to solve the problem, achieving about 90% accuracy.<sup>2</sup>

Many words have such multiple meanings and uses. Further, communication involves social complexities that are not

necessarily evident in the message itself. What do such computational results tell us about the nature of law as a body of language? Most obviously, such results call into question the scientism suggested by some theories of law. The meaning of the language is not specified with certainty; at best we can infer only a probable meaning. However, does legal language work better than common language? There is a lack of convincing evidence that this is so, however, there is equally convincing evidence in the opposite direction.<sup>3</sup>

If one reviews and makes a certain research in science literature, one can reveal that the level of readability of the law is low for the majority of the audience. This is despite the writers' desire to achieve precision in meaning. Accuracy comes at the cost of comprehensibility. As readability studies clearly show, the readability of a text has meaning only in relation to a specific audience.<sup>4</sup>

## II. COMMUNICATION ROLE OF LAW

Purpose of language is to convey meaning between communicating agents. If the audience finds the law incomprehensible, little meaning is conveyed, and the ambiguity of meaning becomes a secondary consideration. To speak of legal language as conveying meaning is in itself quite misleading. Of all the uses of language, it is perhaps the least communicative, as it is designed not so much to enlighten language users as a whole, but to enable one expert to register information for review by another.<sup>5</sup> Such approaches to the law are echoed in the priorities sometimes expressed by legislators, for example in the following observation of the drafter of the law, which is primarily concerned with the process of passing the law and the interpretation of the law by legal experts who deal with the law. Lawmakers have two main goals. A bill must be drafted in order to be passed and must function as intended when it becomes law.

If the law is to be adopted, it must be in a form acceptable to the majority of members of parliament, and for the law to be effective, it must be given the meaning intended by the Government, which refers to when the law is interpreted by the

<sup>1</sup> Jurafsky, D. and Martin, J. H., (2009). *Speech and Language Processing: An introduction to natural language processing, computational linguistics, and speech recognition*. Pearson Prentice Hall, 2nd edn.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> DuBay, W., (2004). *The principles of readability*. Impact Information, (2004), 1–76.

<sup>5</sup> See more about: Crystal, D. and Davy, D., (1969). *Investigating English Style*. L. Longman.

highest appellate court. There are additional goals to consider as well. Each author ultimately strives to produce a provision that is clear enough that even opposing parties understand it in its intended sense without unnecessary litigation and attendant costs.<sup>6</sup> Contracts are approached as a body of language. The corpus (body) of a language is compiled and studied for its linguistic characteristics.<sup>7</sup> The characteristics can be compared with other forms of English, for example the finding that the use of prepositions is far greater in contract language than in general English.<sup>8</sup> Such linguistic features can be used to automatically classify text in a contract into functional categories, such as headings, performance clauses or definitions.<sup>9</sup>

At the broadest level, these works deal with improving the communication of law through the application of computer techniques and contain assumptions about the nature of law. Legislation, regulations and contract provisions are taken as the subject of study. This fits the focus of most legal philosophies, with the exception of American realism and its "rule skepticism." Implicitly, the "rules" that express the law, or to put it another way, the written language that regulates human interactions ("regulatory language"), are considered central to law. Law is a language. Law is a process of communication, and the effectiveness of that communication is studied and problematized. Although useful for the specific projects involved, they are by no means a complete representation of the law.

Law is an act of communication between human beings whose relationships, purposes and interactions are complex. Communication can be embodied in sound, symbol or image. Communication can be multi-layered, simultaneously designed to convey different meanings or to have different purposes in relation to the specifics of the audience. To limit conceptions of the right to communication, or to omit the perspective of communication, is to omit the dimensions necessary for a reasonably complete account. Allen and Engholm, provide an interesting intersection of consideration of law as language and the use of images to represent legal meaning. As they state, it is difficult to exaggerate the importance of language as law. They identify a number of ways in which communication (with more acute consequences in a legal case) can be problematic. Uncertainty, ambiguity, impression and vagueness are examples of problematic communication.

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account. Allen and Engholm, provide an interesting intersection of consideration of law as language and the use of images to represent legal meaning. As they state, it is difficult to exaggerate the importance of language as law. They identify a number of ways in which communication (with more acute consequences in a legal case) can be problematic. Uncertainty, ambiguity, impression and vagueness are examples of problematic communication.

Such problems can arise in semantics (meaning words) or in syntax (sentence structure). They suggest the use of "normalized drafting" to resolve syntactic ambiguity, particularly in law, and the use of diagrams (flow charts) and careful paragraphing to ensure that ambiguity does not arise accidentally. They show how flowcharts can easily be used to clarify the meaning of layered conditionals and conjunctions in legal provisions.<sup>10</sup> It can also be noted that law as a language is different from language in general. In this respect, law represents a sublanguage: ie. one of the many "registers" or "genres" that exist in any language. Such registers may be applicable to certain situations (family versus public spaces), certain professional groups (lawyers, doctors, engineers), certain geographic or demographic groups. There are different registers in the law itself. The language of contracts, legislation, the courtroom, police interrogation and legal academic discourse are different, but all within the framework of law as language. Further, language varies from jurisdiction to jurisdiction, with, for example, legislative styles being more general in civil law countries compared to more specific in common law countries.<sup>11</sup>

Even within common law countries (for example Australia versus the United States) legislative registers can be significantly different. Jackson suggests that the professional registers of the law are internally problematic for him. On the one hand, law claims to be a single system, a standard available to all: law is expressed, mainly, through (a special register of) natural language, even non-lawyers have access to it, as the ideology of law really requires. On the other hand, law clearly has its own culture. Even within the legal community, there are many different professional groups, each with their own version of legal language.<sup>12</sup>

Issues of power are also related to language. This is most obvious when the entity creating the language does so from a position of power. More complex expressions of power relations are found in social situations. For example, male speech has been found to express more "power" than female speech in some studies in a courtroom context.<sup>13</sup>

<sup>6</sup> See more about: Stefanou, C. and Xanthaki, H., (2013). Drafting legislation: a modern approach. Ashgate Publishing, Ltd.

<sup>7</sup> Curtotti, M. and McCreath, E., (2011). A corpus of Australian contract language. In Proceedings of the Thirteenth International Conference on Artificial Intelligence and the Law 2011.

<sup>8</sup> Ibid

<sup>9</sup> Curtotti, M. and McCreath, E., (2010). Corpus Based Classification of Text in Australian Contracts. In Proceedings of

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<sup>10</sup> Allen, L. E. and Engholm, C. R., (1978). Normalized legal drafting and the query method. *Journal of Legal Education*, 29, 4 (1978), 380–412.

<sup>11</sup> See more about: Jackson, B. S., (1995). *Making Sense in Law: Linguistic, Psychological, and Semiotic Perspectives*, vol. 4 of *Legal Semiotics Monographs*. Deborah Charles Publications.

<sup>12</sup> Ibid

<sup>13</sup> Ibid

### III. THEORETICAL UNDERSTANDING OF THE LAW

The theoretical understanding of the legal field is quite well aligned with its popular presentation. Law firms are often referred to as the most typical professional services firms<sup>14</sup> that create value mainly from the intellectual capital of employed lawyers and legal associates. These law firms enjoy protected markets and exercise full control over their pool of expertise.<sup>15</sup> Courts are in a similar position where they are the sole bringers of justice in society and enjoy complete control over the provision of court services.<sup>16</sup>

In the courts, judges are the ones who control professional knowledge and experience, and possess authority and autonomy in their judicial capacity.<sup>17</sup> Therefore, the intellectual capital of professionals working in this field (lawyers and judges) is key to creating value in law firms and courts.

The legal services they provide are consequently very knowledge-intensive, which has equipped them with an opaque quality. This opacity makes it virtually impossible for anyone outside the field to assess the value of the services.<sup>18</sup> Many are unable to understand whether legal advice, a legal contract or a court judgment is of good quality or not. Because of this opacity, field symbols have become more than symbols. Instead, they serve as signals to clients and citizens in their assessment of the value of the services provided.<sup>19</sup>

For example, if a lawyer wears a tailored suit, an expensive watch and sits in a corner office, the client assumes that he (or she) is a good lawyer, since has been able to charge a lot in the past, and accordingly assumes that his/her legal advice will be of great value and evaluates the quality of the service provided in that light. In the same way, certain symbols, courtroom design, and court costumes are used in courts to depict, materialize, and emphasize certain elements in the rule of law. The use of images and symbols was consequently crucial for legal professionals in gaining trust and preserving their reputation, status and aura of high quality and the rule of law.

This is associated with a high level of institutionalization in the legal field, where law firms, courts and professionals within

these organizations,<sup>20</sup> organized and performed law practice. in the same way for decades, if not centuries.<sup>21</sup> In their legal practice, they were very resistant to changes and technological implementation.<sup>22</sup>

However, the rapid digital transformation in the surrounding world has pushed the legal field towards a "tipping point"<sup>23</sup> where its organizations are "ripe for change".<sup>24</sup> The legal field is particularly interesting as an environment for studying digital changes and resistance to such changes. Moreover, the digital transformation of the legal field is extremely important, since the legal field (and its system of institutions, actors and professions) is central to a functioning democracy<sup>25</sup> and legal services have a value far beyond the legal context, since the purpose of lawyers is to provide legal services to other industries and individuals.<sup>26</sup>

An effective digital transformation of the legal field therefore conveys the promise of greater access to the law, greater justice and an increase in the quality and efficiency of legal services in general,<sup>27</sup> while a dysfunctional digital transformation instead carries the risks of injustice and ineffectiveness of legal services provided to society and other industrial environments. The digital transformation of the legal field is consequently an area of great importance, and the interest in research focused on this area is great, both inside and outside the academic arena.

### IV. THE IMPACT OF INFORMATION TECHNOLOGIES ON THE LEGAL PROFESSION

Information technology and lawyers, at first glance, is not the most natural combination of information technology that can be imagined as fast, schematic and futuristic, while lawyers are cautious, verbose and old-fashioned. The impact of IT and especially the Internet on law has grown ever larger since then, and also the use of IT and especially the Internet by lawyers has increased significantly. Currently, there is a connection between IT and law that is clear to people outside the field, ie.

IT plays a central role in law, legal practice and legal research. Reliance on technology has even become so much that it

<sup>14</sup> von Nordenflycht, A. (2010) What is a professional service firm? Toward a theory and taxonomy of knowledgeintensive firms. *Academy of Management Review* 35(1): 155-174.

<sup>15</sup> See more about: Maister D. H., (2003) *Managing the Professional Service Firm*. New York: Free Press.

<sup>16</sup> See more about: Møller, J., & Skaaning, S. E. (2012) *Democracy and Democratization in Comparative Perspective: Conceptions, Conjunctures, Causes, and Consequences*. Routledge.

<sup>17</sup> See more about: Hodson, R., & Sullivan, T. A. (2012) *The Social Organization of Work*. Cengage Learning.

<sup>18</sup> See more about: Løwendahl, B. R., (2009) *Strategic Management of Professional Service Firms*. Denmark: Copenhagen Business School Press.

<sup>19</sup> Ibid

<sup>20</sup> Muzio, D., Brock, D. M., & Suddaby, R. (2013) Professions and institutional change: Towards an institutionalist sociology of the professions. *Journal of Management Studies*, 50(5), 699-721.

<sup>21</sup> See more about: Susskind R. (2010). *The End of Lawyers*. New York: Oxford University Press.

<sup>22</sup> See more about: Susskind, R. & Susskind, D. (2015). *The Future of the Professions: How technology will transform the work of human experts*. Oxford University Press, USA.

<sup>23</sup> Winch, G., & Schneider, E. (1993). The strategic management of architectural practice. *Construction Management and Economics*, 11(6), 467-473.

<sup>24</sup> Christensen, C. M., Wang, D., & van Bever, D. (2013). Consulting on the Cusp of Disruption. *Harvard Business Review*, 91(10), 106-114.

<sup>25</sup> See more about: Møller, J., & Skaaning, S. E. (2012). *Democracy and Democratization in Comparative Perspective: Conceptions, Conjunctures, Causes, and Consequences*. Routledge.

<sup>26</sup> See more about: Grönroos, C., & Ravald, A. (2011). Service as business logic: implications for value creation and marketing. *Journal of Service Management*.

<sup>27</sup> See more about: Susskind, R. (2019). *Online Courts and the Future of Justice*. Oxford University Press.

could be said that the combination of information technology and lawyers has become natural. Not everyone seems to be convinced of the benefits of information technology despite impressive progress, IT is still prone to errors and less user-friendly than landlines and typewriters, for example. Surprisingly, this is a comment by Schaefer from 2004, not someone from an earlier decade.<sup>28</sup> First of all, one could doubt the convenience of the typewriter compared to modern computing devices. What the author may be trying to say is that once ink is on paper, the fixed text usually stays there for years. The future of the bits and bytes in any file is less certain. Regardless, typewriters have faded in the last 10 years and it will be quite difficult to find a working typewriter in any office, including law offices.

This was not the case in the early eighties of the last century when the personal computer appeared. At the time, most lawyers were reluctant to switch to electronic media and stuck to pen, paper, typewriters and dictaphones, although in some countries, such as the US, precedent databases were already widely used. In other countries, mainly those with a statutory legal system, this was not the case, because at the time of the advent of the Internet, only a few lawyers could understand the social impact of information technology in the years to come. About a decade later, around the time most lawyers began using computers for their office work, an influential new phenomenon emerged: the World Wide Web.

Dedicated programs such as Mosaic, Netscape and Internet Explorer made it easy to "surf" from one computer to another by following hyperlinks. The large number of networked computers has opened up an almost endless source of legal information for lawyers and laypeople alike.

With the increase in the number of legal sources on the Internet, clients have been given the opportunity to determine their position by viewing and searching online legal documents. Like doctors dealing with their patients' diagnoses based on Internet sources, legal professionals often have to spend more time correcting any misconceptions that have formed in their clients' minds than analyzing and advising. This illustrates that despite the wealth of legal information, the role of lawyers remains important.

## V. CONCLUSION

Since human capacity is limited, no matter how much information is distributed, we will have no choice but to rely on others to sort out what is relevant and reliable for us. In fact, it may happen that a huge and unprecedented supply, some would say too much, of information makes expert interpretation more, not less, necessary.<sup>29</sup>

In addition to using all the information available on the Internet, almost every minute of their working day lawyers, both practitioners and academics, use information technology: e-mail to communicate, word processors to write, databases to retrieve information and knowledge systems to get support. The latter are still not used as often as expected 20 years ago, but in some

domains they are used massively, e.g. in tax law and social welfare law. Already in 1975, the first legal expert system in the field of social benefits was publicly announced in Great Britain. The system determined eligibility for benefits and issued an advice letter to the client. The field of IT and law deals with a wide range of topics, which can be freely translated into information technology for lawyers.

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AUTHORS

**First Author** – Ahmed Salem Abushaala phd.candidate