

Introduction

Tuesday, 5 March 2019 2:19 PM

Introduction

All happy families are alike, every unhappy family is unhappy in its own way - Tolstoy
Reading - an act that establishes the force of the law in relation to particular people and particular audiences

- The language of law is nothing if it doesn't have force
- Sometimes that force comes with direct, explicit references

Contempt of court case

- Son solicitor: "And Justice Beach has got his dick on his hand"
- Does this constitute contempt of court?
- What is in dispute?
 - Rule of the court
 - Authority of the court
- Contempt established through interpreting what was said (judge is a wanker)
 - Contempt of the court, not just of the judge themselves
 - It is offensive, but is it contemptuous?

1. Form/style/genre of the text
2. How the language constitutes contempt of the court
3. Question of interpretation

Shakespearean references in Oscar Pistorius and Uber cases

- "A human tragedy of Shakespearean proportions"
- "The lady doth protest too much, methinks"

Core elements

1. Topic
 - Text and languages of law
2. Particular text
 - The specific judicial judgement
3. Skill
 - Close reading of judgements
4. Focus
 - Attention to the language through which law presents itself, is known, and on a good day is understood

Introduction to the variety of legal languages

What does the language of law express?

- "It is in the nature of language to be overlooked" - Emile Benveniste
 - It is not an instrument, but something that shapes the way we think, do things and conduct ourselves
 - It is the language that makes law creative, and the language that makes the law limiting
- "'Jurisdiction' concerns the speaking of law - by law and about law - in a place where legal speech is warranted" - Marianne Constable
 - We can learn from language, language talks about itself all the time, as does law
 - Delineates the parameters of law
 - Self-referential enterprises
- "The language of the law is historically much better fitted to expressing the power or authority of the law" as opposed to regulating the material things - Peter Goodrich

Variety of idioms that make up legal English

Law uses a distinctive language

- A particular way of speaking and writing, seeing and hearing
- Its preferred way of reading the languages and texts of law

A plurality of national idioms from which common law is derived

- The common law is based in Latin, Norman French and English

Doing law in different voices

- In international law contexts
- Indigenous and non-indigenous languages

A professional lexicon

Understanding material texts of law

The second amendment of the US

- Interpreted as an individual's right to possess as many firearms as possible; or as an individual's right to be protected by an armed militia
- If read in accordance to Latin grammar (used by the founders who wrote the amendment), the first clause is absolutely central to understanding the second
 - E.g. "the teacher being ill, the class was cancelled" - the class is only cancelled only in this one instance because the teacher is ill, not that class is cancelled everyday indefinitely
 - Therefore, the latter interpretation is actually correct, as the first phrase controls the meaning of the second phrase
- **Key point:** the meaning of law comes not only from (Latin) words, but also in its (Latin) construction
 - The text of the law remains Latinate in its structure, organisation and pattern
 - We must pay attention not just to the words on the page, but to how they are organised

The preamble to the Yarra River Protection Act 2017 is written in Australian legal English and the Woi-wurung language of the traditional owners of the Yarra River/Birrarung

- Speaks in multiple voices/across languages

What is a legal text?

- Not restricted to speaking or writing, but extends to any media of expression - even how we dress
 - Constitutions and treaties
 - Legislations and books
 - Architecture and statues: lady Justice
 - Wigs and gowns
 - Televised hearings or trials
- "Each genre of discourse has its own distinct topics and terms, as well as modes of dress, sites of appearance, and proper manners of elocution or delivery" - Peter Goodrich

From the body to the word to speech

- Early medieval trials were oracular/divine (organised to give us a definitive pure guilt or innocence through divinity, not necessarily religious)
 - Truth manifested directly on the body - drown, burn etc.
- Divine justice gave way to its human equivalent - the trial by argument/reason
 - Guilty and not guilty, not longer guilty and innocent
 - Eliminated god
 - Due to growth in literacy
 - Justice becomes a language game

- Speaking and arguing for a cause which is then decided by a judge
- A movement of truth to certainty
 - Lose conception of truth, instead talking of certainty
 - Faith in the ability of language to dispel and settle arguments definitively
 - At which point truth emerges
- Primary source of the common law is unwritten
 - Arguments are to be settled by speech
 - Speech is authentic, writing is the fallen or degraded form of communication
 - Trials are the oral processes in which pleaders speak their causes in the presence of one another and in the presence of the judge who is to pronounce on the correctness of the discourse
- Nonetheless, there is a lot of writing involved
 - The judges already have the skeleton of lawyers' arguments before them (Japan example)
 - Even judgements are written first, then summaries/portions are read aloud
 - Reading *from* writing
 - Not speaking then having transcriptions recorded

Legal texts express themselves as a legal and political community

- Constitution: the nation is an imagined political community
 - Materiality:
 - Double language
 - Killed animals for the calf skin (printing material)
- Books of law: legislation
 - A text that *gives* the law
- Statutes
 - Dramatic rise in the numbers of statutes in Australia

Summary

Legislative answers to problems appear to be an ubiquitous approach to both the practices of law and to legal responses to social problems

Quick recap

1. How law says what it says is as important as what it says
 - Language *performs* law
2. Materials of legal texts
 - Bodies
 - Speech (trials)
 - Writing (statutes)
3. A change is afoot
 - From legislation to procedure/regulation
 - From graphic/written to visual to digital

Visual and digital representations of law

Creation of graphics that demonstrate Australian statutes

Paper sculptures created from law texts

Lawyers destroying documents

- McCabe vs British American

Law reform infographics - UK

- "Easy read" about changes to the definition of manslaughter
 - The public/community
- "Hard read" was geared towards academics and lawyers

Photographs from the evidence are included in judgements

We look at the writing of judgements, so writing itself is a visual regime

Audio-visual recordings of court proceedings

Most judgements are no longer presented in the official form, but rather known as unofficial reports digitised on Australasian Legal Information Institute

- Increased access via digitisation

Law is then confronted with digital problems

- E.g. Google defamation case

Davey proclamation

An iconic document in Australian history, characterised as a cartoon that was pinned to trees in Tasmania in the 1830s

- Posted as a message to Aboriginal people about law
- Themes
 - Rule of law
 - Equality

Manderson reminds us that when looking at an image, we tend to read top to bottom or left to right

1. We are all abstractly equal as individuals
2. Equality in the form of making an agreement
3. Rule of law in principle to rule of law in action
 - Applicable from both perspectives
 - Yet the white people are always the executioners of law

Use of images because the intended audience is illiterate (by definition of English)

Feedback: key takeaways

Codes, constitutions, books and statutes, provide a set of **texts of legal authority**

- Primarily written
 - Transcripts, judgements, statutes etc.
- Material support changes
 - Bodies, speech, paper etc.
- Expressing values *of* law as much as values *in* law

Written texts perform law in different ways

- Constitutions make, contracts bind, declarations state the way that things are, statutes legislate, procedures regulate etc.
- Judgements reason and judges provide reasons for a decision
- Treaty

The text is **not only written**

- Spoken
 - Word, pictorial, algorithmic
- Venerable tradition of visual images
 - Use of photos in evidence
 - Use of paintings to communicate law and its authority

What do the texts of law tell you about the languages of law?

- The plurality of legal languages
 - Legal idioms in common law
 - Forms of legal texts
 - The organisation/structure and the use of the languages of law
- Some languages of law have been dominant, which tells us about the ways legal language has given shape or pattern to specific communities
 - Foundational documents e.g. Constitution in English
 - Law is a professional language, a community of interpreters