THE MEANING OF MEANINGLESSNESS

Reflections on Some Semantic Problems of Law and Human Communication

1. INTRODUCTION

Man is a communicating being. Human communication, like breathing, smiling, sulking, and thinking takes place regardless of whether or not we understand what we are doing. But man is also a social being, and his being as "social" is so dependent upon his being as "communicating" that all who are interested in the former aspect of humanity must concern themselves with the latter — even if *they* do not understand what they are doing, in the sense that their concern is unconscious, or not specifically directed. Men's ability to live together in society — in "community" — depends fundamentally on their ability to communicate with one another; and much of the tension, friction, and dissension that disrupt the harmony of men's living together in society arises from breakdowns or blockages in human communication. For our ability to communicate with one another has limitations, and our grasp of it is precarious.

Communication breakdowns may become relevant to law in two ways. First, a main purpose of law is to smooth out or resolve the centres of dissension and discord between human beings which appear from time to time as *foci* of eruptive interference with the peaceful continuity both of the disputants' own lives and of society as a whole.[1] Many of the problems which the law thus has to solve are the direct result of breakdowns in human communication, as, for example, with most modern suits for divorce.[2] Other legal problems, of course, arise independently of communication breakdowns. Many commercial disputes result from breakdowns in communication — whether between partners who are no longer able to communicate successfully with each other on the internal affairs of their partnership, or between parties to any one of a hundred kinds of business and commercial transaction and negotiation, who lose the capacity for flexible interchange of ideas and mutual adjustments which is essential to their continued dealing with each other. But many

1. *Cf.* K. N. Llewellyn, *The Bramble Bush,* 2 ed. (1951) 108 ff., esp. at 111 ff.

2. *Cf.* Dr. Johnson's advice to the young gentleman at Streatham: "I would advise no man to marry . . . who is not likely to propagate understanding." (G. B. Hill (ed.), 1 *Johnsonian Miscellanies* (1897) 213).

other commercial disputes arise from the intervention of fortuitous circumstances, creating tangled legal relations and states of affairs which would give rise to litigation however closely the parties continued in mutual understanding. So, too, litigious situations arising out of negligence or accident, and perhaps most other tortious situations besides, have not much to do with communication breakdowns.

Yet even in these cases, where legal disputes would still exist despite perfect communication, every practitioner who has tried to negotiate settlements will be well aware that blockages to communication may arise by reason of the very fact that the legal dispute exists. Once fortuitous circumstance has thrust a man into the role of a litigant, he tends to become passionately espoused of his cause in a way that blinds him to the normal communicative receptiveness which might otherwise greatly facilitate settlement of the dispute.

The second way in which communication breakdowns may become relevant to the law is that they may occur in the communication *of the law itself.* This may mean that the law is not being successfully communicated to the man in the street who is expected to obey it. Every man is presumed to know the law, or at least to have in his mind an intuition of the law which is "consonant with" or "parallel to" the general spirit of the law.[3] But if the law is imperfectly or abstrusely formulated, or is not made accessible through adequate communication channels, or is not in fact consonant with or parallel to the everyday citizen's idea of its general spirit, then neither of these requirements is likely to be satisfied.[4] Further, communication of the law even to lawyers themselves may be imperfect or altogether blocked. Every attempt to find the *ratio decidendi* of a precedent case is understood by those who undertake it[5] as an attempt to bring to successful fruition an imperfect act of

3. *Cf.* for this interpretation of the legal presumption of knowledge P. K. Ryu and Helen Silving, "Error Juris: A Comparative Study" (1957) 24 *University of Chicago Law Review* 421, esp. at 463. For a later statement by Professor Silving see her "Mental Incapacity and Criminal Law" (1961) 2 *Current Law and Social Problems* 3, at 35 ff.

4. Perhaps the most outspoken English advocate of the need thus arising to make the laws clear and accessible was Jeremy Bentham. In his *Nomography* (3 *Works* (ed. J. Bowring, 1843) 231-283), a characteristically vehement attack on the "general depravity of the style of English statutes", he took as the *raison d'être* of all his criticisms the axiom that the purpose of legislation was to communicate law to its subjects. See 3 *Works* 237, 243. *Cf.* generally on Bentham's attitude: D. Baumgardt, *Bentham and the Ethics of Today* (1952) 111-12.

5. *Cf.* the difficulties expressed by Diplock J. in *Port Line Ltd.* v. *Ben Line Steamers Ltd.* (1958) 2 Q.B. 146. See generally J. Stone, "The *Ratio* of the *Ratio Decidendi"* (1959) 22 *M.L.R.* 597, and literature there cited; and see now A. W. Simpson, "The *Ratio Decidendi* of a Case and the Doctrine of Binding Precedent", in A. G. Guest (ed.), *Oxford Essays in Jurisprudence* (1961) 148, at 168 ff.

communication by the precedent judge; and every attempt to interpret an intractable statute is conceived by the interpreter[6] as an attempt to complete an act of communication in which the legislature, as communicator, has played its part imperfectly.[7] In fact, of course, the imperfections in both cases *may* lie rather on the side of the interpreter, who sees the communication as imperfect only because he has been insufficiently alert or skilful in his role of communicatee, or even because he has wilfully sought to misunderstand.[8]

These latter qualifications suggest that if we wish to attain a fuller understanding of the reasons for failure in human communication, the various elements involved in an act of communication must be analysed with considerable care. In fact it appears that an act of communication contains at least five constituent elements, and the imperfection or failure of the resulting communication may be due to defects in any one or more of the five. These principal constituent parts which we distinguish in human communication are as follows:

(1) The *persons participating in human communication.* These are of two kinds: (a) the *communicators,* or persons who address[9]

6. Among a *plethora* of *cris de coeur* in the judicial interpretation of statutes *cf.* Lord Simonds and Lord Radcliffe in *St. Aubyn* v. *A.-G.* (1952) A.C. 15, at 30 and 44 respectively (as to the U.K. Finance Act, 1940); MacKinnon L.J. both in *Bismag Ltd.* v. *Amblins (Chemists) Ltd.* [1940] Ch. 667 at 687 (as to the U.K. Trade Marks Act, 1938) and in *Vaughan* v. *Shaw* [1945] K.B. 400 at 401 (as to the Rent Restrictions Acts, a favourite target for judicial castigation); and the Australian High Court (Dixon C.J., Fullagar and Kitto JJ.) in *Petrie* v. *Dwyer* (1954) 91 C.L.R. 99 at 105-106, 108. -109. A full study of the actual reasons for failure of communication in each of these cases would be particularly illuminating. See generally J. Stone, *The Province and Function of Law* (1946) (hereinafter cited as "Stone, *Province")* 198 ff., and literature there cited.

7. *Cf.* G. Radbruch, *Rechtsphilosophie,* 5 ed. (1956) 210, in which he compares philological interpretation and juristic interpretation and says that whereas the former is "re-thinking of an idea thought before", the latter is "thinking to its conclusion what was once thought (*zu Ende Denken des Gedachten*)".

8. On wilful misunderstanding by litigants and their advisers see Stephen J. in *Re Castioni* (1891) 1 Q.B. 149 at 167. On devices for tax avoidance often based on deliberate reliance on the draftsman's words as against his patent intention, see Lord Simon L.C. in *Latilla* v. *I.R.C.* [1943] A.C. 377 at 381; but contrast Jordan C.J. in *In the Estate of Vicars* (1944) 45 S.R. (N.S.W.) 85 at 93-94. On the need for more positive and co-operative participation in the legislative act of communication *by the judges as communicatees,* see Denning L.J. in *Seaford Court Estates Ltd.* v. *Asher* [1940] 2 K.B. 481 at 499; but note the subsequent history of his suggestions in *Magor and St. Mellons R.D.C.* v. *Newport Corporation* [1952] A.C. 189.

9. For analyses of the notion of human communication see D. Harrah, "Science and the Rhetorical Aspect of Communication" (1957) 9 *Methodos* 113; C. Cherry, *On Human Communication* (1957). And see J. Stone, "Problems Confronting Sociological Enquiries Concerning International Law" (1956) 89 *Recueil des Cours* 63 at 94-97.

others or transmit messages to them; (b) the *communicatees,* or persons to whom messages are addressed or by whom these are received.

(2) The *communicatum* or the message transmitted or received.

(3) The *communication linkage,* or the relation of communication between the communicator and communicatee.

(4) The *communication means* or the ways, methods, or devices by which communication takes place. In the present essay we shall be concerned only with language, as the most common communication means; but any kind of expedients for transmission of mental contents may of course be involved, from the most complex mechanical devices to the simplest human resorts of expression. Not only emotional states, but also thoughts, are communicated by men through expressions of the eyes and face, postures of the body, modulation of the voice,[10] and presumably by various other physical manifestations not yet properly specified and identified.

(5) The *communication situation,* or the situation in which human communication takes place, all of its elements (1) to (4) being present.

To articulate in this way the elements of the phenomenon of human communication is to chart the areas within which we must search for the reasons why human communication is sometimes successful and sometimes a failure, in the extreme case to the degree of breaking down altogether. The success or failure of human communication is determined, first, by circumstances lying in the persons participating in human communication — by their mental abnormalities, personal idiosyncrasies, mental habits, physical behaviour patterns, mental affinities, personal incompatibilities, and the like. Secondly, success or failure is determined by circumstances lying in the communicatum, embracing both its *qualitative* aspect (its coherence, clarity and proper organization) and its *quantitative* aspect (the "bulk" of the material communicated and the time span in which a certain amount of material is transmitted). Thirdly, success or failure is determined by circumstances lying in the communication linkage. This has various aspects: communication may be affected in this area either by unfavourable *media* of transmission producing physical disturbance of messages,[11] by the time distance between the communicator and the communicatee, or by mental conditions detrimental to the understanding of messages (for example, lack of mental rapport between the persons participating in human communication and various mental factors unfavourable to

10. *Cf.* W. Hellpach, *Sozialpsychologie,* 3 ed. (1951 at pp. 23-53.

11. For example, the so-called "channel noise". Such interference with physical communication *media* may of course be deliberately created. On the complexity of the communication situation which then emerges see J. Stone, *Legal Controls of International Conflict* (1954) at pp. 318-323.

attentive reception).[12] Fourthly, success or failure is determined by circumstances lying in the communication means. Here again, what is conducive and what is unconducive to communication has at least two aspects. One aspect includes the condition of the technical devices of communication. The other aspect includes the linguistic qualities of the language used. Finally, success or failure is determined by circumstances lying in the communication situation. This requires separate attention because human communication is a whole which is something more than the sum of its parts; so that in the cumulative presence of all the elements (1) to (4) of human communication, there are factors which are not present when those elements are taken in isolation. These factors include the suitability and unsuitability of the particular communication means (however efficient) to the particular communicants; the adequacy or inadequacy of the particular communication linkage for the particular communicatum; and the readiness of the particular persons participating in communication to transmit or receive the particular communicatum.

Each of the *foci* for interference with human communication might be analysed in depth; and at each point there would be found numerous possible interference-factors which might each be analysed in detail. The purpose of the present essay is to explore some of the problems which would be encountered by such an analysis as applied to "meaninglessness". "Meaninglessness", whether assigned as a *reason* for communication breakdown or as a *name* for one type of breakdown, would appear at first sight to be a simple phenomenon, not beset by analytical subtleties, and confined in its effects and causes to one element in the communication situation — namely, to the communication means. But in fact we shall find that the analysis cannot be kept either simple, or confined to one element in the communication situation. And the reason for this, as we shall see, is that on the one hand, the term "meaningless" is commonly applied to a considerable number of different kinds of defective communication; while on the other hand it is doubtful whether *in any one of these* there is strictly an example of "meaninglessness" at all.

Our purpose, in short, is to attempt a rational reconstruction of "the meaning of meaninglessness". When this has been done, we shall return to the question of how communication-situations tainted by putative meaninglessness are relevant to law.

12. *Cf.* on both physical and mental disturbances of the communication linkage E. Emery, P. A. Ault and W. K. Agee, *Introduction to Mass Communication* (1960) 6.

2. THE LOCATION OF "MEANINGLESSNESS" IN HUMAN COMMUNICATION

The contexts in which "meaninglessness" is imputed to attempts at communication may best be discovered by a further articulation of the elements of the communication means which is adopted for such an attempt. It will be recalled that this means will usually be language, but may also consist in other signs. In any case, the use of the sign will involve the following elements:

(1) The expression, utterance, or other referring sign or symbol itself. This will here be called the *"signum",* as a covering technical term.

(2) The sense referred to; here termed the *"significatum".*

(3) The object or entity referred to; here termed the *"designatum".*[13]

The *signum* consists in articulated sounds or written characters organised into linguistic utterances; or of diagrams, drawings, items of music, etc. In short, it consists of physical events, perceptible by the senses, intended as means of human communication. The *significatum* consists in mental contents communicated, which may be thoughts, feelings, desires, promptings, or any other mental datum.[14] The *designatum* consists in what the thoughts, feelings, desires, promptings, etc., are about. It can consist in entities of various ontological order: houses, landscapes, animals, etc. (objects of the physical or biological order); sentiments, doubts, imaginings, etc. (mental events); law, science, art, etc. (cultural manifestations); and numbers, values, relations, etc. (abstractions).

When the *signum* is absent, there is no human communication. But in such a case there may be one of those situations which *more or less resemble* human communication. Every human perception or formation of an idea is a simple case of this kind; for it means that

13. See C. K. Ogden and I. A. Richards, *The Meaning of Meaning,* 4 ed. (1936) 11 ff. (where the terms used are respectively "symbol", "reference", "referent"), and A. H. Gardiner, *Theory of Speech and Language,* 2 ed. (1951) 29 ff. (where the terms used are respectively "name", "sense", and "thing-meant"). The threefold analysis was known before the work of Ogden and Richards (see, *e.g.,* F. de Saussure, *Cours de Linguistique Générale,* 4 ed. (1949) 101 ff., speaking of *"signe", "significant",* and *"signifié"),* but first received wide popular reception and appeal in the form of Ogden and Richards' "basic triangle" (*loc. cit.*). *The Meaning of Meaning* is still a *locus classicus* in its field, but must now be read subject to clarifications by later work, *e.g.* Gardiner, *op. cit.,* and C. Morris, *Signs, Language and Behaviour* (1946).

14. On the wide and flexible range of possible "mental contents" see A. R. Blackshield, "Empiricist and Rationalist Theories of Justice" (1962) 48 *Archiv für Rechts- und Sozialphilosophie* 25 at 78-9.

there is present to a human mind a *significatum* or *designatum* or both, which could, if one chose, be made the subject of an attempt at communication with some other mind. Among cases more closely resembling communication but still falling short of it, we may mention the situation in which two persons together both contemplate the same reality and actually share the same thoughts, emotions, etc., about it; such persons may well be said to be in a state analogous to communication, but there is in fact no communication until such time as one or the other of them expresses or articulates in some kind of *signum* the shared mental content. We may also mention the situation of introspection, inner perception of one's own bodily or mental conditions, and perhaps even the working-out in one's mind of a train of ideas. These are processes through which one may gain knowledge, and an essential step in the gaining of it may be the formulation or interpretation of some internal *signum.* In such a process a man may be said to commune with himself, and even to communicate with himself. But it is not *really* communication because there is still no external *signum.*

When the *signum* is present, communication may still fail. The reason for this failure lies in an absence of *significatum* or *designatum,* or both. An attempt at communication necessarily involves the treatment of something as a *signum,* either by a would-be communicator, or a would-be communicatee, or both. Where the attempt is unsuccessful we commonly say that the supposed *signum* is "meaningless"; but though successful communication always involves the *transmission* of meaning, unsuccessful communication does not necessarily involve *absence* of meaning. And it may be questioned whether any *signum,* or anything which in the course of an attempt at communication is treated as a *signum,* can ever be wholly meaningless.[15] The resolution of this question requires an analysis of the notion of "meaninglessness"; and to this we now turn.

To speak of an attempt at communication *usually* means that someone is attempting to play the part of a communicator; and to say that the attempt fails *usually* means that for the intended communicatee to whom the would-be communicator is addressing himself, the *signum* used fails to conjure up any *significatum,* or *designatum.* This failure, as we have already seen, *may* be due simply to some deficiency on the part of the intended communicatee. But we now mention this possibility only to set it aside: we are here concerned with defects in *language* as means of communication. In any event it is certainly not possible to say simply of this kind of failure that the *signum* involved is "meaningless".

15. See A. B. Johnson, *A Treatise on Language* (ed. D. Rynin, 1959) *passim* and Editor's Introduction at 10; Gardiner, *op. cit.* n. 13 *supra,* at 42.

The other possibility, which is directly relevant here, is that the failure is due to some deficiency in the scheme of *signum, significatum,* and *designatum,* which the would-be communicator offers.

In the first place, *signa* may be defective. They may be ambiguous or equivocal (for example "leaves", "spring", "let"), signifying more than one *significatum* and designating more than one *designatum.*[16] Or they may contain omissions, misspellings, inversions, etc., which leave the meaning to some extent at large: that is, they may violate the consensual procedures for formation of words and sentences which are prescribed by the rules of spelling, grammar, and syntax. In the second place, *significata* can be vague, ill-organised, confused, etc., designating only very broadly or imprecisely what they are about. Thirdly, *designata* can be incapable of adequate apprehension either in the given situation of learning or because of limitations on the mental powers of man in general.

Deficiencies of all three of these kinds, of course, occur constantly in human communication, but usually they do not constitute a *complete* blockage to successful communication, serving only, on the one hand, to interpose between the transmission of a message and its successful reception a period (which may be only momentary) in which the intended communicatee must puzzle over the deficiency; or, on the other hand, to throw out of focus, or into confusion or ambiguity, the message as received. We would not dream of saying in either event that the

16. The converse of equivocal *signa* are equivalent *signa, i.e.* two or more different expressions which signify the same *significatum* or designate the same *designatum.* Examples are "girl" and "lass"; "equilateral triangle" and "equiangular triangle"; "the morning star" and "the evening star" (both referring to the planet Venus); and "animals with lungs" and "animals with kidneys". *Cf.* on the logical difficulties which arise from such equivalences L. J. Cohen, *The Diversity of Meaning* (1962) 172 ff. Bentham, *op. cit.* n. 4 *supra,* (3 *Works* 247) castigated equivocation and equivalence respectively as "Unsteadiness in respect of Purport" (where "in the compass of the same discourse, to the purpose of denoting divers ideas, or portions of ideas, one and the same word or set of words is employed"), and "Unsteadiness in respect of Expression" (where "for the conveyance of one and the same idea, or portion of an idea, different locutions, whether single or many-worded, have been employed"). *Cf. Lightfoot* v. *Maybery* [1914] A.C. 782, at 805, where Lord Moulton thought that the draftsman of the will in that case "seems to have been obsessed by a desire never to repeat the same phrase even when referring to the same person, a rule which may tend to elegance in literary style, but which is lamentably unsuitable in the drafting of a will." As to this see the contrasting *dicta* of Blackburn J. in *Hadley* v. *Perks* (1866) L.R. 1 Q.B. 444 at 457 and in *R.* v. *Buttle* (1870) L.R. 1 C.C.R. 248 at 252. And c*f.* with equivocation Stone's "category of concealed multiple reference" (*Province* 174-76) and with equivalence his "single legal category with competing versions of reference" (*ibid.* 179-180).

intended communication was "meaningless". But in extreme cases we *do* say this; and the question is, what do we mean?[17]

In the case of *signa,* extreme cases occur where the *signa* are formed in a way which not only violates the accepted rules of word and sentence formation, but is so completely foreign to them that the resulting *signa* cannot be interpreted at all in terms of those rules (for example "prempt", or "Wish dim in hue barters"). In relation to *significata,* extreme cases occur where there is no *significatum* at all (for example, "amphicontrusion");[18] or where the juxtaposition of *significata*

17. "I conceive *nonsense* to be one thing", said Bishop Berkeley, "and *unintelligible* another"; and this is only the first of the distinctions we need to draw. See Berkeley, *Alciphron, or the Minute Philosopher* (1732) VI, 7.

Cohen, *op. cit.* n. 16 *supra,* at 106-07, brings us much closer to the present intention. "When a man claims to discern meaninglessness", he says, "he may have discerned one or other of several very different things, depending on the context of his claim. This is true even if we disregard statements on the verbal plane of semantics, as when he has seen that a particular string of language-words instantiates no customary pattern of sentence-construction, such as 'If a the goes but' in English, or when he has seen that a particular use of some language-phrase, like 'leading question' is undesirable. Perhaps he has seen that a certain combination of words has no function in the culture of a certain community, like the expression 'empty term' in ancient Greek logic. Perhaps he thinks that no conceivable purpose is achieved by uttering a certain sentence, such as 'Edinburgh is between Glasgow'. Or perhaps he thinks that no desirable purpose is served by uttering some other, such as 'Some machines can think for themselves' ". Cohen proceeds to say that "when a man claims that a remark is meaningless he may have seen that it is self-contradictory, or that it has no implications whatsoever. He may have seen that though it is apparently a statement its truth-value is in principle quite unascertainable . . . Or he may have seen that it is not a statement at all, like the habitual liar's remark 'I always lie', in so far as it cannot even have a truth-value . . . This is by no means a complete list, but it at least serves to show that the concept of nonsense is too multiform to be much illuminated by any single theory of meaning." See also *ibid.* 125-26, 151, 168, for further issues whose implications would need to be explored in a full analysis of "meaninglessness".

18. The difference between "prempt" and "amphicontrusion" is that the former is not even a word; the latter is a perfectly well-formed word, but just happens to have no *significatum.* Once this stage is reached the very form allows us to intuit *something: e.g.* that "amphicontrusion" is a noun, and not a verb or adjective. It also allows us to form cognate words, the verb "amphicontrude" and the adjective "amphicontrusive"; still however with not the remotest intuition of their meaning. The same is true of "nonsense sentences": see Cherry, *op. cit.* n. 9 *supra,* at 118-19, on the sentence "The ventious crapests pounted raditally", which he thinks does communicate *something* — "at the least ... a standard sentence construction. We might guess, for instance, whether a statement is being made, a question being asked, or an order given." We might also translate the sentence into French *("Les crapêts ventieux pontaient raditellement");* but not, he thinks, into more remote languages such as Chinese.

is not only ill-assorted and confused, but is so extremely ill-assorted and confused that the communicatee finds it in fact impossible to conceive of anything at all by them (for example, "whispering silence", "square circle"). And finally, in relation to designata, extreme cases occur where a clear *significatum* can be formed but where the *designatum* is not properly constituted for the following reasons: it cannot be *known* to exist in the given state of human knowledge (for example, human beings in other solar systems) or it can be known *not* to exist (for example, the beard of Mr. Khrushchev); or, still further, it can be known that it *cannot* exist, at least within the reality that lies within the present range of human experience (for example, a golden mountain, a winged horse).

These are the main situations in relation to which we use the word "meaningless". But not all of us would agree that all of them are meaningless; and indeed the question that has here been raised is whether any of them can strictly be so described. They can, however, be described by other terms. Examples like "prempt" and "amphicontrusion" can be described as "non-intuitive"; that is, although they have the appearance of linguistic signs, they simply fail to evoke any *significatum* or point to any *designatum* for the communicatee. His attitude to them is one of simple incomprehension; his mind is blank before them.[19] Cases like "square circle" and "whispering silence" can be described more strongly as "counter-intuitive"; they do present the communicatee with something, but it is something which he finds it impossible to conceive or imagine; his mind rebels against them. Examples like "Mr. Khrushchev's beard" or "human beings in other solar systems" can be described as non-empirical; that is, they suggest to the communicatee a *possible designatum,* whose existence can be conceived of but can be falsified or cannot be verified,[20] at least in the present

It is to be noted that as mere signs, expressions such as "prempt" and "Wish dim in hue barters" can be employed in logical operations. For example, under the rules of immediate inference, it is correct to infer from "No prempt nam is a lawzy eeng" that "No lawzy eeng is a prempt nam". And under the rules of syllogism (*Modus Barbara*) it is correct to infer from "All wish dim in hue barters" and "All screams are wish" that "All screams dim in hue barters".

19. At least so far as any *designatum* or *significatum* is concerned; but see *supra,* last footnote.

20. For the principle of verifiability as a criterion of *meaning* see A. J. Ayer, *Language, Truth and Logic,* 2 ed. (1948) 9, distinguishing between a "strong" sense of "verifiable" (where the truth of the statement so qualified can be "conclusively established in experience"), and a "weak" sense (where it is only possible "for experience to render it probable"). On the fundamental problem of radical philosophical scepticism as to the reliability of the linkage between *significata* and *designata,* see I. Tammelo, *Rational Man and Radical Doubt* (1952) and A. R. Blackshield, "Human Values and Human Thought" (1962) 2 *Jaipur Law Journal* 144 at 161 ff.

state of human knowledge. As far as his actual knowledge goes, he cannot point with certainty to the presence of any factual *designatum.* And again, examples like "winged horse" can be described more strongly as "counter-empirical"; for the possible designatum which they suggest to the communicatee is not only within the reach of actual knowledge, but is contrary to actual knowledge. So far as his actual knowledge goes, he can point with certainty to the absence of any actually existent *designatum.*

These four modes of semantic deficiency — non-intuitive, counter-intuitive, non-empirical, and counter-empirical *signa* — can of course occur in combination. Not all of the theoretically possible combinations will in fact occur, but some will. For instance, what is non-intuitive ("amphicontrusion") may also be regarded as non-empirical. And what is counter-intuitive ("square circle") may also be regarded as non-empirical and counter-empirical. But they may also occur singly: thus "curved space" is for most of us non-intuitive but not counter-intuitive, nor non-empirical, nor counter-empirical; "Mr. Khrushchev's beard" is non-empirical in the sense that its existence can be falsified, but it is not counter-empirical, nor non-intuitive, nor counter-intuitive; "oil on the planet Pluto" is non-empirical in the sense that its existence cannot be verified, but it is not counter-empirical, nor non-intuitive, nor counter-intuitive. In the present context it will suffice to consider these modes of semantic deficiency singly.

3. An Inventory of the Modes of Semantic Deficiency

In one sense, it seems that the most appropriate meanings of the word "meaningless" are "counter-intuitive" and "counter-empirical". For the latter imports for us definite absence of *designata:* and the former, at least from the point of view of the communicatee, also imports this (though not only this). For similar reasons, it would seem appropriate to equate "non-empirical" with "meaningless", in those cases where the import of the former term is that we can assert with empirical certainty that no *designatum* exists. On the other hand, we have seen that the "non-empirical" mode may also occur when it is impossible to answer the question whether *designata* exist or not; while in the case of non-intuitive *signa* that question cannot even be reached because consideration of the question presupposes that one knows *what it is* whose existence or non-existence is being decided. From counter-intuitive and counter-empirical *signa* one does know this; the trouble is that one also knows that the question of existence must carry a negative answer. There is a *significatum,* but it has no *designatum;* and in this sense it is meaningless.

But meaninglessness of the *significatum* resulting from the non-existence of the *designatum* does not import meaninglessness of the

signum. And indeed, the very fact that the communicatee knows *what it is* that does not exist means that the *signum* is *not* meaningless. For this knowledge is precisely the meaning that has been conveyed to the communicatee by means of the *signum.* The fact that he regards the communication as counter-intuitive or counter-empirical does not make it meaningless; though if the communicator does not so regard it this will certainly make it a failure as an instance of communication.

The mode of semantic deficiency of *signa* which would least widely be thought of as equivalent to "meaningless" is probably "non-empirical"; and it need not detain us long. The proposition that what is non-empirical is meaningless can only be maintained in a philosophical sense, and then only by certain philosophical schools. From the common sense point of view what is non-empirical may very well have meaning; and in any case this is conclusively established for our purposes by the same argument as was just applied to the case of *significata* without *designata.* A *signum* which the communicatee experiences as non-empirical has necessarily conveyed to him a meaning — namely, the *significatum.* The fact that he is left in doubt as to whether or not there exists a *designatum* which corresponds to this *significatum* does not make it meaningless; though if the communicator was seeking to avoid or overcome this doubt there is again in a sense a failure of communication. Incidentally it may be mentioned here that there is a kind of *signa* for which *designata* are "constitutionally" absent. These are the so-called syncategorematic words such as "and", "or", "of", "because", etc., which signify something, and as such are instrumental for creating semantically complete units of expression and thought, but do not designate anything.

This leaves us with the rather more intricate question whether non-intuitive words or sentences are meaningless. Here it is necessary to consider a number of situations, though their number can be halved at the outset by establishing that there is no material difference *in this regard* between non-intuitive words or phrases and non-intuitive sentences. If, and precisely insofar as, a word like "prempt" is meaningless, so is a sentence like "Wish dim in hue barters". The point needs to be stressed because, on the one hand, it might be thought that the sentence was somehow more meaningful than the word because it at least consists of parts which convey intelligible ideas when taken in isolation; and because, on the other hand, it might equally be thought that the sentence was somehow less meaningful than the word because of its bafflingly inappropriate linkage of ideas. The proper analysis is that whether a communicatee is interpreting a word or a sentence, his task is to combine units into a meaningful whole, which they will automatically assume when linked in correct order according to linguistic rules. Normally the process is completely automatic because the task of the communicator is to provide the units already correctly assembled; and the communicatee's reconstruction in his own mind is then merely

a matter of absorbing what is already supplied. Sometimes the communicator fails in this task, either through ignorance or unskillfulness (as in barely literate scribblings) or through inadvertence (as in typists' and printers' errors) or by deliberate design (as in anagrams and jumbled-sentence games); but often the communicatee will still be able to reconstruct the correct, meaningful whole. But where he finds this impossible, and particularly when as with "prempt" and "Wish dim in hue barters" he finds it impossible even to see how the particular units supplied (and not altered into, for example, "prompt" and "Fish swim in blue waters") could conceivably be combined in any rational way, then for him the word or sentence is meaningless. The fact that in one case the units to be collated are letters, and in the other they are words — or that what is sought as a totality in the one case, a word, is given as a unit in the other — simply makes no difference. In the same sense, no more and no less, a paragraph would be meaningless if it consisted of sentences each intelligible in isolation but dealing with hopelessly jumbled and unrelated subjects; or at the other end of the scale, a letter could perhaps be described as "meaningless" if it were in fact just an incomprehensible squiggle bearing no relation to any item in any known alphabet. We propose, then, in considering the different situations in which non-intuitive words and sentences occur, to make no differentiation between the former and the latter.[21]

The first situation to be mentioned is that in which the combination of letters or words is not even intended to be a word or sentence: where no one has even attempted communication, but something looking like a *signum* has nevertheless eventuated — for instance through a monkey's striking the keys of a typewriter, or through an electronic brain getting out of order and somehow producing nonsensical collocations of letters by itself. In this situation what eventuates really is meaningless. But we mention it only to note that we are not considering it here; for what we are at present considering, it will be remembered, is the situation where someone *has* tried to communicate and the intended communicatee can find no meaning. This situation will, however, concern us in our next section, where we propose to consider briefly how matters stand from the point of view of a would-be communicatee. Similarly to be considered at that point is the situation where the apparent *signum* has been intentionally formulated by a human being, but not with any intention of communicating: for instance the case of nonsense verse, or of literary hoaxers devising a meaningless combination of words and passing it off as modern poetry.

More material of the cases mentioned above are those in which there *is* an intending communicator, but because of his illiteracy or his speech

21. The final standing of words and sentences may, however, be different in that a sentence may have to satisfy in addition other criteria of meaning than at present adverted to. See *infra* section 5.

disorder or accident what he produces as his intended *signum* is in fact quite inadequate to carry his intended *significatum* or *designatum.* And these cases are not easy. Objectively, of course, the supposed *signum* seems meaningless; but from the subjective viewpoint of the would-be communicator there really is a meaning. And once this is taken into account it is hard to speak of *meaninglessness* even objectively; the most that can be said is that the meaning of the *signum* is *not discoverable.* This is especially the case because after all the meaning *may* be discoverable: a reader sufficiently familiar with the workings of an illiterate mind may be able to interpret an illiterate scribble; and when a typist's fingers go astray on the keyboard and produce a line of gibberish, a reader familiar with typists' fingering and with the layout of a typewriter keyboard may still be able to reconstruct what the letters should have been, and so still arrive at the intended meaning. Nevertheless these are cases in which it is at least reasonable to speak of "meaninglessness". Yet if we do so speak we ought to be careful to speak only of meaningless combinations of letters and words; not of meaningless words and sentences, and still less of meaningless *signs.* For these are not words or sentences, but their failings or distortions. And in this sense we can say that there are no meaningless words or sentences, for if an utterance has no meaning as a word or sentence it is not a word or sentence.

The next case to be considered is that of "prempt" and "Wish dim in hue barters" *as used in an essay like the present.* In the present context examples like these have a meaning; and they mean "meaningless word" and "meaningless sentence" respectively.

The next case to be considered is that of anagrams; and with these we may group all codes and ciphers in which ordinary language is concealed behind a facade of apparent meaninglessness. Here again it is obvious that there really is a meaning; the situation is simply that the normal rules for interpreting *signa* are superseded, or supplemented, by other special rules. If the intended communicatee experiences the s*igna* as non-intuitive, this is not even a deficiency of the *signa;* it is simply a matter of his lack of knowledge of, or of sufficient skill in operating with, the special rules applicable.

A further situation to be considered is exemplified by Al Capp's bestowal upon a character in his American comic strip *Li'l Abner* of the name "Joe Btfsplk". Here "Btfsplk" as a combination of letters is meaningless; but the character is a recurring and distinctive one and to regular readers of the strip "Btfsplk" has by now become a word

richly endowed with meaning.[22] Much the same can be said of the same artist's mythical animals such as shmoos and iggles,[23] or of more famous examples such as Edward Lear's Jumblies, or his Yonghy-Bonghy-Bo, and Lewis Carroll's Snark — not to mention the final catastrophic discovery that the latter was really a Boojum. In all these cases the *prima facie* meaningless word is not a surname, but a denotation of a genus or species which happens to be non-existent. All cases are non-empirical and counter-empirical, and may even be counter-intuitive. But they are not meaningless, and it is doubtful whether they are even non-intuitive. For the "intuition" of meaning which is implied for normal cases by our use of this latter term is not an *a priori* intuition unaided by previous language experience; on the contrary it is totally dependent on such experience, including knowledge of how to operate with the rules for formation of words and sentences, and including in addition previous experience of the same word in similar contexts, or at least (since people undoubtedly do intuit with reasonable accuracy the meanings of words they have never encountered before) experience of how words which are somehow comparable in verbal form or mental content are used in comparable contexts.[24] A word whose meaning has been learnt is as much intuitive for our purposes as one whose meaning is understood as the result of an intelligent but not necessarily articulate guess; in any event, it is not impossible that the words we are now considering are "intuitive" in both these senses. By the time we have read through to the end of *The Jumblies* or *The Hunting of the Snark* we know all there is to know about these creatures, and thenceforth their apparently meaningless names will in fact be sufficient to conjure up this fund of knowledge. This is more particularly the case where, as with the shmoo and the iggle, the *signa* used to tell us about the non-existent *designata* are not only verbal but pictorial as well; any reader of the comic strip in question can form a clear picture of "shmoo", and for many Americans "shmoo" (which does not exist) is probably much more meaningful than "platypus" (which does exist as a curious rare animal in Australia). Our knowledge of the Jumblies and the Snark is far short of this; but we know a considerable amount about their characteristics and habits, and if some aspects of the concept we have of them are rather mysterious

22. It may of course be added that in any event, even *ab initio,* this is a surname and so subject to different criteria of meaning from those which apply to ordinary words. *Cf.* on the problems of proper names Bertrand Russell, *An Inquiry into Meaning and Truth* (1940) 32 ff.; Gilbert Ryle, "The Theory of Meaning", in C. H. Mace (ed.), *British Philosophy in Mid-Century* (1957) 239, at 250 ff., B. Migliorini, *Dal Nome Proprio al Nome Comune* (1927); and A. H. Gardiner, *The Theory of Proper Names,* 2 ed. (1954).

23. As to "shmoo" see the exhaustive but sometimes over-fanciful analysis by A. A. Roback, *Destiny and Motivation in Language* (1954) 137 ff.

24. See Gardiner, *op. cit.* n. 13 *supra,* esp. at 35; I. A. Richards, *The Philosophy of Rhetoric* (1936); and *cf.* W. K. Wimsatt and C. Brooks, *Literary Criticism: A Short History* (1957) 641 ff.

and unformed, we must remember that — particularly in the case of the Snark — this is by the deliberate intention of their creator. And this leads to the second sense in which such words are "intuitive".

For the fact is that if we have previously read any other nonsense verse at all, we do *instantly* understand "Snark" or "Jumblies" in the only sense that matters: that is, as referring to a non-existent and slightly ludicrous creature which is being set before us for the purpose of our irrational diversion. If the writer is an expert in devising his nonsense-names, our *instant* understanding or surmise goes further than this; telling us, for instance, that the Jumblies themselves live by rather irrational standards, or that there is something rather mysterious and sinister about the Snark. But at the very least, we know at once that we are reading about nothing that exists, and we know why it interests us all the same.

A further special example is the language used by James Joyce in *Finnegans Wake.* Here is a communication which most communicatees will at first find non-intuitive; the language is often only approximately similar to natural language, and at times is equally close to any of half-a-dozen natural languages. Most of his words are neoplastic formations: they are growths on the body of language like tumours (neoplasms) upon a living body. But for a reader with Joyce's own immense knowledge of languages, history, philosophy, mythology, literature and Dubliniana the book will be packed with meaning; and even the reader with only average general knowledge can glean considerable meaning from it once he understands the punning, cross-echoing structure on which Joyce has built his unique language. In short, this finally becomes similar to the code situation, on a massive scale.

Differing from the *Finnegans Wake* situation or the code situation only in degree are the results of communication through language which is ungrammatical (i.e. transgressing the rules of the grammar of the given language) or paradactical (i.e. transgressing the rules of the syntax of the given language). In this use of language, if communication in fact takes place, what happens is that the communicator employs an idiosyncratic or neoplastic or archaic language, which the communicatee translates either into conventional language or into his own individual language. Within the framework of either or both of the idiosyncratic languages which may thus be involved, what would be ungrammatical or paradactical in conventional language may be completely grammatical or syntactical. Insofar as the ungrammatical or paradactical sentences of, for example, children or pre-Socratic philosophers, are capable of conveying the intended ideas *to some people,* for example to the parents of the particular child or to specialists in the Greek language of the 7th to 5th centuries, these sentences cannot be regarded as absolutely meaningless. They can be meaningless only for certain people — even though these are probably the majority.

Such ungrammatical or paradactical sentences are, of course, much closer to absolute meaninglessness if they are lifted out of their context — which here includes the fact that the communicator is systematically adopting an idiosyncratic way of speaking with which the communicatee is familiar — and considered as isolated sentences. This leads us, finally, to the case of isolated idiosyncratic utterances suddenly intruding their non-intuitive sets of *signa* into the midst of normal prose — utterances such as "the wafting of the silence of luminous delight"[25] or "Are cans constitutionally iffy?"[26] But here again, it may be possible to describe such utterances as "meaningless" *only* if they are lifted out of context: when the intention of the whole passage is known, the result of such phrases may be not to detract from the overall meaning, but to enrich it.[27] In other words, in their proper contexts such phrases do have meaning; not by virtue of their existence, but by virtue of their occurrence as parts of thought-units whose other parts endow them with meaning by adding something to them or even by detracting something from them. So that the final effect of this kind of case is simply to underline the lesson that meaning is dependent on context. If a parliamentary draftsman uses phrases appropriate to mystical poetry or to meditative existentialist adventures in the realm of linguistic possibilities, we may properly say not only that there is a breakdown in communication, but that this is due to "meaninglessness".

25. See M. Heidegger, *Unterwegs zur Sprache* (1959) 141.

26. See J. L. Austin, "Ifs and Cans" (1956) 42 *Proceedings of the British Academy* 110, at 110.

27. Heidegger's phrase is an attempt to capture in words the mood and essence of the Japanese aesthetic term *"iki",* whose lexical definition could be "the loveliness that shines through the material embodiment of an artistic idea". The attempt occurs in the context of a work in which the evocative, "calling" functions of language are repeatedly stressed. See, *e.g. op. cit.* 16, where Heidegger says that "In that which is spoken, speaking is not exhausted"; and *ibid.* 21, where he says that when things are "named" in his writing "the naming does not utilise words but calls into words. The naming calls." *Cf. infra* n. 93. See generally on existentialist attempts to transcend the mere *meaning-functions* of language, I. Tammelo, Book Review (1954) 32 *Australasian Journal of Philosophy* 73, at 74. For a more critical view of similar attempts in the whole phenomenological movement, see J. Bucklew, "The Subjective Tradition in Phenomenological Psychology" (1955) 22 *Philosophy of Science* 289. For Austin's question "Are *cans* constitutionally iffy?", on the other hand, the title "Ifs and Cans" which immediately precedes it probably gives a sufficient clue to enable the reader to recognise instantly that the question thus strikingly posed is a perfectly intelligible one concerning the linguistic philosophy of capability-statements and conditionals.

4. THE INVENTORY CONTINUED: "MEANING" IMPUTED BY *WOULD-BE COMMUNICATEES*

We said above that to speak of an attempt at communication usually means that someone is attempting to play the part of communicator; and so far our consideration of attempts which fall short of communication has been confined to this possibility. But it is also appropriate to speak of attempts at communication where an individual attempts to play the part of communicatee, taking some material and attempting to treat it as a *signum.* In most attempts at communication this distinction is hardly important because the attempting communicator and attempting communicatee are both present; and where the attempt fails, it fails because one of them, or each of them, fails to play his part adequately. But an attempting communicator can also fail simply because he finds *no* communicatee; and an attempting communicatee can fail because there is no communicator. The former of these cases does not raise the question of meaninglessness at all; but the latter raises it in a very interesting form which we must now consider.

There are a number of ways, which it will be necessary to examine in a moment, in which materials never intended to carry any meaning may come to be subjected to efforts to extract a meaning out of them. Where these attempts fail, and the supposed *signum* refuses to yield up the meaning which in fact it has not got, there is of course no problem. The interesting problem arises *where the attempt to discover a meaning is successful.* When a reader has discovered a meaning, how can we still maintain his material to be meaningless? And when he has played the part of communicatee successfully, how can we still claim that there has been no communication?

The second question is easy to answer: the would-be communicatee is simply deluded in thinking that there has been a communication if in fact there is no communicator. But the first question is more difficult, and again requires us to enumerate the different cases in which it arises.

One of the cases we have already mentioned is where the material treated as *signum* has eventuated without any human agency: for example, typescripts which eventuate when monkey or machine run amok. Here it seems fairly easy to say that the resulting typescript is in fact meaningless, even if interpreters discover a meaning in it. Yet to some extent this must depend on the degree to which the supposed meaning is apparent on the face of the material. If the material were such that it would *prima facie* be regarded as non-intuitive, and the meaning extracted by the interpreters appeared laboured, strained, or far-fetched, then we could certainly say that the material was meaningless. But if it were a million monkeys instead of one, and their typing really produced the proverbial result, would we really say that the works of Shakespeare were meaningless? And if the material were somewhere in between

Hamlet and hodge-podge, neither macaronics nor *Macbeth,* what would we say then? Obviously in some cases we would have to admit meaning even here. Yet it is believed that we would lean over backwards to avoid such a conclusion; we should be greatly averse to regarding as "meaningful" any material that was not the product of any human agency. We still regard it as a hoax when a chimpanzee wins prizes at an art show; and even if we thought his painting significant before we discovered his true identity, we will tend to change our tune when we learn the truth.

What, then, of artistic and literary hoaxes which are as much devoid of intended meaning as the work of chimpanzees, but are in fact produced by humans? There are examples in the literary history of every country; in Australia, the outstanding instance is the case of the Angry Penguins. *Angry Penguins* was the name of an Adelaide literary magazine which received unsolicited poems purporting to come from the pen of a tragically deceased young poet named Ern Malley, and purporting to be submitted posthumously by his sister. The editors found the poems so impressive that they decided to devote an entire number of *Angry Penguins* to Ern Malley's work, one of them (Max Harris, a well-known Australian writer) saying later: "At this stage I knew nothing about the author at all, but I was immediately impressed that here was a poet of tremendous power, working through a disciplined and restrained kind of statement into the deepest wells of human experience. A poet, moreover, with cool, strong, sinuous feeling for language". In the special Ern Malley issue these qualities were examplified by such poems as "Coda" —

> We have lived in ectoplasm,
> The hand that would clutch,
> Our substance finds that his rude touch
> Runs through him a frightful spasm
> And hurls him back against the opposite wall.

— or "Sybilline" —

> That rabbit's foot I carried in my left pocket
> Has worn a haemorrhage in the lining.
> The bunch of keys I carry with it
> Jingles like fate in my omphagic ear,
> And when I stepped clear of the solid basalt,
> The introverted obelisk of night,
> I seized upon this Traumdeutung as a sword
> To hew a passage to my love.

This material was not dissimilar to Harris' own literary work of the period, and an accusation was soon made that "Ern Malley" was fictitious and his poems a hoax, the suggestion being that Harris had written the poems himself. Harris denied this particular accusation truthfully and in good faith. But the matter was now newsworthy, and reporters

investigating found that the biographical facts supplied about Malley by his "sister" were indeed untrue. Eventually it was discovered that the poems had in fact been a hoax perpetrated by two young Sydney men who explained in a newspaper statement:[28]

> We decided to carry out a serious literary experiment. . . . . What we wished to find out was: Can those who write, and those who praise so lavishly, this kind of writing tell the real product from consciously and deliberately concocted nonsense? It was our contention, which we desired to prove by this experiment, that they could not.

And they added that their *modus operandi* in writing the poems had been carefully devised to ensure that the product was in fact nothing more than "consciously and deliberately concocted nonsense."[29]

After the initial sensation had died down, the question which continued to be discussed by the more serious critics was whether the poems so written were in fact meaningless. Mr. Harris took the view that "The myth is sometimes greater than its creators" and that the authors had written meaningful poetry in spite of themselves. An independent critic, Robert Peel, wrote in *Meanjin*[30] that "Whatever the intentions of the two authors of the experiment, ... they frequently display a freshness of image, a crisp suggestiveness, and verbal high

28. See *The Sunday Sun* (Sydney, Australia), 25 June, 1944.

29. "We produced the whole of Ern Malley's tragic life-work in one afternoon, with the aid of a chance collection of books which happened to be on our desk: the Concise Oxford Dictionary, a Collected Shakespeare, Dictionary of Quotations, etc. We opened books at random, choosing a word or phrase haphazardly. We made lists of these and wove them into nonsensical sentences. We misquoted and made false allusions. We deliberately perpetrated bad verse, and selected awkward rhymes from a Ripman's Rhyming Dictionary. In parts we even abandoned metre altogether and made free verse cacophonous.

" Our rules of composition were not difficult: There must be no coherent theme, at most, only confused and inconsistent hints at a meaning held out as a bait to the reader. No care was taken with verse technique, except occasionally to accentuate its general sloppiness by deliberate crudities. In style, the poems were to imitate, not Mr. Harris in particular, but the whole literary fashion as we knew it from the works of Dylan Thomas, Henry Treece and others . . .

" For the Ern Malley 'poems' there cannot even be, as a last resort, any valid *Surrealist* claim that even if they have no literary value (which it has been said they *do* possess), they are at least *psychological documents.* They are not even that. They are the conscious product of *two* minds, intentionally interrupting each other's trains of free association, and altering and revising them after they are written down."

30. See Robert Peel, "Penguin Pot-Pourri" (1944) 3 *Meanjin* 113.

spirits, which give their work, if only in flashes, the quality of genuine poetry." Other critics showed that many of the poems could be interpreted without much effort as brilliant satires and parodies on contemporary thought, as direct attacks on Harris and even as containing warnings to him of the trick that was being played on him.[31] At least some of these interpretations seemed warranted: it was hard to believe that the authors had given themselves over to chance as completely as they claimed. On the other hand, some of the poems were interpreted as obscene; and (along with other poems in the same number of *Angry Penguins*) were the subject of criminal proceedings against Mr. Harris in September 1944.[32] Counsel for the Crown put our present problem most strikingly when he referred to the Malley poems as "twaddle" and "meaningless nonsense" and in the same breath as "revolting and crude in the highest degree" and "a deliberate piece of smut".[33] The magistrate decided, taking a rather well-balanced view of the matter, that the poems were not immoral or obscene, but that certain passages in them were "indecent" within the meaning of the term in S. 108 of the South Australian Police Act, 1936. It seemed impossible (he said) to give any satisfactory explanation of the meaning of the poems as a whole, but some of the language employed was unjustified and indecent. The present writers would finally suggest that any judgment on the "Ern Malley" poems must be cast in similar terms: that they have no overall meaning (whatever overall meaning Mr. Harris and others may have believed themselves to see) but that there are occasional passages with a certain degree of poetic meaning, and occasional passages with a certain degree of indecent meaning (whether or not these meanings were intended by the actual authors of the poems). And we may join in the belief that probably the authors were not in

31. See, *e.g.* in the same issue of *Meanjin* Brian Elliot, "A Summing Up", 116, esp. at 118-19.

32. Unreported; before Mr. Clarke, S.M. The most interesting evidence for present purposes was the psychiatric testimony of Dr. R. S. Ellery, who said that the general effect of the Malley poems on the average person would be one of bewilderment; that most people were mentally lazy and would not interpret them; that those not mentally lazy would reach the same conclusions as Mr. Harris; that others again would be satisfied with an emotional satisfaction such as one gets from listening to music, because the various sentences in the poems were not held together by logic but more by association of ideas; and that the sexual references were too involved to have any direct sexual effect or appeal to the reader.

33. See Brian Elliott, "Taboo — or Not to Boo?" (1944) 3 *Meanjin* 180, at 181, commenting that "it was considerably amazing to hear these verses solemnly attacked and seriously defended at such extraordinary length . . . The prosecution . . . paid Malley the compliment of having at least a preoccupation if not a meaning; and incidentally could not continue along those lines without at moments revealing unexpected pungencies of plan, reference and implication."

fact able to exclude the human element completely (even if this was really their goal), and that at some points they have in fact written into the poems the meaning which was later read out of them.

And up-to-date variation on the odd mixture which thus results of chance and human intention as elements in the composition of what is then treated as a *signum,* is provided by the use of electronic computers to write poetry. One such machine has been devised by a company in California. It has been given a vocabulary of 3,500 words arranged according to different parts of speech, and it arranges words, chosen by reference to the parts of speech, in patterns chosen from 128 different patterns of simple sentence syntax. The choice of words for a particular poem can be severely restricted so that some words will reappear more frequently, thus creating the appearance of a unified subject-matter. A sample of the work of this machine appeared in the magazine *Horizon* for May, 1962:

> Few fingers go like narrow laughs.
> An ear won't keep few fishes,
> Who is that rose in that blind house?
> And all slim, gracious blind planes are coming,
> They cry badly along a rose,
> To leap is stuffy, to crawl was tender.

It will be seen that to some parts of a poem so produced a meaning can well be attributed, and that it may even be possible for the reader to read into the whole poem an overall meaning. Yet *ex hypothesi* no meaning is intended because there is no one to intend it; and we would conclude, as with the *Angry Penguins* material, that such poems as a whole are in fact meaningless, though parts of them may have at least a degree of poetic meaning.

A further case to be considered is that of nonsense verses such as those by Edward Lear and Lewis Carroll already referred to. The aspect of these which interested us earlier was that the communicatee is unable to extract any meaning from them (at least in any usual sense of meaning); the aspect which now concerns us is that the writer does not intend any meaning (at least in any usual sense). But the fact that we feel the need for such parenthetical qualifications of our statements indicates that there is *some* purpose of the communication which is at least *analogous* to meaning, and in nonsense literature this purpose — a diversionary and wilfully irrational purpose — which is what is understood by the communicatee, is also what is intended by the communicator. As long as this is the case, there is here neither meaninglessness nor failure of communication. Where problems arise is once again where the reader attributes to the material a meaning which the writer did not intend. In *The Hunting of the Snark,* for example, there occur the lines:

I engage with the Snark — every night after dark —
In a dreamy delirious fight;
I serve it with greens in those shadowy scenes,
And I use it for striking a light.

Theo Ruoff has suggested[34] that on the basis of these lines the poem could be viewed as obscene; he also quotes the ease of the French commissioner of police M. Latour-Dumoulin, who sought to prosecute a contributor to *Le Paris* for a line of asterisks which he deemed to be obscene. Whatever we think of these cases, it is a fact that in 1931 in China *Alice in Wonderland* was banned by the Governor of Hunan Province on the ground that it was degrading, in that "Animals should not use human language, and that it was disastrous to put animals and human beings on the same level".[35]

This type of misunderstanding is of particular interest to international lawyers; because it most frequently arises on the international level, as the last example shows. It occurs not only where the communicator intends *no* meaning, but where he intends no meaning within the universe of discourse in which a meaning is discovered. Walt Disney comic strips featuring Mickey Mouse are not intended as meaningless, but they are not usually intended to have meaning on the political level. They have of course been so used, for example, as anti-Nazi propaganda; but when the *Mickey Mouse* strip was banned in Yugoslavia in 1937 because an episode depicting a plot against a young king, and a conspiracy to place an impostor on the throne, was interpreted as an attack on the young King Peter of Yugoslavia or perhaps on the regency headed by Prince Paul which was ruling the country for him, there was a plain case of meaning attributed where it was not intended.[36] The banning of Mickey Mouse comics in East Berlin in 1954 because Mickey was officially classified as an anti-Red rebel[37] was probably a similar case. And when in 1905 in England the Lord Chamberlain forbade further productions of *The Mikado* "on the ground that it might give offence to our Japanese allies", there was a further illustration of what is meant: though in fact the Lord Chamberlain's fears were groundless because the music of *The Mikado* was being played by Japanese bands on Japanese ships at English anchorages during the period of the ban.[38]

34. See "Links with London" (1954) 28 *Australian Law Journal* 201, at 203.

35. See Anne L. Haight, *Banned Books* (1955) 66.

36. See *ibid.* 104.

37. See *ib.* 105.

38. See *ib.* 67-68.

In all these cases, the question finally is: Can the attributed but unintended meaning be said in any sense to exist? The question does not admit of any easy answer, and will not necessarily receive the same answer in every case. It seems clear that each case must be decided *ad hoc,* that the absence of any intention on the part of the communicator to convey such a meaning is only one factor to be taken into account, and that the final criterion must be the reasonableness or plausibility of the interpretation offered. If the suggestion of obscenity in *The Hunting of the Snark* were a little more explicit, then the poem *would* have an obscene meaning even though presumably nothing could have been further from Lewis Carroll's mind. The correct answer to the question of meaning in all such cases is in fact the answer given by the common law of defamation: in libel cases, the plaintiff and his witnesses appear in the role of communicatees who have discovered a meaning in the publication complained of which, in many cases, its author never intended. The fact of this absence of intention is of course material, especially if there has been an offer of apology;[39] but the important question is whether reasonable persons have in fact understood the publication complained of in the meaning alleged by the innuendo. And before leaving this question to the jury at all, the judge must first decide whether the publication complained of is *capable* of referring to the plaintiff, and *capable* of bearing a defamatory meaning in the minds of reasonable persons in the circumstances of the particular case.[40] *Mutatis mutandis,* we would apply this test to all the cases of attributed meaning here referred to.

5. THE CRITERIA OF MEANING

We have now completed our survey of the situations in which a communication is said in some senses, or from some point of view, to be meaningless. We have seen that there is hardly an instance in which it can really be affirmed with certainty that there is a complete absence of meaning. Yet this does not mean that the word "meaningless" is itself meaningless. We would prefer to say that where and insofar as a purported act of communication fails to transmit meaning, that act of communication is functionally "meaningless". The fact that analysis might show *some* meaning to be somehow connected with the *signum* employed is nothing to the point; what matters is that communication of meaning has failed. From this functional point of view, we would say that the criteria of meaning are as follows.

39. See the U.K. Defamation Act, 1952, s.4.

40. See: *Nevill* v. *Fine Art and General Insurance Co.* [1897] A.C. 68 (*per* Lord Halsbury, L.C. at 72, 76-77); and *cf. Sturt* v. *Blagg* (1847) 10 Q.B. 906; *Cox* v. *Lee* (1896) L.R. 4 Exch. 284; *Capital and Counties Bank* v. *Henty* (1882) 7 App. Cas. 741; *O'Brien* v. *Marquis of Salisbury* (1889) 6 T.L.R. 133; and *Australian Newspaper Co.* v. *Bennett* [1894] A.C. 284. *Cf.* in South Africa *Richter* v. *Mack* [1917] App. D. 201,

Strictly speaking, there is no criterion of meaning of a *letter* unless it represents a word; however, we may speak of the criterion of significance of a letter, which is the possibility of using it, in combination with other letters, in a way that will be acceptable and comprehensible to other members of one's own language community, to represent on paper the spoken words of the language. The criterion of meaning of a *word* is the possibility of correlating some mental content with it; and this possibility, we have said, is always present whenever an utterance or group of letters qualifies as a *word* at all. The criterion of meaning of a *sentence* is the possibility of correlating some mental content, constituting an intention of the communicator, with an utterance consisting of words linked with each other in accordance with principles of grammar and syntax; the correlation being such that the utterance is capable of producing a response on the part of the communicatee corresponding to the communicator's intention. There is successful communication if the response which the utterance is capable of producing is the response expected by the communicator as part of his intention.

In the case of indicative sentences, this intended response is an affirmation or denial of something. In the case of interrogative sentences, it is a response in the sense of an answer. In the case of various directive sentences, such as imperatives and optatives,[41] the intended response is a compliance with the directive. In the case of meaningless sentences there can also be an intention to communicate something and produce a response; but the inappropriate linkage of the components of the sentence does not make it possible for the communicatee to understand this intention, and so he cannot be expected to give an appropriate response to the intention which the communicator may still connect with his sentence.

In the sense indicated by these criteria, we may continue to speak of "meaninglessness" in the various cases which we have considered. And indeed if we wish to employ such criteria at all, we *must* continue to speak of "meaninglessness". For if it is really nonsense to speak of "meaninglessness", then of course it is equally nonsense to speak of "criteria of meaning". Beyond this, however, we wish to take no final position on whether "meaningless" is really an appropriate characterisation for the different kinds of defective *signa* here considered. On the one hand, all of those cases have something in common, and their common suggestion or evocation of "meaninglessness" is a useful pointer to this. On the other hand, our survey has shown that these cases, in which there are attempts at communication (whether by would-be communicators or would-be communicatees) but the result nevertheless falls short of an act of communication, are legion, each with its special difficulties.

41. On the various kinds of directive sentences see N. Bobbio, "Comandi e Consigli" (1961) 15 *Rivista Trimestrale di Diritto e Procedura, Civile* 369-390.

And to lump them all together under the catchword "meaningless" may only obscure and minimise the number and intricacy of the difficulties. Attempts to transmit or receive meaning by means of language fail not only or even usually because of absence of meaning; but for an almost infinite number of subsidiary reasons. Far more useful than an exclusive attention to some artificially broadened and rigidified conception of "meaninglessness" will be an awareness of each kind of defective or abortive communication as its own specific kind of communication phenomenon, with an advertence to precisely what defects impede or impair it. This of course involves an ability to compare it with other kinds of defective or abortive communication, but also to contrast it with these: for it requires awareness both of the deficiencies which are present in the situation considered but not present elsewhere, and, still more important, an awareness of the deficiencies which do arise in other attempts at communication, but do not affect the situation considered. And not the least importance of this latter kind of awareness is that it may remind us that although a particular act of purported communication fails to communicate meaning, in the sense that it is (for example) non-empirical or counter-intuitive, it may nevertheless communicate something.

Indeed, it is perhaps the most important lesson of the preceding pages that only in the case of non-intuitive *signa* is the communicatee's mind left blank by the attempted communication. Language has a considerable toleration for the violation of its principles. The ordinary rules of word and syntax formation are important, but not all-important. Nor can we set up as an absolute *desideratum* the precision of language which would be achieved by the elimination of all equivocation and ambiguity, leaving each *signum* signifying only one *significatum* and pointing to only one *designatum.* Ambiguity makes it possible to be playful with language. It can also render linguistic utterances pregnant with multiple meaning so that they convey several ideas at the same time, or present the main theme of thought with overtones of parallel or collateral meanings. All these potentialities are important in poetry: but not only in poetry. Wherever it is part of the function of language to call upon, to evoke, to feel out, to reach towards — or to compromise, adjust, pacify, reassure, propitiate, bridge over, smooth over, conciliate and the like — the strength and value of ordinary language may lie precisely in its "imperfections". Thus, in the field of law, there are "constructive ambiguities", resort to which enables (for example) treaty draftsmen to give treaty-makers a basis for reaching a formal agreement. The imperfect formulae agreed upon in unfavourable communicative conditions may provide a foothold for elaboration in future more favourable conditions which the imperfect formulae may themselves help to create. At the very least, the formal agreement on formulae with indefinite meaning may keep the door open to later substantial agreement. In short, the communication of "meaning" is after all only a part of the purposes of our use of linguistic *signa.*

6. "MEANINGLESSNESS" IN HUMAN RELATIONS RELEVANT TO LAW

The relevance to law and legal problems of those kinds of breakdown in human communication which conjure up cries of "meaningless", will for the most part be incidental and interstitial. Many possible cases of such relevance may be imagined, but they will often be *only* imaginary and need not here be canvassed. For example, the problems (if any) which would be created by the intrusion into the midst of a statute of a line of "printer's pie" may safely be left for discussion if and when they arise. The present purpose is not to provide an exhaustive list of legally relevant communication situations which are meaningless or quasi-meaningless, but rather to offer the hope that as such situations individually arise, the understanding of them may be facilitated by an awareness of the elements involved in the whole problem of meaninglessness— by readiness, for example, to distinguish what is "non-intuitive" from what is "counter-intuitive", "non-empirical", or "counter-empirical".

Some random comments may nevertheless be offered. In the general run of communication breakdowns which lead to litigious disputes, "meaninglessness" is not likely to play an important role. This is not to say that actual or imputed "meaninglessness" does not frequently eventuate in men's everyday human communication. It is only to say that when this occurs, the frustrated communicatee is more likely to dismiss the communicator as a fool than to serve him with a writ. On the whole, "meaninglessness" in human relations will give rise to legal problems only in those aspects of men's relations and affairs for the regulation and conduct of which they are peculiarly dependent upon language: in contract, in wills and in those aspects of men's linguistic behaviour which may lay them open to charges of defamation, sedition, blasphemy, and other legally-prohibited meanings.

Problems of meaning and interpretation can of course arise in a contract as in any other legal document. The peculiar problem that arises in contract law is, however, that of mistake. This is not *necessarily* a problem of "meaninglessness"; "mistake" always betokens a defective act of human communication, but this frequently depends on cross-purposes which do not involve want of meaning, except in the sense that each party as communicatee attaches a meaning to the *signa* used in negotiation, where no meaning *of that kind* was intended by the communicator.[42] Strict meaninglessness, however, probably arises only in those cases where each party has attached to the *signa* employed a clear *significatum* which in fact, unknown to them, is completely without any *designatum.* The *signum* is then "meaningless" in the sense of

42. See: *Raffles* v. *Wichelhaus* (1864) 2 H. & C. 906; *Scriven* v. *Hindley* [1913] 3 K..B. 564. And *cf*. *Henkel* v. *Pape* (1870) L.R. 6 Ex. 7 and *Thornton* v. *Kempster* (1814) 5 Taunt. 786, where the misunderstandings arose through the mistake of a third party.

"counter-empirical". But examples of this extreme situation are rare. Perhaps the best example is *McRae* v. *Commonwealth Disposals Commission,*[43] involving the sale of a non-existent tanker lying on a non-existent reef.

Meaninglessness, or acute problems of communication verging on meaninglessness, perhaps arise more frequently in wills than in any other kind of legal instrument. Sir Edward Coke thought that "wills, and the construction of them, do more perplex a man than any other learning";[44] and time and again testamentary dispositions have been judicially described as "nonsense".[45] But this is more often a momentary outburst of exasperation than a solemn conclusion that the testator's words are meaningless, indeed, "a court never construes a devise void, unless it is so absolutely dark, that they cannot find out the testator's meaning";[46] though this often means rather supplying the testator's words with a meaning which he himself obviously did not have in mind.[47] At the *beginning* of a construction suit in the Probate jurisdiction, the question of meaninglessness may often arise in the sense that the instrument to be construed is non-intuitive, by reason of vagueness, complexity, mistake and absent-mindedness,[48] equivocation,[49] use of idiosyncratic private terms,[50] uncomprehending lay use of inappropriate technical terms, and the like; or that it is counter-intuitive, by reason of baffling

43. (1951) 84 C.L.R. 377. *Cf. Hitchcock* v. *Giddings* (1817) 4 Price 135; *Strickland* v. *Turner* (1852) 7 Exch. 208; *Couturier* v. *Hastie* (1856) 5 H.L. Cas. 673. Cases where meaninglessness is known to the parties would of course be rarer still. But see *Hall* v. *Cazenove* (1804) 4 East. 477; and *cf. Thornborow* v. *Whitacre* (1705) 2 Ld. Raym. 1164.

44. *Roberts* v. *Roberts* (1613) 2 Bulst. 123, at 130. *Cf.* Treby C.J. in *Monnington* v. *Davis* (1695) Fort. 224, at 227.

45. See: *Vaughan* v. *Marquis of Headfort* (1840) 10 Sim. 639, *per* Shadwell V.C. at 641; *Smith* v. *Coffin* (1795) 2 Hy. Bl. 444, *per* Buller J. at 450.

46. *Minshull* v. *Minshull* (1737) 1 Atk. 411, *per* Hardwicke V.C. at 412; *cf. Re Roberts* (1881) 19 Ch. D. 520, *per* Jessel M.R. at 529.

47. See *Dormer* v. *Phillips* (1855) 4 De G.M. & G. 855, described by Lord Cranworth L.C. at 859 as "one of those unsatisfactory cases in which the Court was called on to say what a testator meant, when it was perfectly clear that he did not know what he meant himself."

48. See: *Re Ofner* [1909] 1 Ch. 60; *Re Ray* [1916] 1 Ch. 461; *Re Ridge* (1933) 149 L.T. 266.

49. See: *Re Jackson* [1933] Ch. 237; *Re Hubback* [1905] P. 129. And see *Haliwel* v. *Courtney* (1496) Y.B. 12 Hen. 7, for a probable early example.

50. See *Kell* v. *Charmer* (1856) 23 Beav. 195.

internal contradictions,[51] or apparent intentions so eccentric and perverse that the mind rebels against them. But at the *end* of the suit, the probabilities are strong that the question of meaninglessness will arise *only* in the sense that the instrument has been given a meaning which it is obvious that its author did not intend.[52]

Of course, this last kind of question can also arise *ab initio.* The supposed testamentary material, even where it is quite open to interpretation as such, may in fact have been produced with some quite other intention:[53] and in this case, unlike the cases of delictual meaning to be referred to in a moment, the law is clear that however plain the objective testamentary meaning may be, the material does not in fact have that meaning, and will not be admitted to probate. Or again, however plain the objective testamentary meaning may be, the testator may be shown to have been so afflicted by feeble-mindedness, or idiocy, or insanity, that he could not in fact have been capable of intending any meaning at all. And in this case, too, the courts will hold that the material is in fact meaningless.[54]

51. A further counter-intuitive situation that may arise is where two inconsistent wills are extant and there is no means of determining the order of their execution. In this case the courts will struggle to evolve a scheme of disposition consistent with both; but if this cannot be done, both will be held void. That is, the court will conclude that the testator's testamentary disposition of his estate is meaningless. See *Jarman on Wills,* 8 ed. (1951) 191 ff.; but *cf. Re the Goods of Nosworthy* (1865) 4 Sw. & Tr. 44.

52. This is frankly recognised by the courts; see *Dormer* v. *Phillips,* n. 47 *supra,* Even complete blanks — surely the nadir of meaninglessness — may be notionally filled in (see *Re Messenger's Estate* [1937] 1 All E.R. 355, but *cf. contra Re the Goods of De Rosaz* (1877) 2 P.D. 66, *per* Sir J. Hannen, P., at 69). The rationale of this judicial mode of proceeding is usually linked with the "horror of intestacy". *Cf. infra* section 7 as to the extreme reluctance to conclude that an Act of Parliament is meaningless. But perhaps in both cases the judicial determination is shaped not so much by solicitude for the testator in the former case and the Parliament in the latter, as by our natural reluctance to come seriously to the conclusion that any human communication is "meaningless".

53. As when a "will" is written as a joke: see *Nichols* v. *Nichols* (1814) 2 Phill. 180. And *cf. Re the Goods of Duane* (1862) 2 Sw. & Tr. 590 and *Ferguson-Davie* v. *Ferguson-Davie* (1890) 15 P.D. 109.

54. See: 2 *Shepherd's Touchstone* (1641) 402 : "An idiot . . . cannot make a testament or dispose of his lands or goods; and albeit he do make a wise, reasonable, and sensible testament, yet is the testament void." But it is added that "such a one as is of a mean understanding only, that hath grossum caput, and is of the middle sort between wise man and a fool, is not prohibited to make a testament"; and the courts, again reluctant to conclude that a will is "meaningless", will as far as possible strive to bring a testator within the latter class rather than the former. This tendency, however, has been far more pronounced in the U.S.A. (see, *e.g.* the authorities collected and discussed by Lumpkin J. in *Slaughter* v. *Heath* 127 Ga. 747, 57 S.E. 69 (1907)) than in England (where

As for the miscellaneous cases of punishable meaning, the relevance to these of our present discussion has already been touched upon. *Ex hypothesi,* in all these cases, there is a meaning at least in the sense that some person or persons having or adopting the role of communicatee must believe that there is a meaning; and the question of "meaninglessness" can only arise when this meaning seems not to have been intended by the communicator.[55] Our answer above was that in cases where the *signum* is reasonably capable of being interpreted to have the supposed meaning, and has in fact been so interpreted, then that meaning it has: and the fact that the meaning was unintended is finally irrelevant. This is clearly accepted by the law where the meaning in question is defamatory.[56] Equally clearly in the case of blasphemous meaning,[57] and probably of seditious meaning also,[58] no punishment will be meted out in the absence of clear evidence of guilty intent. But in the case of obscene meanings, the matter has currently become controversial.[59]

cases like *Greenwood* v. *Greenwood* (1790) 1 Add. 283n. and *Banks* v. *Goodfellow* (1870) L.R. 5 Q.B. 549 must be compared with others like *Earl of Sefton* v. *Hopwood* (1855) 1 F. & F. 578, *Smith* v. *Tebbitt* (1867) L.R. 1 P. & D. 398, and *In the Estate of Park* [1954] P. 89). The explanation may need to be sought in other factors, as for instance that the question has been litigated much more frequently in the U.S.A., presumably therefore with a much greater number of cases in which the issue is raised as a device by which dissatisfied relatives seek to overthrow the will, and with a correspondingly greater reluctance on the part of the judges to permit the will to be disturbed.

55. See generally on *mens rea* in defamatory libel, sedition, blasphemy, and obscenity Glanville Williams, *Criminal Law. The General Part* (2 ed. 1961) 29.

56. See: *Hulton* v. *Jones* [1910] A.C. 20 and *Cassidy* v. *Daily Mirror Newspapers* [1929] 2 K.B. 331; and c*f.* the *Capital and Counties Bank Case,* cited *supra* n. 40, *per* Lord Blackburn at 771-72. For a lively account of the effects of *Hulton* v. *Jones* see J. Dean, *Hatred, Ridicule and Contempt* (1953) 129 ff.

57. See authorities quoted by N. St. John-Stevas, *Obscenity and the Law* (1956) 149-150.

58. See *ibid.* 149; *sed quaere* whether if the point were ever to become controversial, it might not prove to be just as confused as the similar point in relation to obscene intentions, as to which see *infra* next footnote.

59. The present legal position in England is that material which in fact has a "tendency... to deprive and corrupt those whose minds are open to such immoral influences" is legally obscene, whether or not it is so intended *(R.* v. *Hicklin* (1868) 3 Q.B. 360); but that its author "shall not be convicted of an offence ... if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern" (U.K. Obscene Publications Act, 1959, S. 4(1)). The continued criticisms, to which the last-mentioned statute is only a partial concession, tend to combine an attack on the *Hicklin* test with an antipathy to censorship in general; and this confusion of issues has deprived the current polemics of much of their force.

This, then, is a limited sampling of some specific kinds of legal problems which may have "meaninglessness" or closely associated communication-phenomena at their heart. But our study of meaninglessness also gives rise to certain *general* observations on the way in which the kinds of communication-situation here discussed may affect all legal disputes, whatever their provenance. And to these we now turn.

The first is to draw attention to the fact that after disputes arise they are often fanned by verbal abuse, cursing and vituperative epithets, in which the *signa* employed point to no factual *designata* and signify no specific *significata,* or at least none to which the communicator is advertent. Such use of language conveys violent emotional disapproval, but in any other sense it is meaningless. And of course, as such language is habitually used by people for whom "cursing" is an automatic part of their everyday language habits,[60] it may not even convey emotional disapproval. It may be completely meaningless. For all this, the extent to which legally relevant disputes can be intensified or even created[61] by such use of language is out of all proportion to its

Perhaps the fullest and most well-balanced of the recent treatments is by St. John-Stevas, *op. cit.* n. 57 *supra.* For useful bibliographies of the recent literature see *ibid.* 120n.; A. Craig, *The Banned Books of England* (1962) esp. at 226, 228; and K. M. Sharma, "Obscenity and the Law" (1962) 2 *Jaipur Law Journal* 195, esp. at 221n.

60. In canon law, cursing is generally regarded as only a venial sin, "because the full content and implication of such expressions is seldom realised by those who use them." H. L. Mencken noted of World War II that "a soldier simply threw in one or another" four-letter word "whenever his flow of ideas began to run sluggish, which was usually". (Foreword to B. Johnson, *The Lost Art of Profanity* (1948) 9). So too Dr. (Samuel) Johnson is said to have defined "bugger" as "a term of endearment among sailors". See generally on the psychology and sociology of swearing J. Sharman, *A Cursory History of Swearing* (1884) (the punning title is deliberate); E. P. Whipple, "The Swearing Habit" (1885) 140 *North American Review* 536; G. T. Patrick, *The Psychology of Relaxation* (1916) 145-171; E. E. Bergel, *Social Stratification.* (1962) 397-98; and in a lighter vein V. Rendall, "Art and Practice of Swearing" (1920) 306 *Living Age* 473; E. Maclean Johnson, "On the comfort of Cussing" (1928) 225 *North American Review* 183-89. B. Johnson, *op. cit.;* and Robert Graves. *Lars Porsena* (1927), this last containing many amusing insights into the reasons for the different degrees of intensity with which curses and obscenities may be uttered and received.

61. As when language understood as insulting provokes violent physical assault. The provoking words themselves are of course only legally relevant in those rare cases where the assault is of homicidal proportions; and even there it has generally been held that *mere* words are insufficient provocation to reduce murder to manslaughter. See *R.* v. *Lord Morley* (1666) 6 State Tr. 770; *R.* v. *Smith* (1866) 4 F. & F. 1066; *R.* v. *Phillis* (1916) 32 T.L.R. 414; *Holmes* v. *D.P.P.* [1946] A.C. 588; *R.* v. *Semini* [1949] 1 K.B. 405. The direction in *R.* v. *Rothwell* (1871) 12 Cox C.C. 145 to the contrary was disapproved in *Holmes' Case.* But see for an important Canadian expression of the contrary view *R.* v. *Sampson* (1935) 3 D.L.R. 128. Of course, not only curse-words, but quite

meaningfulness.[62] This is a factor which will come into play mainly in disputes on the magisterial level of adjudication; but it is none the less important for that. It may also add fuel to the flames in graver cases; and on any level there seems to be little that the lawyer can do about this embittering factor in his clients' disputes, expect to utter soothing platitudes (which may themselves be meaningless), or to try to impress them with the truth of the adage that words break no bones.

The second general point, already touched upon in the preceding section, is that wherever the lawyer is called upon to exercise a soothing or conciliatory function in relation to disputes, or to induce agreement which may forestall disputes, he may deliberately avail himself of words chosen not for their meaning, but precisely for their imperfections in meaning. The vagueness, equivocation, or evasiveness of skilfully chosen words may serve as a "ruse of reason" creating artificial agreement whose effect in preserving or restoring peace may be as great as that of substantial agreement. Not only the treaty-draftsman on the international level, but the draftsman of contracts, terms of settlement, and deeds of release on the everyday municipal level, must inevitably from time to time avail himself of such devices. Yet such use of language not for communication but for compromise has its dangers as well as its benefits. If the peaceful relations thus restored or preserved are subjected to further strain, the very fact that nothing is *really* solved by the mere verbal compromise will mean that the *casus belli* may at any moment be catastrophically re-opened; and if this happens, since each party can now charge the other with having "agreed" to the chosen formula (which each party will of course interpret in his own sense), the formula may serve only as a further stimulant to mutual indignation,

ordinary conversational utterances, may provoke hostility through the attribution of a meaning where none is intended. *Cf.* the indignant reaction to the "obscene" remark that "Aristotle was the pupil of Plato" observed by W. H. Davies and recounted by Robert Graves, *op. cit.* 44-45. Misunderstandings of this kind can also lead to physical violence. See *R.* v. *Cunningham* [1959] 1 Q.B. 288, and *cf.* on one version of the evidence *R.* v. *Newman* [1948] V.L.R. 61. In the latter case, however, whatever the words used, they would obviously be coloured by the relationship between the persons participating in communication and by the communicator's known proclivities.

62. Further problems arise where a curse-word is used as meaningless by the communicator but in fact has unsuspected meaning for the communicatee: *e.g.* the word "bastard" (as to which see Graves, *op. cit.* 17) used to address one who is in fact illegitimate, though the addressor does not know this. This position is almost but not quite reached in *Bedder* v. *D.P.P.* [1954] 1 W.L.R. 1119 (prostitute jeering at sexually impotent client) and in *R.* v. *Sampson, supra* last footnote (small boys calling negro "coon", "nigger", "baboon face"). In each case the abusive speakers were obviously aware of the factual reference of their gibes, but, equally obviously, they did not intend nor avert to the extremely hurtful response which the words would evoke in the minds of their addressees.

and as a further weapon for each party to wield with argumentative zeal. So that, finally, the struggle may be fiercer than before. On the whole, it seems that such linguistic potentialities should be used with great restraint; and that the general rule should still be that

> legal language should be, to the utmost possible extent, precise and accurate: that is, that every phrase should have a clear meaning, and that the connection of all, together, should be such as to give rise to no ambiguity.[63]

The third, and final, general point to be noted is that *signa* or apparent *signa* can often be supplied with a meaning where no meaning, or at least no meaning in the relevant universe of discourse, was intended at all. The interpretative, reasoning minds with which men are endowed tend originally to see all physical events as *signa;*[64] and though civilised man tends much less than his primitive ancestors to attribute "meaning" to natural phenomena, the tendency remains strong with regard to the utterances and behaviour of his fellow men. A crucial lesson to be learnt from the study of imperfect acts of communication is that inferences from such materials are often not to be trusted.

This is well recognised in the law of evidence, where opinion based on this kind of inference is regularly excluded as inadmissible. Only the supposed *signa* themselves may be given in evidence. As is to be expected, the rule is best established in relation to inference from words;[65] but it also applies to inference from actions and states of

63. See C. Davidson, 1 *Precedents and Forms in Conveyancing,* 3 ed. (1860) 27; adding at 28 that the want of such accuracy "occasionally leads to the necessity of a judicial interpretation, to put an authoritative meaning on words which have no intrinsic meaning."

64. On this deeply-felt need to interpret and explain events and phenomena, as basic to the character of man, see Blackshield, article cited n. 20 *supra,* esp. at 148.

65. See: *Duke of Brunswick* v. *Harmer* (1850) 19 L.J.Q.B. 20. In the general kind of case, the rule may be relaxed if there are extraneous circumstances to support the witness's inference: see *Daines* v. *Hartley* (1848) 3 Ex. 200. But where the words of which an impression or interpretation is offered are those of allegedly defamatory matter then in issue, the rule is for obvious reasons strictly enforced: see *Harrison* v. *Bevington* (1838) 8 C. & P. 708; *Rainy* v. *Bravo* (1872) L.R. 4 P.C. 287; *Collins* v. *Jones* [1955] 1 Q.B. 564. And for equally obvious and still more pressing reasons, the refusal to accept impressions or interpretations offered in such cases by the plaintiff himself *is* stricter still: see *Hale* v. *Cranfield* (1598) Cro. Eliz. 645; *Wood* v. *Brown* (1815) 6 Taunt. 169; *Solomon* v. *Lawson* (1846) 8 Q.B. 823 (And *cf. Zenobio* v. *Axtell* (1795) 6 T.R. 162, as to the plaintiff's own translation of a libel in French). On the controversial use of the rule to exclude evidence of literary (but not scientific) merit in obscenity cases see St. John-Stevas, *op. cit.,* n. 57 *supra,* at 153-55.

affairs.[66] Yet the law tends to be less cautious in drawing its own inferences. Dignified by the name of "presumptions",[67] these legal inferences attach to a great variety of states of affairs (which are often in reality ambiguous and ambivalent), predetermined legal implications (which are often irrebuttable).[68] And this legal habit of thinking might well bear re-examination.

This is not to suggest that the common legal presumptions are hotbeds of error and injustice. On the contrary, we would stress, first, that courts *must* attain to precise, coherent, and manipulable constructs of the facts on which they are to pass judgment. And if such a construct cannot be extracted *from* the complex, shifting and ambivalent circumstances of actual human states of affairs, then willy-nilly it must be superimposed *upon* them.[69] Indeed, one of the reasons sometimes rather disarmingly offered for the general rule excluding opinion evidence based on an inference by the witness, is that it is for the judge and jury, not for the witness, to draw such inferences.[70] In any case, it is clear that legal presumptions are sometimes essential if the judicial process is to function at all. Secondly, we would stress that the legal presumptions often relate to rather trivial matters, and in any event cannot determine the gravest matters. Where it is reasonably obvious that the supposed *signum* might in fact be susceptible of other explanations, or where the liberty of the subject is at stake, the legal inferences thus sanctified will stop short. Thus, the law still refuses to allow any inference to be drawn from the failure of an accused to give evidence in his own behalf. Indeed, perhaps the best-known of all legal presumptions is that in criminal matters every man is innocent until he is proven guilty.

On the whole, then, lawyers may be fairly satisfied with their use of presumptions. But fair satisfaction must not be allowed to set into complacency. Presumptions, at best, are a second-best; and this is only one of many areas in which lawyers should be constantly re-examining their tools.

66. See: *Bonfield* v. *Smith* (1844) 12 M. & W. 405; but compare such cases as *Fryer* v. *Gathercole* (1849) 4 Ex. 262 and *Lucas* v. *Williams & Sons* [1892] 2 Q.B. 113.

67. On the frequent loose usage of this term and its undesirable consequences, see B. W. Jones, 1 *Law of Evidence,* 5 ed. by S. A. Gard, (1958) 18-19.

68. See on this process Giorgio Del Vecchio, *La Verità nella Morale e nel Diritto* 3 ed. (1954) 41-42.

69. See *id.* 47, commenting on E. Redenti, "L'Umanità nel Nuovo Processo Civile" (1941) 18 *Rivista di Diritto Processuale Civile* 30.

70. See *North Cheshire and Manchester Brewery Co. Ltd.* v. *Manchester Brewery Co. Ltd.* [1899] A.C. 83, *per* Lord Halsbury L.C. at 85 — and this in a case where he himself had "not the smallest doubt" of the inference in question, thought it "the inevitable result", and would "at once have jumped to that conclusion, and so would everybody else."

7. "MEANINGLESSNESS" IN LAW

What, finally, are we to say of "meaninglessness" within the law itself? As to statutes, there are judicial pronouncements in plenty to the effect that the courts *cannot* conclude that a statute is meaningless.[71] Yet the fact remains that statute law can be meaningless all the same — as when a statute provides that a transaction shall be effected "in the form set forth in the Third Schedule hereto" and there is no Third Schedule.[72] In this case that to which the words of the section refer is non-empirical. Statutes may also be meaningless in the sense of counter-intuitive: there may be contradictions between sections of the same statute, or even within the same section. The U.K. Intestates' Estate Act, 1890, s. 6, spoke of "the testamentary expenses of the intestate".[73] There can also, especially in constitutional enactments, be very impressive forms of words which it is impossible to give any meaning capable of practical application.

It is fascinating to watch the courts as they wrestle with these problems; but here we are in a position to comment only on one aspect of the process. This is that when the statutory *signa* are non-intuitive, that is, have *no* clear *prima facie* meaning, the courts will strain prodigiously to avoid the *prima facie* conclusion, and to attach *some* meaning to the statute all the same.[74] But when the *signa* are counter-intuitive, in the sense that the *prima facie* meaning leads to "manifest absurdity or repugnance",[75] or to consequences which are "contrary to

71. See: *Income Tax Commissioners* v. *Pemsel* [1891] A.C. 531, *per* Lord Halsbury L.C. at 549. The assumption that a provision "has no effect" in the sense that it is mere surplusage inserted *ex abundanti cautela* may be more readily (but still not too readily) indulged: see *I.R.C.* v. *Dowdall, O'Mahoney & Co. Ltd.* [1952] A.C. 401, *per* Lord Reid at 415.

72. As in the U.K. Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, 42 & 43 Vict. c. 64 S. 22(3).

73. Interestingly enough this phrase is *not* counter-intuitive, in that its self-contradictory character does not become apparent on one's first confrontation with the words, but only when one stops to think specifically what the *designatum* can be. *Cf.* the distinctions in the construction of wills, etc., between latent and patent ambiguities.

74. See n. 52 *supra.*

75. See *Becke* v. *Smith* (1836) 2 M. & W. 191, *per* Parke B. at 195. *Cf.* the same judge in *Garney* v. *Harris* (1852) 19 L.T. (O.S.) 94; *Brettel* v. *Dawes* (1852) 7 Exch. 307; *Miller* v. *Salomons* (1852) 7 Exch. 475; *Eastern Union Railway Co.* v. *Cochrane* (1853) 9 Exch. 197. But see Lord Bramwell's remark in *Hill* v. *East and West India Dock* (1884) 9 App. Cas. 448 at 464, that "it is to be remembered that what seems absurd to one man does not seem absurd to another"; and *cf.* Lord Greene M.R. in *Grundt* v. *Great Boulder Proprietary Gold Mines* [1948] Ch. 145, at 158.

reason"[76] or "strangely anomalous"[77] or "such . . . that we can safely pronounce that the Legislature must have had a different intention from that which the ordinary import of the word conveys"[78] or "so extensive and so alarming" that the *prima facie* construction "ought not to be adopted",[79] then in any such case the courts will strain just as prodigiously to avoid the *prima facie* conclusion and find some other meaning.[80]

One particular lesson for the interpretation of statutes which might perhaps be mentioned is that too many meanings may be as great a bar to communication as no meaning at all. "Obscurity", observed Bentham,[81] "is ambiguity taken at its maximum". If a statute is provided by its judicial interpreters with a sufficient number of conflicting meanings, it becomes in effect meaningless.[82]

The reluctance to find "meaninglessness" in case law is even stronger than in relation to statutes—for the judicial attitude to the latter is after all still coloured to some extent by the traditional hostility

76. See *R.* v. *Badcock* (1845) 6 Q.B. 787, *per* Lord Denman C.J. at 797.

77. *Colquhoun* v. *Brooks* (1889) 14 App. Cas. 493, *per* Lord Herschell at 504. But perhaps the best example of a "strangely anomalous" result in contemporary case-law was in *Prince Ernest of Hanover* v. *A.-G.* [1956] Ch. 188, where a statute of 1705, literally read, meant that in World War I Kaiser Wilhelm of Germany was a British subject. And in that case the statute was literally read all the same, because (it was said) the incongruity arose rather "from the effect of the passage of a long period of time" than from the statute itself. See Lord Evershed M.R. at 208.

78. See *R.* v. *Great Driffield (Inhabitants)* (1828) 8 B. & C. 684, *per* Bayley J. at 690.

79. See *Garrard* v. *Tuck* (1849) 8 C.B. 231, *per* Wilde C.J. at 250.

80. See, *e.g.* Lord Kenyon C.J. in *Fowler* v. *Padget* (1798) 7 T.R. 509, at 514: "I would adopt any construction of the statute that the words will bear, in order to avoid such monstrous consequences as would manifestly ensue from the construction contended for by the defendant." But of course judges do not attribute such consequences with nearly so free a hand as counsel invite them to do; and see n. 75 *supra.*

81. See *op. cit.,* n. 4 *supra;* 3 *Works* 239. And see *ibid.* 244 ff.

82. See: Bronson J. in *The People* v. *Purdy 2* Hill. (N.Y.) 31, at 36 (1841), warning that if judges "roam at large in the boundless fields of speculation", the constitution may be made "to mean one thing by one man and something else by another, until in the end it is in danger of being rendered a mere dead letter." The same is true, of course, of interpretations or restatements of any rule of law. *Cf.* Fullagar J. in *Watson* v. *George* (1953) 89 C.L.R. 409, observing that "it is a grave mistake, when a technical term has acquired a fairly well settled meaning, to attempt to alter or enlarge that meaning to suit one's individual taste" (419) and that "the self-confessed glossator is not often an improver" (420). See generally Stone, *Province* 179-180.

to parliamentary intrusions into the field of the common law.[83] It is true that in the *Port Line Case*[84] Diplock J. held that the Privy Council decision in the *Strathcona Case*[85] had no discernible meaning, and refused to follow it. Yet it still remains questionable whether it is permissible for a judge to hold in this way; and the net effect of the *Port Line Case* was only to give new point to this question.

Yet whatever the attitude of judges is, and whatever it ought to be, it is plain enough that in case law, too, meaninglessness will raise its vacuous head. And this is no less true because in most instances the "meaninglessness" of judicial modes of speaking will be subtly concealed so that what is in fact counter-intuitive is not at first experienced as such.[86] In Chapter 7 of *The Province and Function of Law,* Julius Stone has shown that many of the basic distinctions upon which judicial decision proceeds are in fact "distinctions without a difference"[87] and that in every such case the affirmation of the distinction as if it were a real one really amounts to saying that something can be both A and non-A at the same time.[88] In every such case, the apparent security of the bases for judicial decision harbours lurking counter-intuitiveness.

83. See *ibid.* 198-201, 743-46.

84. Cited *supra* n. 5.

85. *The Lord Strathcona Steamship Co.* v. *Dominion Coal Co.* [1926] A.C. 108.

86. When the judges do recognise a legal formulation as meaningless, they will usually reject it. *Cf. Tooth. & Co. Ltd.* v. *Tillyer* (1956) 95 C.L.R. 605, where the Australian High Court avoided the area covered by *Broom* v. *Morgan* [1953] 1 Q.B. 597, apparently because the distinction there central between substance and procedure was found to raise questions to which there could be no satisfactory answer, and an examination of the judgments in *Broom's Case,* and academic comment thereon, was found to disclose "as little academical as there has been judicial agreement concerning the legal foundations upon which the decision proceeded or should have proceeded" (616). See also, in *Compagnie des Messageries Maritimes* v. *Wilson* (1954) 94 C.L.R. 577, at 589, Taylor J.'s rejection of the applicant's argument because it seemed to assert that contractual clauses purporting to oust the jurisdiction of the courts were "at one and the same time void and yet not devoid of all legal significance". But note that both these contradictory positions had common-law authority.

87. See Stone, *Province* 171-74.

88. As when the allocation of the onus of proof depends on whether the fact to be proved is included among the facts defining the scope of the relevant substantive rule, or is merely contained in an exception to that rule. Of course the parliamentary draftsman or other communicator of the rule may have chosen the order of words deliberately, with this purpose in mind. The legal test of onus is then not meaningless, but the extraction of onus from the substantive rule resembles the code situation discussed *supra* section 3.

Indeed, whether the defect be no meaning, or too many meanings,[89] or a vague and indeterminate meaning, all of what Stone now calls the "categories of illusory reference"[90] in the formulation of legal precepts are functions of the inevitable failure of legal language to conform strictly and unequivocally to the semanticist's tidy pattern of *signum-significatum-designatum.* Sometimes legal concepts have no *designatum* at all,[91] but habitually their *significata* are ambiguous and indeterminate.[92]

Yet we have seen that these qualities of language are not always defects; and it is perhaps the greatest virtue of Stone's analysis to have shown that precisely in the impossibility of fixing legal precepts for all time with one unambiguous meaning, lies their capacity for constant growth and adjustment to social change. For, finally, we must add that the defects of language as a means of human communication seem to be an inescapable part of language itself. The problems studied by semantics were present in language long before the word "semantics" was created; and the problems will remain when that word has itself sunk into semantic obsolescence.

This, of course, does not mean that an effort to understand linguistic defects, which brings results that are at once reassuring and alarming, is a mere sleeveless errand. On the contrary, we must strive to increase and deepen our understanding of the failings of language as a means of

89. See n. 82 *supra.*

90. See article cited n. 5 *supra,* at 611 ff. In his forthcoming new edition of *The Province and Function of Law,* Professor Stone has indeed explored the possibility that others of the categories *(e.g.* that of "concealed circuitous reference") may be ultimately reducible to meaninglessness. The present writers have greatly benefited from discussions with Professor Stone in connection with his preparation of this edition. And c*f.* for an attempt to represent the logical structure of these categories in terms of symbolic logic, I. Tammelo, "Sketch for a Symbolic Juristic Logic" (1956) 8 *Journal of Legal Education* 277, at 300-02.

91. *Cf.* Jeremy Bentham's analysis of legal fictions in C. K. Ogden (ed.), *Bentham's Theory of Fictions* (1932); and Ogden's Introduction at xxxiv ff. *Cf.* on legal fictions Del Vecchio, *op. cit.* n. 68 *supra,* at 40-41; and on various related "simulations" and "disguises" of law, *ibid.* 38-39.

92. For a detailed study of the problems that can arise even from the mere "form-words" (articles, prepositions and conjunctions) in legal documents, see Margaret M. Bryant, *English in the Law Courts* (1930).

communication, and to be aware of their effects upon human relationships and human activities. Insofar as those effects are undesirable, we must strive to counteract them; and in this regard the clarification and *précisation* achieved through semantic study may well bring piecemeal but nontheless important improvement. Yet for the most part our counter-action to linguistic failings must lie in the fostering of an increased human willingness to communicate[93] and of inexhaustible patience and tolerance when communication is defective, rather than in any wholesale elimination of the failings themselves.

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93. On the existentialist understanding of "authentic communication" as opposed to "mere talk" see K. Jaspers, *Einführung in die Philosophie* (1950) 25-27, 101-03, 117-18 (transl. by R. Manheim as *Way to Wisdom* (1954, reissued 1960) 25-27, 106-07, 124); and M. Heidegger, *Sein und Zeit,* 7 ed. (1953) 138-70, esp. at 162 ff. (transl. by J. Macquarrie and E. Robinson as *Being and Time* (1962) 188-214, esp. at 205 ff.). *Cf.* for a good short discussion of Heidegger's views W. Barrett, *Irrational Man* (1961) 197-200.

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