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From Hard-Copy to Digital Law via “Illustrated Courtrooms”: Visualising the History of Legal English

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Abstract: This essay addresses different patterns of the visualisation of the law. It examines how scholars attempt to depict, represent, and perform the law and its founding authority. It also focuses on the pragmatics of legal language: written and spoken standard legal English are pragmatically enriched within contexts where the law is interpreted, uttered, or performed. The linguistic notion of “context” discloses the interrelations between the agendas of law and power and reveals how the law conveys its content to the body politic as its ultimate addressee. It then proposes a renewed concept of legal linguistics. In order to determine the different ideologies underpinning the evolution of English legal language, as well as its prototypical forms of the visualisation of the law, three stages in the history of the English language will be examined: Late Middle English, Early Modern English, and Contemporary English. Each of these stages will be likened to the different parts of judicial proceedings. This will allow us to examine how English legal language has been used in a specific context, the trial, where the law is both uttered and performed.

Keywords: law as ideology, law as performance, written and spoken Standard English, legal pragmatics, Chancery, courtrooms, legal texts and documents, digital law

Community is maintained or achieved – social disintegration is prevented or overcome – when men speak words that create bonds of social cohesion; without such words there can be no community. And we mean also that the community itself provides the sources of those words, makes them available to its members, in the language that it transmits. This is the paradox with which we started: that men create community by language, and that the community creates men by language.

– Harold J. Berman, *Law and Language*, 59.

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1 “Law as Ideology” and “Law as Performance”: Forms and functions of the visualisation of the law

“Visualising the law” can be included among the fields of research to which scholars with a background in either law or humanities have dedicated numerous analyses, and which are aimed at “depicting,” “representing,” or “performing” the law.¹ Indeed, attempts at visualisation unavoidably involve “an interpretation of the law’s founding authority,” which is “self-critical, or self-reflective [...] particularly when literature tries to critically challenge [such] authority and legitimacy as a discourse on truth and justice.”²

This is the attitude of the law-and-literature movement in relation to the topic at stake. The foundations and legitimacy of the law are made “visible” through mechanisms of representation and performance, which unveil the “source of legal authority,” as well as the “‘mystical’ moment of [its] performative self-authorization.”³ These mechanisms of representation also denote how jurists handle Roscoe Pound’s “sibylline leaves,” gather “the scattered prophecies of the past,” and turn the “oracles of the law” into that “body of dogma or systematized prediction which we call the law.”⁴

1 See, among others, Peter Goodrich, “*Specula Laws: Image, Aesthetics, and Common Law*,” *Law and Critique* 2.2 (1991): 233–254; Costas Douzinas and Lynda Neal, eds., *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999); Richard K. Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques and Entanglements* (New York, NY: Routledge, 2011), further references in the text abbreviated as DB. See also Peter Schneck, *Rhetoric and Evidence: Legal Conflict and Literary Representation in U.S. American Culture* (Berlin and Boston: De Gruyter, 2011), Chapter 1 of which is dedicated entirely to the “portrayal of law in literary fiction,” to “courtroom trial [as] the dominant form and focus of cultural representations of the law,” and to the “relation between [legal] reality and its representation.”

2 Schneck, *Rhetoric and Evidence*, 19 and 18, respectively.

3 Schneck, *Rhetoric and Evidence*, 18, 61 et seq. Paul Raffield, *Shakespeare’s Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford and Portland, OR: Hart Publishing, 2010), 2, also refers to the “mystical basis of the law’s authority.” Schneck and Raffield quote Michel de Montaigne, “On Experience,” in *The Complete Essays*, trans. and ed. Michael A. Screech (London: Penguin, 2003), 1216; Blaise Pascal, *Thoughts*, trans. William F. Trotter, ed. Charles W. Eliot (New York, NY: Collier, 1909–1914), Frag. 294; and Jacques Derrida, “Force of Law: The Mystical Foundations of Authority,” trans. Mary Quaintance, *Cardozo Law Review* 11.5–6 (1989–1990): 920–1045. See also Simon Glendinning, “Derrida and the Philosophy of Law and Justice,” *Law and Critique* 27.2 (2016): 187–203.

4 Roscoe Pound, “The Path of the Law,” *Harvard Law Review* 10.8 (1896–1897): 457–478, 457, 458.

This essay provides a scenario within which it is possible to conduct a broader examination of the notion of the visualisation of the law, i. e., of its ability to perform the most relevant legal function (i. e., conveying the meaning of the law) through written and spoken standard legal English, i. e., its traditional forms of representation. Political (and economic) powers indeed draw on standard language when it comes to enforcing their agenda. Governmental action may institutionalise legal language: institutional support thus has relevant linguistic implications, and legal language may become the “medium of national communication.”⁵ This is the case for written and spoken Standard English: the political and economic agendas that lie beneath legal documents and discourses are then conveyed and performed in contexts such as courtrooms and parliamentary debates.⁶

Scholars have also found alternative forms of the visualisation of the law. Among them, I will focus on two patterns of representation. The first may be called “law as ideology.” This is a pictorial, graphic device that delivers an iconic visualisation of the law: “the practice of politics and the enactment of government as a type of aesthetics”⁷ employ symbols, codes, marks, and other images that are traditionally associated with the attributes of power, i. e., the real and ultimate source from which law’s authority is deemed to emanate. “Law as ideology” is interested in depicting the authorial side of the law rather than in portraying the sequence of written sentences (the black-letter law) and spoken utterances (the interaction) that Roscoe Pound defined as the “law in the books” and the “law in action.”⁸

5 David Crystal, *The Stories of English* (London: Penguin, 2005), 222–223.

6 On “the reciprocal transfer of meanings between speakers and listeners [as] the metabolism of language,” in general, and on “the communifying’ function of legal language in all societies where law exists – that is uttered in the context of legal activities,” see Harold J. Berman, *Law and Language: Effective Symbols of Community*, ed. John Witte, Jr. (Cambridge et al.: Cambridge University Press, 2012), 38 and 69. Trials are prototypical contexts for legal interaction and performance of the law: see, among others, Jonathan Culperer and Merja Kytö, *Early Modern English Dialogues: Spoken Interaction as Writing* (Cambridge: Cambridge University Press, 2014), 10 et seq. On the constitutional context and the evolution of legal language, see Andrei Marmor, “The Pragmatics of Legal Language,” *Ratio Juris* 21.4 (2008): 423–452, 424–429. For the U.S. constitutional environment, see Berman, *Law and Language*, 133 et seq.; Pier Giuseppe Monateri, “Voice, Incarnation and the United States Supreme Court,” *Pólemos* 9.2 (2015): 341–356. For parliamentary debates as relevant legal linguistic contexts, see, among others, Anu Lehto, “Complexity in National Legislation of the Early Modern English Period,” *Journal of Historical Pragmatics* 11.2 (2010): 277–300.

7 Raffield, *Shakespeare’s Imaginary Constitution*, 1.

8 Roscoe Pound, “Law in the Books and Law in Action,” *American Law Review* 44 (1910): 12–36.

Like written and spoken standard legal English, figurative representation can be interpreted in different ways that go beyond the “literal” meaning of “pictorial” illustration. This means that “law as ideology” proposes a type of visualisation that is closer to *implicatures*, i. e., the interpretation of meaning that linguists work out in pragmatics. Indeed, pragmaticists do not confine their interpretation of legal language to the original intent of the lawmaker or to the *ratio legis* of authoritative provisions; on the contrary, they “go further and ask what is hinted at by an utterance in its particular context, what the sender’s ‘agenda’ is.”⁹

Iconic implicatures are apparent when we consider how representations and portraits of the English monarchs represented the law in the Middle Ages and in the late Elizabethan period. The King was indeed depicted as the “fountain of justice:” he was a key figure in the administration and enforcement of the law, as well as the “general conservator of the peace of the kingdom,” as Blackstone wrote in his *Commentaries*.¹⁰ The same holds true as far as the iconography and the “power of the clothing” of Elizabeth I is concerned.¹¹ The cultural context of the late sixteenth century saw two powerful and opposing rhetorical instruments used for political persuasion: on the one hand, Elizabeth I encouraged a “politics of aesthetics,” which relied on royal portraiture, i. e., the most “visible, tangible form of the mystical basis of the law’s authority”¹²:

Figurative art, in the form of royal portraiture, remained a dominant propagandist tool [...] insofar as the authority of law has been linked to the affective capacity of the image to control and direct the gaze of its audience, the depiction of the monarch as *Imago Dei* remained a potent rhetorical instrument.¹³

⁹ Patrick Griffiths, *An Introduction to English Semantics and Pragmatics* (Edinburgh: Edinburgh University Press, 2006), 7. See also Marmor, “The Pragmatics of Legal Language,” 424.

¹⁰ Sir William Blackstone, *Commentaries on the Laws of England in Four Books. Notes Selected from the Editions of Archibald, Christian, Coleridge, Chitty, Stewart, Kerr, and Others, Barron Field’s Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In Two Volumes* (Philadelphia: J.B. Lippincott Co., 1893), 1.266.

¹¹ See Kendrick Smaellie, “Dressed to the Nines: Queen Elizabeth I and the Power of Her Clothing,” *Student Library Research Awards*. Paper 7 (2014). Available at http://repository.wellesley.edu/library_awards/7. See also Susan Doran, “Virginity, Divinity and Power: The Portraits of Elizabeth I,” in *The Myth of Elizabeth*, eds. Thomas F. Freeman and Susan Doran (London: Palgrave Macmillan, 2003), 171–199; Ann R. Jones and Peter Stallybrass, *Renaissance Clothing and the Materials of Memory* (Cambridge: Cambridge University Press, 2000); Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power* (Cambridge: Cambridge University Press, 2004); Daniela Carpi, “The Language of Clothing and The Law,” *Pólemos* 10.1 (2016): 143–155, 147–148.

¹² Raffield, *Shakespeare’s Imaginary Constitution*, 1.

¹³ Raffield, *Shakespeare’s Imaginary Constitution*, 2.

On the other hand, this pictorial policy intertwined with the rise of poetic drama – an effective “speaking picture,” according to Edmund Spenser.¹⁴ Hence, portraiture and drama represented strategic means for depicting and discussing political issues, as well as conveying the Queen’s commitment to the new constitutional context of the emerging sovereign nation state.¹⁵

This “iconology of power”¹⁶ was inherent to the Tudors’ government: the representation of the Queen was indeed part of *the* metaphor of her political agenda, as well as *the* device used to uphold the establishment of her new authorial constitutional order.¹⁷ Furthermore, the pictorial and theatrical representation of the Queen was aimed at strengthening the legitimacy of such authorial rule *vis-à-vis* the body politic. As Elizabeth I held on 12 November 1586, when delivering one of her most famous speeches before Parliament:

We princes, I tell you, are set on stages, in the sight and view of all the world duly observed. The eyes of many behold our actions; a spot is soon spied in our garments; a blemish quickly noted in our doings. It behooveth us therefore to be careful that our proceedings be just and honourable.¹⁸

The second pattern through which the visualisation of the law is attained is the “law as performance.” This mainly focuses on the practice of law, as well as on how the proliferation of visual images may influence its legitimacy, authority, interpretation, and enforcement. Richard K. Sherwin’s seminal work *When Law Goes Pop* points out how intense the “influence of the visual mass media on the way trial lawyers represent their clients’ interests” is.¹⁹ When it goes pop, the law changes functions and meaning: it “yields to the media’s logic. As a result, its capacity to serve as a necessary brake upon popular passions and impulses is

¹⁴ Edmund Spenser, *“The Defence of Poesy” and Selected Renaissance Literary Criticism*, ed. Gavin Alexander (London: Penguin, 2004), 10. Indeed, “painting can be described as a discourse where brush strokes represent the phonemes constituting the words that give form to the painting seen as a text”: Carpi, “The Language of Clothing,” 144.

¹⁵ See John A. Guy, ed., *The Reign of Elizabeth I: Court and Culture in the Last Decade* (Cambridge: Cambridge University Press, 1995).

¹⁶ Carpi, “The Language of Clothing,” 147–148; Raffield, *Shakespeare’s Imaginary Constitution*, 15, 82, 104–112.

¹⁷ See Stephen Greenblatt, “Invisible Bullets: Renaissance Authority and Its Subversion,” in *Glyph 8: John Hopkins Textual Studies* ed. Walter Benn Michaels (Baltimore, MD: John Hopkins University Press, 1981), 40–61; Raffield, *Shakespeare’s Imaginary Constitution*, 18–50.

¹⁸ Sir John E. Neale, ed., *Elizabeth I and Her Parliaments 1584–1601*, 2 vols. (London: Cape, 1957), 2.119.

¹⁹ Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago and London: The University of Chicago Press, 2000), 7. Further references in the text abbreviated as LP.

lost” (LP, 171) and therefore turns into “an increasingly popular form of cultural postmodernism” (LP, 31).

The law is then performed as if it were represented either on-stage or on-screen. The consequences are threefold. First, the practice of the law is now treated like a performing art: “fictional methods are in common use within the courtroom” (LP, 47). Second, “the ways in which law goes *pop* coincide with a broader pattern of cultural change” (LP, 39), and this has affected how we conceive of the law: “any attempt to understand adequately [how the] law works in contemporary society requires that popular culture be taken into account” (LP, 8), because “mass media today are [...] the primary if not the exclusive source of the public’s knowledge about law, lawyers, and the legal system as a whole” (LP, 17). Third, such image-based representation of the law has skirted the line between fiction and reality, and this side-stepping of the line has been amplified by the increasing impact of communication technologies in the administration of justice and in courtroom trials:

In a variety of ways law today is being visually projected inside the courtroom: including day-in-the-life videos in personal injury cases, reality-based police surveillance videos, civilian and news journalist videos [...] and digitized reconstructions of images they contain, computer graphics, digitally reconstructed accidents and crime re-enactments, and video montage [...] the latter montage has even replaced an attorney’s live summation before the jury. (LP, 33–34)

“Law as performance” thus has several traits in common with “law as ideology:” both visualise the authorial side of the law; both are aimed at conveying its content and meaning. However, the meaning of the law does not stem from a textual, i. e., semantic, interpretation of legal provisions; rather, it is inferred from the legal language “that is uttered in the context of legal activities,”²⁰ including the courtroom discourse to which Richard Sherwin, Harold J. Berman, and the historical pragmaticists have dedicated their studies.²¹ Again, both

²⁰ Berman, *Law and Language*, 69, according to whom “[t]he vocabulary of law is part of legal syntax, that is, the arrangement of legal terms in phrases and sentences.” On semantics as “the study of word meaning and sentence meaning, abstracted away from contexts of use,” see Griffiths, *An Introduction to English Semantics*, 15.

²¹ See Sherwin, *When Law Goes Pop*, 41–72, and Berman, *Law and Language*, 69. Among pragmaticists, see Culperer and Kytö, *Early Modern English Dialogues*, 49–59, 69, 326–60; Esperanza Rama-Martínez, “Courtroom Interaction between 1760 and 1860,” *Journal of Historical Pragmatics* 14.2 (2013): 236–262; Barbara Kryk-Kastowsky, “Historical Courtroom Discourse: Introduction,” *Journal of Historical Pragmatics* 7.2 (2006): 163–179; Dawn Archer, “(Re)initiating Strategies: Judges and defendants in Early Modern English Courtrooms,” *Journal of Historical Pragmatics* 7.2 (2006): 181–211; Barbara Kryk-Kastowsky, “Impoliteness in Early Modern English Courtroom Discourse,” *Journal of Historical Pragmatics* 7.2 (2006): 213–243; Irma

forms of visualisation go further and ask what is hinted at by an utterance in its particular context, what is “law’s implicit or hidden meaning” (LP, 11). It is evident that this type of interpretation requires

a critical sensitivity to the different ways law masks meaning and power [...] At the same time, we must attend to the ways the irrational subtextual, and symbolic play of rage and desire flow through law’s discursive practices and strategies [including trial and courtroom discourse]. (LP, 11)

2 From traditional forms of the visualisation of the law to the law “Going Pop” ... and back again to written Standard legal English

“Law as ideology” and “law as performance” are thus strategic patterns for representation of the law. Both conceive of representation as a mechanism that is capable of undraping the meaning of the law encoded in legal vocabulary and phraseology, as well as of disclosing the mutual interrelations between power and the law. These types of interrelations emerge, on the one hand, within the legal contexts where the law and the legal language are uttered, represented, and performed, and, on the other hand, the power agenda beneath legal language is usually conveyed by means of communication (hard copy, courtrooms, digitalisation, audio-visual), the aim of which is disseminating the representation of the law.

When it comes to exploring how the law communicates its content within legal contexts, both types of representation encourage the examination of sources of legal meaning that are different from the classical textual legal genres. To this extent, legal documents, transcripts of courtroom trials, bills and writs, petitions, and law reports are usually numbered among the genres that convey written and spoken legal language.²²

Taavitsainen and Andreas H. Jucker, “Twenty Years of Historical Pragmatics,” *Journal of Historical Pragmatics* 16.1 (2015): 1–24.

²² On legal textual genres, see Matti Rissanen, “Standardisation and the Language of Early Statutes,” in *The Development of Standard English 1300–1800: Theories, Descriptions, Conflicts*, ed. Laura Wright (Cambridge: Cambridge University Press, 2000), 117–130, 118–120. For witness depositions and trial records, see Culperer and Kytö, *Early Modern English Dialogues*, 49–59; Kryk-Kastowsky, “Impoliteness in Early Modern English Courtroom Discourse,” 214; Merja Kytö, Terry Walker, and Peter Grund, “English Witness Depositions 1560-1760: An Electronic Text Edition,” *ICAME Journal* 31 (2007): 65–86.

Albeit semantics and syntax applied to legal documents are still essential vehicles for interpreting the law's communicative content, it is evident that only the context, in general, and the legal context, in particular, *enrich* legal language and therefore disclose how multifarious “the pragmatic aspects of language use” are.²³ Further, the context acts as a “background that is common knowledge between the conversational parties,” and this also helps in decoding what implicature is hinted at by a legal text or utterance in a specific legal context.²⁴

This is particularly true as far as “law as ideology” is concerned: the symbolic depiction of the authorial attributes of power conveys power's agenda and its quest for legitimacy. The relationship between power and the law is thus made explicit and directed at the body politic: within the broader landscape of the portrait – which assumes the constitutional legal order as its scenario – the body politic is indeed the ultimate addressee of the prescriptive content of the law. Once it has dismissed its iconic camouflage, the law appears as if it were the *ancilla domini*. This also means that power sets not only its own agenda, but also the content of the law, and therefore the meaning that the law has to convey. “Law as performance” also rejects the possibility of the “autonomy of the law” from the context in which it is uttered or performed.²⁵ As Sherwin points out, its doctrines, language, and methods are indeed not self-sufficient:

Law is everywhere. It is in law offices in conversations between lawyers and clients, and between lawyers arguing or negotiating with other lawyers. It's in the minds of judges, clerks, bureaucrats, and jurors. And it's on the air – on television, film, and computer screens in court and out. (LP, 10–11)

Indeed, the skills of lawyers are represented through commercial advertising; and this also explains why, *when law goes pop*, this type of advertising has become the most common form of representation of the law.²⁶ Because of its inherence to popular culture, advertising is *the* mode of communication that the audience is most familiar with, and it therefore ensures constant coarse tuning

23 Marmor, “The Pragmatics of Legal Language,” 424. On the relevance on the legal context, see Culperer and Kytö, *Early Modern English Dialogues*, 61 et seq.

24 On the different types of pragmatic and semantic interpretation, see Griffiths, *An Introduction to English Semantics*, 6–9; Marmor, “The Pragmatics of Legal Language,” 424–225.

25 For an account of how the autonomy of law was challenged in the U.S. legal environment from the 1960s onwards, see John Witte, Jr., and Christopher J. Manzer, “Introduction” to *Law and Language: Effective Symbols of Community*, Harold J. Berman, ed. John Witte, Jr. (Cambridge et al.: Cambridge University Press, 2012), 135, 3 et seq.

26 See Sherwin, *When Law Goes Pop*, 26.

between the societal context that forges popular culture and its audience, as well as fine-tuning between that culture and the law.

Legal textual genres and spoken legal utterances are still relevant forms of visualisation of the law. This is evident as far as written legal English is concerned. To this extent, I cannot deny the relevance of Ferdinand de Saussure's linguistic taxonomies when devising a study on English as a form of visualisation of the law: indeed, the distinction drawn between *langue* and *parole* is applicable to its diachronic analysis.²⁷ The concept of *langue*²⁸ is capable of encompassing patterns of legal representation referring to past times when it is impossible to resort to other technical devices in order to record and preserve the spontaneous speech of defendants and witnesses in courtroom trials.²⁹ It follows that transcripts of legal proceedings, witness depositions, and parliamentary debates act as iconic representations of a language that we cannot otherwise record. The same holds true for the language and the spelling of laws and statutes, which is diachronically immutable and therefore

characterised by neutrality and generality; it avoids subjective and personal attitudes and a strong regional marking, to ensure correct and unambiguous transmission of information it must be conservative in its choice of structure and lexis and hostile to stylistic variation.³⁰

And yet, these features “represent anonymous authority and power,”³¹ which may be pragmatically enriched within the legal context and by external factors, such as political and economic ones, which may thus challenge the meaning of the legal lexicon, and therefore impose a new sense (its own *parole*) on existing lexical items within the actual legal context.³²

27 See Ferdinand de Saussure, *Course de linguistique générale*, publié par Charles Bally and Albert Séhéhayé avec la collaboration de Albert Riedlinger (Paris: Payot & Rivage, 1914). See also Berman, *Law and Language*, 37 fn 5; Culperer and Kytö, *Early Modern English Dialogues*, 4.

28 Whereas *parole* is the speech used by real people, *langue* refers to “the more abstract systems of linguistic signs”: Culperer and Kytö, *Early Modern English Dialogues*, 4.

29 This is why pragmatic markers abound in trial records and depositions: see Culperer and Kytö, *Early Modern English Dialogues*, 361 et seq.

30 Rissanen, “Standardisation and the Language of Early Statutes,” 120. See also Lehto, “Complexity in National Legislation,” 278 et seq. See also Culperer and Kytö, *Early Modern English Dialogues*, 9: “Historical pragmatics [...] faces an apparent obstacle in that our knowledge of the spoken interaction of the past is confined to what can be gleaned from written records.”

31 Rissanen, “Standardisation and the Language of Early Statutes,” 121.

32 Indeed, “[i]n relation to historical legal documents [...] the audience and function can change in the course of time. As an example, Parliamentary Rolls were mainly meant as record keeping for administrative use before the late fifteenth century, but when printing of statutes

Furthermore, letters, lexical items, mechanisms of affixation, phrases, and sentences are all symbols³³ whose prescriptive meaning stems from the interaction of semantic knowledge with the knowledge of the world, i. e., between power structures, contexts, and textual genres that play a key role in conveying the content of sentences and utterances. In addition, I have already said that written transcriptions are historically the most common forms of visualisation of the law, and this still holds true when it is impossible to resort to other technical devices in order to record and preserve the spontaneous speech of defendants and witnesses in courtroom trials.³⁴ As a form of visualisation of the law, language then reveals the relationship between politics and language: the assumption is one of the key arguments when it comes to determining which features allow a local variety of English to become the standard language. This is the case of U.S. English, where the colonial lag and diglossic situation (a high English variety *vis-à-vis* several dialects spoken by the colonists) were noticeably affected by a wave of “linguistic democratisation”: a “socio-political role of language [...] was [thus] relevant in the building of the USA as a nation.”³⁵ When founding an independent nation, political power has its institutions and its language; the voice of the people will, then, be subsequently spoken by the political branches, as well by the judiciary (the U.S. Supreme Court), as Harold J. Berman and Pier Giuseppe Monateri have pointed out.³⁶ This is apparent in Noah Webster’s lexicographic studies, the *Dictionary of the American Language*³⁷

was introduced the acts came to be addressed to people outside the Parliament”: Lehto, “Complexity in National Legislation,” 282. Taaavitsainen and Jucker, “Twenty Years of Historical Pragmatics,” 5–7, highlight the shift from De Saussure’s “langue” to “parole” in historical pragmatics.

33 See Berman, *Law and Language*, 65.

34 See Charles Barber, *Early Modern English* (Edinburgh: Edinburgh University Press, 1997), 30.

35 See Gabriella Mazzon, “The Ideology of the Standard and the Development of Extraterritorial Englishes,” in *The Development of Standard English 1300–1800: Theories, Descriptions, Conflicts*, ed. Laura Wright (Cambridge: Cambridge University Press, 2000), 73–92, 75–76. On the ideological foundations of American English, see Richard W. Bailey, *Speaking American: A History of English in the United States* (Oxford and New York: Oxford University Press, 2012), 6–15.

36 See Berman, *Law and Language*, 133–149; Monateri, “Voice, Incarnation and the United States Supreme Court,” 352–354. See also John H. Fisher, *The Emergence of Standard English* (Lexington, KY: The University Press of Kentucky, 1996), 2, who reminds us of the most relevant “congressional action towards simplified spelling” in the U.S. through which to give voice to institutionalised American English, i. e., *A Manual of Style Prepared by the U.S. Government Printing Office*.

37 Noah Webster, *Dictionary of the American Language* [1828] facsimile edn. (New York: S. Converse Facsimile edn., Johnson reprint 1970).

and the *Dissertations on the English Language*. The United States required both constitutional and linguistic codification: “as an independent nation, our honor requires us to have a system of our own, in language as well as in government. Great Britain [...] should no longer be *our* standard.”³⁸

There is, then, a type of visualisation of the law that is capable of capturing the ontological excess of power: although it is evident that the “uncanny presence of the law” may be embodied and conveyed by all means of communication and representation, the prototypical one still relies on linguistic patterns (DB, 43, 47). In this respect, written language backs the semantic *ostension* of the ultimate source of power. This is apparent as far as the common-law legal system is concerned. Not only did the democratisation of American English favour the Americanisation of the common law and its translation “into some form of a written code, or digest, which would be concise and comprehensive enough” under the authored text of the U.S. Constitution,³⁹ but the legitimacy and sovereignty of the ancient English constitution also entailed the idea of laws enacted in the best interests of English subjects. This was strictly associated with Aristotle’s “good governance” of the *polis* and with the constitution as a social contract based “on the recognition of community, association or friendship” for “the creation or maintenance of the *polis*” itself,⁴⁰ which emerged as an English constitutional innovation “from both the political quarrel between the crown and Parliament and the religious battle over episcopacy and presbytery.”⁴¹ According to Sir John Fortescue, such principles stemmed from the role of a

king ruling his people politically, because he himself is not able to change the laws without the assent of his subjects nor to burden an unwilling people with [a] strange imposition, so that, ruled by laws that they themselves desire, they freely enjoy their goods, and are despoiled neither by their own king nor any other.⁴²

38 Noah Webster, *Dissertations on the English Language* [1789] facsimile edn. (Menston: Scolar Press, 1967), 240.

39 On the “Americanisation of the Common Law,” see Schneck, *Rhetoric and Evidence*, 123–124: this led to the “simplification and standardisation of American laws,” as well as the revision of several common-law core concepts, such as that of property. Furthermore, “[n]ew forms of social and mercantile interaction radically changed old and opened new fields of legal conflict for which the Common Law had no ready concepts or precedents.”

40 Raffield, *Shakespeare’s Imaginary Constitution*, 171.

41 Lee Ward, *The Politics of Liberty in England and Revolutionary America* (Cambridge: Cambridge University Press, 2004), 60.

42 Sir John Fortescue, *De laudibus legum Angliae – In Praise of the Laws of England*, trans. Shelly Lockwood (Cambridge: Cambridge University Press, 1997), Chapter IX.

The assumption is particularly apparent when we consider those ancient legal documents where symbolic or iconic elements complement the written representation of the law: among others, the documents released by the Chancery and by the King's Privy Seal, which are now reproduced and collected in the seminal work *An Anthology of Chancery English* edited by John H. Fisher, Malcolm Richardson, and Jane L. Fisher or in the *Statutes of the Realms* collected in the *Rotuli Parliamentorum* and now partially stored in the Helsinki Corpus.⁴³ Among them, we can mention the signet letters of the English Kings, in general, and of Henry V, in particular, to which linguists devoted their studies.⁴⁴ The iconology of the written language, which reached its peak in these documents and legal texts, displayed a threefold attitude: it was an authorial linguistic symbol, a marker of power, as well as one of the earliest uses of "English as official writing" capable of conveying the King's agenda.⁴⁵

To this extent, Fisher, Richardson, and Milroy uphold that Henry V's Signet Letters are "the most influential [documents] in establishing the convention" of what we now call "Chancery Standard":⁴⁶ this expression was first used by Samuels in 1960,⁴⁷ and it refers to a trend towards the uniformity of the written language, as well as to the emergence of the early attested form of Standard English, which is also known as "Chancery English." There is, then, recourse to what Fisher calls "chancery hand," a form of international business handwriting

43 See John H. Fisher, Malcolm Richardson and Jane L. Fisher, eds., *An Anthology of Chancery English* (Knoxville, TX: The University of Tennessee Press, 1984), and *The Statutes of the Realm: Printed by Command of His Majesty King George the Third, in Pursuance of an Address of the House of Commons of Great Britain. From Original Records and Authentic Manuscripts*, ed. Alexander Luders et al. (London: Dawsons of Pall Mall, 1810–1828). See also Fisher, *The Emergence of Standard English*, 36–65.

44 The Signet Letters are "epistolary in form, [and are] either letters of instruction by the King or some other official, or petitions by individuals or institutions to the King, the Lord Chancellor, the Council, the Parliament": Fisher et al., *An Anthology of Chancery English*, 5–16 and 84–194, for the reproduction of the Signet Letters, Later Signet and Privy Seals. See also Malcolm Richardson, "Henry V, the English Chancery, and Chancery English," *Speculum* 55 (1980): 726–750; Jim Milroy, "Historical Description and the Ideology of the Standard Language," in *The Development of Standard English 1300–1800: Theories, Descriptions, Conflicts*, ed. Laura Wright (Cambridge: Cambridge University Press, 2000), 11–28.

45 John H. Fisher, Malcolm Richardson, and Jane L. Fisher, "Introduction" to *An Anthology of Chancery English*, eds. Fisher et al. xi.

46 Fisher et al., "Introduction," xv.

47 See Michael L. Samuels, "Some Applications of Middle English Dialectology," *English Studies* 44 (1960): 81–94. See also Fisher, *The Emergence of Standard English*, 27.

originating from the Italian chancelleries and eventually merged with the native English cursive via the influence of the French Royal Chancery.⁴⁸

One of the most relevant features of the Signet Letters is the elevated degree of homogenisation attained as regards their style and language. According to linguists, the use of a standard language by the political power, in general, and by the public administration, in particular,⁴⁹ is one of the markers of standardisation. The Signet Letters can thus be considered the *prototypical* form of visualisation of the relationship between law and power, and the written text conveys the prescriptive meaning of the King's command as part of his political agenda.⁵⁰

These letters were indeed written in response to petitions to the King as the fountain of justice: the King complements the written command with the royal seal, i. e., the symbol that corroborates the authenticity and truthfulness of the document where his supreme authority is visualised. The King's command is then mediated by a specific style: it is the chancery hand emanating through the hands of "six scribes whose names are signed, and perhaps as many as thirteen others whose hands can be distinguished."⁵¹ This did not prevent the King from contributing to the standardisation of the (legal) English language through his personal usage and style. Indeed, the Signet Letters already exhibit orthographic, lexical, and morphologic characteristics that would be preserved in the subsequent phases of the English language: the use of *that* as a demonstrative, the lack of inflected infinitive (i. e., without the suffix *-en*), the use of *do/doo* as an auxiliary verb, and so forth.⁵²

48 See Fisher et al., *An Anthology of Chancery English*, 3–5; Norman Blake, "Introduction" to *The Cambridge History of the English Language*, vol. II, 1066–1476, ed. Norman Blake (Cambridge: Cambridge University Press, 1992), 1–22, 13.

49 Rissanen, "Standardisation and the Language of Early Statutes," 118.

50 "The Chancery clerks fairly consistently preferred the spellings which have since become standard. The documents [...] show the clerks trying to eliminate the kind of orthographic eccentricity found in the Privy Seals minutes, the petitions passed on to them for entering the rolls." Fisher et al., *An Anthology of Chancery English*, 27. However, the earliest standardisation attempts may be traced back to the reign of King Alfred, when West-Saxon gained in prestige: see Terttu Nevalainen and Ingrid Tieken-Boon van Ostade, "Standardisation," in *A History of the English Language*, ed. Richard Hogg and David Denison (Cambridge: Cambridge University Press, 2006), 271–311.

51 Fisher et al., *An Anthology of Chancery English*, 9.

52 The characteristics of Chancery English are examined in Fisher, *The Emergence of Standard English*, 44–53.

3 Performing the law through spoken varieties of legal English

In the previous paragraphs, we noted that “law as performance” rejects the possibility of the “autonomy of the law” from the context in which it is uttered or performed. This means that legal research should focus on sources of legal meaning and visualisation of the law where the written text is pragmatically enriched by the context.⁵³ This absence of “autonomy of the law” requires one to go beyond the black-letter law, as well as the words of legislators, jurists, and administrative officials, and therefore to study and perform the law in specific legal contexts.

However, the lack of autonomy of the law is not usually confined to written, visualised language; it usually refers to the spoken variety of the English language that falls under the umbrella of English for special purposes. Linguists, however, have challenged the possibility of setting such a standard spoken language.⁵⁴ On the one hand, they argue, uniformity often concerns written varieties of the language: they are usually indebted with language policy and language ideology and get institutionalised by political and governmental power, which controls the means for its dissemination.⁵⁵ On the other hand, standardisation of writing proceeded faster “than standardisation of speech,”⁵⁶ and the “most palpable manifestation of the standard is not in the speech community at all, but in the writing systems.”⁵⁷

From this, however, it does not follow that it is not possible to deliver a visual representation of the law through its spoken utterances. “To tell the history of a language is, or should be, to tell the history of all the manifestations of that language: all its spoken dialects and all its written and spoken

53 See Berman, *Law and Language*, 13.

54 See Dennis Kurzon, “‘Legal Language’: Varieties, Genres, Registers, Discourse,” *International Journal of Applied Linguistics* 7.2 (1997): 119–139, 127–128. The author distinguishes between the “language of the law” and “legal language”: whereas the former is the language or style used in legal texts and documents, the latter is the language used when people talk about the law.

55 “In the institutionalisation of present day New Standard Englishes, schools, media, government and academics all play their part in establishing the variety”: Laura Wright, “Introduction” to *The Development of Standard English 1300–1800: Theories, Descriptions, Conflicts*, ed. Laura Wright (Cambridge: Cambridge University Press, 2000), 1–8, 4.

56 Fisher et al., *An Anthology of Chancery English*, 26.

57 Milroy, “Historical Description and the Ideology of the Standard Language,” 11.

registers.”⁵⁸ This entails that the history of standard spoken English is particularly sensitive to the pragmatic context, in general, and of legal English, in particular, and therefore it may complement the history of the written language. Furthermore, the entire history of standardisation is pervaded by the “rise of accent [and speech] as a social symbol,” as Lynda Mugglestone has stressed.⁵⁹ The concern with speaking properly is intimately likened to the oral version of English: the “Standard English Speech” that was outlined by Hart in 1907⁶⁰; Received Pronunciation (RP) and “Estuary English,” which have acted as a true linguistic performance promoting English through radio, cinema, and television.⁶¹

Additional arguments support spoken language as a form of standardised visualisation in the contemporary imaged-based practice of law. Spoken legal English is usually uttered and performed by lawyers in courtrooms, and the law thus goes pop because of the “influence of popular culture and the need for maximizing the effective of communication often requires emulating family patterns [TV fiction] in which relevant meaning are formed and conveyed” (LP, 26).

Sometimes, it is necessary to preserve spontaneous speech. Spoken legal language can be captured either by writing it down or by recording or filming performances and utterances in courtrooms – and the former has, for centuries, been the only way to visualise the law performed in trials. This has been emphasised by Charles Barber as regards early Modern English⁶²: verbatim transcription is necessary when we want to safeguard the precise words that are alleged to have been used by the parties in courtrooms and parliamentary debates. The written record attempts to preserve verbatim debates and depositions, and to reproduce the context in which the law was uttered, visualised, and eventually performed.⁶³

⁵⁸ Anne Curzan, *Fixing English: Prescriptivism and Language History* (Cambridge: Cambridge University Press, 2014), 53. See also Crystal, *The Stories of English*, 224–226; Barber, *Early Modern English*, 36–38.

⁵⁹ See Lynda Mugglestone, *Talking Proper: The Rise of Accent as a Social Symbol* (Oxford: Oxford University Press, 2007).

⁶⁰ James M. Hart, *The Development of English Standard Speech in Outline* (New York: Henry Holt and Co., 1907).

⁶¹ See Tom McArthur, “English World-Wide in the Twentieth Century,” in *The Oxford History of English*, updated edition, ed. Lynda Mugglestone (Oxford: Oxford University Press, 2012), 446–487, 459, 551–552. On “London official or literary English,” see Henry C. Wyld, *A History of Modern Colloquial English* (New York: E. P. Dutton & Co., 1920), 76, 82. On RP, see also Crystal, *The Stories of English*, 468; Nevalainen and Tiekens-Boon van Ostade, “Standardisation,” 307 et seq.

⁶² Barber, *Early Modern English*, 29.

⁶³ See Jonathan Hope, “Second Person Singular Pronouns in Records of Early Modern ‘Spoken’ English,” *Philologische Mitteilungen* 94.1 (1993): 83–100, 84.

One of the most remarkable examples of how transcripts preserve the performance of legal language is represented by the trial of King Charles I in 1649. The transcripts challenge James I and Charles I's continuous appeal to scripture to justify their power and the sacrosanct nature of the royal prerogative *vis-à-vis* the ancient common-law constitution, according to which the King faces lawful limits to his monarchic governance in favour of the freedoms of his subjects.⁶⁴ "Against the constitutional dilemma raised by competing claims for royal prerogative and the extensions of parliamentary power,"⁶⁵ the records depict a sovereign (the King) who is sentenced to death by the Lord President on behalf of a new intangible sovereign, whose uncanny presence and political rule derive now from the consent of the body politic. The excerpt is an impressive *pièce*, where the law is solemnly and tragically uttered and performed. At the end of the trial, the King "tries in vain to make a speech to the court after the sentence":

Lord President. For all which Treasons and Crimes this Court doth adjudge, That the said Charles Stuart, as a Tyrant, Traitor, Murderer, and a Public Enemy, shall be put to Death, by the severing [of] his Head from his Body.

(After the Sentence [is] read, the Lord President said, This Sentence now read and published, is the Act, Sentence, Judgment, and Resolution of the whole Court.

Here the Court stood up, as assenting to what the President said.)

King. Will you hear me a word, Sir?

Ld. President. Sir, you are not to be heard after the Sentence.

King. No, Sir!

Ld. President. No, Sir; by your favour, Sir. Guard, withdraw [your] Prisoner.

King. I may speak after the Sentence—By your Favour, Sir, I may Speak after the Sentence ever.

By your Favour, (Hold!) the Sentence, Sir—

I say, Sir, I do—

I am not suffered for to speak: Expect what Justice other People will have.⁶⁶

But spoken language also has traits in common with "law as ideology." In this respect, political power not only implements its political and legal agenda by relying on the pragmatics of the law, on its ability to gain authority in the

⁶⁴ See Raffield, *Shakespeare's Imaginary Constitution*, 191 et seq.

⁶⁵ Ward, *The Politics of Liberty*, 59.

⁶⁶ Barber, *Early Modern English*, 29–30.

specific context where the law is performed; it also resorts to sociolinguistic factors, such as the prestige of a spoken variety. This is the language of the court: John Palsgrave's *Leclarissement de la langue francoyse* (1530) considers it the place "where best englysshe is spoken", as does John Hart's *Orthographie, conteyning the due order and reason, howe to write or paint thimmage of mannes voice, most like to the life of nature* (1569). George Puttenham's *The Arte of English Poesie* (1589) esteems the court's spelling the "purest language in the country," which poets and "those who wish to advance in life consider it to be in their interests to use [its] standard-like forms."⁶⁷

Nor in effect any speach vsed beyond the riuer of Trent, though no man can deny but theirs is the purer English Saxon at this day, yet it is not so courtly nor so currant as our Southerne English is, no more is the far Westerne mans speach: ye shall therefore take the vsuall speach of the Court, and that of london and the shires lying about London within ix. miles.⁶⁸

The King's speech thus implements his aesthetics of the law, and can also be considered the most sophisticated form for its visualisation. It is what Sherwin calls "aniconic images," which "present themselves as visual, but they actually point to the unseen," since the "source of an aniconic image derives from an invisible source," i. e., the voice and the utterances of the King's power and agenda (DB, 16).

4 An interdisciplinary assessment: legal linguistics between law, language, and power

Written and spoken varieties of standard legal English are, then, forms of visualisation of the law. In this regard, however, the study of legal language is limited to neither the language's system of sounds nor to the lexicon, grammar, and syntax. The analysis necessarily goes beyond the structure of words and sentences and encompasses the study of the meaning the language conveys. We must bear in mind that legal English semantics and pragmatics have to do with the content of specific legal texts and contexts, and that this content is the authoritative meaning of the law, i. e., a meaning that may be inferred by legal

⁶⁷ See Barber, *Early Modern English*, 13; Crystal, *The Stories of English*, 270; Nevalainen and Tieken-Boon van Ostade, "Standardisation," 306.

⁶⁸ George Puttenham's, *The Arte of English Poesie* [1589] (London: Melton Scholar Press, 1968): Book iii "Of Ornament," Chapter 4, "Of Language."

sentences and utterances. Such meaning thus rests on the authority of the law, which is construed so as to preserve the body politic and avoid its dissolution.

Such authoritative and prescriptive meaning is closely related to the ultimate source of legitimacy of the legal order: its provisions, which are enacted by the various political branches, demand to be observed because their ultimate source of legitimacy is political power. When assessing the pragmatics of legal language, we necessarily interpret legal provisions and utterances in order to ascertain which legal implicatures are hinted at by the law. To put it another way, we have to capture the meaning and the agenda that lie beneath the norms in light of the contextual and background information, i. e., the context of the representation of the law.

These kinds of pragmatic implicatures are a field of research that semantics and pragmatics and legal studies share. I call this “legal linguistics.” In this respect, I will not concentrate on the relationship between law and linguistics: in-depth analyses have already been dedicated to the topic, as well as to its applicability to several sub-fields of the discipline, such as forensic studies.⁶⁹ Nor will I limit my analysis to the language of the law: renowned scholars have examined the topic with precision, such as Maitland and Berman,⁷⁰ and linguists have done the same with legal English, examining how it has changed over time and how these changes affect its structures and the contexts of language use.⁷¹

Both legal and linguistic studies consider legal linguistics to be part of their respective domains. I, on the other hand, see it as a field of research where law and language overlap like roof tiles: “language is individualized by context and by the speaker, who gains meaning, identity, understanding, and direction

69 See Heikki E. S. Mattila, *Comparative Legal Linguistics: Language of Law, Latin and Modern Linguas Francas*, 2nd edn. (London and New York: Routledge, 2013), Kurzon, “‘Legal Language’,” 121. On forensic linguistics, see John R. Baldwin and Peter French, *Forensic Phonetics* (London: Pinter Publishers, 1990); John M. Conley and William M. O’Barr, *Just Words: Law, Language, and Power* (Chicago: University of Chicago Press, 1998); John Gibbons, *Forensic Linguistics: An Introduction to Language in the Justice System* (London: Blackwell, 2003).

70 See Barber, *Law and Language*, 64 et seq.; Frederick Pollock and Frederick W. Maitland, *The History of English Law: Before the Time of Edward I*, ed. S. M. C. Milsom (Cambridge: Cambridge University Press, 1968), 1. 79–88; William Trothwell, “The Problem of Law French,” *French Studies* 46.3 (1992): 257–269; John H. Baker, *Manual of Law French*, 2nd edn. (Aldershot: Aldershot Scholar, 1990); William M. Ormrod, “The Use of English: Language, Law, and Political Culture in Fourteenth-Century England,” *Speculum* 78.3 (2003): 750–787, 766.

71 On how and why words change meaning, see Christian Kay and Kathryn Allan, *English Historical Semantics* (Edinburgh: Edinburgh University Press, 2015), 70–91.

through the experience of language.”⁷² To this extent, legal linguistics is an interdisciplinary assessment, where linguistics and legal studies jointly examine the implied, authoritative meaning hinted at by spoken and written legal language within the historical, cultural, political, and social contexts where the law is practised. When assessing language as a form of visualisation of the authoritative meaning of the law, it is evident that we must necessarily take into account the content of the law, as well as the relationship between the agenda of power and the authority of the law. Thus, the legitimacy and meaning of the law have to be necessarily carved out of the specific legal textual genres that are the loci where the agenda of the law is embodied and represented.

If we want to capture the law’s authoritative meaning and the policies that lie beneath the legal language, we have to turn to the different contexts in which the law is performed. These are forms of visualisation of the law that represent the authorial side of the power and reveal the relations between power and the law that are hinted at by the language. Indeed, language standardisation may be considered a part of the authorial side of the law:

The more stable and enduring a society becomes, the more regular become its administrative procedures. Part of the process of regularizing the procedures is the standardizing of the official language in which they are transacted and recorded. The official language thus very early achieves a regular written form.⁷³

When conveying the prescriptive content of the law, language becomes standardised by power in order to ensure “correct and unambiguous transmission of information,” as well as “maximum disambiguation.”⁷⁴ If we consider that institutionalised language, i. e., spelling, is “wholly a matter of written language [and] independent of meaning,”⁷⁵ it is evident that a single provision may visualise and convey different meanings and contents of the law. The meaning of the law will ultimately depend on which agenda has asserted itself as the ultimate authority of the law.

This holds true when we examine how legal English emerged as the administrative language in the fifteenth century. King Edward III’s political agenda “reinforced the sense – already powerful in England – that language was the primary marker of ‘national’ identity.”⁷⁶ This led to the enactment of

⁷² Witte, “Introduction,” 29.

⁷³ John H. Fisher, “Chancery and the Emergence of Standard Written English in the Fifteenth Century,” *Speculum* 52.4 (1977): 870–899, 870.

⁷⁴ Rissanen, “Standardisation and the Language of Early Statutes,” 120.

⁷⁵ Rissanen, “Standardisation and the Language of Early Statutes,” 118.

⁷⁶ Ormrod, “The Use of English,” 780. See also Thorlac Turville-Petre, *England the Nation. Language, Literature, and National Identity 1290–1340* (Oxford: Clarendon Press, 1996), 181.

the *Statute of Pleading* in 1362: from that date onwards, English (not French) became the language of oral communication in all the courts of the land.⁷⁷ This meant that the native legal language was a valid form of visualisation of the constitutional legal system, as well as a plausible “means of conducting effective oral business between justices, clerks, jurors, witnesses and defendants.”⁷⁸ Paraphrasing Sherwin, we might say that, by enacting the *Statute of Pleading*, the law went pop, because the choice of English as the legal language showed how intense the overlapping between law and popular culture had always been in England.

King Edward III’s nationalistic agenda was challenged by the powerful order of the coif, which gathered the sergeants-at-law, i. e., the conservators of legal knowledge that was practised, uttered, and performed in the courts in Law French. The order of the coif contrasted the King in order to preserve French as the formal language of pleading and of the law performed in the pragmatic context of trials. An elite thus tried to impose his agenda and language “as the authoritative medium of communication for all the common law courts.”⁷⁹

5 Visualising the content of the law: power, pragmatic interactions, and the development of legal English

English legal linguistics usually focuses on the role that governmental, i. e., royal, power played in the process of progressive affirmation of both standard legal language and meaning. As Frederick W. Maitland and Frederick Pollock highlight, “[t]he Norman Conquest [was] a catastrophe which determines the whole future history of English law,” a dramatic change in ideology and agenda, and in the legal language as a means for its visualisation and transmission.⁸⁰ Norman rule, i. e., the new power, not only conveyed a new prescriptive meaning by enacting new provisions, it also modified the form (the lexicon, the grammar, and the syntax) that conveys the meaning and content of old English law. The Norman Conquest entailed, then, a replacement of both legal English morphology and semantics with their French counterparts, loans and

⁷⁷ *Statutes of the Realm* 1810-28, 1:375–376.

⁷⁸ Ormrod, “The Use of English,” 771.

⁷⁹ Ormrod, “The Use of English,” 771.

⁸⁰ Pollock and Maitland, *The History of English Law*, 1.79.

derived words, which still pervade the body politic and the constitutional regime.⁸¹

Such meaning and agenda may also stem from powers that are different from political and governmental authorities. First, the meaning that law conveys may change over time. If we consider early modern legal language, we will realise that statutory law “displays the double form *him or her*.”

Then everie person soe offending shall forfeyte and lose fower tymes the values of everie suche Cable so by him or her made or cause to be made as aforesaide [...]

Provided always neverthelesse That this Act shall not extend to any Person or Persons in Execution for any Fine on him her or them imposed for any Offence by him her or them committes [...]⁸²

This usage – “which now could be motivated to avoid a gender bias” – was then “determined by the need to provide for all, as the use of the plural *them* is singled out separately.”⁸³ The role of power is even more apparent if we consider that an act of parliament may impose new language policy, as occurred with the formal adoption of sex-indefinite *he* in 1850.⁸⁴

Second, the same addressees can change the language and meaning of the law, i. e., of a form and a function we are traditionally accustomed to considering as the outcome of the top-down process of dissemination. This is pointed out by Matti Rissanen, who has examined the phraseology of the early statutes of the realm: whereas the statutes of the realm seem to develop the unmarked “neutral” future indication by resorting to shall, the “development of the standard followed the natural, spoken expression; it was influenced by change from below rather than by change from above.”⁸⁵

⁸¹ On the overwhelming dominance of French as the legal language in early legal English literature, see Theodore F. T. Plucknett, *Early English Legal Literature* (Cambridge: Cambridge University Press, 1958), 80–97.

⁸² See HC, *Statutes of the Realm*, 1592–1593, 857, and 1695–1696, 76, respectively. Both laws are quoted in Terttu Nevalainen, *An Introduction to Early Modern English* (Edinburgh: Edinburgh University Press, 2006), 83.

⁸³ Nevalainen, *An Introduction*, 83.

⁸⁴ See *An Act for shortening the language used in acts of Parliament* (The Interpretation Act, 1850, 13 & 14 Vict. c. 21). The Act stated, “in all acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender and number is expressly provided.” See Ann Bodine, “Androcentrism in Prescriptive Grammar: Singular ‘They’, Sex-indefinite ‘He’, and ‘He or She’,” *Language in Society* 42 (1975): 129–144, 132.

⁸⁵ Rissanen, “Standardisation and the Language of Early Statutes,” 125.

It is quite evident that the same means of communication, transmission, and recording of legal linguistic representation of the law may act as influential powers trying to confer their own meaning on patterns of legal visualisation. It is indisputable that these means of communication have their own “political,” “social,” and “economic” agenda, and that they therefore may be interested in manipulating, altering, or determining the authoritative meaning conveyed by legal language, and, ultimately, they aim to replace the meaning and policy set forth by the governmental, political power.

Hence, legal linguists have to ascertain what the effective source of the authority and meaning of the law is. I prefer to label the ultimate source of law’s legitimacy as ideology rather than power. Indeed, ideology is a broader term encompassing all agents (political and non-political, governmental and non-governmental, such as individuals, communities, lobbyists, economic powers) that may exert effective influence over the meaning of the law. This is due to the fact that legal linguists act as legal historical pragmatists⁸⁶: they examine the context of language use and “provide explanations for patterns of language change,” focussing on the “communicative context” in which such language change occurs.⁸⁷ This also sheds light on how spelling in written language may be independent of meaning and therefore visualise different meanings of the law. Indeed, historical legal pragmatics also examines how old words and language visualisation of the law may cover new meanings: the process of semantic change affects existing lexemes because they adopt an additional meaning that complements the old one.⁸⁸ And such changes are particularly relevant when modifications in lexicon, grammar, and syntax depend on the medium conveying the meaning of the legal discourse: the media may propose (and impose) such a change because they can turn the interactions between legal semantic knowledge and the knowledge of reality into a new meaning and into a new visualisation of the law.

This kind of historical pragmatics may really contribute to the study of the language as a powerful form of visualisation of the law. In this regard, it represents the diachronic part of legal linguistics – an intriguing study of how language discloses the impact of ideology on the law.⁸⁹

⁸⁶ See Taavitsainen and Jucker, “Twenty Years of Historical Pragmatics,” 1; Andreas H. Jucker and Irma Taavitsainen, *English Historical Pragmatics* (Edinburgh: Edinburgh University Press, 2013), 31–52.

⁸⁷ See Jucker and Taavitsainen, *English Historical Pragmatics*, 4.

⁸⁸ See Dieter Kastovsky, “Vocabulary,” in *A History of the English Language*, eds. Richard Hogg and David Denison (Cambridge: Cambridge University Press, 2006), 199–270, 215.

⁸⁹ Berman, *Law and Language*, 69.

I now intend to propose the visualisation of the history of legal English. In this regard, three stages in the history of the English language will be examined (Late Middle English, Modern English, and Contemporary English) in order to detect which ideologies underpinned its evolution. Furthermore, we will liken each of these three stages to the three main parts of judicial proceedings: the writ, the courtroom trial, the judgement. These, indeed, will not only help us in complementing the linguistic change written English has undergone over the centuries, but they will also allow us to examine how the language has been used in a specific context, the trial, where law is both uttered and performed and takes on a form of visualisation that is different for the black-letter one.

6 Visualisation as standardisation: hard-copy law and middle legal English

The period in the history of English I consider first is late Middle English. This was a period of transition from Middle to Modern English, which historical linguists traditionally extend from the second half of the fourteenth century to the advent of the Tudors in 1485.

Burrow and Turville-Petre exclude it from their anthologies of Middle English, because they consider that such dating is too indebted to non-linguistic considerations, such as the Kings' linguistic policy and political agenda.⁹⁰ However, it is evident that the "external aspects" of the history of English⁹¹ really affect both the features of the language, in general, and those inherent to English, in particular. Bearing in mind that legal language's "aims may make [legal] language complex [...], but they also make it innovative in some aspects of syntactic and lexical usage," it follows that it may also exert influence on other textual genres: in legal documents written in late Middle English, linguistic aspects are "decontextualised and deregionalised [...], and [this] marked these forms as part of the standard."⁹²

From a linguistic point of view, this period marks a new stage in English legal linguistics: it experienced the reestablishment of English as the official language of the realm and its subsequent adoption by the national

⁹⁰ See John A. Burrow and Thorlac Turville-Petre, *A Book of Middle English* (Oxford: Blackwell Publishing, 2005), 6. See also Fisher, *The Emergence of Standard English*, 16 et seq.

⁹¹ On the role of external history in diachronic linguistics, see Albert C. Baugh and Thomas Cable, *A History of the English Language*, 6th edn. (London and New York: Routledge, 2013), 8–10.

⁹² Rissanen, "Standardisation and the Language of Early Statutes," 121.

bureaucracy.⁹³ Finally, the language for official writing caused a progressive shift towards the standardisation of the language.

As far as legal visualisation is concerned, during the Middle Ages, the law was usually proclaimed, i. e., uttered, by the Kings assembled with barons and representatives of the commons and then written down. It is, then, a form of visualisation that rests on hard-copy law – the parchments upon which the late governmental power recorded the law of the land it had uttered and therefore performed.

It does not follow from this, however, that the law was confined to a merely hard-copy representation. By contrast, the “fountain of justice” disseminated its political will through legal proclamations that called for its declamation and enforcement in the realm and in courtrooms.

This is clear as far as the beginning of trials are concerned: the count or declaration announced at the very beginning of the proceedings and that contains the formal statement of the case. I liken this period, which is legally and linguistically relevant, to the administration of justice. Indeed, the first two acts that attest to the reestablishment of the English language as the official language are related to both the issuing of writs and to the conduct of proceedings. First, the *Provisions of Oxford* 1258, which were issued – and this is significant – in Latin, French, and English,⁹⁴ provided that no further expansion of the writs system would be allowed without the consent of the barons and the commons.⁹⁵ Second, Henry III assented to a parliamentary petition in 1362 and enacted the *Statute of Pleading*⁹⁶. The establishment of English as the language of judicial proceedings did not prohibit the use of Law French: although English became the only plausible language for performing the law within the courts, it was impossible to completely dismantle a legal tradition that had rested on French and its legal terminology over the preceding three centuries.⁹⁷ As a

⁹³ Notwithstanding the dominance of the French language, Blake, tells us that “a small corpus of administrative documents in English [was released] before 1189, though it is not until the end of the fourteenth century that documents in English become common.” See Blake, “Introduction,” 8.

⁹⁴ See Fisher, *The Emergence of Standard English*, 22: The *Provisions of Oxford* are “the only royal document in English since the proclamation of William the Conqueror in 1087.”

⁹⁵ On the writ system, see Frederick W. Maitland’s seminal work *The Forms of Actions at Common Law: A Course of Lectures*, ed. Alfred H. Chaytor and William J. Whittaker (Cambridge: Cambridge University Press, 1936); Henry A. Hollond, “Writs and Bills,” *The Cambridge Law Journal* 8.1 (1942): 15–35.

⁹⁶ *Statutes of the Realm* 1810–1828, 1.375–376. The original petition is in *RP*, II.273.

⁹⁷ See E. J. Dobson, “Early Modern Standard English,” *Transactions of the Philological Society* 54.1 (1955): 25–54, 24 fn 1, which quotes a petition from *Rotuli Parliamentorum* II.173a (21 Edw. III (1347) 64) complaining about the presence of foreign clergy who could not speak English.

result, legal French could still be used, provided that “common-law writs clearly state[d] the substance of the case.”⁹⁸

The relevance of the *Provisions of Oxford* and the *Statute of Pleading* were not limited to their nature as governmental acts regulating the issue of writs by the Chancery upon a plaintiff’s request.⁹⁹ On the contrary, they implied the importance of written and spoken language as forms of the visualisation of the law. Not only did the hard-copy law sanction the use of English and record the joint utterance of both the King and the body politic, it also disseminated the performance – the proclamation of the law – through which governmental power set the authoritative meaning of the law. It offered the basis for its iconic representation in a trial: “the statute on the use of English in the law courts has taken on a kind of iconic significance in the world of linguistic and literary history.”¹⁰⁰

Furthermore, the reestablishment of English was not limited to the authoritative use of English. There are indeed several explicit references to English as a valid language in the operations of the central government of this period, and such references seem to hint at a clear royal agenda. To this extent, we can mention the earliest petitions to the King written in English, dating from 1344 and 1386: in addition to the *Statute of Pleading*, the opening speech of Parliament in 1362 was delivered in English.¹⁰¹ Furthermore, Henry IV accepted the throne and made a formal oral declaration in front of the same Parliament in 1399,¹⁰² and the number of legal documents and parliamentary reports grew at a steady rate during the reign of Henry V, whose “use of English marks the turning point in establishing English as the national language of England.”¹⁰³ As Fisher argues,

The first English entry in the *Rotuli Parliamentorum* is the 1388 petition of the Mercer’s guild (RP 111.225) [...] In 1397 the address of Judge Rikhill concerning the impeachment of

98 It “implicitly defended the continued use of Latin forms in writing and of French forms in oral proceedings as the best means of guaranteeing the interests of the parties”: Ormrod, “The Use of English,” 773.

99 On the development of the Chancery jurisdiction from seeking remedies requested by petitioners, see James F. Baldwin, “The King’s Council and the Chancery, II,” *The American Historical Review* 15.4 (1910): 744–761; Penny Tucker, “The Early History of the Court of Chancery: A Comparative Study,” *English Historical Review* 115.463 (2000): 791–811.

100 Ormrod, “The Use of English,” 752, 782.

101 See RP II.268. See Fisher, *The Emergence of Standard English*, 22. argue that, under the Statute 36 Edw. III. Stat. i. c. 15, oral discussions must be recorded in Latin. See Pollock and Maitland, *The History of English Law*, I.83

102 RP 3.422–423.

103 Fisher, *The Emergence of Standard English*, 22.

Gloucester is recorded in English (RP 111.378). Chief Justice Thirnyng's two speeches regarding the deposition of Richard II and accession of Henry IV and Henry's own challenge to the throne in 1399 are in English (RP 111.424, 451, 453).¹⁰⁴

Several authors contend John H. Fisher's assumption: "the transformation of the language of government and business would not have been possible without more than a decade of preparation and propaganda," as well as of a social network "to which scribes belonged in fifteenth-century London."¹⁰⁵ Despite this, however, Edward III, Henry IV, and Henry V did encourage the use of English, and this encouragement hinted at the implicatures that we have already called the King's agenda.¹⁰⁶ This agenda was the outcome of what historical linguists call the "nationalistic" ideology of the kings – among them, Henry V – which sponsored English as the official language of bureaucracy, legislation, and administration of justice, and his Signet Office, "the king's private secretariat which travelled with him on his foreign campaigns."¹⁰⁷

Henry V's policy reflected political and practical motives: by writing in English,

Henry first and foremost identified himself as an Englishman at war with France, while at the same time seeking to carry favour with the English-speaking merchants, who might be prevailed upon to finance his campaigns.¹⁰⁸

This nationalistic ideology had deep roots. First, the loss of Normandy (1204) accentuated the "Englishness" of the nobility of Anglo-Norman origins.¹⁰⁹ There was then a series of civil and international wars, which triggered the "emergence of linguistic nationalism," as evinced by its "repeated use to whip up parliamentary support for the continuing war with France, that a French victory would annihilate the English language."¹¹⁰ This is particularly true when it comes to Henry V's invasion of France (1417): the king adopted English in order to secure popular support for this military expedition.¹¹¹

104 Fisher, "Chancery and the Emergence of Standard Written English," 880.

105 Fisher, *The Emergence of Standard English*, 23, and Crystal, *The Stories of English*, 230. The role of Chancery in the development of legal English is challenged by Wright, "Introduction," 4.

106 On these "efforts to promote" English, see Baugh and Cable, *A History*, 149.

107 Nevalainen and Tiekens-Boon van Ostade, "Standardisation," 274.

108 Nevalainen and Tiekens-Boon van Ostade, "Standardisation," 274. As Berman says, this is a type of communication through language: "[t]he national language therefore creates some bonds of community among all who speak it." See Berman, *Law and Language*, 60.

109 Baugh and Cable, *A History*, 123.

110 Fisher et al., *An Anthology of Chancery English*, xv f 14.

111 Fisher et al., *An Anthology of Chancery English*, xv fn 20.

His linguistic policy bore fruit. After Henry V's death, the entries in the *Rotuli Parliamentorum* in English increased:

There are English entries in 1403, 1404, 1405, 1411, and 1414 (two), and two from the last Parliament of Henry V in 1421. But beginning with 1422, the first year of the reign of the infant King Henry VI, English entries begin to be more frequent, and by 1450 they are the rule.¹¹²

It is thus evident that there are strong connections between the King's ideology, the reestablishment of English, and the revival of the legal language. In this respect, the process of standardisation is the outcome of a deliberate policy of governmental power. In addition,

there were good reasons why the technical terms of the old English law should be preserved if the king could preserve them. They were the terms that defined his royal rights.¹¹³

Furthermore, the body politic is completely represented and "visualised" in Parliament: the overlapping of linguistics, law, and territory are manifest in the parliamentary representation of counties and boroughs, i. e., the units of medieval constitutional English legal geography. This had repercussions on how the first representative institutions of the realm and their electoral systems were shaped. England established a strong connection between the Crown, the land, the community, and the law, and allowed territorial interests to be represented within Parliament: "every acre of English soil and every proprietary right therein have brought within the compass of a single formula, which may be expressed thus: *Z tenet terram illam de [...] domino Rege.*"¹¹⁴

To this extent, the line between legislation and the administration of justice was not clearly drawn in late Middle English. Both the courts of law and Parliament originated from the *magnum concilium*,¹¹⁵ and "a large part of the work of the 'Parliament' was what we should call 'judicial', consisting of those cases that had proved too hard or too novel for the judges in the separate courts."¹¹⁶ The interrelations between the judicial and legislative functions were then manifold in the representation of the law and in conveying its

112 Fisher, "Chancery and the Emergence of Standard Written English," 880.

113 Pollock and Maitland, *The History of English Law*, I.82.

114 Pollock and Maitland, *The History of English Law*, I.232.

115 See Charles H. McIlwain, *The High Court of Parliament and its Supremacy* (New Haven, CT: Yale University Press, 1910), 16–17.

116 McIlwain, *The High Court of Parliament*, 25. This is apparent as far as the House of Lords is concerned. Although it preserved its jurisdiction (see McIlwain, *The High Court of Parliament*, 32), the role of ideology and Chancery in forging legal English is outward: the clerks standardised English because issuing writs for the people who sought amelioration of the laws from the

authoritative meaning. On the one hand, the process of standardising the language began long before the division of the administrative and judicial functions of both the Chancery and Parliament was eventually drawn¹¹⁷; on the other hand, the functions of Parliament as an “extraordinary court of justice”¹¹⁸ made it possible to preserve a similar role for both Parliament and the courts: that of an “act” and a “place” where the law is discussed, debated, proclaimed, and recorded.¹¹⁹

This linguistic process led to the recognition of English as a medium through which the nation could be governed by selecting “the kind of English that was to serve as a *reference dialect* in the [same process of] standardisation of the written language.”¹²⁰ This was also due to the absence of a clear division between judicial and political branches: the kings were thus able to impose their agenda via the mediaeval administration that emanated from its household,¹²¹ the Chancery and the Parliament they summoned, and this implied a great deal of work to be done by the Chancery clerks.¹²²

The clerks thus implemented the kings’ agenda, contributed to the nationalistic policy, and, by upholding the revival of English, disseminated the authoritative will of the King, the courts, and the body politic summoned in Parliament. Hence, they played a crucial role in the standardisation of the language: they received the petitions sent to the King; they subsequently embellished and polished those destined for Parliament. They were a group “engaged

King, and, at the same time, they were members of the King’s courts and attended the House of Lords, advising it as regards legislation.

117 On Chancery as “a department of government descended from the Anglo-Saxon *scriptorium*, [which] had custody of the great seal of England, which was used to authenticate the instruments that his office prepared,” see Timothy S. Haskett, “The Medieval English Court of Chancery,” *Law and History Review* 14.2 (1996): 245–313, 246, 248, 249. See also McIlwain, *The High Court of Parliament*, 31.

118 According to Fisher et al., *An Anthology of Chancery English*, 20, “[t]he ancient Petitions to Parliament and Parliamentary Proceedings are petitions presented to the Parliament and actions upon these petitions.” On the Parliament as an extraordinary court of justice, see McIlwain, *The High Court of Parliament*, and Francis Palgrave, *An Essay Upon the Original Authority of the King’s Council* (London: command of His Majesty King William IV under the direction of the Commissioners on the public records of the Kingdom, 1834).

119 See McIlwain, *The High Court of Parliament*, 30.

120 Nevalainen, *An Introduction*, 30.

121 Georges Sayles, “The Household of the Chancery,” *The Scottish Historical Review* 25.98 (1928): 109–113. See also Lila B. Dibben, “Secretaries in the Thirteenth and Fourteenth Centuries,” *The English Historical Review* 25.99 (1910): 430–444.

122 See Ormrod, “The Use of English,” 757. On clerks’ service in attending in the upper house of Parliament, see also James R. Bryant, “The Office of Master in Chancery: Early English Development,” *American Bar Association Journal* 40.6 (1954): 498–501, 500.

in their most formal and meticulous task of enrolling the acts of Parliament for posterity, their hands were more careful and their forms more nearly like [the] modern written standard.”¹²³

The consequences are threefold. First, through the hard-copy legal language, the clerks conveyed a pictorial representation of English society: “many of the petitions,” i. e., of the bottom-up attempts to influence the governmental policy and agenda, “provide dramatic vignettes of fifteenth-century life.”¹²⁴ Second, the “increasing elaboration and precision in petitions, the growth, in fact, of a petitioner diplomatic, were due to the fact that it was becoming more difficult to secure an answer.”¹²⁵ And therefore petitions to Parliament required the emergence of a uniform style and a standard prose. Indeed, not all the petitions were rewritten and transcribed in Chancery standard and with Chancery hand by the clerks. An increasing number of petitions were indeed “made with the exactitude and care of a legal document”: a petitioner knew that if his petition was not sufficiently accurate, there was then a “danger of it being delayed and ignored.”¹²⁶ Third, the commons accepted the top-down nationalistic royal agenda that conveyed the standardised usage of the English language and its representation within the parliamentary political branch.¹²⁷ In this regard, Henry V’s concerns about the creation of an official language for the realm matched the body politic’s will: one of the first acts of his reign was his assent to a petition asking not to change the language in which petitions were written.¹²⁸

The language of the Signet Letters of Henry V was also close to Chancery standard. This attests to the contribution of the King to the standardisation of the legal language, but it also sheds light on the influence it exerted on the literary language, an influence that was due to the fact that the King, Chaucer, Lydgate, and Gower were part of the same legal and cultural *milieu*, as the portraits in the 1410 Bedford Psalter confirm.¹²⁹

123 Fisher et al., *An Anthology of Chancery English*, 25.

124 Fisher et al., *An Anthology of Chancery English*, 22 note 19.

125 Alec R. Myers, “Parliamentary Petitions in the Fifteenth Century: Part I: Petitions from Individuals or Groups,” *The English Historical Review* 52.207 (1937): 385–404, 387.

126 Myers, “Parliamentary Petitions,” 387, 398.

127 Myers, “Parliamentary Petitions,” 390.

128 This occurred in 1414: see *RP* IV.22.22 (petitions from commoners asking that laws not change the language of petitions); *RP* IV.22.22 (King’s assent). As uphold, the language of petitions corresponded with the Chancery Standard, with some minor variations like *axe* vs. *askynge*; *hie* (high); *of lasse than they* (unless they). See Fisher et al., *An Anthology of Chancery English*, 22 fn 19.

129 See Sylvia Wright, “The Author Portraits in the Bedford Psalter-Hours: Gower, Chaucer and Hoccleve,” *British Library Journal* 18 (1992): 190–201. The Duke of Bedford’s Psalter-Hours, Add. MS. 42131, is illustrated with portrait that pertain to the writers and civil servants of the King

7 Visualisation as performance: illustrated courtroom discourse in modern English and its simplification

The above reference to the *Statute of Pleading* is an introduction to the second stage in the development of the legal language, the stage when Middle English was developing into Modern English. This stage corresponds to the “general process undertaken before the bench of oral argument between the representatives of the parties to the suit.”¹³⁰ The *Statute of Pleading* referred to English as the language of oral communication for all judicial proceedings: pleas were also to be “pleaded,” “counted,” “defended,” “answered,” “debated,” and “judged” in English. Latin and Law French challenged the place of English until the seventeenth century, and Law French was dislodged by 1731, when it lost its place to late Modern English.¹³¹

What is really relevant is the persistence of the jargon of the courts: the performance of spoken utterances remained incomprehensible to those without knowledge of the law. And the reasons for this are intimately connected with ideology and its linguistic and pictorial representation.

As far as representation of the law is concerned, the language of judicial proceedings is entrusted with the conveyance of a specific ideology. Before the Glorious Revolution, the ideology it conveyed was part of the attempts on the part of the Tudors and the Stuarts, on the one hand, and the Radical and Puritan wings, on the other, to challenge the common-law constitution.

In this respect, the embarrassment, steadily growing among scholars, regarding the absolutist trend of the late era of Elizabethan rule, was even greater after James I’s accession to the throne. On the one hand, not only had the myth of Astraea, which was traditionally associated with the person of Elizabeth I, been employed in Shakespeare’s *Titus Andronicus* to represent justice abandoning the Earth but, on the other hand, such an absolutist trend appears to be even more disquieting in “[t]reason and other politically motivated

(John Gower and Geoffrey Chaucer). This upholds the idea of the strong connection between the legal and the literary language of the period. See also Tim William Machan, “Chaucer and the History of English,” *Speculum* 87.1 (2012): 147–175, 150: “Chaucer resembles a politically active linguistic midwife who brings to life a form of the language that could serve as a social, literary, and conceptual model for Lancastrian England and its cultivation of a national English identity.”

¹³⁰ Ormrod, “The Use of English,” 772.

¹³¹ See 83 Statute 4 Geo. II. C. 26.

trials [...] across” the seventeenth century.¹³² The same linguistic patterns are even more capable of capturing the new ideology, as in Raleigh’s trial:

Raleigh. I do not hear yet, that you have spoken one word against me; here is no Treason of mine done: if my Lord *Cabham* be a Traitor, what is that to me?

Attorney. All that he did was thy Instigation, thou Viper; for I *thou* thee, thou Traitor.¹³³

Historical pragmaticists would expect that the representation of the law within courtrooms should follow grammatical rules. By contrast, the law as performed matches the ideology and reveals the agenda of governmental power: the records thus visualise the new equilibrium in the exercise of power, a new equilibrium that reveals the presence of the body politic as a new sovereign, which is even more apparent in the trial and execution of Charles I mentioned above.

The necessity of conveying the new ideology through language turns the use of pronouns from semantics and sociolinguistics to pragmatics: what is really relevant is the vivid and precise representation of power, the necessity of capturing the spontaneous speech of the people. This concern is fully attained after the Glorious Revolution. The supremacy of the fundamental law of the land was restored on the basis of the constitutional principle of mixed government and on a contractual basis. From that time onwards, English political power has been rooted in the consent of the people. To sum up, the restoration of the English constitutional identity exhibits a high degree of adaptation of English legal tradition, since it “emphasized the need to balance and calibrate the distinct elements in the English polity, rather than appealing primarily to its antiquity.”¹³⁴ This implies that spoken courtroom discourse has to give the impression of real speech, and that records must match the way the law has been effectively performed. Discourse also requires that remedies be granted according to the law of the land, and be expressed in a precise legal language, a controlled instrument capable of expressing the nuances of the pleading and of contributing to giving a vivid impression of a spontaneous utterance.¹³⁵ The jargon of law is, then, a prerequisite for both good governance and preservation

¹³² Culperer and Kytö, *Early Modern English Dialogues*, 53.

¹³³ *Helsinki Corpus*: E2 XX TRI RALEIGH I, 208, quoted in Jucker and Taatvitsainen, *English Historical Pragmatics*, 1. On the use of second-person pronouns as terms of address in the context of trials, see Jucker and Taatvitsainen, *English Historical Pragmatics*, 73–84; Hope, “Second Person Singular Pronouns,” 85.

¹³⁴ Ward, *The Politics of Liberty*, 60.

¹³⁵ The formulaic character of legal English is highlighted by Kryk-Kastowsky, “Impoliteness in Early Modern English Courtroom Discourse,” 214.

of the ancient English common-law constitution. This is apparent if we consider that “Trials texts became more frequently after 1640,” as the *Corpus of English Dialogues* upholds.¹³⁶ Such an ideal constitution is founded upon both the unwritten authority of precedent and the immemorial antiquity of common customary law, and it guarantees fundamental freedoms to English subjects. Moreover, the idea of good governance evokes another principle of the ancient common-law constitution upon which the most important common-law jurists from Bracton onwards agreed that the King himself was subject to the law, as interpreted by his judges. This is the “*lex terrae*: the unwritten constraints of the ancient constitution, the immemorial *suprema lex* or common law, whose jurisdiction is unchallengeable and whose judges are the ultimate arbiters of juridical disputes.”¹³⁷ Courtroom discourse thus requires resort to a detailed, accurate, and exact technical legal language that has proven to be capable of capturing and conveying all the peculiarities and minor features of the pleading. This establishes an equivalence between the language used and the typical pictorial representations of Anglo-American courtrooms: these are the traditional “illustrated courtrooms,” where art, law, and news merge and convey the content of the law, thus offering an expressive rendering of the law as performed in front of the bar.¹³⁸

The art of illustrating courtrooms perfectly matches the subtleties of the detailed legal lexicon, grammar, and phraseology.¹³⁹ In this regard, it complements the way language represented legal language in the early Modern English period. Legal jargon was indeed based on legal French, and this required a careful translation of terms: “legal terms became more accessible to law students and lay people alike with the publication of the first English law dictionary,”¹⁴⁰ John Rastell’s *Exposiciones terminorum legum anglorum* (1560), which went through thirty editions in the course of 300 years. And the same holds true for Abraham Fraunce’s *The Lawiers Logike* (1588) and John Cowell’s *Interpreter: Or Booke Containing the Signification of Words [...]*

136 Culperer and Kytö, *Early Modern English Dialogues*, 25. For an examination of the *Sociopragmatics Corpus*, i.e., a sub-section of the *Corpus of English Dialogues*, with particular reference to trial dialogues, see Archer, “(Re)initiating Strategies.”

137 Raffield, *Shakespeare’s Imaginary Constitution*, 85.

138 See, among others, Elizabeth Williams and Sue Russell, *The Illustrated Courtroom: 50 Years of Court Art* (New York: CUNY Journalism Press, 2014).

139 The complexity of the legal jargon also explains why there had been a steady rise in the presence of defendants in criminal proceedings from the seventeenth century onwards: Archer, “(Re)initiating Strategies,” 187.

140 Nevalainen, *An Introduction*, 50.

requiring any Exposition or Interpretation (1607), with the latter offering several etymologies of legal terms.¹⁴¹

In addition, this rigorous pictorial representation of the law perfectly corresponds to the authoritative meaning the governmental power conveyed through the law after the Glorious Revolution. From a linguistic point of view, the sovereign is now the King in Parliament, a new sovereign. Indeed, “Liberty is to be supposed,” and “in cases where the Sovereign has prescribed no rule, there the Subject hath the liberty to do, or forbear, according to his own discretion.”¹⁴² It follows that the legal language must complement such a politics of liberty, setting precise rules and limits on power, which, under the rule of law, “is not able to change the laws without the assent of his subjects.”¹⁴³

Thus, the *rule of law* still rests on the *immemorial antiquity of the law of the land*. However,

the *Liberty of Man, in Society*, is to be under no other Legislative Power, but that established, by consent, in the Commonwealth, nor under the Dominion of any will, or Restraint of any Law, but what the legislative shall enact, according to the Trust put in it.¹⁴⁴

When it comes to visualising the meaning of the law, the consequences are twofold. As a part of the public corporation, the law coincides with the supremacy of Parliament: the King rules his people politically and is therefore represented in Parliament. As the fountain of justice, the King enforces the law, i. e., performs its meaning, judicially¹⁴⁵; the law is proclaimed, i. e. uttered, and courtroom discourse is the main form of its visualisation.

After the Glorious Revolution, the role of the press as a medium for the propagation of the authoritative meaning of the law grew at a steady rate.¹⁴⁶ Not only was the law proclaimed and performed in Parliament and within

141 Paula Blank, “The Babel of Renaissance English,” in *The Oxford History of English*, updated edition, ed. Lynda Mugglestone (Oxford: Oxford University Press, 2012): 262–297, 289.

142 Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), Chapter XXI, 111–113.

143 Fortescue, *In Praise of the Laws of England*, Chap. IX

144 John Locke, *The Second Treatise on Government*, in *Two Treatises on Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1988), Chapter IV, 22.

145 For an overview of early Modern English proceedings, see Archer, “(Re)initiating Strategies,” 184–186.

146 However, the earliest newspapers are coeval to the Early Modern English period: the *Corantos* was published for the first time in 1620, and the *Licensing Act 1695* saw a “flood of printed works”: Culperer and Kytö, *Early Modern English Dialogues*, 39; Jucker and Taatvitsainen, *English Historical Pragmatics*, 187–90; Roberta Facchinetti, Nicholas Brownlees, Birte Bös, and Udo Fries, *News as Changing Texts: Corpora, Methodologies and Analysis*, 2nd edn. (Newcastle upon Tyne: Cambridge Scholars Publishing, 2015).

courtrooms, but newspapers, which contributed to the formation of public opinion, also disseminated it. It is evident that, under the influence of these new modes of transmission, legal language could also grow distorted. Indeed, the press acted not only as a means of mass communication, devoted particularly to news books and pamphlets, but also as a pattern conveying a meaning-making practice alternative to the governmental one. Furthermore, the advent of the first forms of mass media affected the same language, which abandoned the technicalities and subtleties of the professional language and favoured resort to a plain variety of the English language.¹⁴⁷ This was functional for the creation of common political speech: the simplification of the patterns of the visualisation of the law insinuated alternative ideologies that undermined those authoritatively conveyed by the King acting politically through Parliament and judicially through the courts.

To sum up, illustrated courtrooms, legal advertisements, and news disseminated by the mass media adopt a synthetic language that is accessible to the public where the meaning of a prescriptive utterance is not determined solely by lawmakers, judges, and scholars. Professional jargon is thus generated and spread by the mass media to suit the audience's average language and knowledge of legal technicalities. We may say that legal language has undergone a process of simplification, where the meaning and context channel and structure relied on an alternative "top-down process" for diffusion of their own agenda, which also influenced the ultimate prescriptive meaning of legal statements.

8 Visualisation as dissolution: a new pragmatics for the "Digital Baroque" era

The role the mass media play in the dissemination of law's authoritative meaning is even more remarkable in the ultimate stage of the language and of judicial proceedings. This is the phase of contemporary English and the end of the trial, when the judgement is rendered.

On the one hand, English is now a global language. It is, then, the language through which, as Sherwin highlights, the

¹⁴⁷ See Kryk-Kastowsky, "Historical Courtroom Discourse," 165, which compares Goodrich's and Danet's opinions of the characteristics of legal jargon. Whereas Peter Goodrich, *Legal Discourse* (London: MacMillan, 1987), 176, defends legal language because of its ties to social institutions, Brenda Danet, "Language in the Legal Process," *Law and Society Review* 14 (1980): 445–464, 487 et seq., calls for its reform due to its complexity and incomprehensibility.

technologies of digital imaging, interacting, computing, and instant access to an almost infinite flow of information online are likewise giving rise to new communities' institutions, and practices, including the communities' institutions and practice of law (DB, 2).

The jargon of the law has ceased to be the language of the courtroom. The stream of visual communication has turned the World Wide Web into a gigantic digital court, where everyone has access to a huge quantity of data, images, facts, and news, which may be adjudged. In this court, an initial judgement of "an image can be strategically used to wash over and inform the way we construe the images that follow" (LP, 33). We are free to act as jurors and to compulsively view videos and other iconic images related to legal storytelling. However, the consequences of this type of electronically mediated communication and proliferation of news channels¹⁴⁸ are twofold: on the one hand, legal language has experienced the "judicial control" of grammar checkers, which impose their own linguistic rules; on the other hand, as Sherwin emphasises, "[w]hen law lives as an image on the screen [the web] the *aesthetic forms, interpretive methods, and narrative content* of popular visual entertainment inevitably finds their way into the courtroom" (DB, 1). This digital image-based arena is the place where, unlike artefacts, digital judgements are rendered, made real, thus distorting *reality*. Indeed, "[t]he shape and texture of the legal imagination itself – how we think and feel and deliberate about truth and justice – are undergoing radical change" (LP, 1).

Digital law is thus a new form of visualisation of the law, which requires a new type of legal linguistics and a renewed attitude in the field of historical pragmatics. What has undergone huge changes is the ideology that supports the legitimacy of the law. Powerful new means of communication are changing the way law's authoritative meaning and content are conveyed. Like Baroque art, digital law "is hyper-positive law, law cut off from nature or from essences of any kind" (DB, 8): there's no Chancery, Kings, God, assembled communities, nor is there the possibility of disseminating counterarguments or counter-ideologies. Digital law is indeed a sequence of algorithmic-oriented images; the legitimacy and adjudication of the law depend only on how many "connected" people from the public visualise it. To put it differently, "law's legitimacy only arises from the public's acceptance of its commands, and of its right to command in the first place" (DB, 8–9).

Like Baroque art, digital law's hyper-positivism is pure ornamentation and rhetoric: an ostensible *vacuum* that cannot be administered. Spoken or written

¹⁴⁸ Curzan, *Fixing English*, 53; Taavitsainen and Jucker, "Twenty Years of Historical Pragmatics," 17; Jucker and Taavitsainen, *English Historical Pragmatics*, 195.

standard legal English loses its ability to be visualised and represented, because this ostensible *vacuum* dematerialises language, power, iconology, the concrete character of writing, and the spatiality of the practice of law: “the anxiety that accompanies baroque visuality [...] is at the bottom a fear of the loss of meaning, and the uncanny presence of the visual sublime [...] frame[s] the contemporary, culture-wide quest for visual competence” (DB, 4).

As a consequence, we must visualise digital law in order to accept its authoritative command. The digital Baroque offers several mechanisms for such representation, including social media. I will now refer to Twitter, which constitutional courts and supreme courts use as a type of press release for their judgements.

This topic is particularly contentious and troublesome, as we do not really know how this digital form of the visualisation of the law will affect the establishment of the meaning of the law in the future. Nevertheless, social media do actually affect the law. First, there is the dissolution of the legal language: this is not simplification stemming from a top-down counter-ideology, as the 140-character bursts of information called tweets imply a manifest change in how to release news about the most recent decisions – this is not plain language, but a new legal one, whose linguistic rules must be consistent with the medium of communication and the purposes of the social communication Twitter conveys.¹⁴⁹ Second, the dissolution of the traditional legal language implies the dissolution of traditional ideologies that used to determine both the agenda and the meaning of the law. By contrast, governmental and judicial powers now compete in order to have their decisions visualised: the number of followers and visualisations define a new meaning-making process that disregards both traditional (political and judicial) processes and those related to globalised financial dominance.

Like countries, whose sustainability is now traded in global equity markets and subsequently enforced under private-law mechanisms,¹⁵⁰ Twitter crosses the public-private divide: courts compete with actors, private individuals, and firms in a conundrum of visualisations. Digital law exists and is accepted provided that the public accepts and visualises it. This determines the dissolution of the forms of legal historical pragmatics we have experienced in past centuries. The authoritative meaning of the law is thus in a state of flux and is awaiting the

¹⁴⁹ Jucker and Taatvitsainen, *English Historical Pragmatics*, 196.

¹⁵⁰ Horatia Muir Watt, “Further Terrains for Subversive Comparison: The Field of Global Governance and the Public/Private Divide,” in *Methods of Comparative Law: An Intellectual Overview*, ed. Pier Giuseppe Monateri (Cheltenham-Northampton: Edward Elgar Publishing, 2012), 270–288, 286.

next visualisation and the next “like” in a world of anxiety. And this anxiety depends on the fact that the lexical items of legal discourse are not defined in terms of predictability, i. e., legal certainty, which has always been the very rationale of a power ruling politically and enforcing judicially the authoritative meaning it visualises through the law.

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