

The Language of Canon Law

Judith Hahn

**Oxford University Press, New York, 2023, 248 pp
(hardback £64), ISBN: 9780197674246**

Luke Beckett OSB

Ampleforth Abbey, UK

Judith Hahn offers a vision of law as essentially a form of communication. The role of language within law is to enable this communication by sending messages not simply from those who make law to those who receive it, but also from the governed to the legislator. This becomes the basis for a view of law as something which is the product of its culture and moment and requires constant adjustment to keep up with these sources. She is not shy of some of the problems implicit in this basic position and offers a full and thoughtful discussion of the divergence between those who see the meaning of the law in the legislator's intention and those who see that meaning solely in the words used in the law (once the legislator has issued the law, the law is on its own). The book is rich in examples from German and American studies in the theory of law and language and in contemporary legal critiques. There are powerful sections in the book which challenge the temptation to use legalese (unsurprisingly, this is as much an issue in civil law as canon law) and offer a plea for greater use of plain language in the law. In the field of canon law this is followed by an argument for the replacement of Latin as the official legal language of the Catholic Church (with all other texts being at best only official translations) and a move to some system in which multiple language texts have equal authority. Hahn looks at various situations where similar systems operate today and is open about the problems that these systems face (especially the problem that one language always seems to end up as being the most important, whatever the official position). Nonetheless, there is much to ponder here and her insistence on law as communication is the starting point for some valuable challenges to the canonical as well as the civil system.

Indeed Hahn is not afraid to use language that may shock some canonists: her comparison of legal and sacramental language with magical language is a case in point. This flows from a discussion of the notion of performative language – as, for example, in the assertion that what makes someone guilty is the legal sentence of the convicting judge. This use of language to have effects is seen as magical, because in this understanding the words themselves are seen as having effects.

As Hahn makes her point in this strongest form, it reveals the challenge which it has to face – and it would be good to see how Hahn would have done this. An alternative model of judicial pronouncement does not see it as constitutive but as declaratory; in other words, the legal language refers to something that is already there (such as the criminal's guilt) rather than creating something

which had not been there before. Analysis of both the notion of a legal fiction and that of a legal person could have been a path to this.

Raising this larger question leads us into the notion of natural law. Hahn's approach rejects any notion of natural law and is close to the classical legal positivism of HLA Hart (who is cited approvingly in the book). This approach remains the predominant approach in the wider world of Anglo-American law (and apparently German law as well). However, in a book which looks at language in canon law, a more serious objection arises. Canon law (at least in the Roman Catholic Church) sees itself as being based in theology and seeking to offer a legal framework to put into practice the Church's teachings in different ways. The extent to which it does this adequately requires constant examination: Hahn raises many interesting critical points, and these serve to stimulate reflection. Her critique of the language around marriage annulment suggests at the least that canonists in that world need to spend more time and effort reflecting on the reality of the human relationship that has existed between a couple and acknowledging the many ways in which this is not erased (for good or ill) if a given marriage in fact is declared to have been invalid. Similarly, her critique of the notions of grave reason and just cause points out how such phrases are in fact a means of transferring a particular situation from legal to administrative regulation (again, for good or ill). This last example leads one into the heart of this critique: for Hahn, these phrases are bad because they lead to legal uncertainty. Behind this immediate objection her discussion reveals a deeper objection. Hahn sees canon law as having become less and less relevant to contemporary believers, and she seems to attribute this in large part to that fact that it does not communicate in a way that those believers can grasp. One might object that if canon law is rooted in something true, then reforming the language in which it is framed cannot be at the expense of changing the truth it articulates.

However, because she does not engage with the theological nature of canon law, her critique is open to this objection. Her refusal to engage with theology as the basis of canon law is systematic. She mentions many dialogue partners for canon law, but theology is not one of them. Indeed, some of the theological notions she points to are open to criticism. By way of example, when she asserts that 'For an institution as concerned with truth as the church, it is surprising that no one has examined what actually constitutes telling an untruth' (p 9) one might reasonably point to any serious work of moral theology. This suggests that Hahn is at least exaggerating. More seriously, her definition of *ex opere operato* misses the point that Trent is making.

There is a problem here, because in fact the arguments which she is making have a theological point and a theological direction: Hahn wants to see changes in the ecclesiology of the Catholic Church, and does not take sufficiently seriously the notion that these changes need to be made at the theological level before they are translated into canonical practice—otherwise canonical changes will be the outcome of unexamined theological presuppositions. Despite this, this book is to be recommended as a stimulating read and a useful examination of conscience for lawyers, who must all be concerned about how well they communicate with the community served by the legal system in which they work.