

**ON LEGISLATIVE
EXPRESSION: OR,
THE LANGUAGE OF
THE WRITTEN LAW**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649023097

On Legislative Expression: or, The Language of the Written Law by George Coode

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GEORGE COODE

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"To say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays, (which have sometimes disgraced the English as well as other courts of justice,) owe their origin, not to the common law itself, but to innovations that have been made in it by Acts of Parliament, 'overladen,' as Sir Edward Coke expresses it, 'with provisos and additions, and many times on a sudden penned or corrected by men of none or very little judgment in law.'"—*Blackstone, Commentaries, Introd. Sect. 1.*

"What I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition; so that it giveth them rather new light than any new nature."—*Lord Bacon, Proposal of a Digest.*

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LONDON:
WILLIAM BENNING AND CO., 43, FLEET-STREET;
JAMES RIDGWAY, 169, PICCADILLY.

1845.

LONDON:
BLACKBURN AND PARSON, PRINTERS,
HATTON GARDEN.



ADVERTISEMENT.

THE following remarks were first printed as an introduction to the Appendix annexed to the Report of the Poor Law Commissioners on Local Taxation, presented to Parliament in 1843. That Appendix, consisting of a digest of the whole of the Statute-law relating to the subject, was drawn up on the plan explained by the remarks.

It would not, on that occasion, have been desirable to draw illustrations or examples from any part of the law, the matter of which was not immediately under consideration. Much more striking illustrations could easily have been found amongst the statutes on more popular subjects, which, on this account, are left to be framed by persons less conversant with practical details and legal language, than those who for the most part are concerned in preparing laws directing the imposition and levy of taxes. But for this very reason, that the laws on the subject of taxation are generally better considered and better framed than most others, it has appeared to the writer still to be desirable in this reprint to limit his illustrations of imperfect expression to examples taken from these laws; and, accordingly, he has simply reprinted his remarks as they appeared in the Parliamentary paper, without addition or alteration.

February 15, 1845.

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ON LEGISLATIVE EXPRESSION.

THERE IS an acknowledged, indeed an obvious distinction between the three operations of determining the final objects or policy of a law, of choosing the means for the attainment of those objects, and of enunciating that choice by means of language. Though the last process is subordinate, and is only executory of the two former, it does, like all executory functions, according as they are well or ill performed, fix the limits within which the superior function shall operate. The most determined will in the law-giver, the most benevolent and sagacious policy, and the most happy choice and adaptation of means, may all, in the process of drawing up the law, be easily sacrificed to the incompetency of a draftsman.

The present paper is confined to the examination of what are the essential parts of the third process of enunciating in language the will of the legislature, and to the statement of the very simple rules which are derivable from that analysis.

It is beyond a doubt that many of the more positive errors and gross defects of legislation are to be prevented by observing a very few intelligible and simple rules, which any person capable of dividing grammatically a sentence of his native language would be competent to apply. Through neglect of such rules a law, good in its substance, is rendered confused in its form, proportionally difficult to be understood and applied, and sometimes is even made inoperative, or, what is worse, a delusion and a snare.

Arbitrary or artificial rules of composition cannot be insisted on. Even where they can be made generally intelligible they will not be sufficiently comprehensive for all cases. Legitimate occasions for disregarding them will occur, and the fair cases for exception being once admitted, the application of the rules could scarcely be maintained in any case. None but natural rules, that is to say, such rules as are strictly derived from the nature of the subject matter, and therefore of universal application to it, can ever be maintained. Such natural rules, from their admitting no exceptions, and from their being extremely simple, intelligible, and efficacious, can be easily applied by the draftsman, and any infraction of them readily detected and displayed. To ascertain these natural rules, it is necessary first to determine what are essentially the elements of a legislative expression.

The Elements of every Legislative Expression.

Essential elements.

1. *the legal subject ;*
2. *the legal action ;*

THE EXPRESSION of every law essentially consists of,

- 1st, the description of *the legal Subject ;*
- 2dly, the enunciation of *the legal Action.*

Occasional elements.

3. *the Case ;*
4. *the Conditions.*

To these, when the law is not of universal application, are to be added,

- 3dly, the description of *the Case* to which the legal action is confined ; and,
- 4thly, *the Conditions* on performance of which the legal action operates.

Some general explanations will perhaps be here allowed. If the statements appear too elementary, it will be borne in mind that these elementary matters are as much disregarded in practice as if they were unknown, and that it is therefore allowable to recur to them as things not altogether obvious nor universally admitted; and this more especially in a matter in which a distinct recognition of first elements conduces so much, as it will here be seen to do, to clearness and certainty in the most remote and complicate practical combinations.

The purpose of the law in all cases is to secure some benefit to some person or persons. When this benefit is secured to the public generally, or when it may be acquired by any person independently of the will of any other, the benefit secured is a Right; where it is confined to a class of persons into which any other person cannot enter, or into which he can only be admitted by the permission of some person or persons, the benefit secured is a Privilege. Privileges conferred for the purpose of being used, not for the benefit of the privileged person, but for the benefit and on behalf of some other person or persons, are Powers.

It is only possible to confer a Right, or Privilege, or Power, on one set of persons, by imposing corresponding Liabilities or Obligations on other persons, compelling these to afford the benefit conferred, or to abstain from invading it. Though the imposition of an Obligation is never the ultimate purpose of a law, it is very often (especially whenever the corresponding Right, Privilege, or Power is already recognised) the only thing which a given law does, in fact, express.

A law, then, can operate in two ways: it can confer the Right, Privilege, or Power directly, and it can impose the corresponding Obligation directly.* It is rarely, however,

* When a right has existed before, and the immediate object of the law is to restrict that right, the effect is still to create a new right; but