

1848

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Repository Citation

Minor, Lucian, "Wordiness in Legislation" (1848). *Faculty Publications*. Paper 1306.
<http://scholarship.law.wm.edu/facpubs/1306>

WORDINESS IN LEGISLATION.

The vice which has pervaded English and American Laws for so long a time and so mischievously, is about to disappear, as we may hope, from the laws of Virginia. Messrs. Patton and Robinson, the eminent jurists appointed by a former Legislature to revise the civil and criminal codes, have determined that so far as their agency may go, common sense shall prevail over pedantry and prejudice, in stripping laws of their useless verbiage, and clothing them in language clear to plain minds. They have patterned much (if we are rightly informed) after the Massachusetts Revisal, and the *Code Napoleon*, which are models of brevity and lucidness. The prevailing character of the Legislature warrants the belief, that the efforts of the Revisors will be seconded by that Body.

But we intend no such concession, as to call the verbiage of our past laws, and of English laws, merely *useless*. It is very hurtful. It so clouds their meaning, as to make their writers often appear to have had in mind Talleyrand's famed saying,—that the main purpose of words is to conceal thoughts. It goes far to hinder not only the common people, but well-informed men, even lawyers, from knowing what is the law; having thus the very effect of the Roman tyrant's cruelty, who fixed up the tablets on which his laws were written too high for his people to read them, and then punished their violation. And it produces such inaccuracy, it leaves so many of those gaps called "omitted cases," that Lord Kenyon or Lord Ellenborough (we forget which) might well say that he could drive a coach-and-four through any statute. The penners of laws, here and in England, seem to have been prompted by that spirit of verbosity, which has justly brought so much ridicule and reproach upon lawyers: the spirit engendered by the old practice of paying for legal writings in proportion to their number of words: the verbosity, which filled many pages with a marriage agreement, amounting at last, as Mr. Shandy luminously informs us, to this only—"In three words, *my mother was to lie in, if she chose it, in London.*"

Some readers may stare, at our saying that a multitude of words makes laws inaccurate. Such an effect is the furthest possible from the conceptions of him who uses that multitude. He doubts not, that his copiousness of language covers every possible case. "Slave or slaves,"—"person or persons,"—"he, she, or they,"—"hog, pig, or shoat,"—"horse, gelding, mare, colt, foal, or filly,"—and other such specifications, make a web which seems to him complete, because it is complicated: but when it comes to be tested in practice, it is found to provide perhaps for not above half the cases it was intended to meet. We could cite a long section, containing 196 words, intended

to punish the forging of certain public and corporate seals, but missing that aim in the fog of words, and punishing only the forging of an *instrument for the purpose* of counterfeiting such seals. This palpable *no hit* is found in the Va. Revised code of 1819, vol. 1. p. 579, §2. Any careful reader will see that its fair grammatical construction is precisely what we have said. Perhaps the courts, knowing what the Legislature meant, might force a different interpretation: but in doing so, they would trample upon the great rule of construction,—that penal statutes must be taken *strictly* against the Commonwealth, and *favorably* to the accused.

Such failures to effectuate the law-maker's intent, are a natural fruit of the wordy system. In penning one of the fashionable, million-word statutes, the writer's mind becomes confused, and he writes confusedly—mismatches verbs and their objects—and sometimes "leaves all memory of sense behind." If his mind is too clear ever to become confused,—yet in attempting minute specification he will leave out some particulars: or, if his knowledge is so great and his recollection so exact as to embrace all that exist, still he cannot foresee future subjects, which have no parallel in the present or the past. Human cunning, the perpetual creation of new objects of value, and the frequent shifting of human affairs into new channels, will always baulk the most tedious particularizer that ever wrote a statute.

To meet these unforeseen emergencies, the million-word man commonly adds to his long list of particulars a sweeping phrase, designed to cover all possible cases. But our courts would probably follow those of England, in adjudging such a sweeping phrase inoperative. For when a law had made it felony to steal sheep *or other cattle*, the courts held the words "or other cattle" inoperative, and that the act extended only to sheep. "And therefore, at the next session," [of Parliament,] says Judge Blackstone, "it was found necessary to make another statute, extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name."* So, the Virginia Legislature† having specified some thirty-six kinds of writing, as the subjects of punishable forgery, and wound up the list with the words, "or other writing, to the prejudice of another's right;" our courts, it is to be presumed, would adjudge the law applicable only to the 36 specified kinds; and the last mentioned words to be of no effect.

Suppose the comprehensive term, the sweeping phrase, alone, had been used? Suppose the English statute had made it punishable to steal "cattle of any kind," without mentioning sheep? Or suppose the Virginia statute had simply punished the forgery of "any writing, to the prejudice of another's right? Would not that language cover every

* 1 Black. Comm. 88.

† 1 R. C. p. 579, 580, §4.

case, as effectually as if every case were specified? The English enumeration, after all its ridiculous particularity, omits goats, and swine. It would not be difficult to suggest papers of value, which are omitted in the Virginia enumeration: bank certificates of deposit, for example. But we cannot imagine any subject of forgery, which would not be included in the words "any writing to the prejudice of another's right;" nor any domestic animal always worthy to be protected against theft, that would not be comprehended by the word "cattle."

To meet the scruples of word-catchers, who might question whether "cattle" properly means hogs or goats, and whether "writing" would meet the case of a *printed* forgery, let the code have prefixed to it a set of definitions, declaring that general words shall be construed to mean all that may fairly be included in them—that "cattle" shall mean (in laws) all animals of the cow, sheep, hog, and goat kinds—that "writing" shall include printing, etching, engraving, &c.

This is what the Legislature of Massachusetts has done; and what our Revisors propose to do. A page or two of such definitions, carefully kept in view throughout the Code, might shorten it by one half—make it infinitely clearer than heretofore—and leave comparatively few cases unprovided for, that could arise in human society. To make this plainer, let us give specimens of such definitions as we understand that the Revisors propose: and then exemplify their views further, by a sample of the shortening and clarifying effect of their plan. We profess to speak not by their authority, but only from our idea of their design, so far as it has been unfolded to the public: and we copy, in part, from the Massachusetts Revisal.

DEFINITION.

In this code, and in all other acts of the General Assembly, the following rules of construction shall be observed, unless inconsistent with the manifest interest of the Legislature, or with the context of the act in which the words and phrases here defined, are used: That is to say,

1. A word in the singular number, may be held to include the plural; and a word in the plural, may be held to include the singular.

2. A word importing the masculine gender, may be held to include females, as well as males.

3. The mention of the chief thing of a kind may include that whole kind: and the name of a thing which, by its ordinary or fair interpretation, embraces also other things, shall be held to include them, without specifying them. For example,

The word "horse" may include *gelding, mare, colt, foal, and filly*:

The word "cow" shall include *bull, bullock, calf, heifer, steer, ox, and yearling*:

The word "cattle" shall include all animals of the cow, sheep, hog, and goat kinds:

The words "in writing," or "written," may include printing, engraving, lithographing, and all other modes of representing words or letters:

The words "justice of the peace," "magistrate," or "justice" (when used to signify a justice of the peace) may include mayor, alderman, judge, or other person having the functions of a justice of the peace:

The words "goods and chattels," or "goods," or "chattels," shall include bank notes, and all other written evidences of debt, choses in action, and papers of value, or other personal property.

The word "county" may include corporation, city, borough, and other localities of jurisdiction:

The word "person" may include bodies politic and corporate:

The word "oath," or "swear," shall include *affirmation, or affirm*:

The words "insane person" may include *idiots, lunatics, persons non compos*, or any wise deranged in mind:

The word "will" shall include testaments and codicils:

The words "free negro" shall include free mulatto; and the word "negro" shall include mulatto.

4. The punishment prescribed for a criminal in the first degree, shall be held applicable to persons aiding, abetting, counselling, causing, or procuring a crime, without express mention of them.

5. The word "he," "she," "it," or "they," shall be taken to mean the person or persons, thing or things, which it represents by fair grammatical construction: without repeating the name itself of the person or thing.

6. The word "forge" or "counterfeit," shall import and include falsely making, forging, counterfeiting, altering or erasing, with intent to defraud.

These at least suffice to show the principle. If statutes be composed with faithful reference even to these few definitions,—omitting the phrases "every such offender,"—"every such person,"—"being thereof duly convicted"—"*public jail and penitentiary house*,"—and countless others like them, with which enactments are padded out to plethora,—it is incredible how much brevity will be promoted, with its attendant graces and virtues,—*lucidness, neatness, accuracy*. In short, it will be found that a half, a third, or a fourth, of the words now commonly used in Virginia statutes, would express their meaning *BETTER* than the whole does. The Greek proverb, that "a half is more than the whole,"—or Dean Swift's oft-quoted saying about two and two not always making four, in the arithmetic of the customs,—is perfectly applicable here.

To illustrate this further, we copy, exactly, a

section of the existing law against forgery; and then offer such a substitute for it, as we suppose to accord with the plan of the Revisors:

[From 1. Revised Code, 578, §1.]

Be it enacted by the General Assembly, That, if any free person shall falsely make, forge, counterfeit, or alter, or cause or procure to be made, forged, counterfeited or altered, or willingly act or assist in falsely making, forging, counterfeiting, or altering any coin, current within this commonwealth, whether made current by law or by usage; or any note or bill of the bank of Virginia, or the Farmers' Bank of Virginia, or any other bank which now is, or hereafter may be chartered in Virginia; or any note or bill of the Bank of the United States; or any other bank which now is or hereafter may be chartered by the government of the United States, or by the government of any state, territory, or district thereof; or shall falsely make or cause or procure to be made, or willingly act or assist in falsely making any base coin; or any note purporting to be the note of a banking company, when there is no such banking company in existence; with intention to defraud or injure any person or persons, body politic or corporate; or shall, with the like intent, pass or tender, or offer to pass or exchange, or cause or procure to be offered, to be passed or exchanged, any such false, forged, counterfeited, base or altered coin, bill, or note, knowing the same to be false, forged, counterfeited, base or altered; every such person shall be deemed guilty of felony; and, on being thereof lawfully convicted, shall be punished by confinement in the public jail and penitentiary, for not less than ten nor more than twenty years.

[270 words.]

Let us see some of the redundancies of this section, under the proposed reformation of the law. The offence needs not be declared *felony*, since all offences punishable by the penitentiary, are to be felonies. The words *falsely make, counterfeit, &c.*, may all be expressed by the one word *forge*, according to our sixth definition. *Causing, procuring, aiding, &c.*, are made needless by the fourth definition, which includes them in the principal offence. Other superfluities will appear from the subjoined draught—which, by the by, is more comprehensive than the above one, since it would embrace a Canadian, or English bank note, as well as unchartered bank notes, while the above section would not: though either might be current in Virginia.

And now for the

Substitute Section.

Any free person who shall forge any coin current in Virginia, or a note of any Bank, within or without the State, whether chartered or not; or any note purporting to be the note of a Bank or banking company, though such bank or company do not, or never did exist; or shall, with fraudulent intent, pass or offer to pass any such forged coin or note, knowing it to be forged; shall be confined in

the penitentiary not less than ten nor more than twenty years.

[87 words.]

In a preceding paragraph we adverted to a section containing 196 words, which aims to punish the forging of certain seals, but (like A. the archer) misses its aim, and punishes only the forging of any instrument for counterfeiting those seals. We will now copy that section: and the reader is desired to see if we misrepresent its import? And should he differ from our opinion, still, is it not plausible enough to raise a contest in a court; perhaps to delay a trial for a year; and by delay, to produce a criminal's acquittal?

[From 1. Revised Code, 579, §2.]

If any free person shall falsely make, forge or counterfeit, or procure to be falsely made, forged, or counterfeited, or willingly act or assist in falsely making, forging, or counterfeiting, or keep or conceal, or aid in keeping or concealing any instrument, for the purpose of falsely making, forging, or counterfeiting, the seal of the President, Directors and company of the Bank of Virginia, or Farmers' Bank of Virginia, or of any other chartered Banking company, which now is or hereafter may be in Virginia; or the official seal of the Register of the Land Office; or the seal of any other public office, or body politic, or corporate, in this commonwealth; such person shall be deemed guilty of felony; and, on being lawfully guilty of any such offence, in relation to the seal of any banking company aforesaid, shall be punished by confinement in the public jail and penitentiary, for not less than five nor more than fifteen years; and, on being lawfully convicted of any such offence, in relation to any other seal aforesaid, shall be punished by confinement in the public jail and penitentiary, for not less than one nor more than ten years.

And now we ask the reader if the aim of this section is not more indubitably, and more intelligibly accomplished in 94 words, by the following

Substitute.

Any free person who shall forge the seal of any chartered banking company in Virginia, or the official seal of any public officer, or body politic or corporate, in this commonwealth; or forge, keep, or conceal any instrument for the purpose of forging any such seal; shall, for so doing as to the seal of such banking company, be confined in the penitentiary not less than five nor more than fifteen years, and for so doing as to any other seal aforesaid, be so confined not less than three nor more than ten years.

We cannot consent to tire the reader with any further copies from the Revised Code. It abounds, and the later laws abound still more, with sections as verbose as either of the two that we have quoted. The whole chapter on Hog-stealing* is a curiosity in that respect: so is that on Horse-stealing:†

* 1 R. C., 572, &c.

† Ib. 575, &c.

is an act of 1834, designed to fix the county where the unlawful remover of a slave may be tried: so is an act passed six or eight years ago, empowering an administrator *de bonis non* to receive assets from a former representative; so, indeed, are enactments enough to tire our own patience (much more the reader's) with the bare mention of them. The last mentioned two (that of 1834, and that of six or eight years since)—especially the last one—can hardly be understood at all.

The fourth section of the law against forgeries* contains 300 words, specifying about thirty-six sorts of *writing*, the forgery of which it makes punishable: and closes the list with the words "or other writing, to the prejudice of another's right." We believe, as we said before, that this closing phrase is descriptive of every one of the thirty-six sorts. And if so, then by using it alone, and keeping our definitions in view, the whole effect of the present section and more, may be accomplished by one containing only 59 words:

[*Substitute for* §4, 1 R. C. 789.]

Any free person who shall forge, alter, or erase any writing, to the prejudice of another's right; or, with fraudulent intent, utter or pass, or offer to pass as genuine or true, any writing so forged, altered, or erased, knowing it to be such, shall be confined in the penitentiary not less than one nor more than ten years.

We venture to say, that taking into consideration the superior comprehensiveness of this substitute, the greater simplicity which the indictment would admit of, and the greater ease of proof,—a forger would find it twice as hard to shuffle off the coil of justice, as under the three-hundred-word section.

One more sample of the period-pruning which the venerable Virginia Code requires, and we shall close. We refer to the first section of the chapter on horse-stealing. † This section contains 157 words. In it the graceful catalogue, "horse, mare or gelding, foal or filly," occurs three times. It is hoped no reader will deny himself the amusement of turning thither, and examining its other beauties. He may then judge of the following

Substitute.

Any person stealing a horse, or being accessory thereto before the fact, shall, if free, restore the horse to the owner or pay him the value thereof, and be confined in the penitentiary not less than five, nor more than ten years; or, if a slave, shall suffer death.

[49 words.]

In the sportive preface to one of Montesquieu's little novels (for he wrote two or three) he utters a gibe against the affectation of excessive brevity, by gravely saying, that he had been thirty years

* 1 R. C. 579, 580.

† *Id.* 575.

engaged in writing a work of twelve pages, which should contain all that was known in metaphysics, politics, and moral science. Let not us be thought liable to that sneer: nor to Horace's hit at him who, laboring to be brief, becomes obscure. No chimera of conciseness, no obscurity, is attributable to any phraseology that we would adopt in legislation. We are only for making laws speak common sense, in words that fit it—language such as Franklin used, and such as the most momentous precepts of the Bible are couched in. The departures of our law-makers from that mode of speech, have often made us sweat with perplexity about their meaning; not only at the bar, when adversaries were contesting the interpretation, but in office-hours, when all we wanted was to understand the duties imposed upon us by statutes. In every such instance, and in well nigh every imaginable instance, to shorten would be to make plain. The obscurity almost always comes from a needless multiplication of words; from a swing and swell of language, which many think essential to legislative dignity, but which is in fact one of the most wretched quackeries.

The auspices under which the present revisal comes forth, the eminent names connected with it, and the portentous length of travail that has attended its birth*—not to mention the common-sense tendencies of this age—warrant the public in expecting at least brevity enough to insure lucidness. Even to learn the cost of printing is something; it is much more, to present magistrates, and people, as well as lawyers, with a body of reading which may not, by its bulk, frighten or confuse them. Any man will *read* a section of three or four lines much more willingly than a section of twenty; and perceive its meaning much more easily.

The chapter of definitions is an indispensable preliminary to any great condensation. THAT is the grand clarifier and abbreviator. Next, it is important to find "masterly" generalities of expression, to be used whenever the law-composer feels tempted into detailed specification. Finally, let him watch constantly for the briefest, but always for satisfactory, sets of words; never using two, where one will express his meaning. If he will practise on these three maxims, and is clear-headed, sagacious, of good judgment, and acquainted with the world,—he cannot fail to earn his country's lasting gratitude.

Note.—Since the foregoing article was placed in the printer's hands, a friend in the Legislature has furnished us a printed copy of the Bill now before that body, for amending the Criminal Law. Its brevity, and consequent clearness, in some sec-

* 12 or 14 years. But Messrs. Patton and Robinson have had the work in hand scarcely two years. We hope they will take one more, at least.

tions, exceed even our own previous conceptions ; though in others, we humbly submit, the old method of particularization prevails too much—for instance, in Chap. IV., §17, about stealing bank notes, &c. Say, in a short section, that all writings for the payment of money, *choses* in action, and other papers or writings of value, shall be deemed goods and chattels : then larceny would attach to them of course.

In the section about forging seals, (chap. V., §2.) the draughts-man has fallen into the same mistake with the 1 R. C. 579, §2 ; in making the stress of punishment fall upon the forging of an INSTRUMENT for the purpose of forging court seals, when he designs to punish chiefly the forging of the SEALS themselves. Why not alter the arrangement, so as to say

“ Any free person who shall forge the seal of any court, or the official seal of any public officer, or body politic, or corporate in this commonwealth ; or make, or keep, or conceal any instrument for the purpose of forging such seal ; shall be confined,” &c.

About this there could be no question—no cavil.

M.