Prof. Elena A. MAKAROV A, Ph.D.¹

LEGAL VOCABULARY IN THE TEXTS OF LAW: COMMUNICATIVE AND PRAGMATIC ASPECTS²

“Even where the Counsel in chambers is merely ‘advising on a case’ or drawing up a conveyance of property, he is really thinking of what view the court and the judges will take of his advice or his draftsmanship if any dispute arises on them. The supreme test in every case is: “Will this stand the scrutiny of the Court?”

*Stephens. Commentaries on the Laws of England*

Abstract

The article deals with modern problems of the relationship between language and law in the framework of the interdisciplinary approach. Obviously, these relationships are binary: language and law act as regulators of human behavior in society, exert mutual influence on each other. For a long period of time there have been discussions about the relations between language and law. Studies on the problems of law consist of two sections, the language of law and the law of language. They also contain problems of text and logical-linguistic phenomena in the law, legal studies and practice. Connection of language and law refers to the problems in the fields of the general theory of law, philosophy of law, the general philosophy, semiotics, linguistics, logic and psychology.

Determining connection of these categories makes it possible to significantly diversify the conceptual and terminological system of jurisprudence, as well as to enrich the methodological and theoretical arsenal of legal science fields and spheres. The language and law performance as regulatory tool of human behavior in society, have a mutual influence on each other, they are in a relationship of

¹Taganrog Institute of Management and Economics, Taganrog, Russian Federation
makarova.h@gmail.com

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mutual enrichment and correction.

Relationships between language and law are binary: the language expresses law in symbolic forms; law has regulatory effects on language. Representation of law by language is an objective form, as predetermined by the essence of language. On the other hand, it is subjective because language does not depend on law. Law can affect only native speakers of a particular language. A characteristic feature in the relationship between language and law is the similarity of their functions: language and law are endowed with communicative functions, manifested in acts of communication between legislators and law executives and between law executives and citizens.

**Key words:** representation of law, public consciousness, communication, legal science, linguistics, linguistic presentation,

Discussions about the problems of the correlation of language and law, which primarily concerned questions of the interpretation of legal norms, have a long tradition in jurisprudence. The peculiarities of legal English are often used as a stick to beat the reader with. They are indicated to show that “it would be a Herculean task to teach lawyers to write their own language creditably”. The style in which legal documents are written is called “official jargon” and has a lot of uncertainty and ambiguity. For any lawyer the words of the document are authoritative as words and there is no possibility of obtaining further information or explanation from the author, either because the author is dead or because it is against the rules or law.

For a long period of time there have been discussions about the relations between language and law. Studies on the problems of law consist of two sections, the language of law and the law of language. They also contain problems of text and logical-linguistic phenomena in the law, legal studies and legal practice (Gryazev, 2011; Tcherdantsev, 2000). Recent works in the pragmatics of legal language have focused on pragmatics, as a source of insights into the theory of legal interpretation (Marmor 2008, 2014, Soames 2008, Ekins 2012 Carston 2013, Solum 2013). The pragmatic effects of communication are essential in all contexts of language use, and are definitely essential to the legislative use of language.

Connection of language and law refers to the problems at the junction of the general theory of law, theory and history of state and law, philosophy of law, general philosophy, semiotics, linguistics, logic and psychology. Systematic philosophical insights about language to solve problems in philosophy of law are relatively recent. Jeremy Bentham was perhaps the first to make a deliberate attempt at it. He developed a theory of the meaning of words, which supported his legal theory.
Bentham wanted to abandon what he called a mythology of natural rights and duties—that is, moral rights and duties that people should have notwithstanding the fact that nobody is enforcing them. He looked for ‘sensible’ phenomena by which to explain the nature of law. He made linguistic acts an essential element of his theory of law and based his ‘legal positivism’ on the claims about the meaning and use of words.

Philosophy of language cannot explain the nature of reasons; its role is to explain the possibility of communication and creating reasons by the use of language. Bentham thought of the meaning of a word in causal terms, as its capacity to act on a subject by creating an image or emotions for which, as he said, the word was a name. “By these general terms or names, things and persons, acts, and so forth are brought to view…” (Bentham 1782, 82; see also Bentham 1776, 28, 108). Words that do not visualize perceptible images have no meanings, according to his theory, except in the case they can be ‘paraphrased’—Bentham’s method of translating whole sentences in which those words are used into sentences that visualize images of real things. In his legal theory, this view of language became the basis of an innovative approach to law which Bentham stated as follows: “A law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power…” (Bentham 1782, 1). As for the use of philosophy of language in philosophy of law Bentham was ahead of his time, as his theory of the meaning and use of words has become the fundamentals of various trends in twentieth- and twenty-first-century philosophy of language. To many researchers in the field of legal studies that approach appeared, as H.L.A. Hart put it, “as a revelation, bringing down to earth an elusive notion and restating it in the same clear, hard, empirical terms as are used in science” (Hart 2012, 84).

Trying to determine connections of these categories, at least, makes it possible to significantly diversify the conceptual and terminological system of jurisprudence, as well as to enrich the methodological and theoretical arsenal of legal science spheres and fields. The language and law performance as regulatory tool of human behavior in society have a mutual influence on each other, they are in a relationship of mutual enrichment and mutual correction, and also of interdependence. Being the essence of the form of public consciousness, language and law act as regulators of human behavior in society, exert mutual influence on each other.

Obviously, the relationships between language and law are binary: the language expresses law in symbolic forms; the law exercises a regulative influence
on the language. Representation of law by language is an objective form, as predetermined by the essence of language. The second form is subjective in nature, because language does not depend upon law. Law can affect only a native speaker of a particular language. Since the 1990s, the problems of language and law have become the object of research by linguists. The most important issues have been the specific character of the legal language and the peculiarities of its interaction with the natural language. The dependence of the effect of legal language on context is an instance of a general feature of communication, which some philosophers of language have approached by distinguishing semantics from pragmatics. The distinction is, roughly, between the meaning of a word or phrase or other linguistic expression, and the effect that is to be ascribed to the use of the expression in a particular way, by a particular user of the language, in a particular context. The pragmatics of legal language is a vast field, because the term ‘pragmatics’ could be used as a heading for much of what modern legal scholars and theorists have described as grounds for interpretation (and also as a heading for much that they have described as the theory of interpretation - since ‘pragmatics’ is a term not only for effects of communication, but also for the study of those effects).

Golev N.D. devoted most of his research to the subject, problems, and the tasks of legalizing and linguistic issues that follow them. The two differ in the aspect of the study: legal studies investigate the relation of language to law (the legal aspect of language); linguistics studies the relation of law to language (linguistic aspects of law) (Golev 1999, 4-11).

Speranskaya A.N. described the problems of the correlation of official, legally fixed perceptions of linguistic phenomena in the sphere of law, and ordinary views of ordinary speakers of the language (Speranskaya, 1999, 86-94). According to her research, the legal linguistics should study, among other things, the mechanisms of the language of law functioning in the ordinary mental-linguistic substratum. Thus, analyzing the opposition of “one’s own” and “another’s” in the views of experts in the field of law, the author claims that the attitude of the former to stealing state property is more lenient than to the private one, as opposed to the attitude of experts manifesting Legal norms, assigned equally to state and private property.

Mansurova V.D. examined the facts of successful and unsuccessful attempts to conduct a legal-expert examination of the media texts that caused claims under Article 152 of the Civil Code “On Protection of Honor, Dignity and Business Reputation of Citizens” (Mansurova, 1999, 94-106), raising the problems of correctness of verbal types of communication. She emphasized the problem of assessing verbal aggression as a fact of language and law, focusing on the need
to take non-verbal situations determining speech intentions and ways of their implementation into account.

Chernyshova T.V. described the mechanisms of the stylistic complex work in the modern newspaper and journalistic text, and what detail of this mechanism predetermines the appearance of the linguistic elements in texts that lead them (texts) beyond the limits of officially accepted or unofficially fixed moral and ethical norms (Chernyshova 1999, 138-144). The need for an interdisciplinary approach to the study of the language of law is indicated by all of the researchers, considering the historical and modern context of the concept of hermeneutics - the interpretation of the texts of the law.

A characteristic feature in the relationship between language and law is the similarity of their functions: language and law are endowed with communicative functions, manifested in acts of communication between legislators and law executives and between law executives and citizens. The content of the legal rules set out in the texts of legal acts may be put to work only through language, as expressed in a language form. «Law is formulated, interpreted and applied by means of language» (Busse 1993, 9). Social legal relations are materialized through language. In all areas of law activities, quality of enforcement is inseparable from the quality of its linguistic presentation (Rüthers 2003, 101). Law executives assess not only the circumstances of the case, but also work «with the language set out in the form of case description» (Podlech 1976, 171), that is legal text. Also, the court’s decision is set out in the written form of language, which is directly related to coming to judicial solution. Statement of legal actions in the form of language is important for legal interpretation.

German researchers in the field of legal studies D. Busse and R. Hartmann emphasized three main criteria that characterize relationship between language and law: 1) codification, 2) explanation, and 3) interpretation (Busse 1993, 11; Hartmann 1970, 47). By codifying they understand the binding legal elements, taking into account the language rules and the regulations of law. N. D. Golev complements this thesis, drawing a parallel between the language (language vs. speech system) and law (law vs. law enforcement practice). «As well as loose social norms can be legalized by canon law, spontaneous, natural changes in language can be transformed into recognized patterns» (Golev 1999, 14). «In many linguistic rules (in particular, codified ones) there are legal elements and they can be legally secured if public necessity occurs. But the principles of this attachment must be installed only in the light of language rules and regulations» (Golev 1999, 11-58). However, for the practice of law there are more important concepts - the meaning and interpretation of legal texts. Any legally significant action is a reflection of the language, that is «... a special case for the use of
a special language» (Busse 1993, 12). This confirms the thesis that it is not possible to perform a function of the law as a mechanism for regulating social norms without reference to a legally significant action through language.

For the rule of law to serve as a regulator of social behavior, it is necessarily embodied through linguistic expression. The great philosopher Georg Wilhelm Friedrich Hegel wrote: «it is the power of linguistic expression itself carries out what should be done. For language is the actual existence of pure self as self; in it there is sheer individuality of self-consciousness as such comes into existence in the sense that it is for others» (Hegel 1990, 48). That is why we can say that law gets its ontological status through language.

Legal norms, combined through the language into the text, are considered not only as a legal phenomenon, but also as the phenomenon of language. They are subject to almost all the linguistic rules specific in the language. Language is seen not as a phenomenon, but as an instrument for legal regulation of social relations. The impact of language on law is expressed through the exercise of the latter in a number of functions, the most important of which are the ontological and epistemological ones. Ontological language function implemented in law practice is the ability of linguistic signs to denote the law. The language not only allows legal norms to exist objectively, but it also provides the possibility of knowing the reality of the legal entities and through it further interpretation of law and law-making activities. Another important function of language in relation to the rule of law is its epistemological function. The epistemological function of language, accomplished in relation to law, is the ability to express the meaning of linguistic signs in order to define normative judgments of the state - the rule of law.

Prokofiev G.S. presented the relationship between the legal norm, its sign (sentence) and meaning, formed in the process of interpreting the utterance as a semantic triangle, where:

I - the norm-judgment itself (proposition);
II - a sign-sentence expressing this norm;
III - the meaning of the norm, i. e., its interpretation.

I-II is the ratio of the designation for which the sign (sentence) denotes an object (norm-judgment). As a result of this relationship, the normative utterance itself arises. II-III is the ratio of the expression when the interpreter establishes the meaning of the sign (sentence), taking the context (semantic environment) of a particular norm into account. The ratio I-III should be considered as an actualization of the concept of the denoter (meaning) of the legal norm, i. e., of the content that the addressee was able to understand (Prokofiev 1995, 14). The analysis of the scheme shows that it is
almost impossible to establish where “right” ends as a judgment and “right” begins as language. Both these components are present in each presented norm of I-III, which is an affirmation of the inseparability and complementarities of language and law. He also argues that “the interpretation is aimed at establishing the real meaning of legal provisions and expressed the state’s will in them,” while noting that “such will is embodied (and, of course, is subject to interpretation) in formally established written documents, having an official character and designed as a public expression of the will of the legislator. “(Prokofiev 1995, 80-85)

Language not only enables legal norms to exist objectively, but it also provides an opportunity for the entities to understand the legal reality and through it to further develop interpretation of law and lawmakers. The manifestation of another important function of language in relation to the norms of law, the epistemological function is seen. The epistemological function of language, exercised in relation to law, is the ability of linguistic signs to express the meaning of normative judgments of the state - legal norms.

Cognition is inseparable from the language, it is realized through the language; its results are formalized in language. “If knowledge were not a language, it could not be operated in a society. The object, the image of which consciousness creates, is not something one person can not transfer to another, its plan is in one head, but can be passed to another, if it has assumed a sensuously perceived form. Language is the form of the knowledge existence; hence knowledge itself always acts in the form of some language “(Kopnin 1974, 76).

Researchers of legal language describe two structural levels in relation between language and law. First, there is an objective law in language, which plays dominant role at this level in language and semiotic processes mediated by it. We can call this level objective, since such interaction between the two phenomena is predetermined by the very essence of language, its ability to denote and express common categories, making them accessible in knowledge and application fields. The second level is characterized by the fact that the language, the language situation, public relations arising in connection with the use of this language already appear to be object of legal regulation. This is the subjective aspect of the characteristics of the relation between law and language, because it is impossible to influence the internal structure of natural language by legal means.

Regardless of the particular approach, it is possible to single out a few specific features that characterize the relationship between language and law. They are: 1) consistency: both law and language are a specific system, i.e., ordered set of individual elements; 2) hierarchical: since both law and language are systems, they have mandatory in-system inherent hierarchy that is the
presence of certain patterns in the relationship between some elements and the others; 3) normative: both law and language are normative systems, establishing certain patterns of social behavior. The analysis dealing with levels of language-law relationship reveals their similarities, which probably can be explained by extra-linguistic factors: the scope of application, conditions of communication, common installation speech, and its main task. The function of the language itself, which is designed to fulfill each style, is superimposed on the regulative function of the law itself. As a result, the integrity of the language of law ensures the interrelation of all its functional levels; three functional styles of the language of law are distinguished: official-business, scientific, journalistic.

1) The official-business style is predominant for the language of law, because ‘serves’ two of its most important levels: A) the language of the law (and other normative acts) is a legislative sub-stratum, B) the language of other legal documents is its everyday and business lining. The language of laws in this case can be considered as a reference in relation to other levels, as there are increased requirements to its quality (accuracy, literacy, lack of law-making errors, etc.). However, with respect to other levels of law, the law has a special authority that leads to the copying or use of similar language facilities, as well as citing significant excerpts of the legislative text (hence, for example, the problem of reproduction, duplication of legal regulations. also distinguishes many subgroups of the language of other legal documents: the language of procedural acts, the language of administrative acts, the language of contracts, the language of documents compiled by ordinary citizens, etc. In terms of content, these documents differ from the law in their casual nature: they are always ‘tied’ to specific subjects, as a rule, they contain descriptions of actual circumstances. In addition, there are much more frequent ‘deviations’ from the literary language, as well as from the norms of functional style, i.e., criteria for the admissibility of the certain words use, expressions, forms.

2) The scientific style is characteristic of the language of legal doctrine. It penetrates into the text of the law (for example, in the form of legal definitions), in individual legal acts (the motivating part of the judicial decision), in the way of thinking and, consequently, in professional communication, including the field of legal education.

3) Columnist style largely reflects professional communication. It is no accident that education of a lawyer, as a rule, involves the study of rhetoric. “The profession of a lawyer is a public profession. Much of it depends on the ability to convincingly substantiate their position, build and present arguments. The desire to influence the listener is determined by the choice of linguistic means, the degree of imagery, emotionality of speech, and the level of its standardization“
Undoubtedly, in practice, the stylistic purity of this or that text turns out to be quite rare. Thus, law enforcement acts, treaties and various documents compiled by individuals often bear the imprint of a scientific, journalistic or conversational style (Shepelev 2008: 52-55) (depending on the level of education and professionalism of the person compiling the document). ‘The significant impact of legal doctrine on the law as a whole causes significant ‘blotches’ of the scientific style in all sections of the legal language’. In the court speech, as the researchers note, elements of all styles can be presented (Katyshev 2011, 90). The professional language used by lawyers in the process of oral communication, like any speech, does not exclude elements of conversational style, is saturated with the professionalisms which often violate language norms. This is due to the fact that ‘the lawyers’ meta-linguistic way of thinking includes the main features of the ordinary meta-language consciousness of all non-philologists’ (Lebedeva 2007, 52).

**Conclusion**

The analysis of existing approaches to vertical and horizontal aspects of the language structure of law allows us to conclude that both intra-linguistic and extra-linguistic factors can be the basis for structuring the language of law. In both cases it is necessary to take the accumulated experience of philological and legal knowledge into account. Thus, information on linguistic levels makes it possible to understand the structure and specificity of the language of law, to build a hierarchy of linguistic signs of legal technique. The subject area of law, on the contrary, attracts attention to features that differ in linguistic (for example, stylistic) specificity. The functional (horizontal) structure of the language of law takes possible areas of its application and the specifics of functioning at a certain level of the legal field of knowledge into account. From the point of view of stylistic originality, four sections can be distinguished in the structure of the language of law: 1) the language of normative legal acts, 2) the language of law enforcement and other individual acts, 3) the professional speech of lawyers, 4) the language of legal doctrine. These sections correspond to three classical functional styles that make up the stylistic basis of the language of law: formal, business, scientific and journalistic. Stylistic originality in the structure of the language of law can not be supplemented by its features, which are most often criticized by linguists:

- the use of legal terms that coincide with the words of the common language (for example, the terminological words ‘ownership’, ‘person’, ‘serviceman’);
- the use of indefinite expressions (‘public interest’, ‘generally accepted moral norms’, ‘base motive’, ‘a sinuous motivation’);
- the use of archaisms (‘hereinafter’, ‘forthwith’, ‘hereto’);
- compact style (complex nominal groups, passive constructions, agent disappearance, intricate syntactic constructions, ‘unseen’ complex sentences, etc.).

In this connection, we can draw attention to the fact that the causes of the problems of understanding between lawyers and non-lawyers in the legal and administrative fields are not in lexicon and language structures, but rather in the abstractness of special legal conceptual relationships. The study of legal terminology, legal linguistics as a science, along with legal rules, will help to further improve understanding between all the participants in legal communication.

The special feature that distinguishes the legal use of language from ordinary conversation is not that participants in a legal system act strategically while participants in an ordinary conversation act cooperatively; the special feature is that legal systems need institutions and processes for resolution of the disputes about the application of language that arise as a result of its context-dependence, and as a result of other pragmatic aspects of communication.
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