Law and Linguistics: Is There Common Ground?

William D. Popkin
LAW AND LINGUISTICS: IS THERE COMMON GROUND?

WILLIAM D. POPKIN*

What can lawyers learn from linguistics? Here are some thoughts, focused on statutory interpretation, and suggested by the Law and Linguistics Conference.1

It is possible that linguistics and law people have such different ideas of language that they cannot get much help from each other. Lawyers do not view words as scientific data, but as things that occur in a context which nourishes their meanings. The following comments and questions seemed of little interest to the linguistics group. If that is so, it suggests something about how useful an interchange between the two disciplines would be.

1. Audience

Lawyers are very concerned with the audience for a text. For example, a statute has several possible audiences: technical vs. lay; historical vs. future; lawyers vs. people affected by the statute; the interpreting judge. Is there anything in linguistics that determines who the audience for a document is?

2. Context

I am sure linguistics experts agree that some context is needed to understand all language, but how much context (past, present, and future) can be considered before you are no longer talking about the meaning of language? I thought that “pragmatics” had something to say about this, but the linguistics experts seemed much more concerned with syntax.

3. Intent

What is the role of the author’s intent in determining the meaning of language? I do not mean secret meanings, but the author’s intent about textual meaning. The House of Lords recently decided that authorial intent that “cost” mean a “marginal” cost prevailed over what the Law Lords

originally thought the text meant—which was “average” cost.2

What specific historical facts limit the meaning of a text—that is, how
does a linguistics expert view the debate between original intent versus
original meaning? I do not see how original intent can be ruled out a priori
as one of several plausible theories of what a text means.

4. Language genres

How can the linguistics group duck the issue the lawyers kept raising
about law language as a type of language? Put differently, is not law a
genre with its own linguistic rules, at least as far as semantics and
pragmatics are concerned? Indeed, contracts, wills, treaties, constitutions,
and statutes may each have their own rules.

5. Empirical data

There is sophisticated empirical work on how people understand
language, which counters simplistic claims about “plain meaning.” Can it
be extended in the following ways?

First, how much context would people routinely consider to determine
meaning? For example, how would ordinary folks determine whether
“representative” includes elected judges?3 Would people not want to know
a lot about the civil rights statute in which the word appeared? And, more
broadly, would they not want to know how meaning is determined in
specialized areas of usage, like law? If so, that would counter the
implication, which I detect among the linguistics group, that people view
language as a storehouse of meaning which can be borrowed for use in
particular settings.

Second, lawyers may be asking for the wrong kind of help from
linguistics experts. We seem to be asking for help in finding plain or
ordinary or literal meaning (is an ambulance a vehicle), when we really
want to know what meaning a text can bear. A statement that texts can
bear a meaning is a statement of fact that should be as testable as any other
statement. An answer might help judges because it is acceptable law talk
when deciding hard cases.

My guess is that linguistics experts, seeking “scientific” meaning, would
be unwilling to explore some of these questions. The linguistics group (at

least *this* group) sounds a lot like the March Hare who admonishes Alice to say what you mean—with the implicit assumption that a science of language can help Alice do just that. The lawyers do not exactly agree with Alice's response—which equated "I mean what I say" with "I say what I mean"—but lawyers view themselves as operating somewhere between these two extremes, trying to get meaning out of what someone says but not limiting meaning (always) to what was said.