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On Writing with Adverbs

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ABSTRACT

The standard rules for good writing dictate that adverbs should be avoided. They undermine the effectiveness of the text, and detract from the author's point. Students and teachers of legal writing have incorporated this general rule, leading them not only to avoid adverbs in their own writings, but also to overlook them in the writings of others, including statutes and cases. However, as Michael Oakeshott has argued, law happens not in the rules but in the adverbs. To become desensitized to the power of adverbs, or to presume that they are weak and unnecessary, leads the reader not only to misconstrue the operation of the rule, but also to overlook the moral aspect that separates a legal order from a power-based regime of commands.

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Whatever their occupation, everyone should strive to write competently.

Attention to good writing instills a clarity of thought and vitality of expression that benefits any line of work. Among lawyers this skill is particularly critical, and the design of legal education curricula reflects this priority. While other professional programs rarely provide any coursework concentrating on the mechanics of writing, law schools typically require two semesters, and often offer more. While business students focus on numbers, and medical students on bodies, for law students the emphasis is on words.¹ The right word, at the right time can determine fates.

For obvious reasons the craft of effective legal writing tracks the skills of good writing generally. Rules drilled into future attorneys draw heavily upon the guidelines expected of all writers. Although style differences are recognized for genre and format – one wouldn't express himself in a dissertation in the same manner as in a short story – acknowledged deviations from the standard practices rarely arise simply because one is writing in law rather than, say, anthropology.

¹ See, e.g., DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* vii (1963) ("The law is a profession of words.").

Except for one exception. The received wisdom maintains that good writers avoid adverbs. “*The adverb is not your friend*,” Stephen King pronounces in *On Writing: A Memoir of the Craft*, his popular autobiographical summary of tips for writing well.² King’s distrust of adverbs is widely shared among professional writers. Mark Twain said that he was “dead to adverbs; they cannot excite me.”³ Graham Greene praises the skill of Evelyn Waugh particularly for “a complete absence of the beastly adverb” within his works, for these are “far more damaging to a writer than an adjective.”⁴ Perhaps the general consensus is stated most concisely by poet Theodore Roethke: “In order to write good stuff you have to hate adverbs.”⁵

Elaborating on his advice that the “road to hell is paved with adverbs,” King tells aspiring writers that

Adverbs, like the passive voice, seem to have been created with the timid writer in mind. With the passive voice, the writer usually expresses fear of not being taken seriously; it is the voice of little boys wearing shoepolish mustaches and little girls clumping around in Mommy’s high heels. With adverbs, the writer usually tells us he or she is afraid he/she isn’t expressing himself/herself

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² STEPHEN KING, *ON WRITING: A MEMOIR OF THE CRAFT* 124 (2000).

³ Mark Twain, *Contributors’ Club*, 45(272) *THE ATLANTIC MONTHLY* 849, 850 (June 1880).

⁴ GRAHAM GREENE, *WAYS OF ESCAPE* 200 (1980).

⁵ ALLAN SEAGER, *THE GLASS HOUSE: THE LIFE OF THEODORE ROETHKE* 184 (1968).

clearly, that he or she is not getting the point or the picture across.⁶

So entrenched has this advice become that King feels no obligation to point out the precise nature of the peculiar danger he fears adverbs hold for the unwary scribe. One explanation, however, appears in similar counsel from essayist Walter Bagehot:

Cautious men have many adverbs, “usually,” “nearly,” “almost”; safe men begin, “it may be advanced”; you never know precisely what their premises are, nor what their conclusion is; they go tremulously like a timid rider; they turn hither and thither; they do not go straight across a subject, like a masterly mind.⁷

Adverbs transform a declaration into a tentative query. They diffuse a statement’s power and belittle its significance. An appended adverb dilutes confident assertion into polite suggestion, and deflates bold proclamations into beige, insipid tentative possibilities. In this view, adverbs, like belladonna, are similarly toxic and should be employed sparingly and only by knowledgeable experts in the art.

Adverbs are both intrinsically weak and inevitably weakening. Bad enough that they add little value to a sentence, but like bad mortar in a wall, they destabilize

⁶ KING, *supra* note 1, at 124.

⁷ Walter Bagehot, *The First Edinburgh Reviewers*, 47 LITTELL’S LIVING AGE 449, 461 (1855).

a text's overall structure. The adverb is not simply an empty and eliminable appendage, it is a contaminating excrescence that exsanguinates the text of all significance.

Strong stuff, but the polemic goes further. While King discourages their appearance in all contexts, he mandates complete prohibition of adverbs with verbs of attribution like *to say*. In this suggestion King echoes advice from Strunk and White's *The Elements of Style*:

It is seldom advisable to tell all. Be sparing, for instance, in the use of adverbs after "he said," "she replied," and the like: "he said consolingly"; "she replied grumblingly." Let the conversation itself disclose the speaker's manner or condition. Dialogue heavily weighted with adverbs after the attributive verb is cluttery and annoying. Inexperienced writers not only overwork their adverbs but load their attributives with explanatory verbs: "he consoled," "she congratulated." They do this, apparently, in the belief that the word *said* is always in need of support, or because they have been told to do it by experts in the art of bad writing.⁸

Neither text considers the possibility that repetition of the same verb strikes the reader as dull and mechanical. Surely the English language includes more than one verb to signal a speech act for valid reasons other than to create new

⁸ WILLIAM STRUNK, JR. & E.B. WHITE, *THE ELEMENTS OF STYLE* 68 (2nd ed., 1972).

sources of error. Nor do these stylists describe situations when attaching adverbs to verbs of attribution may clarify, not weaken, the author's voice.

Consider that English is not a tonal language. Despite this formal lack, very often a sentence's meaning changes significantly when said with one inflection rather than another. For example, the sentence "Alice is supposed to have left" is facially ambiguous. On one reading the speaker states that Alice had an obligation to have vacated the premises by a set time, with which we should expect she has complied (i.e., *supposed* = required). Alternatively, the speaker is communicating a belief held by others that by that time Alice is likely to have already departed, whatever her reasons (*supposed* = thought).

In conversation this difference is marked by the voicing of the second syllable. In the case of requirement, the second syllable is explosive, almost staccato, but in that of reported belief the syllable gets drawn out. Because these differences in intonation cannot be marked in the text, indicating one reading over the other may necessitate violation of one or another of King's rules. The writer may avoid confusion either by using adverbs (e.g., she said commandingly), or perhaps by "shooting the attribution verb full of steroids," and cheekily inserting something other than the naked "she said."⁹ When one is attempting to capture the nuances of natural language, the need for adverbs may be more complex than that captured by the default avoidance rule favored in the mainstream of English composition.

⁹ KING, *supra* note 1, at 126.

Even were we to grant, though, that King's position offers solid advice for ordinary authors, we should not leap to the conclusion that it serves equally well for legal writers. Our relationship to adverbs differs from the general population's. Such realities merit accounting in the writing and reading habits we impart to students.

When law students absorb King's rule that adverbs are weak and "timid," they learn not only to avoid them in their own writing, but also to discount adverbs encountered in the writing of others. If adverbs perform no real work, or at least no work worth doing, the central meaning of a text can presumably be rendered accurately without noting the adverbial embellishments. This need not be a conscious strategy, but one that reflexively emerges after repeated admonitions from trusted sources that adverbs are "beastly."

Any such habit will bedevil the student's efforts to understand the law. Contrary to the ordinary view that adverbs are superfluous, law emerges through its adverbs. Whether a deed has been performed may be given, but the heavy legal lifting begins when ascertaining whether it was done *excessively*, *negligently*, *knowingly*, *wantonly*, *recklessly*, or any of a range of other possible ways of doing. This abundance of legal adverbs is not the consequence of the poor compositional choices by legislative framers; but for the adverbs, law would be only a catalog of authoritatively enforced rules, rather than *law* – a social order that consenting citizens have a duty to obey. The distinction swings on whether

compliance is grounded in a fear of punishment for violation, or a choice arising from an understanding that the law is proper. Because the latter is the basis for the complex legal systems,¹⁰ even if electorates sent only Stephen Kings to statehouses and Congress lawyers would not escape an abundance of textual adverbs.

This point was made more formally by Shirley Letwin when she endorsed the essential nature of legal rules as “adverbial”:

Instead of commanding the subject to perform anything, a rule designates the manner in which certain activities are to be carried out by those who wish to engage in them or a manner of punishing certain actions that are forbidden. A law against murder does not command anyone to refrain from killing, nor does it prohibit all killing. It stipulates that whoever causes the death of another person in a certain manner under certain conditions will be guilty of the crime of murder. It prohibits causing death “murderously.” Thus, at the heart of the idea of law is a sharp distinction between an obligation to subscribe to certain

¹⁰ See, e.g., TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 178 (1990):

People obey the law because they believe that it is proper to do so, they react to their experiences by evaluating their justice or injustice, and in evaluating the justice of their experiences they consider factors unrelated to outcome, such as whether they have had a chance to state their case and have been treated with dignity and respect.... This image differs strikingly from that of the self-interest models which dominate current thinking in law, psychology, political science, sociology, and organizational theory, and which need to be expanded.

conditions in doing what we choose and an obligation to perform this or that action at a given time and place.¹¹

She renders accessible the political philosophy of Michael Oakeshott. His thinking is complex but reduces to the following points: The rule of law is a “moral practice... analogous to [the rules of] a game.”¹² A practice, in its turn, “consists of well-defined conditions that shape how people engage in a particular activity” which direct how things are properly done without specifying any particular outcome. The analogy is with language. Users follow the rules for proper language use in order to be understood, but the rules do not dictate that any particular content be uttered.

“What makes the idea of a practice so important is that it unifies those engaged in it without dictating what anyone does. This is because the requirements of a practice, being conditions rather than commands or orders, are not obeyed or disobeyed, but subscribed to. Structured this way, individuals remain free to choose what they will do.”¹³

As Oakeshott explains, “the expression ‘the rule of law,’ taken precisely, stands for a mode of moral association exclusively in terms of the recognition of the authority of known, non-instrumental rules (that is, laws) which impose

¹¹ SHIRLEY ROBIN LETWIN, ON THE HISTORY OF THE IDEA OF LAW 334-335 (2005)

¹² *Id.* at 313.

¹³ *Id.* at 310.

obligations to subscribe to adverbial conditions in the performance of the self-chosen actions of all who fall within their jurisdiction.”¹⁴ In other words, “A rule [like law] can never tell a performer what choice he shall make; it announces only conditions to be subscribed to in making choices.”¹⁵ Any appearance of a legal rule of prohibiting an act is illusory. Despite grammatical appearances to the contrary, in practice, as Letwin echoed, “A criminal law does not forbid killing or lighting a fire, it forbids killing ‘murderously’ or lighting a fire ‘arsonically.’”¹⁶

Oakeshott is attempting to answer the question of why people have a duty to obey the law when the legitimacy of the law is based in the consent of the governed. Most of us, of course, have not actually consented to the laws under which we live, which could imply that we have no obligation to obey them. The answer, he suggests, lies in the fact that law directs a manner of being rather than slavish observance of specific acts. We remain free to choose, constrained only to make our choices within the bounds of the moral rules of our civic association. To return to the language analogy, law establishes the grammar and syntax of social living, tools with which citizens are then able to choose how to construct their own lives. So long as their choices remain comprehensible and reasonable to their fellows, they can be described as “following the law.”

Within this model adverbs allow the expression of the moral dimension of the normative social order. Adverbs direct our attention away from external

¹⁴ MICHAEL OAKESHOTT, *The Rule of Law*, in *ON HISTORY AND OTHER ESSAYS* 136 (1983).

¹⁵ MICHAEL OAKESHOTT, *ON HUMAN CONDUCT* 58 (1991)

¹⁶ *Id.* at footnote 1.

behavioral conformity and toward the consenting will of the actor, and thus to his free choices. This aspect of the legal system can be distinguished from strict liability rules or compelled orders such as the requirement to pay income taxes. While rules, they do not rise to the level of true laws in this jurisprudential sense because they consider only the performance of overt specific acts with no regard to intent, desire or purpose of the actor. These rules assign responsibility and maintain order by treating human actors akin to natural phenomena, social analogues to cattle or hurricanes, and not as rational thinking, and ultimately consenting citizens.

The overarching question Oakeshott hoped to resolve asked “how people can engage in orderly activities, where they recognize and accept common standards, without being reduced to uniformity or having recourse to an infallible or non-human source of truth.”¹⁷ Adverbs shift the legal liability inquiry from the naked act to the intending person. Without adverbs, law can be efficient, but it will not be moral, nor would we have an ethical duty to obey. Lacking adverbs, we move beyond the perimeter of the rule of law and into the exercise of mere power.¹⁸

Law students should be cautioned against overuse of adverbs, but the reason for the frugality contrasts markedly from that offered to writers of other disciplines.

¹⁷ LETWIN, *supra* note 10, at 310.

¹⁸ We can envision a possible comparative analysis of the development of the idea of the reasoning individual and the belief that political legitimacy is grounded in the consent of the governed, with the variable uses of adverbs in legal texts. Following Oakeshott, the prediction would be that these variables vary directly.

In law, adverbs should be used sparingly not because they are weak and frivolous, but because they are intense and powerful. What a page of words gives or denies, a single adverb can reverse in practical effect. Students' eyes should not be trained to skip lightly over a statute's qualifying adverb, but rather to highlight it as vital as any other word to the meaning, and perhaps more than most. Adverbs should be respected, even a bit feared, but not hated, and certainly never underestimated.

Messages to law students that disparage the importance of adverbs risk training them not merely to misread the technical operation of the law, but more damningly to society, to overlook the moral heart of law itself. On this point especially it does not suffice to instill in students the traditional aversion to adverbs. All those guiding students in the proper way to read legal texts must balance this formal practice with insights into the substantive relationships involved. Otherwise, students will become obsessed with the dissection of mere rules, and grow blind to the people living their choices within the boundaries of those rules. Freely.