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## Editors' Note to Chapter 2

One of the most persistent tropes in the field of language and law is the densely loaded expression that law is a 'profession of words'. The influence of that phrase stems from Mellinkoff's use of it as an epigraph in *The Language of the Law* (1963); and its intricacies have been systematically explicated in Constable (1998). 'Words', when used in legal contexts, can mean anything from lexical items independent of context (lemmas) through to particular tokens of a word used in a given context; 'words' is also used, also vaguely, to mean part of or a whole utterance or text. Ainsworth, this volume, also draws attention to how the 'profession of words' phrase may bear some responsibility for more attention being given in current research to legal vocabulary than to other linguistic structures such as syntactic organisation. Durant's chapter is a study of the established 'vocabulary' kind; but it goes beyond description of the legal lexicon into analysis of the potential impact of semantic variation in people's use of general legal terms on public understanding of and attitudes towards law.

Durant argues that words including *law* itself, *justice*, *authority*, *rights*, *rule*, *regulation*, *legitimacy* and others form a loose but distinctive sub-field within the English lexicon: a field made up of general words naming or describing law which together conceptualise what law is and how it fits into the wider field of social relations. Such words may on some occasions of use, he argues, be treated as legal terms of art. But even in their legal settings – especially across different jurisdictions – they show considerable indeterminacy of meaning, especially polysemy, vagueness and contestability. Durant's chapter explores which words it is useful to think of as being in such a cluster of core, general terms of law. He then describes what is meant in this

context by polysemy, vagueness, and contestability and, through an extended reading of the history, semantic development and current use in different meanings of the word *law*, shows how such considerations can affect what we understand as ‘law’ in legally and politically relevant ways.

In a recent volume celebrating the work of the late Peter Tiersma (along with Mellinkoff, perhaps the other most influential figure in modern linguistic work on legal language), the US jurist Frederick Schauer assessed what has been accomplished in the study of legal vocabulary and what remains to be done. He concluded, ‘The work that remains to be done, however, is that of analysing the relationship between the conventions of the technical and the conventions of the ordinary, and to do so in a way that recognises law’s parallel needs to speak to itself and at the same time to speak to those outside it.’ (Schauer, 2015:38). Durant’s chapter responds to the challenge posed by that assessment.

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## Seeing Sense: The Complexity of Key Words That Tell Us What Law Is

*Alan Durant*

*The nature of law, the rule of law, legal order, law and order, rightful, basic human rights, rights and responsibilities, against natural justice, social justice, the interests of justice, just and equitable*

There is an interesting group of English words and expressions – illustrated above by sample phrases clustered around *law*, *right(s)*, and *justice* - which are generally recognised as communicating important attributes of what we call ‘law’. Those attributes (including authority, legitimacy, justness, etc.) are relevant whether we are thinking of law as an abstract entity (cf. *natural law* or *positive law*), as a body of doctrines or institutional system (cf. *the law*, *legal order*), or as a singular realisation (*a law*, *legislative act*). For centuries arguments about such attributes have complicated debates about what distinguishes ‘law’ from coercion and other forms of exertion of power, from custom and belief or retribution and revenge, and from moral judgement. So the existence of a cluster of ‘key’ expressions<sup>1</sup> which lexicalise those attributes can seem an elephant in the room in efforts to understand ‘the language of law’.

What I will call in shorthand ‘law-designating’ words including *law*, *right(s)* and *justice*, as above (plus *equitable*, *authority*, *sovereignty*, *legitimate*, *rule*, *order* and *regulation*, and some others introduced below) are used in various ways in different contexts. Some are used in legal rules. Some combine with other words to form stable phrases, and among those phrases some lend their name to a legal principle, doctrine or ideal (e.g. *legitimate expectation*, *the rule of law*). Most can also be found in political, diplomatic, journalistic and scholarly comment on the place and significance of law in society. The same clustering of expressions surfaces in conversation among people subject to law but not professionally involved in making, applying or studying it. In the last-mentioned of these domains, general

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<sup>1</sup> The phrase ‘key expressions’ here alludes to established use of the term ‘keywords’. Analysis of such keywords in English is usually associated with the work of Raymond Williams (1976/1983), who started to research such words by collecting usage of a cluster of five words (*industry*, *democracy*, *class*, *art*, and *culture*) that suggested themselves as ‘key points’ from which he could draw ‘a map’ of ‘changes in life and thought’ he was seeking to explain in *Culture and Society 1780-1950* (1958:13). Williams planned to publish entries for these and other such words as an Appendix to that book but later published instead a separate book: a ‘vocabularly of culture and society’ consisting of over 100 words (for context and discussion, see Durant 2006). My involvement in research based on Williams’s approach in the ‘Keywords Project’ ([keywordsproject.pitt.edu](http://keywordsproject.pitt.edu)) has shaped this chapter; though the specialised, normative treatment of meaning in law leads to substantially different lines of argument.

public usage or ‘ordinary language’, such words and phrases offer vernacular versions – frequently dismissed as bowdlerised versions – of what law is and what values it stands for.

In ‘non-legal’ settings among the situations just described, expressions which form the general terminology of law are commonly used with meanings or nuances that differ, sometimes markedly, from their conception in law. An *order* may be a meal, *authority* a generalized enemy, and *law* something Kafkaesque; *sovereignty* can become a vague political football; and *the rule of law* may be an established status or a continuously tested process or aspiration, or even taken to be something resembling *law and order*. Are such uses nothing more than misuse of technical terms and ignorance – hence ‘bowdlerisation’? Lawyers mostly say so, emphasising the separation of law from other kinds of discourse as a specialist field with its own terminology, mode of reasoning, and rules. Many non-lawyers, on the other hand – and among them some philosophers – foreground how vague or ambiguous many of the core terms in and about law are. Is it possible that these two opposing views are not completely at odds with one another, and that the property of semantic indeterminacy – an incompleteness or failure of words to signify a particular meaning - is functional in some way analogous to how vagueness has been shown to play particular roles in legal drafting and statutory interpretation (Endicott, 2000; Waldron, 1994)? This essay considers the possibility.

The idea that a social purpose might be served by complexity, rather than precision, in words whose task it is to tell us what law is seems odd. But if true the idea could be significant as regards the ‘language of law’, because the words and phrases in question are not generally considered to be uncertain but rather viewed as having settled meanings, even when there is profound disagreement as regards what those meanings are. As is often pointed out, *law* has its etymological origins in something being ‘fixed’ or ‘laid down’; adjectival *right* develops from ‘movement in a straight line, direct, unswerving’; and *lex* and *legal* are traceable controversially either to ‘something tied or bound’, from Latin *ligare*, or ‘something written down to be read’, from Latin *legere* (Cassin, 2014). In the absence of a prescriptive language Academy, however, by what authority could meanings for such words be prescribed for situations where they are not employed as specialised legal terms but rather, as most of the words to be discussed have been for centuries, used as active political and general expressions?

The relation between legal and other meanings associated with the same words in different contexts merits investigation, despite the significant difficulty that the questions which surface are interdisciplinary. The issues are linguistically interesting

because of the questions about semantic variation and norms they raise; they are also legally interesting, in appearing to engage the principle of legal certainty. The ‘public understanding’ aspect of that principle requires words used in law to be definite and clear in telling us what the law is, so that citizens can organise their affairs in a way that does not break the law. Sensibly, but leaving important problems unresolved, the principle only expects such words to tell us what the law is, not what law is.

Proper analysis of semantic variation in the meaning of general legal words calls for investigation of each word, as well as of the semantic relationships between them. Below there is scarcely space even to mention them all. But there are general points worth making even if those points can only be illustrated by brief examples. Subject to these limitations, this chapter probes how the distinction used in dictionaries between ‘general’ and ‘specialised’ usage relates to law in a highly distinctive way. It examines aspects of semantic indeterminacy in some core legal expressions that follow from their polysemy, vagueness or contestability, and asks whether, on account of these characteristics, such expressions may in some way function as a conduit for, rather than as a blockage to, legal-lay communication. If so, the chapter concludes, questions arise regarding how (and how far) public participation in law is made possible by what is communicated, given the fundamental asymmetries of power and understanding of law involved.

### **Context: Language of Law, Theories of Law**

It is counterintuitive that the most general words which name and describe law might not have been exhaustively discussed already. A substantial body of scholarship exists on legal concepts and their associated terminology, as well as on representation of legal words in specialist dictionaries (Mac Aodha, 2014). Introductions to legal pedagogy, in English, often acknowledge the many meanings of *law* (though less often differences of meaning between *law* and cognate words in other languages). In this section I argue that, despite these considerations, not enough attention has been given to the meaning of general legal words. To develop this point, I comment first on two fields which might be expected to examine such meanings but seem not to in any detail: linguistic studies of legal vocabulary; and discussion in Anglo-American philosophy of law on how word meaning contributes to legal concepts.

#### *Linguistic Approaches to Legal Vocabulary*

Work in linguistics is mostly descriptive, including studies concerned with vocabulary (lexis). Where analysis is *not* descriptive, linguistic studies are still only rarely prescriptive (prescriptive approaches typically fall outside the scope of linguistics as a discipline). Rather, linguistic studies that go beyond description generally aim to be explanatory (e.g. by accounting for aspects of language acquisition or, at a higher level, the human capacity that makes language acquisition possible). From the outset, therefore, there is typically a divergence of purpose between linguistic and legal approaches to what words mean.

The central descriptive task of linguistics consists in examining structures and patterns in language use as they actually occur rather than as they should be. Such features, including word meaning, can be described ‘synchronically’ (as contrasts within a given language system at a particular point in time) or ‘diachronically’ (concerned with historical change). Either approach can have a comparative dimension, examining contrasts between different languages or contact between them such as borrowing of loanwords.

Linguistic studies of ‘the language of the law’ often combine historical and synchronic perspectives, and tend to emphasise the distinctiveness, even peculiarity, of legal language as a variety (Mellinkoff 1963, Crystal and Davy, 1969, Tiersma, 1999). Peculiarities noted include complexity of sentence grammar in operative legal documents, minimal use historically of punctuation or structure mapping by means of paragraphs and sections, a preponderance of vocabulary of Romance origin, persistent archaism, and use of ‘binomial pairs’ (i.e. doubling of near-synonyms such as *aid and abet*, *cease and desist*, *last will and testament*, often collocating words with origins in different languages; sometimes also triples, such as *null, void and to no effect*). More recently, legal language has been shown to be a suitable topic for corpus linguistic investigation (Coulthard and Johnson, 2007). Comparative studies are less common. But Mattila (2013) describes legal use of language in a number of European languages and assesses the legacy of Latin in legal systems developed in those languages. Cassin (2014) traces linguistic and conceptual interaction between languages and considers English expressions such as *authority, justice, law, liberty, power*, and *the rule of law* - along with their counterparts in other European languages – to be ‘untranslatables’: the words do have cognates, but those cognates are embedded in different formations of ideas as well as different institutions and legal systems. Also concerned with cross-linguistic comparison, Wierzbicka (1997, 2006) has mapped semantic overlap and differences for various cultural fields onto roughly 60 postulated semantic primitives of a ‘natural semantic metalanguage’, or NSM (her analysis of *reasonable*

being the most relevant legal discussion; Wierzbicka 2006). As has been suggested above, however, comparative analysis is important within jurisdictions as well as between them, especially historically. Any account of legal English vocabulary, for example, must assess the changing role played in its development by different languages including Norse, Anglo-Saxon, Anglo-Norman, and Latin.

Linguistic discussion that is concerned particularly with the meanings of words as used in law has directed its spotlight less on words naming or describing what law is than on challenges faced by judges in statutory construction: how meanings are attributed by courts in applying laws that use ordinary words to establish legal categories. Hutton (2014) analyses numerous cases. Solan (2010) and Carston (2011), in different ways, evaluate how judicial approaches to attributing meaning (for instance based on maxims, Scalia and Garner, 2012) relate to natural language processing as understood in linguistics and psychology. Durant (2010) explores how courts interpret words used in utterances other than those found in the wording of legal rules: words which become the crux of a legal dispute because of their contested occurrence in media discourse or communication online.

The focus of the present topic, however, on general terms for law which can bear varying meanings across different domains of use, has received little attention. Central to the topic, as with statutory interpretation but with different emphasis, is the dichotomy with which this section began: between descriptive and normative purposes in both the use and analysis of language. ‘Normative’ purposes, in this context, must be clarified as operating at several levels. First, there is normative with respect to behavioural outcomes (since operative legal language confers rights, imposes obligations and guides action, and so performs a socially directive function; linguistically, commands, use of modals such as *ought* or *should*, and implied meanings all play a part). Second, there is ‘linguistically normative’ (concerned with which words should be used, for example to comply with courtroom etiquette, and how words should be construed in legal cases). Both these senses need then to be distinguished from so-called ‘normative legal theory’, which is interested in what law could or should be and stands in contrast to two established ‘analytical’ approaches: descriptive legal theory (e.g. doctrinal studies investigating regularities in a particular legal system) and explanatory legal theory (e.g. Marxist accounts of how law serves an ideological function in social structure). Although in legal discourse different levels of normativity typically reinforce each other, linguists bring a descriptive and explanatory mind-set even to normative language. It is of course possible to examine linguistic normativity descriptively (Bartsch, 1987); but understanding the normative constraints on

language use in law requires a level of familiarity with legal concepts and procedures that can discourage linguistic researchers, especially if they feel unsympathetic in principle to normative linguistic judgement.

### *Words and Concepts in Jurisprudence*

The possibility that core words for law have not been exhaustively examined in jurisprudence seems still less likely. But there are grounds for thinking it may be the case in works that treat explication of verbal meaning as largely irrelevant to conceptual analysis at the level required of general theories of law. As Finnis puts it in his account of legal theories early in *Natural Law and Natural Rights*,

Jurisprudence, like other social sciences, aspires to be more than a conjunction of lexicography with local history, or even than a juxtaposition of all lexicographies conjoined with all local histories. (Finnis 1980:4).

Works of Anglo-American jurisprudence by theorists such as Dworkin or Raz, like Finnis, tend to construct their arguments through critique, use of hypothetical scenarios, and practical reasoning. In doing so, they show only passing interest in the meaning of words. Ultimately this is the case with Finnis, too, though his writing is often more attentive to verbal nuance - before dismissing it as irrelevant:

I use the concept of justice with all the breadth that that concept has had in academic discussion since Aristotle first treated it as an academic topic. That is to say, I set aside all the special and limited shades of meaning that the word *justice* may have acquired in common parlance... We must let our discussion be ruled by the substantive questions we have in mind (about what is reasonable and unreasonable in human conflict), not by the conventions and associations of our language. (Finnis 1980:161-2).

In accounts of law that go beyond particular laws or legal systems – into arguments for instance about *natural law*, *the nature of law*, *the authority of law*, or *law as justice*, as works by the authors mentioned do – specific legal systems are treated as instantiations of a supposed more general legal form. At that level of abstraction complexities in the meaning of words get left behind except where some specific ambiguity hinders the argument.

Emphasis on concepts more than on how words convey them has not been an uninterrupted tradition in Anglo-American philosophy of law, however (let alone in the longer history of thinking about law, for instance among the Scholastics and Renaissance lawyers who were accustomed to grappling with philological

problems). The contemporary emphasis I have mentioned involves to some extent a reaction against an earlier ‘linguistic turn’, including a period of influence of ordinary language philosophy on the jurisprudence of H.L.A. Hart from the late 1940s onwards. In *The Concept of Law* (1994 [1961]), Hart acknowledges the influence on his thinking of Oxford philosopher J.L. Austin (a second John Austin, not the 19<sup>th</sup>-century jurist and author of *The Province of Jurisprudence Determined* (1861)). Hart praises Austin’s insight that, as Hart glosses it in the Preface,

Many important distinctions, which are not immediately obvious, between types of social situation or relationships may best be brought to light by an examination of the standard uses of the relevant expressions and of the way in which these depend on a social context, itself often left unstated.’ (Hart 1994 [1961]: vi).

Hart and other legal philosophers of the time were especially impressed by Austin’s essay ‘A Plea for Excuses’ (1979 [1956]) and incorporated ideas into their thinking encapsulated in Hart’s tribute to Austin: that it is possible to use ‘a sharpened awareness of words to sharpen our perception of the phenomena’ (Hart 1994 [1961]: vi). For a variety of reasons, nevertheless, *The Concept of Law* proved a high-water mark of influence of this kind of language-focused analysis.

The next generation of influential philosophers of law in the same tradition, especially Raz and Dworkin, thought differently. In Dworkin’s *Law’s Empire* (1986), references to ‘semantic’ characteristics are to something wider than verbal nuance. Dworkin uses ‘semantic’ to refer to what he calls ‘semantic theories’: theories which, as he describes them, are concerned with ‘how all lawyers use the word *law*’ (Dworkin, 1986:36). But ‘use the word *law*’ here is figurative (and note that Dworkin is only interested in how lawyers use the word, not how other language users do). He begins his analysis of law by contrasting ‘semantic’ with ‘plain fact’ accounts (i.e. accounts of particular laws which have been passed) and describes semantic theories as ones which call for ‘digging out shared rules from a careful study of what lawyers say and do’ (Dworkin 1986:43), especially elucidation of rules and criteria supporting a ‘common assumption, which is that we [*lawyers again*] do share some set of standards about how *law* is to be used.’ (Dworkin 1986:32) Dworkin’s interest in *law* is that it is the main word in English which conventionally triggers the concept; it is the concept in some largely unexamined way beyond the word which is of main theoretical interest to him (see the final section of this chapter for further discussion).

In similar vein, though steering towards a different theoretical position, Hart’s former student Raz suggests (2009) that sometimes too much attention is given to

word meaning rather than too little. At various points he maintains that there is no particular need in developing a general theory of law even to use the word *law* (or the phrase *the law*, which he treats as roughly equivalent). It would be possible, Raz maintains, to talk about law 'by talking of the system of courts and legislature and the rules they endorse in a state, or in other ways'. Law's essential features, in Raz's view, include claims to legitimate moral authority, being source-based, and claims to have peremptory force (2009:97). Each of these features, however, is a broad concept whose verbal formulation seems to reprise the problem of verbal meaning he would prefer to circumvent; the words used might designate potentially very many different referents, or none at all, in different historical periods and social systems.

Explication of word meaning of a kind Hart, adapting Austin, had favoured was displaced in a shift that not only affected philosophy of law but the whole of analytical philosophy; and in continental philosophy discussion of words and their meanings set off in other directions. Fifty years on it is far less true than when Hart wrote it that, as he put it in his entry for 'Jurisprudence' in the first (1960) edition of the Unwin *Concise Encyclopaedia of Western Philosophy and Philosophers* (Rée, 1989:155), 'the elucidation of the expression *law* and terms embodying fundamental legal concepts (e.g. rights and duties, legal personality, ownership, sources of law) is now regarded especially in England as an independent and important study.'

## **Legal Meaning**

Two important considerations lose their urgency when less attention is paid to word meaning in the analysis of law. One is a procedural matter: how, largely through judicial decision, law controls verbal meaning not by one single means but in a number of related ways. The other is the fact that the most general words we use to name and describe law fit only very awkwardly into that combination of approaches. This section of the chapter outlines how courts rather than philosophers and linguists deal with legal meaning, which they do largely by distinguishing different interpretive categories which are subject to specific interpretive conventions. It also points out that, while a sophisticated, historically evolved strategy governs the interpretive culture of law, that interpretive culture exerts no direct authority over the meanings attributed to words in domains beyond law. As a result, words used concurrently both in legal and in other fields may retain or vary from understandings prescribed for them in their legal use in ways that are unpredictable and may be problematic.

### *Types of Vocabulary*

Words which make up the lexicon of a language are commonly distinguished into types, classifiable on the basis of alternative properties. Word class (or part of speech) is an obvious classification, which plays a role both in grammar and semantics. The etymology or historical origin of words offers another significant basis for grouping. Words are also often grouped according to usage, including whether they feature generally in discourse or only in specific styles (e.g. technical, religious, legal). Categorising some vocabulary items as technical terms and defining the relation that should exist (rather than necessarily does exist) between them and other general or ordinary words plays an important role in shaping law as a field.

Many domains of language use employ technical terminology (as ‘terms of art’), domains including science, technology and medicine; economics and professions such as law and business; and sport and leisure pursuits. Law is generally recognised among these as creating and controlling its terms of art in a distinctive way. In fields based on observation, measurement or experiment, for example, one or more starting points in a practice or field external to language can serve to anchor definitions. Further terms are added and defined reciprocally but ultimately in relation to one or more such external reference points. In more theoretically and discursively constituted fields, such as theology or philosophy, for most terms (since these will principally be abstract words) there will be nothing concrete to point to, and so no external, ostensive basis for naming or definition. Correct usage is stipulated by whatever forms of institutional authority are sanctioned. In this sense many legal terms, not only acknowledged legal fictions (Fuller 1967), involve ‘deeming’ or declaring something to be endowed with a particular scope or meaning: legal practice creates or adopts its terms and stipulates their meaning not by reference back to something fixed and external but forwards, for the purpose of application to something by required deference to established legal authority.

### *Categories of Words for Interpretive Purposes*

Reflecting specific features of how terminological authority is created in general, four general types of expression can be distinguished in legal use.

- Some expressions are recognised legal terms of art (e.g. *assumpsit*, *rescission*, *derogation*, *best endeavours*). These have specialised meanings. Some are in Latin or of French origin (e.g. *mens rea*, *de minimis*, *lien*, *bailment*); and many have little or no circulation beyond law in other varieties of the language (e.g. *fee*

*simple, estoppel*). Some have been called ‘legal homonyms’ (Tiersma, 1999:111-2), because one context for their use is legal while another is general, e.g. *consideration, conversion, detriment, liable*. But such expressions are not homonyms in the traditional sense, of different words etymologically which share the same form, such as *bank* of a river and *bank* as a financial institution. Rather, they are words whose senses are simply different enough that each occurs in a recognisably separate context. Potentially such terms could create ambiguity, but they tend not to because their alternative meanings are clear enough in a given context (and a reader or listener encountering an opaque use will recognise that some other meaning is intended which they have not grasped). Because terms of art become well-established professionally, they do not need to be explained on each occasion among people who use or encounter them. Learning to understand and use such expressions is part of becoming a lawyer in the sense proposed by Mertz (2007).

- Alongside such terms of art there are words explicitly defined for the purpose of a particular law, contract or other document and typically presented in its first section or alternatively in separate definition or interpretation clauses or an added schedule. For example, section 1 of the ‘Addressing Bullying in Schools Act (Northern Ireland)’ 2016 defines ‘bullying’:

(1) In this Act “*bullying*” includes (but is not limited to) the repeated use of

(a) any verbal, written or electronic communication,

(b) any other act, or

(c) any combination of those, by a pupil or a group of pupils against another pupil or group of pupils, with the intention of causing physical or emotional harm to that pupil or group of pupils.

In recent UK legislation, additional explanatory notes are provided alongside the main legislative text (in relation to the section quoted here, those notes give further specification of what a ‘school’ is). In some circumstances, definition can be the main subject matter of a set of regulations (e.g. the UK Capital Gains Tax [Definition of Permanent Interest Bearing Share] Regulations 1999/1953). Definitions formulated along such lines are confined to use for the purpose of the particular document.

- Other words again are recognised as being in need of judicial construction (legal interpretation), typically because they are vague and therefore unclear in the applicable legislation. These are instances of Hart's 'open texture', famously illustrated by his 'No vehicles in the park' example (1994 [1961]: 126-30). For Hart, there is a kind of gradience from core to peripheral or penumbral exemplars in relation to prototypical instances of a category (in this case, regarding what a 'vehicle' is (for discussion see Hutton 2014)). Vagueness in such 'category words' is resolved by judicial decision: seemingly fuzzy scope is judicially clarified so that a definite legal outcome, reflecting in or out of the relevant category, can be decided.
- There are also so-called 'ordinary words' of English. These are not legally defined, and their meaning is presumed to be generally understood or can be 'taken on judicial notice' (i.e. the court does not require argument or evidence on the point). In a UK trademark registration application for the word mark LUV, for instance (*Elliot's Trade Mark Application* [2014] R.P.C.13), the judge could declare that 'the meanings of *love* are well known to anyone with a command of the English language', even though the application was for the mark to be used on goods including sex toys and aids. Other counterintuitive and problematic examples include the important phrase *beyond reasonable doubt* (for discussion of difficulties created by this example, see Heffer this volume).

For some words in these categories - the terms of art - a word is intended to be recognised as a member of its assigned category. This flags how it should be interpreted. With other words, context of use plays an important part in how a word is treated (e.g. a word used in a statute and construed by a judge primarily in relation to a given fact situation may have already been defined, potentially differently, or may be re-defined later in a different legal context). What matters overall is that the distinctions are governed in legislation either by definition or by judicial reference to interpretive aids in applying the legislation (see, within a massive literature on statutory interpretation, Barak 2005; Greenawalt, 2012).

In the intricacies of this area of legal procedure it is easy to forget, however, that the system of normative interpretation applies only to legal use of words, even though many of the words used in law – notably the general terms discussed in this chapter – have a wide circulation in contexts where such normative rules do not apply. Unstipulated interpretation of *estoppel* is unlikely to raise problems, because the word is hardly used except where a legal context already exists. With legal

homonyms like *consideration*, mostly it is clear when a non-legal meaning is intended; if *consideration* is introduced in a context where it could convey a contract-like meaning (while the other meaning, something like either ‘detail’ or ‘thoughtfulness’, would be more likely), then the word will probably be interpreted as figurative or humorous. Vague terms are slightly different. The word *boat* might be defined or construed as a kind of building for a specified legal purpose; but this will have minimal impact on conceptualisation of boats generally (as well as no decisive impact on what a boat is in a different legal context). Importantly, beyond law’s interpretive jurisdiction legal adjudications of word meaning may influence how people think but they are not binding. How serious or otherwise this characteristic of legal vocabulary is depends on the nature and significance of the word in question. It may not matter much with *estoppel*, *consideration* or *boat*. But scope for variation in what is meant by terminology indicating legal principles and purposes raises the politically crucial question of how far public understanding matches legal understanding with respect to *justice*, *rights*, *authority*, or *the rule of law*.

#### *Tension between Different Bases for Meaning*

There is one further complication in this interpretive landscape that must be mentioned: what kind of meaning, for a given expression, will satisfy an expectation of being the right kind? Interwoven with extensively discussed theoretical topics such as attributing intention and choosing between a text’s literal meaning or overall purpose, interpreters may relate the basis for a decided meaning to how language works in different ways.

Underpinning word meaning in legal settings, there are two major alternative emphases in this respect. Each happens to reflect an established perspective in linguistic thinking: one would be described as synchronic, the other as diachronic. Both ultimately prescribe interpretations, and so what language means, in that, within whatever range of alternative interpretations exists, a singular, correct construction will be imposed on a problematic expression. But that stereotypical view of law deciding meaning depends on more subtle interaction between two legal norms.

One of the two interpretive norms coincides fairly closely with the default position in modern linguistics. It presumes that speakers of a language internalise vocabulary as a network of contrasts, rather than as historical word stories (because a child acquires a contemporary state of the language system in which he or she is immersed and understands distinctions and nuance spontaneously, without reference to etymology or an expression’s historical development). This

view finds its first main expression in linguistics in the work of the early 20<sup>th</sup> century Swiss linguist Ferdinand de Saussure, and is then developed in several directions in structuralist semantics (for history and discussion, see Geeraerts, 2010: 47-100). As regards semantic variation, the view typically takes for granted the homogeneity of a language community (in ideal form they are all users of the same common system of contrasts), subject to some qualification for dialectal or sociolectal, and potentially idiolectal terms. Law echoes these broad interpretive assumptions (in a common-sense rather than theoretical way) in its adoption of ‘ordinary reader’ and ‘plain meaning’ approaches to interpretation.

But there is another, contrasting historical-philological approach. That approach draws attention to how any expression has an origin in the language (either as a coining or borrowing from one or more other languages) and a traceable development of meanings that change over time but which may cumulatively be relevant to a modern social concept (e.g. ‘ethnic’, ‘family’, ‘working classes’, ‘neighbour’, ‘torture’, ‘genocide’, ‘freedom’ or ‘justice’). This interpretive emphasis may also begin from contemporary use but accepts that reflection on meaning is deepened by familiarity with historical substrata, especially when interpreting documents or subject matter from or indebted to earlier periods (in practice, the view can range from conservative appeals to etymology as an ultimate standard through to historical reconstruction of a word’s history as a way of tracing conceptual complexity).<sup>2</sup> Common law draws on such a historical conception in close reading of textual detail in precedential judgments, both as regards difficult words under scrutiny in a given legal case and in interpreting the language used in previous judicial rulings.<sup>3</sup> This historical hermeneutic has however been specialised

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<sup>2</sup> A number of important historical perspectives on meaning are bundled together here, though they differ in important respects. Among the most relevant here are these: Goodrich (1986) presents a historical and critical overview of hermeneutic approaches in ‘reading the law’; Geeraerts (2010:1-46) and Kay and Allan (2015) trace the background to philology and diachronic lexical semantics; Empson (1951) offers close readings of historically complex words in literature (e.g. *wit*, *honest*, *sense*); Skinner (1998) investigates conceptions of *liberty* in political circulation during the emergence of *liberalism*; Raymond Williams’s 1976 ‘Preface’ to *Keywords* (1976/1983) describes how the historical development of word meanings surfaces in conflicting efforts to understand present-day society and values.

<sup>3</sup> The term *common law* is itself interesting in this respect. There is the clear modern meaning (a system of law applied by judges based on cases and precedent, in contrast with *civil law* or *civilian* systems); there is the historical meaning (the imposition on a previously regional legal system of a greater degree of standardisation, achieved in England from the 12<sup>th</sup> century onwards by a unified system of courts combined with travelling judges, as introduced by Henry II); and there is a third meaning which combines historical reality with myth and can colour the other two: that of law ‘shared or available to all’, a use foregrounded especially when ‘our’ is placed in front: ‘our common law’. This third use, combined with the historical sense, presents a glowing image of community ownership of law ‘since time immemorial’. Any such image of ‘time immemorial’ is difficult to justify, however, either to mean ‘always’ or even in doctrinal use to indicate time before legal memory (i.e. any time before the accession of Richard I in 1189). The main political settlements that have shaped common law’s relation to the modern population come later, in shifts from feudalism into capitalism and from the assumed divine right of kings into representative, Parliamentary democracy, by way of events including the Civil War, tyrannicide, Bill of Rights, colonial domination overseas and

in a particular direction in common law reasoning, especially in higher courts. The repeated practice of judicial construction in so many cases has engaged successive generations of judges in seeking to resolve, or at least in commenting on, interpretive problems to do with words and phrases as they arose.

Arguably it is the combination of these nuanced ideas of meaning that creates law's (at least common law's) rich interpretive culture. Exactly how courts and other tribunals triangulate between the different viewpoints outlined above is nevertheless not easy to describe, because interpretation is embedded in kinds of reasoning which are frequently articulated in other terms. Detailed reasoning about meaning may be presented as much by emphasising that the relevant authority is good as that the linguistic argument is good.

### **Cluster of 'Key' Words**

With relevant contexts now in place - that is, the existence of a debate about what word meaning contributes to legal concepts and the use in law of a range of interpretive strategies that nevertheless do not govern word meaning beyond law - it is time to address more directly which words are worth investigating as the cluster of words I claim show significant semantic indeterminacy in their different uses.

Use of the term 'cluster' here involves a commitment to the idea that words are not mere atoms of conceptual content but relate to other words as members of lexical fields within the overall lexicon. The least committing version of this idea is hardly controversial, either intuitively or in structuralist linguistics from Saussure onwards. But the precise basis on which such groupings are decided has been subjected to considerable scrutiny and the most apt terminology for use in the present case cannot be presumed.<sup>4</sup> Whatever term is adopted, exact membership of what I will call simply a 'cluster' cannot be fixed definitively. Nor can an overall number of members. Word clusters are elastic networks, linking to adjacent semantic domains in different ways. This characteristic is especially notable where the words in question are abstract and polysemous, because patterns of similarity

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more recent independence movements and wars. For discussion of further difficulties with this expression regarding exactly what areas and aspects of law it applies to, see also Glanville Williams (1945:302)

<sup>4</sup> The concept of, and history of theories related to, lexical fields is traced in detail in Geeraerts (2010: 52-70). The loosest relationship is simply between words used in a general conceptual or thematic domain; but many such words may not be restricted to or specialised for use in that domain. A stronger requirement is be that words should show a measured likelihood of co-occurrence; and a still stronger requirement might insist on semantic relationships such as synonymy, antonymy, and hyponymy between members. What is called a 'lexical set' is bound by interlocking semantic relationships (e.g. *mother, father, daughter, son, sister, brother*).

and contrast around them depend on which sense is activated in signaling a particular relation. So it is far more difficult to justify membership of words in a semantic field of abstract terms about law - where the main point to be made about such terms is that they are polysemous and vague - than to group concrete terms which form part of a recognizable schema (e.g. *table, chairs, knives and forks* and *vase of flowers*, while excluding *donkey, microscope, and serenity*).

Despite difficulties with word groups in general, there seem good reasons to want to think of the general terminology of law as a cluster. First, many words appear uncontroversial as prominent words naming or describing the social institution and values of law. Those words, it would seem, should occur frequently in jurisprudence and, if less prominently, in related fields including 'law and society', constitutional law, and political theory. Secondly - but in ways that turn out to be complicated - candidate words seem as if they should relate to each other according to an established taxonomy of sense relationships (such as synonymy, antonymy, or hyponymy).

This second expectation presents challenges as regards what the basis is of connections between prospective members of the cluster. *Order* and *rule* both seem obvious candidates for inclusion, for instance. In one of the senses of each, the two are near-synonyms for (and so might be grouped with) legally important *command*, despite awkwardness when separating out their meanings as nouns and as verbs. In another sense of each, though, the two words signify the abstract social purpose, state or outcome of law as a system, not a single instruction; and in this sense they enter into different semantic relationships with surrounding words (e.g. they are closer to *regime* or *governance*). Or consider how *justice* invites being seen as a superordinate (or hyperonym) of *law*. Law is one among a number of ways of achieving justice (there are alternatives such as charity or political initiative) but 'being just' can appear a necessary feature or entailment of *law*. Such semantic relationships, when stated, can appear extremely reductive, however. The relation between the two words *law* and *justice* can be seen to be more complicated by considering the celebrated maxim sometimes held to encapsulate *natural law*: 'unjust law is no law' (or, switching the sense of *law* from abstract to concrete in both instances, 'an unjust law is not a law'). The meaning of this maxim, as translated from Latin *injusta lex non est lex*, has been debated from renderings of Aristotle onwards, through St Augustine and Aquinas, up to the present; and the semantic relationship between its main terms appears crucial to claims which surround it and their ramifications. Whether in Latin or English, the maxim seems to confirm that *law* entails 'justice', since law without justice is said not to be law. But it also affirms

the opposite: that there is potentially a class of law (i.e. unjust law) which lacks justice. Arguably part of the maxims memorable, self-contradictory effect results from tension created precisely by uncertainty regarding the semantic relationship between *law* and *justice*.

Word nets devised primarily on the basis of semantic relationships and applied to abstract semantic domains often seem crude and reductive in this way.

Intersections of meaning between polysemous, abstract words do not fit easily into established semantic categories or neat tree diagrams. Rather, the meaning relations between them are a kaleidoscopic movement of facets and relations, criss-crossing in ways that invite but elude definitive description. A purely ‘semantic relations’ approach would simplify details of conceptualisation in a given context of use and cut off any given meaning from its relevant lexical history, textual tradition, or surrounding ideas.

It is important in selecting general ‘law’ words, however, not to allow difficulties of this kind to eclipse the value of describing relationships between words and concepts by considering them as a ‘cluster’. But which words should be included? Here, as the outcome of an informal process combining introspection, general reading, and consulting dictionaries and thesauruses, is a provisional selection (based on apparent family resemblances, observed tendency to occur together, and in some cases to create an appearance of more systematic semantic relations).

1. A **minimal** list should include *law*, *justice* and *right(s)*, as well as words based on *lex* and *leg-* (a formation etymologically unrelated to *law*) including *legal* and *the principle of legality*. Something is considered law or law-related if it is named or described by any of these words.<sup>5</sup> *Equity* may also fit in this first group, as a further word indicating an area, type or quality of law, though the word’s development complicates that categorisation. Leaving aside financial meanings of *equity*, use of *Equity* with capital E in British English suggests a hyponym of *law*: a particular division within the English legal system, initially a route of direct appeal to the sovereign in the person of the Lord Chancellor, bypassing common law courts;

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<sup>5</sup> The first chapter of Jeremy Bentham’s *Of Laws in General* (first published 1780, but held back for nine years by the author during which time he claimed that half the printed sheets had been devoured by rats) is concerned with ‘how a law may be considered in eight different respects’ (each the subject of a separate later chapter). Bentham emphasises ‘the necessity of these verbal discussions’, and analyses why no other word than *law* in English ‘would answer the purpose as well’ in conveying our distinctive concept of law. Bentham examines the relative merits of other words that ‘come into competition with’ *law*, including *command*, *commandment*, *order*, *injunction*, *decree*, *precept*, *specialist*, *ordinance and edict*, *constitution*, *regulation*, *establishment*, *institutional*, and *mandate*. The modern Athlone Press edition of this work (1970) was edited by the positivist legal philosopher H.L.A. Hart, discussed above as having been especially influential in emphasising the continuing importance of linguistic meaning in shaping legal concepts.

then later, the distinct Courts of Equity until absorbed into the court system by the Judicature Acts of the 1870s. Alternatively, however, *equity* might be considered a meronym of *law* (a part or quality of what law is: its fairness and even-handedness, resulting in ‘equitable’ treatment). Other words here include *regulation*, bringing with it a distinction likely to problematize the scope of *law* in any discussion of that word’s vagueness: between *hard law* and *soft law*. *Regulation* itself is both vague and contested among policy makers and professionals, cutting across earlier relations between state and market and between public and private actors in the delivery of law. This might also be the place for *jurisprudence*, whose meaning is both ‘body of law including case law’ (e.g. ‘jurisprudence of the European court’) and ‘science of human laws in general; philosophy of law’.

2. Given the historical centrality of arguments between *positive* and *natural law* approaches to what law is, *morality* appears an important word in the variable synthesis of notions expressed in law. Modifying terms which combine with *law*, including *divine*, *natural*, and *positive* warrant inclusion here. Note, however, that parallel expressions in form may not be symmetrical in meaning: *natural law* denotes a legal and philosophical tradition from ancient Greek origins onwards, concerned with aspects of law including divine provenance, universals, and human reason; *natural rights*, important in political changes during the 18<sup>th</sup> century, denotes human rights considered inherent or inalienable but ridiculed by Bentham as ‘nonsense upon stilts’; *natural justice* is a narrower, originally 17<sup>th</sup>-century doctrine, that anyone whose rights are affected by an official decision should be entitled to advance notice and a fair hearing before an unbiased judge (a principle now more often known, as expressed using other words within the same cluster of general terms, as *right to a fair hearing*).

3. Also to be added should be words which indicate the basis on which, or premises from which, general concepts of law are derived: *legitimate* and *authority* seem obvious here. Other related words include *impartiality* and *fair*, but these seem less particularly legal (they are arguably used mostly in a wider social context, in this respect similarly to the otherwise undoubtedly central terms *public/private*, *reason/reasonable*, and *interest*, including *public interest* and *best interest*). In the development of law generally and international law in particular, *customary* is also important.

4. Overlapping with the preceding group, next might be words concerned with values that law aspires to or protects, and desired social conditions that systems of law seem calculated to bring about: *order* (in its abstract, ‘system’ sense), *freedom*, *liberty*, *civil liberties*, *liberties of the subject* (plural but less, rather than more, than

singular abstract *liberty* because restricted by being possessed by someone who is only a ‘subject’), and similarly qualified *freedom under the law*. This grouping might also include *equality*, extending to *equality before the law* as well as, in litigation, *equality of arms*.

5. A further sub-group appears salient in showing how law is expressed and relates to other social values and structures, including power: *power* itself (including different meanings when shifted from abstract to concrete and when used in the plural: *delegated, discretionary, and special powers*); also, *coercion, command, obligation, binding, duty, and enforcement*. Inclusion of particular words here depends again on the particular sense in which they are understood: *power* is part of one semantic grouping when used to signify an abstract resource potentially monopolised or distributable by a (human, institutional or symbolic) *sovereign*, but in another group when specifying some particular delegated jurisdiction or agency. In turn *jurisdiction* meshes with one grouping in its abstract meaning of ‘authority’ or ‘competence’, but another when specifying a place or institution in which a particular authority is exercised. In turn *authority*... The potentially circular connections and definitions which result from such categorization, with one expression glossed by surrounding terms in the same group, is of course not specific to this field but a general problem of definition; it may even strengthen a sense that the words should be viewed as a group rather than individually.

6. At a further remove from core ‘naming’ terms come expressions which denote general characteristics of a polity: *democracy, and governance, representation and representative, constitution, separation of powers, policy, state*. These valuably foreground the constitutive (and *constitutional*) rather than coercive dimension of law, but as regards their place in this cluster seem likely to appear primarily political rather than legal words.

A feeling may already have taken hold, at some point during this exercise, of beginning to deal with different kinds of word: some less abstract, or in a different field, possibly with less of a naming or descriptive role in relation to law. Perhaps some kind of limit should therefore be imposed, perhaps after group 5 or if not there after group 6? Or would it be better to reverse the process and think of words which should not be included? Reasons for exclusion of marginal cases might include not being used frequently enough, or having only a technical rather than also a general meaning, or seeming to be at the wrong level of generality. There is a group of words, for example, which all show some degree of relevant polysemy and vagueness but describe institutions more than they do law as a concept: *court, trial, case, hearing, tribunal*; and there are words with similar properties

for legal actors including *judge, advocate, party*. And there are words which denote values or principles prominent in law but whose currency has not extended into general vocabulary: *habeas corpus* and *ultra vires*, as well as arguably *prerogative* and *proportionality*.

Given the informality of the process adopted for choosing words as members, what I am calling a ‘cluster’ of key terms cannot be more than an intuitive word web. Various methods could be adopted to refine the process, ranging from corpus linguistic frequency-of-occurrence measures to double-coding protocols using agreed criteria for decisions made by researcher readers.<sup>6</sup> Even as informally as this exercise has been conducted, however, an impulse to cluster does not stop easily: it is difficult to think about any one of the above words without cross-referring to others. In the most general sense, therefore, they *are* a cluster. Collectively, such words designate – they lexicalise as far as any words can, albeit in historically and culturally specific ways – some fundamental level of what law is. Yet for all that the most general words of law, which Raz treats as mostly unproblematic because they form ‘part of the common terminology of practical discourse in general’ (Raz 2009:30) remain elusive both in their meaning individually and in the semantic relationships they enter into with each other.

### **Polysemy, Vagueness and Contestability**

In the face of such classificatory difficulty, it is important to return to the reason for considering this open-ended group of words as a ‘cluster’. This section develops in greater detail an account of how words of the general type included in the cluster behave in terms of their meaning. First I summarise aspects of meaning I consider significant. Concern here is no longer only with what the words mean in legal settings, but with any given word’s semantic footprint across all its different contexts of use. Then I take one word – *law* itself – for more detailed illustration. Looking closely at just one word, for reasons of space, restricts comparative discussion (though some reference is necessarily made to connections radiating out to other words). *Law* was chosen as my example because - as the word was shown above to be for some philosophers of law - *law* is emblematic in designating the conceptual domain signalled by words including *law, justice, rights, and regulation*. The

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<sup>6</sup> Approaches to using corpus linguistic techniques for identifying and analysing key words in given fields include Stubbs (2001), which presents case studies on particular words and phrases based on a combination of traditional concepts such as lexical field, sense relations, and collocation with more recent corpus techniques; and Baker and McEnery (2015), which uses and also reflects on methods for identifying words and phrases that are simultaneously marked in terms of relative frequency and thematic importance.

word *law* also exemplifies fairly clearly the main points about meaning that would need to be highlighted equivalently in other words considered to be in the cluster.

### *Multiple Senses*

One pronounced feature of words identified as members of the cluster I am describing (though also shown in a less marked way by many other words) is their polysemy. Polysemy occurs when a word has more than one distinct sense and where its multiple senses are felt by native speakers to be related (Cruse, 1986). A textbook example is *mouth* (of a face) and *mouth* (of a river). The ‘river mouth’ sense appears a figurative extension from the form and function of a human mouth, and has become on this basis an additional, conventional meaning. Virtually all the words discussed in the previous section are polysemous in this way. Different relationships exist, however, between polysemous senses. These include hyponymy (where as mentioned above one sense denotes a type of the entity denoted by another sense) and meronymy (where one sense denotes a part of the entity denoted by another sense). Senses at different levels of concreteness or abstraction are also common. So is figurative extension by means of tropes such as metaphor and metonymy. Historically, polysemous senses arise from processes of semantic change including sense widening and narrowing, amelioration and pejoration (see Kay and Allan, 2015:25-48). While it is unremarkable that words show polysemy in this way, the consequences for interpretation seem particularly significant in law because of the importance law attaches to consistent use of words even if, beyond law, other meanings with different degrees of closeness to the legal meanings may be ascribed to the same word.

One effect of polysemy on interpretation can be ambiguity, which arises when more than one sense is activated for a word simultaneously, often intentionally. This can create uncertainty as to what was meant. For ambiguity to arise (which in most kinds of discourse is relatively uncommon, because one meaning will typically fit a given context better than another), two conditions need to apply: an expression must have more than one established meaning; and the interpreter must either entertain an extraneous or incorrect reading or alternatively find it difficult to decide what the intended meaning was. In poetry, religious discourse, jokes and some other kinds of discourse, ambiguity can also work in another way. An interpreter may be encouraged to entertain the multiple meanings simultaneously. Ambiguity of this kind can be created either by lexical characteristics (alternative meanings for a particular word) or by syntax (alternative parsings of a grammatical structure). In legal drafting, major efforts are made to avoid ambiguity because it creates a kind of indeterminacy which calls not for acceptable ‘filling in’ of

meaning by judges, as vagueness may, but instead an apparently additional interpretive decision that may be perceived as encroaching on the role of the legislature.

Another, under-acknowledged consequence of multiple senses is confusion of level between concrete and abstract meanings. Different senses related in this way exist for most words in the cluster, as can sometimes be seen in their grammatical behavior, especially whether they can be preceded by an article *the/a*, and whether they also occur in the plural. As Chomsky cautions, however (1965: ii, 64), the relation between countable and mass words in grammar does not map directly onto the concrete/ abstract distinction: in his example, *boy* is a count noun distinct both from the mass noun *butter* (which is still concrete but not countable) and from abstract *sincerity*. Some examples appear straightforward: ‘a rule of law’ (countable and concrete, a specific legal measure) as compared with ‘the rule of law’ (an abstract – as well as historically complex, culturally varying, and hotly disputed – political value). But other examples shift meaning in apparently minor yet sometimes important ways. The difference between concrete *order* (‘command’) and abstract *order* (‘arrangement’, ‘system’) has already been noted. But there is a further distinction within use of the second of those senses: *order* in one meaning is something that law should consistently uphold, while politically and socially it should not show itself to be partisan to a given *order* (in the first of these two uses *order* is abstract but not countable, while in the second it is both abstract and countable).<sup>7</sup>

In highlighting the importance of concrete and abstract senses, it is important not to lose sight of how this distinction within the senses of a polysemous word interacts with other facets of conceptualisation to produce intricate shadings of meaning far beyond easily enumerable senses. Staying with *order*, an array of philosophical and historical nuances opens up. Philosophical meanings of *order* have been described especially clearly in Finnis (1980:136-9), who identifies four uses as aspects of one single general meaning: ‘a set of unifying relationships’. The

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<sup>7</sup> The difference between these senses of *order* is emphasised in relation to the phrase *law-and-order* in Raymond Williams’s final discussion of ‘keywords’ in his 1985 essay ‘Mining the Meaning: Key Words in the Miners’ Strike’ (Williams, 1989). Williams suggests that four words were crucial during this major industrial dispute, which Williams felt involved ‘the dislocation of our habitual social order’: *management*, *economic*, *community*, and *law-and-order*. Of the last of these words, he comments, ‘I take this as a single word, as it is currently used [...] For it is the arbitrary combination of what should be two quite different words and concepts that is the key to its contemporary ideological effects... Listening to some ministers, it is easy to pick up their real sense of *order*, which is command: obedience to lawful authority; indeed, when combined with the ‘right to manage’, obedience to all authority... What is at issue, in any conflict about a particular law, is the underlying definition of the desired social order. (Williams 1989: 125)

first kind, for Finnis, is ‘natural order’ that we do not ourselves bring about: ‘the order studied by the natural sciences’ (in describing this kind of order Finnis excludes the related, purposive ‘watchmaker’ alternative: ‘divine order’). Finnis’s second ‘order’ is what humans ‘bring into understanding’ in creating internally coherent knowledge and reason. Thirdly, there is ‘order’ imposed by humans onto whatever matter around them is subject to their powers (e.g. systematic use of inventions or the products of technology); and fourthly, there is the ‘order’ or state of unity brought about ‘by intelligently deliberating and choosing’, an order of social interaction, management and communal organisation. For Finnis, what matters most about these recognized senses is how they pave the way for a notion of ‘human community’, and so require law to be understood in terms of interpersonal connections rather than purely at the level of an individual legal subject. But arguably what makes the four kinds of order (which postulate different origins, states of nature, and creative agency) more generally important is that they lend real or symbolic weight in different historical periods to more complex uses of the word (Foucault 2001, though note that the French title of this work – *Les mots et les choses* - does not contain the word *order*).<sup>8</sup> In a hierarchical extension of the basic meaning of ‘series’, *order* has been used to denote social or professional rank, status or class (e.g. orders of monks or knights), as well as status in other social institutions or conventional arrangements (e.g. *order of wedlock*). It has also been used normatively to denote a harmonious condition of everything being ‘correct’, ‘in a healthy state’ and ‘in its place’, even ‘normality’ (in contrast with *out of order* and *disorder*). But complications follow, including whether a particular use of *order* is descriptive or ascriptive (or one of these dissembling the epistemological status of the other). An *order of plants* in biology may seem to fall in Finnis’s first category, of ‘order out there in the world’ (though it might be better understood as combining properties of his first and second categories); *alphabetical order* may seem an example of Finnis’s third kind (a human-made, technological convention). But what about abstract *religious order* or concrete ‘a religious order’? Such order, or such an order, may lay claim to derivation from *divine order*, while being in obvious respects a human-made institution. And what, then, about *feudal order*, *legal order*, or *New World Order* (the last of these in all its various intellectual and political 20<sup>th</sup>-century manifestations)? Such usages absorb several different, even potentially conflicting dimensions and resonances of what *order* means.

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<sup>8</sup> Foucault appears initially to have preferred the title ‘L’ordre des choses’, but that title had already been used by someone else.

## *Vagueness*

Vagueness is more significant in legal language than ambiguity although, like ambiguity, it combines with effects of polysemy where the vagueness in question is only of a particular sense rather than in an expression's overall meaning. The phenomenon has been extensively analysed not only in philosophy of language (e.g. in close connection with semantic indeterminacy more generally in Quine 1960:125-9) but also in legal construction and adjudication, including how vagueness can be useful to law-makers (Endicott, 2000). It has also been examined in detail by Waldron in relation to the US doctrine of 'void-for-vagueness' (Waldron, 1994).

To summarise Waldron's impressive, formally set out description, an expression is vague if it is imprecise in the sense that there are: objects or instances within the domain of the expression's usual use where an interpreter will be unable to decide whether the object or instance falls within the meaning of the expression or not, and where the interpreter who finds herself or himself in such a position attributes that inability-to-decide to the expression's meaning rather than to a lack of further information (Waldron 1994:513). Waldron's example is the colour term *blue*. Most people, he says, would hesitate when shown various colour patches in deciding whether some shade of turquoise or lavender is or is not blue, or whether it is borderline.

In *Word and Object*, Quine (1960:126-7) points out that a general term for physical objects can in fact be vague in this way in more than one respect: the general term *mountain*, he notes, is vague in relation to how much terrain each indisputable mountain occupies, and it is vague in terms of what lesser eminences should count as a mountain at all. For many words, vagueness of these kinds raises questions about the different approaches to categories already alluded to: Aristotelian 'necessary and sufficient conditions' accounts; 'prototype and goodness-of-exemplar' understandings associated first with 'family resemblance concepts' in Wittgenstein, then with prototype theory in psychology; and legal 'open texture' as discussed in Hart.

Vagueness has tended to be a less prominent topic in linguistic semantics than in law, being treated in pragmatics instead as an aspect of contextual modulation of meaning by inference (e.g. Sperber and Wilson 2005); in law, the difference between meanings which are conventional aspects of a word and meanings which are constructed by inference is not consistently drawn. Vagueness of expressions is discussed in law in many contexts, especially in relation to conceptual categories, as

above; in relation to so-called trivial vagueness (where a general rather than precise expression has been used unadvisedly or as inappropriate hedging introduced into a legal document); in discussion of the boundary between vagueness and arbitrariness; and regarding the vagueness of general evaluative terms such as *reasonable* (Soames, 2011).

### *Contestability*

The third kind of indeterminacy of meaning that commonly arises with general legal terminology scarcely features in treatments of meaning in linguistics. But it is important across the range of uses of the ‘law words’ under discussion in this chapter.

The meaning of an expression can be said to be contestable if the expression communicates an evaluative (often called appraisive) force but at the same time exhibits incompatible characteristics or elements which offer alternative ways of satisfying that same evaluative judgement. The most well-known account of contestability in this sense is to be found in an article by the philosopher W. B. Gallie (1956) concerned with concepts rather than verbal expressions. In Gallie’s account, controversially discussed under the description he coined of ‘essentially contested concepts’, for contestability to exist there must also be a history of struggle between alternative criteria involved in efforts to secure a ‘proper’ meaning for the expression/concept. Among Gallie’s examples are concepts expressed by words including *art*, *democracy*, and *social justice* (as well as what he calls an ‘artificial example’, of *championship* and *champions*). Waldron’s discussion (Waldron 1994) sifts carefully through Gallie’s detailed criteria governing whether a concept satisfies the conditions of being ‘essentially contested’ (‘essentially’ meaning in respect of its essence, rather than merely ‘intensively’). The example Waldron then analyses in more detail (Waldron 1994: 529-34), based on Gallie’s discussion, is that of *democracy*, which can be considered contestable because of three linked conditions:

- (1) *democracy* can be explicated in terms of political representation but it is not implausible alternatively to explicate the word’s meaning in terms of direct participation in government;
- (2) *democracy* has a favourable evaluative meaning, such that people want to and feel democracy should be promoted; and
- (3) because of the two preceding conditions, a history has built up of using *democracy* to embody what nevertheless remain rival political principles (e.g.

‘every political system should have a representative structure’; and ‘we ought to encourage direct popular participation in government’).

By analogy with this illustration, it is easy to see that many expressions in the cluster of law-naming or law-designating words introduced above are contestable in this sense. Gallie mentions *liberty* and *social justice* in this context; and *the interests of justice, law and order, authority, legitimacy, and basic human rights* are all similarly amenable to such analysis (though their contestability can of course be overridden by normative interpretation in a legal setting). It should be noted, nevertheless, that, since contestability in this sense only applies to words which involve an appraisive force (i.e. they are evaluative and implicitly encourage pursuit of acclamation for a particular conception of the contested word or concept), this kind of semantic indeterminacy is unlikely to be found in many other words in the cluster identified above.

### *The Word Law*

In light of these fairly abstract distinctions about meaning and semantic indeterminacy, now consider the word *law* in more detail, taking this word as an example of the kinds of complexity I claim make general words for and about law difficult in legal-lay communication. As a way into examining *law*, the word, rather than slipping directly into the concept or concepts it is taken to convey, the *Oxford English Dictionary* (OED) is an obvious place to start (especially if read in conjunction with concise or pocket dictionaries and with dictionaries compiled on different lexicographical principles such as COBUILD publications).<sup>9</sup> This is not only because of the OED’s acknowledged authority but because it is compiled on historical principles and offers a range of related resources.<sup>10</sup> First I offer an outline of what the OED says about *law*; then I address the significance of considering word meaning in ways the dictionary opens up in thinking about legal concepts.

The OED entry for *law* has not been fully revised since 1902 but contains draft additions up to 2004. Strictly there are five headword entries for *law*: four nouns and a verb. The four nouns cover meanings of: ‘a body of rules’ (the entry mainly discussed below); ‘score, share of expense’; ‘round or conical hill’; and an

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<sup>9</sup> All modern dictionaries base their headwords and entry content on computerised linguistic corpora. But some (including Collins COBUILD dictionaries) also adopt a policy of ordering meanings based on attested frequency in their corpus. For detailed analysis of the COBUILD project, see Sinclair (1987).

<sup>10</sup> The OED is best now thought of as an online publication ([www.oed.com](http://www.oed.com)). In print, it was first published in parts as *A New English Dictionary on Historical Principles*, eds, J.A.H.Murray, H.Bradley, W.A.Craigie & C.T.Onions (OUP, Oxford, 1884-1928); 2<sup>nd</sup> edition 1989; 3<sup>rd</sup> edition in progress. See the OED webpage for details of and articles about related resources including the *Historical Thesaurus of the Oxford English Dictionary* (HTOED).

interjection sense conveying surprise or dismay, ‘Oh law!’). The verb means roughly ‘ordain’ or ‘render lawful’ but is virtually obsolete.

The entry for *law* as ‘a body of rules’ begins with information about pronunciation, variant word forms, relative frequency of use (Band 7, among the top 1000 words in English), and etymology. A pop-up gives a timeline of first attestation for each recorded sense (with peaks in the number of new senses in early 17<sup>th</sup> century and mid-19<sup>th</sup> century), as well as a separate timeline of sense development (showing dates and duration for each). To represent the word’s various senses, four Roman-numeral major branches provide an overall structure, divided into 20 numbered principal senses (sub-divided in turn into lettered senses making a total of 51 recorded senses). Each sense – it is conceivable that fewer or more could be distinguished by what lexicographers call further ‘splitting’ or ‘lumping’ together - is traced to its first attestation (and final date of recorded use, where obsolete); each is also annotated with usage information (e.g. ‘rare’ or ‘archaic’). The senses are each also illustrated by quotations accompanied by the name of their author and the date of publication (578 in total, with a timeline of sources for the quotations provided in another pop-up). Following this detailed listing of the word’s senses when it is used as a separate form, equivalent information is provided for related compounds (e.g. *law enforcement*). All this semantic information can be combined with a thesaurus approach to meaning – in philological terms, an onomasiological rather than semasiological perspective - by cross-referencing to HTOED (the OED’s historical thesaurus, Kay and Allan 2015: 92-112). Such cross-referencing makes it possible to connect with the semantic field in which *law* has been used by examining cognate terms for each sense at different points in the period during which English law developed (terms including *assize* (1303), *droit* (1480), *jure* (1496), and words for legal science including *juristics* (1837) and *nomology* (1880)).

Scaled back from such richness of evidence, in outline the modern word *law* might be described as follows. *Law* emerges from Late Old English *lagu* (c1000), a form derived in turn from Old Norse *lag*, ‘something laid down or fixed’. The native word in Old English had been *á*. The OED also notes that, ‘as *law* is the usual English rendering of Latin *lex*, and to some extent of Latin *jus*, and of Greek *νόμος*, its development of senses has been in some degree affected by the uses of these words’. (Further discussion of the significance and legacy of these origins, with particular regard to European philosophy, law and politics, can be found in entries for the respective words in Cassin 2014.)

Three of the word's four main branches of meaning in the OED entry have titles: 'I. A rule of conduct imposed by authority'; 'II. Without reference to an external commanding authority'; and 'III. 'Scientific and philosophical uses'. The fourth, unnamed branch contains only one sense, s20: 'Allowance in time or distance made to an animal that is to be hunted, or to one of the competitors in a race, in order to ensure equal conditions.' It is the three named senses which give both the general concept of law and, in the relation between Branch 1 and Branch 3, show significant conflicts in social thinking that have complicated the word's development and current use.

The first branch ('rule of conduct imposed by authority') compresses into a single grouping senses covering two vast areas of law, 'human' and 'divine'. Within 'human', the dictionary also deals with both customary and positive law. Alongside the three other branches, this telescoping gives some idea of the scale and scope of this word that has been condensed into what is still a lengthy analysis. *Human law* (s1-8), from about 1100, covers: 'the body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects.' As a whole it is this branch which distinguishes the most familiar meanings: 'legal system', a 'code or system of rules'; 'one of the individual rules which constitute the 'law' of a state or polity'; and 'the condition of society characterized by the observance of the laws'. This branch also notes use of *law* to mean substantive area of law (law 'divided, according to the matter with which it is concerned'); and traces use of *law* 'in contradistinction to equity'. *Law* is also exemplified meaning 'legal profession', and to signify legal proceedings: 'action of the courts of law, as a means of procuring redress of grievances or enforcing claims; judicial remedy'.

Perhaps what is most striking, however, to a modern reader accustomed to the reach of administrative legal measures in securing policy or social engineering goals (e.g. specifying taxation details, correcting for market failure, or stipulating food standards), is the second prong of this first branch: the extent and variety of uses that signify 'divine law' (ss9-16). Some of these senses are not recorded after the 16<sup>th</sup> century but some remained current until the end of the 19<sup>th</sup> century. Such senses range from 'The body of commandments which express the will of God with regard to the conduct of His intelligent creatures' through divine law as 'implanted by nature in the human mind, or as capable of being demonstrated by reason', to 'The system of moral and ceremonial precepts contained in the Pentateuch', 'the law of Moses, the Mosaic or Jewish law'; and broadest of all, *law* meaning 'a religious system'.

Branch 2 (which traces uses ‘without reference to an external commanding authority’) is less relevant to legal discussion. It does, however, evoke how grounded in custom and convention other senses may be. Section 14, for instance, deals with ‘Custom, customary rule or usage; habit, practice’, and later senses illustrate uses to mean ‘rule of action or procedure; one of the rules defining correct procedure in an art or department of action, or in a game’ (examples here include rules of the card game whist, rules for hospitality, codes of honour, and the *law of the jungle*). How far these are meanings ‘without reference to an external commanding authority’ must depend on the particular case but also inevitably to some extent depends on the meaning given to polysemous *authority* (itself a very substantial entry in the OED).

Branch 3 begins (in s17) with what law means in the ‘sciences of observation’ and in the ‘physical sciences’, broadly from the 17<sup>th</sup> century onwards. In sciences of observation, *law* (here as a count noun) signifies ‘a theoretical principle deduced from particular facts, applicable to a defined group or class of phenomena, and expressible by the statement that a particular phenomenon always occurs if certain conditions be present’. This is the sense condensed in a less technical rendering as one of the meanings in Dr Johnson’s *Dictionary* (1755): ‘*Law*, an established and constant mode or process; a fixed correspondence of cause and effect.’ In the physical sciences, on the other hand, *law* is ‘called more explicitly *law of nature* or *natural law*’; and some quotations here, selected prior to 1902, reflect a tension between divine origin, human perception and reasoning. Illustrative quotations include Boyle’s ‘The Wisdome of God does... confine the Creatures to the establish'd Laws of Nature’ (1665), and Locke’s, ‘A Law of Nature... something that we may attain to the knowledge of, by our natural Faculties’ (1694). Further quotations indicate domains in which such laws obtain, including general laws of motion, the universal law of gravitation, laws of reasoning, and Grimm’s law in philology.

### *Law and Concepts of Law*

How much illumination can be expected from reading one OED entry in this way? This question is approached by considering the *law* entry itself first, and then in comments on my use of *law* as an example of complexity claimed to exist in most or all words in the cluster of legal ‘key’ words.

The OED entry for *law* illustrates a series of points made above. It shows legal and other uses of *law* across various fields and discourse types: law, religion, science, games, and hunting. Its four branches and 51 recorded senses confirm that *law* is

highly polysemous in the view of lexicographers. The word's range of senses varies on a number of dimensions: different subject areas, degree of technicality (including in different fields), degree of generality and potential for vagueness, degree of concreteness and abstractness, and social register. On an assumption that meaning in at least some cases involves representation of the speaker's beliefs, the meanings also reflect significant differences between historical periods of thinking. Some views expressed in the various senses, and in accompanying quotations, are now to be found only in historical sources – part of a cultural substratum of modern legal thinking – while others remain current and amount to socially dominant current understandings. Others again are current but likely to be confined to the thinking of specialised, minority social or interest groups. Together, this range shows the social-semantic footprint of *law* as a word of English.

The dictionary makes no attempt to extend its encyclopaedic information, and does not comment on the relative spread, weight, uptake or influence of ideas represented in the various senses. But by no means all the senses reported are in fields distant from what a lawyer or philosopher of law thinks of as 'law' or relevant to law; and many of the varying senses are not trivial in relation to a lawyer's or philosopher's concerns. Some, in fact, are expressions of major alternatives or lines of argument related to the general legal meaning of *law*. In this way, many of the senses reported chart uses of the word that a reader might expect to encounter in a legal or jurisprudential argument, and whose significance within such an argument he or she might wish to assess as precisely as possible.

The word's main complexities, however, are not in any one sense or in the word's range of senses. Rather, they concern unresolved blending, intersection or interstices between senses of the kind introduced above in relation to *order*, including points at which meanings are positioned in relation to one another in an overall field. One major complication, which runs through the history of legal thinking as well as through debates about the legal systems of 'good' and 'bad' states, resembles the point made above by reference to the condensed natural law maxim 'unjust law is no law': how far *law* implies moral grounding for rules it articulates, in a manner analogous to *justice*. Historically this issue is central to religious and philosophical, as well as legal, debate about *natural law* and *positive law*. In OED s15, *law* does convey a 'justice' meaning: 'what is considered right or proper; justice or correctness of conduct'. But that meaning became obsolete in English around 1500. Unsurprisingly, the thesaurus link for s15 sense is to words with moral or ethical resonances: *right*, *justice* and *rightfulness* (and may suggest

semantic differentiation taking place between the two words during the period, in the context of late Mediaeval reinterpretations of Classical legal thinking). How far *law* retains such an implied, residual meaning has now to be assessed based on a view taken of its relation to other words around it in different fields of contemporary discourse, particularly *rights* and *justice*.

The other main, unresolved issue associated with the word *law* concerns law's provenance, an issue highly germane to understanding what gives law its authority. Which surfaces in the relationship between the OED's first and third branches of meaning.<sup>11</sup> Branch 1 acknowledges such a complication in a note linked to s9c (the first sense in 'divine' meanings for *law*). Concerning the phrase *the law of nature*, it notes, 'now rarely, because of the frequency of that expression in sense 17' (i.e. the first sense of Branch 3, 'scientific and philosophical uses'). The OED comments on the relevant scientific sense in a note as follows:

In the physical sciences, *law* is 'called more explicitly law of nature or natural law. The 'laws of nature', by those who first used the term in this sense, were viewed as commands imposed by the Deity upon matter, and even writers who do not accept this view often speak of them as 'obeyed' by the phenomena, or as agents by which the phenomena are produced.'

The physical science meaning of *law*, that is to say - the one conveying 'demonstrated general principle', and on one reading proclaiming the ambition and values of secular science – inherited an earlier, religious schema that was no longer completely believed by many users of the expression but which was nevertheless retained by them and continues to be discernible as an implication at some indefinite level of possibility.

What is most striking in these aspects of the development of *law* is that there is no neat compartmentalisation between concepts of natural law, positive law, and scientific law. Rather, the interrelation between these concepts appears as

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<sup>11</sup> The question of where law comes from and what gives it its authority is of course a major, if not the central, question for legal theory, with positions ranging historically and culturally across divine commandment or inspiration, customary cultural practice, the command of a sovereign and obligations created by it, 'recognition' by those subject to the law, and elaboration from a basic, grounding norm – among others. Kelly's (1992) chronologically-narrated account of legal theory, from the Greeks through to the closing stages of the 20<sup>th</sup> century, is particularly accessible and eloquent in its discussion of the relationship between arguments in jurisprudence and philosophical and political ideas. A thought-provoking recent historical and comparative discussion of the relationship between law's provenance and its social function is *The Fall of the Priests and the Rise of the Lawyers* (2016), written by the English international financial lawyer Philip Wood. Concerned with questions of the morality of law, past and present, as well as with international finance, Wood traces the changing balance between religions and legal systems in different places and periods, arguing for better understanding of the contemporary role of law in creating and preserving human values.

something that can on occasion morph into hybrid or qualified versions which give expression to what was (and for many people remains) an unresolved but fundamental question about the origin of orderliness in the world and its articulation or transformation into human order and law.

Acknowledging such messiness in ideas conveyed by *law* - ironically the prototypical term for universality of authority and application – conflicts with the aim of understanding *law* as an expression of ‘univocal’ concepts. Despite this, close reading of the word in the OED and beyond need not undermine efforts to formulate ideal-type concepts or develop arguments based on them. The value of the kind of verbal analysis offered here lies rather in the close-up it offers of processes of making meaning: a sharpened image of changing and sometimes conflicting local uses of words which create and explore what gradually becomes more generalized social thought, alongside uses of language which communicate as far as possible in already established categories.

But *law*, it might be queried, is hardly representative in this respect. Is it not an unusual or even unique word? Could it be an exception among the other expressions listed above? It might be, but the points being made about *law* are echoed strongly in most of those other words. Even a brief reading of the OED entries for those other words shows complexity in number and range of senses, in the historical development of different branches of meaning, and as regards current polysemy. In most, there is one or more historical turning point, divergence, or conflict related to alternative conceptualisations. With some, a crux of meaning relates to one or more new fields in which the word begins to be used (in ways that result in coexisting technical and general uses); or there may be tension between meanings that emerge between concrete and abstract levels, or different conceptual fields stimulating new lines of figurative use. Further, because polysemy is often accompanied by vagueness (Mehl 2013), as well as sometimes by contestability, the words grouped above do all seem complex in the ways I have claimed *law* is. What was argued for *law* more generally can also be shown for the other words: that values, arguments, contradictions and dilemmas are inscribed in a word’s multiple, developing senses.<sup>12</sup> While much about the meaning of such abstract legal terms could only be established by more systematic study, there seems an important watershed here in thinking about legal vocabulary: between understanding legal ‘key words’ as materials in a historical process of negotiating

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<sup>12</sup> Although written in a different research context, my ‘keyword’ entries for *legitimate* and *rights* illustrate these features (<https://keywordsproject.pitt.edu>). Other relevant entries in the Keywords Project corpus include: *authority*, *freedom* and *liberty*, and *privilege*.

ideas and values, and considering words as vehicles for concepts that can be detached from the history of their formulation and deployed in contexts where it is an overall argument, rather than a density of multiple ideas, interpretations and attitudes embedded in particular words, which is expected to be communicated.

## **Conclusions**

The account I have offered of this relatively unexplored topic in ‘the language of law’ remains highly schematic. My intention has been to show the potential interest of the topic and draw attention to possible lines of enquiry. In conclusion, however, it is important to comment on two areas of significant theoretical difficulty. One concerns a common reservation: that discussing philosophical concepts as if they resemble word meanings is misguided. The other concerns a claim I made at the beginning of the chapter: that semantic indeterminacy in general legal terminology might serve a social purpose in communication between the legal sphere and public discourse at large.

### *Concepts and Conceptions*

It is not incompatible with the criticisms developed above that it is still easy to agree when writers such as Dworkin, Raz or Finnis insist that irrelevant senses of words should be filtered out in putting forward a philosophical argument. The difficulties that need further consideration occur in a middle-ground, between acknowledging the significance of semantic indeterminacy and insisting on concepts being ‘univocal’ in the accounts of law they contribute to.

Difficulties in this area have little to do with general debates in anthropological linguistics about how far semantic distinctions reflect cultural distinctions and influence cognitive categorization, the traditional ground of ‘linguistic relativism’ debates around the Sapir – Whorf hypothesis (Gumperz and Levinson, 1996). The issues here are more concerned with the level in a conceptual hierarchy at which theoretical analysis of law can most successfully take place. In contrast with the critique of fixed the legal concepts I have put forward, for example, a distinction is often emphasised between two levels of analysis: the level of unified concepts (abstract, ideal notions) and a level of conceptions (particular instantiations, or realizations of such concepts). To illustrate that distinction, Dworkin many years ago outlined a scenario in which he instructs his children to behave ‘fairly’. In doing so, he says he anticipated two possible outcomes: first, that in applying the concept of ‘fairness’ his children might go beyond any particular examples of conduct he would have thought of himself; and second, that he would be prepared

to modify his own view in light of alternative conceptions of fairness which underpinned their choices. The significance, for Dworkin, was that his children's actions, and his concession by way of response, do not affect the 'fairness' concept itself. That concept, he maintains, exists above the varying conceptions of it; and the true meaning of his instruction was that his family should be guided by the concept of 'fairness', while allowing for disagreement over controversial cases created by varying conceptions of that concept.

Dworkin's scenario serves in part to clarify a distinction he was making between two types of legal rule: rules amenable to further development in use but based on a large number of overlapping, agreed instances (concept-based rules) and rules where detail is specified and which are therefore less amenable to flexibility of interpretation (conception-based rules). This distinction appears valuable in accounting for the tendency of legislation to follow different conventions in different periods and legal systems (especially for modern common-law legislation to reach into more areas of life and be more voluminous and detailed than previously). As refutation of the contestability of concepts, however, the scenario seems inconclusive. How far, for example, does Dworkin's view depend on the contrast he draws between concept and conception, and how far is it coloured by an extra dimension - that of family hierarchy - which he introduces in passing, in that a 'law of the father' dimension complicates prospects for contestability of what an overarching concept of fairness should be. Clarification of the example also seems needed on how the children's alternative conceptions related to complexities of the particular word *fair* that Dworkin had used in giving them the instruction.

Varying Dworkin's scenario slightly in order to draw out such difficulties, by creating a hypothetical situation based on *justice*, may highlight a larger role for contextual interpretation in how concepts and conceptions work. Imagine that a city mayor exhorts a gathering of her officers to 'dispense', 'do', or 'administer' *justice* (the three commonest verbs, in order of frequency, which immediately precede *justice* in the Oxford English Corpus (OEC), in contrast with *obstruct*, *escape* and *delay* as the three most frequent verbs related to different kinds of actor linked to *justice*). In this modified scenario, it is first of all difficult to know whether there is one or several different instructions, because what *justice* means is inflected by each particular verb of which it is made the grammatical object. Now imagine that, following the instruction, one officer gives public property away, another takes out writs, and another inflicts punishment on people. (This is inevitably somewhat strained, reflecting simplification already present in the earlier scenario.) Each of

the officers' responses derives from an alternative interpretation of *justice*, based on established senses: 'quality of being just' (construed here as some kind of *social justice* objective, justice as a balancing of all interests to be achieved including by resource redistribution); 'administration of law and judicial proceedings' (justice as a matter of proceedings in legal institutions); and 'punishment or retribution' (rendered more graphic in the now obsolete metonymic sense of the word *justice* reported in OED sense 2b, 'gallows'). To be credible, each of these responses by an officer would need to be enriched considerably. But in outline they suggest that an account framed in terms of a dynamic conceptualization or construal of *justice*, narrowed and altered by context, might offer more insight into what justice is than an account formulated in terms of conceptions treated as varied embodiments of a static, superordinate concept. One reason for preferring a 'contextualized' account is that it fits better with the word's recognized semantic indeterminacy.

Characteristics of such indeterminacy include how *justice* prompts a similar pattern of alternative interpretations through its vagueness (e.g. whether *justice* can extend to extrajudicial detention, deportation, or drone strikes) as well as through its contestability (e.g. whether 'proper' *justice* is achieved better by 'redistribution of resources' or by 'putting people in prison for longer'). Deciding which of the two analyses should be preferred seems to depend further on how the notion of 'concept' is understood (including how static or dynamic concepts are, and what internal structure they are assumed to have). It also depends on how far abstract cultural concepts should be thought of as being constituted in the course of their use in particular verbal and cultural contexts (for further discussion see Croft and Cruse 2004; Geeraerts 2010: 240-9; Nuyts and Pederson 1997).<sup>13</sup>

### *Conduit, Competence and Mystification*

The other remaining topic to be addressed concerns the claim I made at the beginning of this chapter: that semantic indeterminacy in the general terminology of law may function as a conduit for communication between the legal sphere and wider public. In introducing that possibility, I presented semantic variation between a professional legal group and other social groups descriptively: as a matter of overlapping meanings in different domains associated with sub-groups in

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<sup>13</sup> Such a contextualised view of concepts is hardly unknown in law. The jurist Glanville Williams argued over 70 years ago that context gives meaning to a word by indicating which other word it is opposed to. He gives the example of *freedom*, which he says has no single meaning: 'Freedom versus imprisonment; freedom versus legal duty; freedom versus deprivation of the franchise; freedom versus imposition; freedom versus economic bondage; freedom versus determinism; freedom versus licence – all these are different meanings.' (Williams, 1945:301). Alongside *freedom*, Williams notes a similar characteristic in other 'chameleon words', as he calls them, including *democracy*, *law*, *right*, *property*, and *interest*.

a larger, overall language community. No relations of power, standards of correctness, or order of priority within the social hierarchy were countenanced. A contrasting view of such semantic variation would however be that it shows in the given society an endemic and potentially dangerous failure of comprehension and associated ignorance of the law. A polemical account might go on to insist on greater respect for professional legal discourse as a society's guarantor of correct meaning (e.g. as opposed to use or abuse of words with inconsistent meanings or implications in various political and other kinds of rhetoric).

Surprisingly little theoretical attention has been given to such questions in linguistics, as far as I know. One way of beginning to explore them, however, is through philosophical arguments regarding a social 'division of linguistic labour' put forward in Putnam's article 'The Meaning of Meaning' (1975), taken up by other writers including Bartsch (1987) (for discussion of connections with the socioculturally situated nature of meaning more generally, see Geeraerts 2010: 244-58). Putnam's main arguments were not about normative meaning, and certainly not about law, but rather a critique of the psychological account of meaning (i.e. the view that meanings exist in the mind rather than in features of the things words refer to). His exposition of differences between specialised and general understandings of words comes halfway through a far more wide-ranging philosophical argument (Putnam 1975: 223-9).

Starting from the observation that the author himself cannot distinguish an *elm* from a *beech* tree, seeing both merely as deciduous trees, Putnam argues that for many words (in a modern society very many, and not only technical words - but his arguments are restricted to so-called natural-kind words) it is only experts in a given area who fully comprehend the essential properties of referents, which for Putnam provide the proper basis of meaning. Further, he suggests, whatever we take as full understanding is subject to change (e.g. as the result of scientific advances). Many language users (here I extend possible instances speculatively from Putnam's concrete, natural-kind words such as *elm*, *gold*, or *tiger* to abstract terms such as *hedge-fund*, *efficiency*, *well-being*, or *rights*) will only understand what they mean partially, in his 'externalist' sense. Our understanding, Putnam suggests, often takes the form instead of reduced stereotypes (typically, a prototypical concept plus semantic extensions depending on how much any particular language user is motivated to know, given their social situation). On this basis Putnam postulates, at least for natural-kind terms, 'a division of linguistic labour' which he outlines through an analogy between a social community and a factory (Putnam 1975:227). Variably according to the different social groups they belong to, language users

according to Putnam engage in a kind of ‘semantic deference’ to whichever class of speakers in the population is taken to possess the relevant expertise to stipulate correct referents for the words a particular language user needs to use. The result (subject to variation between societies as regards the degree of prestige and trust they are willing to accord to experts) is some kind of tacit ‘correct terminology’ authority that consists of experts who may, in different circumstances, be scientists, chefs, boat-builders, gardeners, or others. Putnam argues that, in our use of imperfectly understood vocabulary items, we attune or orientate towards the usage of such experts (but in doing so nevertheless need to understand words at some threshold level ourselves, if we are to be competent language users). At the level of a whole society, language in Putnam’s view functions accordingly like a massive, hierarchically ordered machine that works collectively, with cooperation but also subordination governing the different extents of understanding of what things around us are or mean – a fundamentally different view from the flat structure of signifying contrasts associated with traditional descriptive linguistics.

Philosophical speculations of the kind Putnam puts forward may seem a long way from practical issues of people attributing different meanings to general legal terms in different walks of life. But one notable attraction of Putnam’s approach is that – exceptionally for academic linguistic thinking - it directly addresses linguistic normativity not only as a matter of constraints imposed on what people say but also in what words mean. The semantic normativity made visible in his approach is concerned with whether meanings meet some standard of correctness and, if so, what confers the relevant standard or combination of standards, given that full understanding of all aspects of a modern society is something impossible for any individual language user to achieve.

What implications follow from such arguments is not straightforward. Clearly there can be no direct transposition of Putnam’s arguments onto discussion of abstract rather than concrete words; some points which may be convincing in relation to natural-kind terms will not apply to abstract legal terms because of the very different notion of ‘reference’ they call for. Another reason Putnam’s ideas in this area have not been widely discussed is that the social ramifications of his conception of linguistic norms - that some level of competence is needed to be a functioning member of a language community but that deferring to the semantic expertise of others in particular domains is normal - is widely considered rebarbative and ‘authoritarian’ (for discussion, see Geeraerts 2010:255-6). As regards legal terminology that provides essential terms in the general vocabulary of wider political and moral debate, even in a democracy, presumption of correctness

on this view might be thought to rest with lawyers' expert knowledge rather than being spread across the more heterogeneous population. Non-lawyers' understandings of such key words would be assumed, in Putnam's terms, to rest merely on stereotypes, and should yield to the semantic jurisdiction of legal experts (presumably either by paying for advice or being confined to listening rather than speaking).

In contrast to this hierarchical way of ordering language in a pluralistic society, Bartsch (1987) encourages an alternative conception of linguistic norms. While acknowledging the possibility of serious norm-conflicts, especially firefights around disputed interpretations at occasional social flashpoints, Bartsch argues that more constructive forms of political engagement are possible, especially where situations can only resolve or move forward through social cooperation. That basic fact about situations, she suggests, encourages people to be more pragmatic and tolerant of semantic flexibility, including vagueness, simplification of complex material, and slippages of meaning. Semantic indeterminacy, she argues, may in some circumstances even facilitate satisfaction of a higher-order communicative norm, whether of promoting efficiency in the exchange of information or in managing social interaction (Bartsch 1987: 209-18).

In the present state of understanding, discussion of what follows practically from key words about law circulating in general vocabulary can move very quickly from what is known into fantasy politics, such as the notion that Bartsch's position might somehow make it possible to 'take back the law' into democratic control. But if we keep closer to Putnam's and Bartsch's actual positions, the implications are more limited. One view broadly aligned with Putnam's account, as has been suggested above, points towards semantic jurisdiction over key terms of law being maintained by a specialist professional elite. Their power over meaning would not be limited to being exercised in law itself, where (despite initiatives including alternative dispute resolution and cases argued by self-representing litigants) it would be difficult for a legal system to function otherwise; it would also diffuse through wider channels of normative influence into other social domains, including politics. Given the scale of reservations expressed in some studies of legal language (e.g. Mellinkoff's (1963) and Tiersma's (1999) accounts of the development of the legal profession as the establishment of a mediaeval oligarchy exploiting specialist linguistic knowledge for the purpose of rent-seeking), such a view would be questionable, or even unpalatable, to many. But while Bartsch's alternative vision of linguistic norms offers a vision of a more participative and negotiated society, it is in obvious tension with law's obligation ultimately to assert

some kind of definitive social order after balancing the benefits of such order against personal and group freedoms.

As yet, there is little to go on in forming a better general view of how legal-lay communication can function, beyond acknowledging simultaneous separation and yet porosity between legally decided meanings and the circulation of general ‘law’ words. It is clearly desirable, in our 21<sup>st</sup> century political culture, to understand tensions in the use of abstract vocabulary with greater clarity and calculation of social effect than how such terms were viewed in the early days of democracy in the United States by Alexis de Tocqueville (2003 [1838]). Aristocracies, Tocqueville argued in his essay ‘How American democracy has modified the language’, had been static, and their use of language reflected political inertia. Democracies, in contrast, encourage constant agitation of ideas as well as competition between them as old thoughts disappear, reappear, or are ‘split into minute shades of meaning’ (2003:554). For Tocqueville, the political implications of the political and linguistic shift from aristocracy to democracy, and the taste for change which accompanied it, were mixed. Writers, he argued – taking as an example his own use of the word *equality* - rarely dwell on a single thought but instead ‘point their aim at a knot of ideas, leaving the reader to judge which of them has been hit’ (2003:555). A ‘secret fascination’ for imprecise ideas, he believed, displayed itself most clearly in ‘constant use of generic and abstract terms and a peculiar way of using them’ (2003:557-8). Tocqueville’s enthusiasm for a republic of ideas built on such terms was tempered, accordingly, by caution on account of their uncertain meaning: ‘One abstract word’, he warned, ‘is like a box with a false bottom: you put into it the ideas you want and take them out again unobserved’ (2003:558). Such a risk, it seems, continues to exacerbate the already complicated interplay between general words used in controlled circumstances in law and their potentially more expansive use in political discourse and ‘ordinary language’.

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