TRUTH AND FAITH IN COMMUNICATION AND LAW

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AS COMMUNICATION THEORY becomes more sophisticated, it continues to gain attention and stature. Now language is studied as one of many variables. Increasingly research designs and models show sociological, anthropological, and psychological insights; and in turn each of these disciplines benefits too. The turn to multiple variables, including McLuhan's "media," might now focus greater attention on social institutions which may have unique variables, even with respect to language forms and mechanisms of transmission.

One fruitful area for exploration is the institution and process of law. Such exploration would benefit not only research but also the administration, study, and practices of law. Furthermore, while laymen might be aided in their understanding of law, the greater gain would be the resulting rounding out in the understanding of the processes of communication. There are insights to be gained that feed back into interpersonal relations generally, exemplifying a feature of communication study that may be its greatest virtue.

The traditional view of law has been undergoing dramatic change, not so much among the laity as among the social and behavioral scientists who explore it. Even within the various components of the legal profession, and especially among its educators, the touchstones are rolling.

The image or prevailing model of law still seems to be that it is somehow transcendent and general, to some extent

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out of the hands of mere man to control, akin to the physical laws of nature. If it is not *a priori* it is, so to speak, pre-enacted, at least prior to application. It operates quietly to control behavior along certain lines; when the need arises, it is there to be articulated, to be followed, or to be applied in determinable factual situations. It is not dependent upon individual caprice or selfish motive. In the main, it is predictable, rational, and fair because it is general in application and in operation. Being all these things, it is generally obeyed, as it must be for society to function.

CENTRAL to this image of law is that it operates through binding general principles or rules. At this point communication analysis may enter because articulated rules are in verbal form. In the twenties and thirties, communication analysis was applied to the common law, then thought to be the heart of legal processes in the United States. Using a blend of psychology, anthropology, scientific idealism, and the Ogden-Richards kind of linguistic empiricism, so-called legal realism concluded that the image of law was mere façade. The rules and concepts which courts used to justify decision were shown to be ambiguous, vague, uncertain, question begging, and often meaningless. Rules ran in at least pairs of opposites. Thus a given opinion did not necessarily "explain" a decision. The decision might, then, be ad hoc, arbitrary, or biased. A given rule served no basis for prediction. Add to all this the skepticism and doubts that were raised about empirical validity in the fact finding of jury trials, and the traditional view becomes one giant myth.

In short, the way legal rules were said and thought to operate was not true. Law is what judges (and other officials?) *do,* not what they *say.* Such a proposition has truth value and provides a base for empirical research, and legal realism has played a vital role in subsequent research as well as theory and practices. Yet communication involves more than just interplay with stark realities. It involves personal interplay within the total context of variables—including symbols—that perform many roles in addition to representation.

Like generals, social myths do not just die. To say that God is dead is to raise merely empirical questions. Legal fictions may not be true, but they serve in other ways, as do metaphors or even the postulated models of science. Religious symbols and propositions need not be true to provide items to live by. A person may have his necessary illusions, as any psychotherapist knows.

LEGAL REALISM had arisen in a period of general skepticism. Its constituents were partly reacting to a complacent and authoritarian obstructionism within the legal profession and institutions to what were felt to be needed social changes and just causes. Today's interest in uprooting poverty and in advancing civil rights through civil disobedience and other actions reflects the kind of pressures here and abroad which put traditional views of law into doubt once again. To the extent that law serves to freeze an undesirable social structure, either domestically or internationally, to that extent, short of revolution, a rational basis of resistance makes sense.

A view such as legal realism puts responsibility for legal obstruction on human beings rather than on untouchable rules. Yet it does so in blatant ignorance of the dangers involved should such a view become widespread before the necessary image—the necessary items of faith in the symbols of law—evolves into some new socially acceptable and workable image to support whatever social order exists.

So it is that legal realism could not survive in its extreme form. Related reasons could be found as to why blatant linguistic empiricism has been absorbed into a developing communication approach that uses a rhetoric more persuasive than the previous dichotomy of empirical as against emotional reference. While the literal level of communication does not tell the whole story, the felt level often works only because the literal level is in operation. Yet, just as the earlier linguistic empiricism has been crucial to contemporary communication sophistication, so too has its impact upon the changing image of law.

Within the esoterics of legal philosophy, Wittgenstein and

J. L. Austin move slowly to modernize the conservative English view as well as to interest legal scholars in this country. There are increasing signs that communication theory even beyond "semantics" will be embraced—at least to the extent that sociological theory has been—to affect legal education and research, perhaps as a complement to that approach, but also through the cultural-communication orientation of anthropology and the personal-relations orientation of psychiatry.

ONE OF THE NOTABLE influences of the earlier legal realism has been upon legal education, which in turn has increasing impact upon legal institutions manned by former law students. Rules are seen still as key variables, along with many others, including social dynamics and values, and as one of many in "decisional situations." While it is still not a predominant view, law is seen by a significant group to be to a large extent what *happens* (compare legal realism) when law-fact dialectic makes contact with individuals and society.

As part of this trend, law schools are entering into "human relations" training for lawyers. This includes a greater interest in the way lawyers behave, for instance, in relationship to clients of various kinds. The relevance of communication approaches should be obvious.

It may seem strange that law schools have not been concerned with the so-called practicalities of practice. But the move is not part of a trend toward a "trade school" approach so abhorred by most law teachers. Rather it is a sign and an outcome of the changing image of law.

Previously—and probably still predominantly—it was felt that lawyers should be taught law in its traditional image, to which they, like all others, should conform. What they did in practice was not "law," although it should involve working in expert fashion within law as its ministers, but not necessarily its prophets. Thus lawyers were taught to represent clients in official forums, mainly to be advocates in court, and to chart a client's course through the mazes of law, partly through expertise in research and interpretation and partly in drafting various instruments which have legal consequences.

While the relevant communication insights have too long been underplayed in the traditional approach, the turn to an interest in the role of lawyers as counselors opens an important door. In this role lawyers may be seen as needing expertise in producing adjustments in interpersonal relations, not just by means of formal contracts or other instruments. Even those devices can only be the outcome of some sort of communication skill, including interviewing and negotiation.

It will come to be seen that lawyers are in a sense one of the media of communication standing between the formalities of law and the informalities of interpersonal relations. Yet to be appreciated is the way in which lawyers use their office (as quasi-officials?) and their privilege of interpretation and of legal rhetoric in authoritative fashion as a special power to impose not only legal norms, but moral and other cultural expectations upon clients. They participate significantly too in what has come to be called the "private ordering" process which operates outside the official forums.

Ultimately, lawyers' traditional roles may change because of these and other insights regarding their education. Communication experts can give needed aid to provide legal educators with techniques for the transition, including symbols to replace those that are part of the traditional expectations of individuals who come out of the masses into legal institutions. The iconoclastic approach of linguistic empiricism is not enough—or maybe it is too much. On the level of legal theory, the symbol of morality comes in to fill the faith vacuum left by rule and fact skepticism. The symbol of morality may seem inadequate, but sociological analysis has not yet helped fill the gap because it has not seen the importance of faith symbols, even if its anthropology brother has.

THE GREATEST PROMISE could come from a combination of personality theory, sociology modified by the participant-observation techniques of anthropology, including small-group theory, and the new empiricism of the English ordinary language approach—in other words, *contemporary* communication theory, or an updated general semantics.

Korzybski provided in his theory of multiordinality what Wittgenstein, and other English analysts in related fashion, has nicely made palatable for common consumption in his theory of "language games." Whereas legal realists reacted with scorn to the ambiguity of rules, they had merely discovered in legal language what is common to all language: the indeterminacy of terms and principles before they are used—that is, in abstract form, out of situational context. They had failed further to take account of the relativity of employment of verbal symbols to a particular frame of reference. Thus they had not seen that a rule might "look different" to one outside the decisional context, be a part of a language game different from theirs.

We have yet to learn, not just within the legal profession, that ambiguity is subtly a pervasive feature of symbols and in a sense a part of the human dilemma. The approach to the dilemma can no longer be to ignore it, for communication analysis will make that impossible. The approach is to explore more deeply how human beings cope with it, as they have to some large extent without realizing it. That is the miracle of communication.

Observation of the mechanism of law in operation can help provide part of the answer, for its miracle has been to operate with abstract generalities against the uniqueness of individual situations. Neither Korzybski nor Wittgenstein fully explored that key facet of communication.

We know that communication does not involve, even in its informational aspects, the mere transmission of a message, the transfer of an idea or experience from one head to another. Perhaps symbols provide a means of mutual identification in the literal sense of communion: a coming together by means of a symbol. If the thought seems mystical, it may be because we have as yet explored too little the significance of symbols where faith is obviously involved. Exploration reveals that faith symbols are obviously involved everywhere, abundantly in law. Of course "faith" and "truth" and "reality" are multiordinal terms. It is appropriate to conclude that faith is, after all, one level of reality.