

ABORIGINAL LANGUAGES AND THE LAW.

In situations in which Australian aborigines, who are wholly or almost wholly ignorant of English, face the white man's court under some charge laid against them, the question presents itself to the minds of the members of the court how far, if at all, such aborigines may be able to understand the significance of such situations, and be capable of grasping the principles of the complex procedure which constitutes the working of a white man's court of law. More specifically, the question occurs to them, and is sometimes addressed by them to linguists, whether and how far aboriginal languages can, for instance, through the services of interpreters, be used to express the juristic ideas and principles involved in the operation of a white man's court of law.

By its very nature, this question implies the assumption that various languages may be unequally suited for the expression of, and reference to, certain concepts and ideas, or, as it can not infrequently be found in statements made by non-linguists, that one language is not able to express certain ideas as well as some other language.

Disregarding the last named popular version of the assumption which appears to imply that languages are endowed with life and independent capabilities of their own, it must be pointed out that the whole assumption implicit in the question mentioned above is based on erroneous premises.

Before proceeding with the argument, it may be useful to bear in mind the definition of human language as generally accepted by modern linguists: "Language is a system of vocal symbols with arbitrarily conventionalized references accepted by a group of humans and understood within it, and having the social function of carrying information from speaker to hearer."

This definition places the emphasis on the structural and functional aspects of language, *i.e.*, on the fact that it constitutes a system of symbols, and has the function of carrying information from person to person within a given group of humans, *i.e.*, a given speech community. The statement that it is a system of symbols with conventionalized references accepted by a given group of humans indicates that the described function of the system is performed by virtue of the individual symbols having definite referential values, *viz.*, to individual items, units, and elements in the culture of the given speech community. These referential values are conventionalized, *i.e.*, agreed upon as a matter of tradition, whereas at the same time the conventionally

established tie between a given symbol and its referential value is arbitrary, *i.e.*, there is, at least in the majority of cases, no recognizable direct link between the form, *i.e.*, the sound structure, of a given symbol and the nature of its referential value. Exceptions to this rule are onomatopoeic words in the case of which there is some obvious connection between the sound structure of the word and its referential value, *i.e.*, its meaning, but such cases have no bearing on the problem under discussion in this paper.

From what has been said above it is clear that a language, as a system of symbols, can only exist if there is a culture complex with which it is connected through conventionally established and, within the speech community sharing that language, generally accepted referential ties. In other words, a language-like system of vocal symbols in which the individual symbols lack references to elements, items, and concepts of a culture is meaningless. This, by analogy, means that a language X. can only be intelligible to human A. if that human A. is familiar with the culture Y. to which the individual symbols of that language X. refer—only such a familiarity will enable him to grasp, and to anchor in his mind, the nature and significance of the referential links between the individual symbols of language X. and the culture Y. to which the former belongs. Such a familiarity with the culture Y. on the part of the human A. may be direct, or may be the result of the greater or lesser similarity of that culture Y. to the culture Z. which that particular human A. may happen to represent. The less the similarity between the cultures Y. and Z., the greater the danger of misunderstandings incurred by the human A. in his dealings with language X. and the culture to which that language belongs. In other words, he may establish erroneous references between given symbols of that language X. and elements of culture Y., *i.e.*, given language symbols are erroneously believed by him to refer to some elements of culture Y. which either do not form part of that culture Y. at all and represent projections of elements of his own culture Z. into culture Y., or are not the particular elements of culture Y. to which these language symbols do in fact refer.

In contradistinction to what has been discussed in the above paragraph, at least some facets of cultures may be conceivable and be grasped and understood as a result of long participant or non-participant observation by trained students of cultural phenomena, without their elements, items, and concepts being necessarily referred to by vocal symbols which form parts of the particular established system of such symbols, *i.e.*, language, which constitutes an integral part of that culture.

From what has been set forth so far, it appears that in situations of a language-culture nexus, culture may be said to be primary with language and to some extent secondary to it. It must be pointed out that even the limited validity of this statement applies only to situations which are viewed in a static state, *i.e.*, as they are at a given point in time. Only from this narrow point of view it is possible to say that language, as a system of symbols, may be dependent upon and be secondary to, a system of concepts—*i.e.*, a culture—to which it refers. To give a simple example: The sentence, "I'll see you after lunch," is only meaningful in a culture in which lunch is an established institution, whereas lunch may well be an institution in a culture without the notion of "after lunch" existing as a concept denoting a point in time, and without having a language symbol referring to it.

It must be mentioned that some recognized authorities on the subject take a much stronger view on the importance of language in language-culture nexus situations, and are inclined to ascribe to language the determining role in all such situations. Sapir, for instance, argues that "Language is becoming increasingly valuable as a guide to the scientific study of a given culture. In a sense, the network of cultural patterns of a civilization is indexed in the language which expresses that civilization. It is an illusion to think that we can understand the significant outlines of a culture through sheer observation and without the guide of the linguistic symbolism which makes these outlines significant and intelligible to society. Some day the attempt to master a primitive culture without the help of the language of its society will seem as amateurish as the labours of a historian who cannot handle the original documents of the civilization which he is describing Language is a guide to 'social reality.' Though language is not ordinarily thought of as of essential interest to the students of social science, it powerfully conditions all our thinking about social problems and processes. Human beings do not live in the objective world alone, nor alone in the world of social activity as ordinarily understood, but are very much at the mercy of the particular language which has become the medium of expression for the society. It is quite an illusion to imagine that one adjusts to reality essentially without the use of language and that language is merely an incidental means of solving specific problems of communication or reflection. The fact of the matter is that the 'real world' is to a large extent unconsciously built up of the language habits of the group. No languages are ever sufficiently similar to be considered as representing the same social reality. The worlds in which different societies live are distinct worlds, not merely the same world with different labels

attached."¹ It is now believed by many that Sapir's views as expressed in this quotation, though essentially correct, may allow of exceptions to which his pronouncements may apply somewhat less stringently.

When taking a dynamic point of view, *i.e.*, looking at language-culture nexus against the passage of time, it has been observed that language and culture are beyond doubt inextricably linked, are interdependent, and influence each other. In other words, changes in a system of concepts constituting a culture bring about, as may be expected, changes in the system of symbols, *i.e.*, the language, which serves to refer to this system of concepts. At the same time, changes in a system of symbols which are not caused directly by changes in the system of concepts to which this language refers, but by other factors, may well bring about changes in the system of concepts to which this now altered system of symbols refers. For instance, the adoption of English numerical expressions (which are based on a decimal system) by speakers of a native language in which there are only a limited number of numerals with a binary or quinary basis, will have profound effects upon these natives' notions of counting, of grouping items into units, and of the accuracy of numerical references. The stimulus for the adoption of the foreign numerical terms may be the need for more exact counting, etc., resulting from a culture-contact situation, *i.e.*, will be on the culture side; but only the adoption of these numerical expressions into the language will, through the resulting alteration and enlargement of the system of symbols, bring about the desired change in the system of concepts constituting language.

It may be useful to quote the views of some authorities on the subject here. Whorf, for instance, says, "When linguists became able to examine critically and scientifically a large number of languages of widely different patterns, their base of reference was expanded; they experienced an interruption of phenomena hitherto held universal, and a whole new order of significances came into their ken. It was found that the background linguistic system (in other words, grammar) of each language is not merely a reproducing instrument for voicing ideas but rather is itself the shaper of ideas, the programme and guide for the individual's mental activity, for his analysis of impressions, for his synthesis of his mental stock in trade. Formulation of ideas is not an independent process, strictly rational in the old sense, but is part of a particular grammar, and differs, from slightly to greatly, between different grammars. We dissect nature along lines laid down by our native languages. The categories and types we isolate from the world

¹ Edward Sapir, in *CULTURE, LANGUAGE AND PERSONALITY* (D. G. Mandelbaum ed.; 1949, University of California Press, Los Angeles) at 161-162.

of phenomena we do not find there because they stare every observer in the face; on the contrary, the world is presented in a kaleidoscopic flux of impressions which has to be organized by our minds—and this means largely by the linguistic systems in our minds. We cut nature up, organize it into concepts, and ascribe significances as we do, largely because we are parties to an agreement to organize it in this way—an agreement that holds throughout our community and is codified in the patterns of our language. The agreement is, of course, an implicit and unstated one, but its terms are absolutely obligatory; we cannot talk at all except by subscribing to the organization and classification of data which the agreement decrees.”²

Hoijer points out that “. . . users of markedly different grammars are pointed by their grammars toward different types of observations and different evaluations of externally similar acts of observations and hence are not equivalent as observers but must arrive at somewhat different views of the world.”³

Returning to the original question whether and how far aboriginal languages can be used to express the juristic ideas and principles involved in the operation of a white man’s court of law, it follows from the above discussion that the central problem is in fact not whether the aboriginal languages are suited for the expression of, and reference to, such ideas and principles, but rather whether these ideas and principles themselves are meaningful and intelligible to aborigines whose understanding of the white man’s culture is so limited that they are wholly, or almost wholly, ignorant of English. As may be deduced from what has been said so far, the limit to what can be expressed in a language really depends on whether there are relevant concepts to be referred to in the culture of the speakers of that particular language. True, it has been pointed out that the pinning down, systematization, and even creation of new concepts can take place through alterations in the system of symbols, *i.e.*, language, on the dynamic level, but if one wishes to assess the ability of an aborigine to understand certain principles and notions involved in the operation of a court he is facing at a given point in time, one looks at a primarily static situation in the terms of what has been explained above. It may appear at the outset that the answer to the question asked at the beginning of this paragraph can only be in the negative, if the great differences of the aborigine’s own culture and the white man’s culture

² Benjamin Lee Whorf, in *LANGUAGE, THOUGHT, AND REALITY* (John B. Carroll ed.; 1956, Technology Press of M.I.T. Cambridge, Mass.) at 212-214.

³ Harry Hoijer, *The Sapir-Whorf Hypothesis*, in *LANGUAGE AND CULTURE* (H. Hoijer ed., University of Chicago Press) at 43.

are taken into account. If the comparison of the two cultures is narrowed down to the field of the application and enforcement of conventionally accepted and prescribed rules of behaviour and the application of sanctions for violations of such behaviour, it may, however, be found that the two cultures show certain similarities in some of their basic principles. It may be argued that aborigines do have a notion of law which is operating as a background to their morals and customs, even though it may not be easy for them to conceptualize law as distinct from the latter two. Still, a skilful interpreter who is fully at home with the culture of the tribe to which the aborigine facing the court belongs, and who is at the same time fully aware of the precise nature of the concepts of law in the white man's culture, may well be in a position to make that aborigine understand the white man's concept of law by explanations embodying suitable applications of analogy, metaphor, and illustrations pictured against the background of the aborigine's culture. There may well be units and elements in the aborigine's system of symbols, *i.e.*, his language, which in view of their referential ties to certain notions in the aborigine's conceptual system may be used by the interpreter to label the concept of white man's law for the aborigine once the latter has understood the nature of this concept itself. Even in cases in which there are no such suitable units in the aborigine's language, the interpreter can use any combination of sounds, be it a word from the aborigine's own language, a word from another aborigine language, or an English word, as a label once the vital prerequisite of the understanding of the notion as such has been achieved by the aborigine.

Much the same as has been set forth in connection with the concept of law in general may be said to apply to a number of specific juristic concepts which form part of the white man's system of law, such as, for instance, the concepts of "unlawfully", of "murder", "fraudulently without a claim of right", and several others. Such concepts may still present a very serious problem leading to a lack of comprehension on the part of the aborigine. This problem is, however, not the difficulty the aborigine may experience in understanding the notions themselves which are more or less intelligible to him, *i.e.*, may be said not to be alien to his system of concepts, and therefore open to some sort of reference by the application of his system of symbols serving this purpose, *i.e.*, his language. The real problem rests with the fact that these concepts which are individually more or less comprehensible to the aborigine occupy positions in his system of concepts and are entwined with other concepts, in ways which are at variance with the positions these notions occupy in the white man's system of

concepts. In other words, his legal system is different from that of the white man, and while the notions of "unlawfully" as that of something done in contradiction to established law, and of "murder" as that of the unlawful killing of another human, may be part of his concept system, he may be at a loss to understand why in a given situation these concepts should be applied to some of his actions which, according to his idea of law, were neither unlawful nor murder. Consequently whatever symbols of his language system may be used to explain these situations from the white man's point of view, they remain unintelligible to him, not because they do not refer to given parts of his conceptual system, but because they do not make sense to him under the given circumstances. To use an analogy, one may think of the reaction and attitude of a not-too-sophisticated white man who is bothered by a fly and kills it, or eats an apple grown in his own garden, who subsequently finds himself captured by a group of well-armed, powerful men against whom he is helpless, and who tell him in all seriousness that killing a fly, or eating his own apple, as the case may be, is murder, and in consequence proceed to subject him to some legal procedures resulting in severe penalties.

There is little chance that even the most accomplished explanation will induce the aborigine to understand and see the concepts involved in the white man's way; as far as he is concerned, the largely familiar concepts are used in a twisted and wrong manner and the problem becomes emotional rather than one of language and culture, and is at the same time loaded with possible unpleasant consequences for him; so why should he adopt the white man's view of such concepts against what he regards as his better knowledge?

There are, at the same time, a considerable number of concepts in the white man's system of law which by their very nature must remain incomprehensible to the aborigine in whose conceptual system there is nothing even remotely comparable. Such a notion is for instance that of lawful custody. Custody in the sense of imprisonment which is intended as a punishment, or as a means of ensuring a person's continued availability to a court, is completely outside the tribal aborigine's world of experience and comprehension, and he cannot as a rule be brought to associate the white man's notions with these events if they happen to befall him. In his own culture, imprisonment as a punishment is unknown, and if he has to answer to a council of elders for a breach of tribal law there is no need to detain him to ensure his availability to the elders; if he runs away to fend for himself or to seek the protection of another aborigine group, he knows that black magic will strike at him sooner or later from some unexpected angle,

so he is not likely to run. At the same time, if he cannot understand the notion of custody, *i.e.*, imprisonment in general, it is self-evident that it will be even more difficult for him to grasp the idea of "lawful" in the concept of lawful custody.

Aborigines with some acculturation but still an essentially tribal background have been known to regard imprisonment, *i.e.*, lawful custody, as a welcome means of travel and seeing the white man's world as it were, because to face a court they had to be taken away from their home area to some white man's place where the court was sitting. They certainly did not associate the notion of punishment with lawful custody.

If an attempt is made to make the aborigine arrive at some sort of understanding of such concepts, like that of "legal custody", which are totally alien to him, a person acting as an interpreter may try to take recourse to a long explanation encompassing ample illustrations of the principles involved in these concepts, coin terms, *i.e.*, linguistic symbols, for them such as some combinations of words of the aborigine's language—or even use the English terms—and proceed to apply these new terms at an increasing rate as his explanation goes on until at least a measure of understanding is achieved by the aborigine. Such a process is in fact the alteration of a language-culture nexus in a dynamic situation as has been described earlier in this article, except that the process is speeded up and artificially controlled.

For a real court case, such a theoretically possible procedure is of course illusory; in the first instance, it would take much more time than could conceivably be at the disposal of the court, and much more effort than could be expected to be put into one case. In the second place, the person acting as the explainer to the aborigine would have to possess such outstanding qualities as to make him a very rare individual indeed, and somebody who is hardly likely to be available to any court, unless very exceptional circumstances prevail. He would have to be fully conversant with the aborigine language, and fully familiar with the aborigine culture on which he would have to draw for his analogies, explanatory statements, and illustrations. At the same time, he would have to have a complete understanding, not just some half-comprehended vague idea, of the exact nature of the white man's concepts he is out to newly embody into the aborigine's conceptual system so that he can explain all facets of these concepts to the aborigine. In addition, he must have the gift of pictorial explanation, and the ability to adapt his explanations to the grade of intelligence, and the progress of understanding, of the particular aborigine he may be concerned with. It is an unfortunate fact that very few aborigines,

and even fewer white people, are sufficiently at home in both the aborigine and the white man's world and language to fulfil the requirements listed here, and even if they may be, few of them have the rare gift of elaborate pictorial explanation which would be required for them to be successful in the task described.

Even in the unlikely event of an aborigine in court arriving at a full understanding of the white man's legal concepts relevant to his case, and achieving the establishment in his mind of the ties between these concepts and the language symbols referring to them, there still remains the problem of the, to him, bewildering and complex procedure constituting the operation of the white man's court. The notions of judge, jury, prosecutor, counsel for the defence, etc., and of their respective functions, are totally alien to his conceptual system, and so are those underlying the court procedures and principles, like, for instance, proceedings directed to ascertain whether the evidence suffices to establish beyond reasonable doubt that he is guilty of a crime alleged against him. Similarly, the significance of pleading guilty or not guilty is outside his world of experience. In the light of what has been said before, it is clear that there can be no symbols in his language system to denote these, for him, non-existent concepts, and that the artificial incorporation of such symbols into his language system can only be the first step towards the integration of the relevant notions into his conceptual system in the dynamic process of the alteration of his language-culture nexus. This again would call for prolonged explanatory efforts by an exceptionally qualified person who is unlikely to be at the disposal of the court.

To sum up, the following may be stated in answer to the question mentioned in the first paragraph of this paper:

Aborigine languages can be used to express some of the juristic ideas and principles involved in the operation of a white man's court of law because the concepts underlying these particular ideas and principles happen to show a resemblance to comparable notions in the aborigine's conceptual world, and there are, in consequence, symbols in his language system denoting such notions. However, for the expression of the majority of the white man's legal concepts, and of the principles underlying his court procedure, aborigine languages cannot normally be used unless an exceptionally qualified interpreter is available who is equally at home, both in language and culture, in the aborigine and the white man's world, and who has an extraordinary gift for conveying through skilful explanation the understanding of new concepts to the untrained comprehending abilities of an aborigine with a tribal background. He must also have the ability to accomplish

the establishment of links between new language symbols, and notions which are to become new parts of the conceptual system held by the mind of such an unsophisticated tribal aborigine.'

A man with such qualifications is not normally available to a court, and the time required for the procedure outlined is prohibitive from the standpoint of ordinary court procedure. In consequence, aborigine languages cannot as a rule be used to express the juristic ideas and principles involved in the operation of a white man's court of law, seeing that many of these ideas and principles are completely outside the aborigine's conceptual world, and no symbols can be available in any language for notions not forming part of the conceptual system, *i.e.*, the culture, of its speakers.

S. A. WURM.*

* *Ph.D. (Vienna). Lecturer in Altaic Languages, University of Vienna, 1945-1952; Linguistic Expert at Central Asian Research Centre, Oxford, 1952-1954; Research Fellow in Linguistics, University of Sydney, 1954-1957; Senior Fellow in Linguistics, Australian National University, 1957-.*