WHAT MAKES ENGLISH LAW LANGUAGE COMPLICATED?

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1. Introduction

During the past decade or so there has been growing interest among language teachers, producers of teaching materials, and, to some extent, even linguists towards the kind of variation in language that Crystal and Davy (1969) call register. The term refers to language usage which is determined, for example, by the subject matter, the speakers' profession, etc. The idea was first applied in science and technology, medicine, and other restricted areas, in which the production of course materials and readers has been going on for years now. Recently interest in this variation of language has extended to areas like administration, bureaucracy, and jurisdiction. The phenomenon seems to be world-wide; in Finland a committee on the language of bureaucracy has just submitted its report, and similar projects are going on in several countries. In the U.S.A. the Plain English movement has been influential enough to affect legislation in several states, with the result that statutes now require that simple and plain language be used in contracts, insurance policies, business agreements, etc.

In these efforts the target seems to be clear: the language of law and bureaucracy should be made simple and plain enough for the man in the street to understand. But how does one know what to simplify? What exactly are the linguistic properties that contribute to the alleged difficulty of law language? In the midst of this high enthusiasm for change, it is quite baffling to realize that very little research has been done on the particular properties of law language in English. The extensive review article by Brenda Danet (1980) mentions only five individual scholars or groups of scholars who have studied legal syntax. Even if the number has grown since then, it is amazingly small. But what have these few scholars found about law language?

When one tries to assess the difficulty of law language, one should make a distinction between difficulties of vocabulary and those of structure. Semantic difficulties (= vocabulary) often go together with difficulties that I would like to call conceptual. Even if we know in principle the meaning of a particular legal term, we may have incomplete apprehension of the legal principles and traditional ways of thinking connected with it. Such cases have been amply illustrated by Mellinkoff (1963), who discusses the history and usage of legal terminology in detail. As I am going to concentrate on syntactic problems in this paper, I shall mention only briefly some aspects of semantic difficulty.

2. Vocabulary

2.1. Technical terms

Law language contains a large number of technical terms (terms of art), which have acquired a specific and accurate legal meaning through centuries of jurisdiction. The situation is often made worse by the fact that the same words have different meanings in everyday usage. Thus action normally means 'doing things, a deed', but in legal language it is 'a legal process to establish a claim or obtain remedy' (Fi. kanne).

2.2. Foreign words

English legal vocabulary abounds in foreign words, mostly loanwords from Latin and French. Naturally, this feature is equally conspicuous in other special fields, such as science, technology, or literary criticism, but what is typical of legal English is the large number of technical terms and phrases which have preserved their original Old French or Anglo-French form. Thus there is laches 'negligence in the performance of a legal duty, delay in asserting a right', and oyez, oyez, oyez, which is a call by a court officer to command silence in court.

2.3. Mannerisms

Mellinkoff claims that legal language today is full of mannerisms that have found their way in gradually, over the course of centuries of legal practice. At first the purpose probably was a laudable one: to increase clarity, accuracy, and unambiguity. The result, however, has been a style which is, as Mellinkoff puts it, "wordy, unclear, pompous, and dull". Instead of resorting to short expressions, lawyers and legal drafters build up long, unnecessarily specific lists of words, as for example in the following:

(1) ... if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof. (US Law, 1965:244)

Incidentally, the above example also contains a word pair or binomial (discrimination or segregation). Binomials are clearly style markers in legal language, and they appear there five times more often than in some other prose styles (see Gustafsson, 1975a and 1981).

3. Syntax

Enkvist (1973) argues that in order to describe the style of a particular writer, or even of a whole genre, we need to distinguish those linguistic features in which the text under examination deviates from a norm. These features are the style markers of the text. In this method, the linguist is faced with two kinds of difficulties: how and where does he indentify the linguistic features that may prove to be stylistically significant, and what is the norm that they should be compared to?

It is quite surprising that in a language so extensively studied as English there is little basic statistical information available concerning the distribution of the elements of language in various genres. Even if some large corpora exist, e.g. the Survey of English corpus, they have not been published.[1] Ellegård (1978) probably gives the most information on some basic features. Therefore, when I present in the following some syntactic properties that are typical of law language, one must realize that most scholars have arrived at these features on an intuitive basis, without any comparative material or norm.

3.1. Sentence length and sentence structure in law language

Sentence length is certainly the feature of law language which is immediately conspicuous to the lay reader. In British Acts of Parliament, reading has been made somewhat easier by typographical means, such as subtitles, indenting, and the numbering of parts of sentences. In a study of the British Courts Act 1971, the average sentence length was found to be 55.1 words, which is considerably more than in any other genre. The average sentence

1. Statistical studies have concentrated on vocabulary, and several word frequency lists have been published, e.g. Kucera and Francis (1967), but they are of little use for syntactic studies.

length in scientific English is 27.6 words (Barber, 1962:23), and in journalism the corresponding figure is between 20 and 21 words (Marckworth and Bell, 1967:376-7). The longest sentence in Courts Act contained 179 words and the shortest ten words (Gustafsson, 1975b:9-12).

The long sentence has a long tradition in English legal language. In the early days of legislation and jurisdiction the drafting of all legal documents was in the hands of a small number of professional lawyers and scribes, as the majority of people were illiterate. The handling of the case in court was crucially dependent on the form of the plea. For the benefit of those drafting the pleas and other documents special form-books wre published, and these books were then copied by generation after generation of lawyers. This practice gave birth to the tradition which, among other things, demands that all relevant information pertaining to the same case has to be presented in one paragraph consisting of only one sentence. The more detailed and accurate the description became, the longer the sentence grew. Mellinkoff has a nice example from the 18th century; even in small print the sentence takes up almost a whole page and contains roughly 600 words (Mellinkoff, 1963:185-186).

So the tradition of the long sentence lives on in English law language, although there apparently are no legal restrictions against the division of the long sentences into shorter ones. But it is not the length of the sentence alone that contributes to the complexity of law language. We must also examine the structure of legal sentences. Let us take one example:

> (2) If a person to whom a pension has been granted under this section before he has attained the age of seventy-two in consequence of any such incapacity as is referred to in subsection (1)(b) above resumes the duties of a Circuit judge, the payment of the pension granted to him shall be suspended during the period of his resumed service, but at the end of that period the pension shall again be payable and be recalculated in accordance with subsection (2) above, and for that purpose the period of his resumed service shall be added to the period of his former service. (Courts Act 1971, Part III, section 19, subsection 3)

The sentence above exemplifies a strategy typical of legal sentences. It opens with a set of conditions, after which the obligations resulting from the fulfilment of the conditions are expressed, usually in a main clause. In other words, the form of the sentence is 'If X, then Y shall be (or do) Z'. In the above example the conditions are expressed in a long if-clause which itself contains three subordinate finite clauses with prepositional phrases. The prepositional phrases indicate the mutual relations between the

parts (under this section, in consequence of, in subsection (1)(b) above). The conditional if-clause is followed by three co-ordinate main clauses. The second main clause is introduced by but, thus showing that the information conveyed by the last two clauses is contrary and additional to that expressed in the first main clause.

The total number of sentences in the Courts Act 1971 was 289, divided into 827 clauses. Of the clauses 396 were main clauses and 431 subordinate clauses, which gives an average of 2.86 clauses in a sentence. When the sentences were tabulated according to the number of main and subordinate clauses, the complexity of sentence structure in legal language became apparent. Only 21 % (60 out of 289) of the sentences were simple, i.e. consisting of a single main clause; and 27 % of the sentences contained only main clauses. The corresponding figures in scientific language are 41 % and 54 % (Barber, 1962:23-4). Among the 300 or so sentences in the text of the Act, 45 consisted of at least two main clauses and two subordinate clauses. The most complicated sentence included two main clauses.

Recognition and understanding of the structure of a long and complicated sentence does not only depend on the number of words and clauses, but also on the degree and type of embedding. According to some studies, 'left-branching' and 'nesting'[1] constructions load our short-term memory more heavily than 'right-branching' constructions and are thus more difficult to understand (cf. Schlesinger, 1968; Forster, 1974). Even if we do not know in detail the proportions of various types of embedding in law language, example (2) shows quite clearly that left-branching and nesting constructions are by no means rare in legal syntax.

In the United States Veda and Robert Charrow studied how well ordinary jury members understand the standard instructions given by the judge. They allowed their subjects to listen to the taped instruction twice, and then asked them to produce an oral paraphrase. The results proved beyond doubt that people understood instructions written in traditional law language very poorly. If a completely correct answer is given the value 1, the average result in the population was 0.39, i.e. roughly one third of the instructions had been understood properly. The Charrows then rewrote the instructions, avoiding constructions that a closer analysis had shown to be diffi-

[1] In a left-branching construction the embedded clause precedes the matrix clause (If it rains, I won't go out), while in a nesting structure the embedded clause is in the middle of the matrix clause (The book I bought yesterday is an interesting one).

cult. These included passives, nominalizations, as to phrases, difficult words, etc. Left-branching and nesting constructions were left out, and right-branching sentences used instead. In most cases there was a dramatic improvement in the results, although the percentage of improvement varied between 2 % and 100 %. The tests also produced an interesting side-product, as it was discovered that the so-called readability indices or formulae do not measure the real diffulty of a text in a reliable way. Actually, in many cases the index obtained with a readability formula and the scores obtained from the empirical tests gave opposite results. The incompatibility of the two methods is probably due to the fact that various readability formulae only take into account the number of syllables, words, and clauses in a sentence, but not the structural complexity, although it is this which seems to be the decisive factor in understanding (Charrow and Charrow, 1979).

3.2. Clausal structure in law language

The complexity of legal sentences can be determined in terms of sentence length and sentence structure, as has been done above. But that is not enough, for the internal structure of individual finite clauses may further complicate the situation. In the following paragraphs I shall discuss some clause-level features typical of law language.

3.2.1. Nominalizations. Most scholars of legal English have drawn attention to the highly nominal character of this register. The nominal sentence elements (subjects, objects, and adverbials) generally consist of deverbal nouns or non-finite verbs (participles, gerunds, and infinitives). The following examples offer several instances of the nominal tendency:

(3) The trial of a person committed by a magistrates' court -
(a) shall not begin until the expiration of the prescribed period beginning with the date of his committal, except with his consent and the consent of the prosecutor, and
(b) ... (Courts Act 1971, Part II, section 7)

(4) Failure of recollection is a common experience, and innocent misrecollection is not uncommon. (Charrow and Charrow, 1979: 1345)

Participles typically function as postmodifiers to their head nouns, but they can themselves be further modified by other similar modifiers, as can be seen in example (3). This kind of multiple modification makes the noun phrases quite complicated. Charrow and Charrow (1979:1323) call it whiz-deletion (= which is), assuming that it makes understanding more difficult. On the other hand, one could also argue that an amplification of post-

modifiers into complete relative clauses would complicate the structure of the sentence even more.

3.2.2. Prepositional phrases. The large number of prepositional phrases in law language is probably connected with nominalizations. As it is impossible to express the relationships between various nominal constituents and their modifiers at clausal level in the form of finite clauses, the draftsmen have to resort to prepositional phrases. The following section contains several examples of this phenomenon:

(5) A person in custody in pursuance of a warrant issued by the Crown Court with a view to his appearance before the Crown Court shall be brought forthwith before either the Crown Court or a magistrates' court, and if he is brought before a magistrates' court -
(a) the court shall commit him in custody or release him on bail until he can be brought or appear before the Crown Court at the time and place appointed by the Crown Court,
(b) ... (Courts Act 1971, Part II, section 13)

In this connection attention could also be drawn to the group of adverbs with the initial elements here-, there-, and where-. Their use in everyday language is definitely archaic, but law language abounds with hereafters, herewiths, theretofores, whereupons, and many other combinations. As Mellinkoff puts it, "most non-lawyers are exposed to these archaisms on infrequent occasions. For the lawyer they are daily bread" (Mellinkoff, 1963:13).

3.2.3. Placement of constituents in the clause. As regards the positions of the main constituents, S, V, and O, law language cannot deviate from basic English syntax, but it is worth having a look at some other elements. The Adverbial is a fairly mobile sentence element in English. As it is the ideal in legal language to express all factors and circumstances affecting the case in question, the number of adverbial phrases in legal sentences is quite high. Several scholars have noted the number and position of adverbials in law language. Crystal and Davy remark, "It is perhaps the adverbials which contribute most to the distinctive quality of the sentences." They mention also that adverbial words and phrases are placed where they will best serve the demands of unambiguity (Crystal and Davy, 1969:203-5).

Charrow and Charrow apparently do not agree with Crystal and Davy in the point of unambiguity in adverbial placement, as they prefer to call these instances "misplaced phrases". They claim that these misplaced adverbials (and sometimes other phrases, too) direct the hearer's or reader's attention to a wrong point in the sentence. They give the following example:

(6) If in these instructions any rule, direction, or idea is repeated or stated in varying ways, no emphasis thereon is intended by me...

The results of the experiment showed that the majority of people did not realize that the proper subject of the sentence was any rule, direction, or idea. The Charrows do not, however, discuss the possibility of ambiguity if the phrase had been placed in its normal postverbal position (Charrow and Charrow, 1979:1323). In my own investigation of the Courts Act I counted all phrases and clauses which had five words or more and which had been placed either between the subject and the first verb or between the auxiliary and the main verb. This was done irrespective of the function of the insertion. The chosen positions are such as can normally be filled by an adverb or a short adverbial phrase modifying the whole sentence (cf. Quirk and Greenbaum, 1973:207-242, 322-330). As a matter of fact, I did also include long postmodifiers of the subject, although they could hardly be placed anywhere else. The total number of these long insertions was approximately 200, and 40 of them were placed between the auxiliary and the main verb. The latter cases are more interesting than the postmodifiers of the subject. They usually modify the main verb, but if they were placed in the normal postverbal position, their scope and head word might be misunderstood. The inserted phrase is typically a prepositional phrase or a participial clause expressing the conditions or the manner of the verbal action. Let us take two examples:

(7) The Lord Chancellor may, with the concurrence of the Minister for the Civil Service as to numbers and salaries, appoint such officers and other staff for the Supreme Court ... as appear to him necessary ...
(Courts Act 1971, Part IV, section 27)

(8) The costs dealt with by rules under this section may, where an appeal is brought to the Crown Court from the decision of a magistrates' court, or from the decision of any other court or tribunal, include costs in the proceedings in that court or tribunal.
(Courts Act 1971, Part VI, section 50)

Thus it is the case that legal sentences are often composed of constituent strings not occurring in everyday language.

Law language strives for exactness and precision, which are properties that are supposed to improve understanding. When it is usual for laymen to misunderstand or not understand at all the meaning of the long, though exact, sentences, we must look for an explanation. It may lie in the fact that the long insertions and modifiers bring the main sentence elements so far apart from one another that the reader cannot grasp the intervening information, as he is trying to find the following primary constituent.

4. Other properties of law language

4.1. References

The above discussion on law language has concentrated on the syntactic structure of sentences and clauses. The textual properties of law language have hardly been touched on at all in linguistic studies; only some general observations have been made on the scarcity and stereotyped nature of intersentential references. The sentence in legal language is a highly independent, autosemantic entity, whose interpretation is not dependent on context. By far the most common way of reference between sentences is repetition. Quite often the repetition takes place in exactly the same form, but the repeated noun phrase can also be premodified by pronominal words like such, the same, said, and that. In the text of the Courts Act 1971 there was not a single reference outside the sentence by a pronoun, but within the sentence the use of anaphoric pronouns is quite common (see ex. 5). In some sense the adverbs beginning with here-, there-, and where- could be counted as instances of pronominal reference. They can be used either internally, to refer to the content of the message, or externally, as reference to the organization of the text. In addition to the examples mentioned above (p. 10), this group includes words like aforesaid and thenceforth 'from that time onward'.

4.2. Worthless doubling vs. exactness

In connection with the semantic difficulties I mentioned binomials, which occur in law language five times more often than in novels, journalism, or popular scientific style (cf. p. 25). I will not deal with the etymology or meaning of these word pairs here, but it has been suggested that they, too, make law language difficult to understand. This is mostly due to the fact that the synonymity or near-synonymity of these terms produces worthless doubling. Legal drafters and lawyers defend binomials by claiming that instead of confusing they increase the exactness of law language as even small differences in meaning will be taken into consideration. The following example reflects the profuse use of binomials:

(9) Without prejudice to any powers exercisable in that behalf, the chief officer of police may give such directions with respect to the movement of, or the route to be followed by, vehicular traffic, during such period, as may be necessary or expedient to prevent or mitigate congestion or obstruction of traffic, or danger to or from traffic, in consequence of the holding of a race or trial of speed authorised by or under regulations under this section, including a direction that any road or part of a road specified in the

direction shall be closed during any such period to vehicles or to vehicles of a class so specified.

(Road Traffic Act 1972, 194)

5. Conclusion

In this paper the term law language has been used to refer to written language only, either in legislation or in other legal documents, such as contracts, insurance policies, jury instructions, etc. Legal language may, however, also be used in spoken form. In Anglo-Saxon countries, trials in court centre around the oral examination and cross-examination of both parties by the counsel. Their use of law language has specifically interested some ethnomethodologists (see the bibliography by Danet, 1980). What has been said above about the difficulty of law language need not directly apply to spoken legal language.

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