

## Language impairment and legal literacy: is a degree of perfectionism unavoidable?

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### Angaben zur Veröffentlichung / Publication details:

Timmermann, Cristian. 2017. "Language impairment and legal literacy: is a degree of perfectionism unavoidable?" *AJOB Neuroscience* 8 (1): 43–45.  
<https://doi.org/10.1080/21507740.2017.1285829>.

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# **Language Impairment and Legal Literacy: Is a Degree of Perfectionism Unavoidable?**

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This is a “pre-print” accepted manuscript, which has been published in:

*“AJOB Neuroscience”*

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Please cite this publication as follows:

Timmermann, Cristian (2017), Language Impairment and Legal Literacy: Is a Degree of Perfectionism Unavoidable? *AJOB Neuroscience* 8(1): 43-45

The final publication is available at Taylor & Francis via:

<https://www.tandfonline.com/doi/full/10.1080/21507740.2017.1285829>

## **Language impairment and legal literacy: is a degree of perfectionism unavoidable?**

Joseph Wszalek (2017) offers a detailed examination of the challenges involved in assisting people with language and communication impairments in the comprehension of legal language and concepts (LLC). Yet it remains unclear what counts as an ethically unacceptable disadvantage in comprehending LLC. As the reader has most likely observed, the different choices regarding profession and leisure activities contribute to an enormous discrepancy in the comprehension of complex language, even among people who enjoyed the same primary and secondary education. If we settle for a minimum threshold of LLC comprehension, we are likely to observe that some people will not meet this threshold due to personal choices, such as not having practiced sufficiently reading or having avoided intellectually stimulating social interactions. While as a society we might want to choose to assist people who suffer from bad luck, i.e. impairments caused by misfortunes, there is a wide resistance to show the same kind of support to assist people who are in a position of disadvantage due to choices made throughout their lives. As the ability to comprehend LLC is crucial to benefit from protected legal rights and to do one's share in the administration of justice, the question of who will bear the costs of failure (or partial failure) to sufficiently develop language and communication skills becomes central. Due to space constraints, I focus in this commentary only on those who had a real choice in developing language capabilities.

We may ponder, are attorneys in general obliged to take extra training on top of an already overloaded study program to assist clients who have difficulties understanding LLC? Do governments have to hire a distinct set of specialists that will act as interpreters? Wszalek (2017) understands the American Bar Association's Model Rules of Professional Conduct as suggesting that "competent lawyering requires a reasonable effort to ensure successful language comprehension on the part of the client." While acknowledging the commitment to assist clients in the comprehension of LLC, I claim that making sure clients understand such language is not only an attorney's task, but that developing basic LLC comprehension skills is also a moral obligation of clients qua citizens, provided they are capable to do so.

Depending on how a society understands legal rights, a moral obligation to undergo continuous democratic education, which includes an effort to develop language and communication skills (Gutmann and Ben-Porath 2014), can be defended. In case a society considers meaningful participation in the legal system a normative public good, here understood as a good from which everyone should benefit and nobody ought to be excluded, every citizen would enter a moral obligation to contribute to the maintenance of this good. Most commonly, citizens contribute to the legal system through taxes to support its functioning. Yet a responsible citizens' participation in the administration of justice also requires the development of language and communications skills, as the case of the jury system

exemplifies (Amaya 2008). The development of such skills is also crucial to maintain the costs of a legal system reasonable. While we might be inclined to think that people can make up for the individual choice of not having developed language comprehension skills by paying for expensive legal interpreters or for more hours of legal counseling, this view underestimates the extent to which we as citizens are embedded in a legal system and in how far the well-functioning of democracies is dependent on competent civil participation (cf. Paulo and Bublitz 2016). As Wszalek (2017) acknowledges, meaningful participation in the legal system requires language comprehension when waiving rights, entering pleas, making contracts, interacting with law enforcement officials, and maintaining an effective client-attorney relationship, among others. Timely, it is also important to underline that an understanding of the content of the constitution and human rights declarations helps individual voters to identify candidates who disregard these rights. An educated voter is less likely to be manipulated to make imprudent choices that will harm others (Brennan 2011).

To involve in lifelong learning to adequately fulfill civil duties has the added advantage that citizens will be more receptive to new concepts (Deakin Crick and Joldersma 2007), something we should not undervalue in a dynamic world that continuously faces new legal challenges. Such an acceptance attitude is essential in a language learning process (Ezcurdia 2004). It is much more likely that an attorney will succeed in instructing on LLC and clarifying doubts when the clients are continuously using and developing language and communication skills. Moreover, we have two major practical problems concerning reliable legal interpretation services. First, it will be difficult in practice to avoid that legal interpreters do not end up taking over part of the decision-making when people overly rely on their services and budgets fall short. Second, we may also question the client's receptive attitude and the attorney's professional conduct when age, gender, race, class and anti-intellectual prejudices negatively interfere the client-attorney relationship.

As long as we agree as a society that meaningful participation in the legal system is a normative public good, and that therefore every citizens should make her part in maintaining this good, we can justify the development of the necessary skill sets without relying on perfectionism, i.e. the governmental arbitrary favoring one lifestyle over another, in our case, favoring literacy over being indifferent towards language abilities. The prevention of free-riding in safeguarding constitutional rights justifies at least a moral obligation to continuously work on one's language and communication skills. Despite the strong opposition we can find in liberal societies to social policies that oblige citizens to develop and use certain skills (Brighouse 1998), the challenges Wszalek has identified in assisting people with language and communication impairments and difficulties in legal settings invite us to reconsider such type of moral obligations.

Even if those failing to develop their language capabilities are a small minority that will not affect the safeguarding of democratic institution and the administration of justice, the choice to not adequately develop those skills is still not only a personal matter. Wszalek (2017) notes that people with diminished language comprehension skills are overrepresented in the criminal justice system and that there could be a relationship between language comprehension and desirable legal

outcome. There are good moral reasons to object in accepting these higher incarceration rates as a fair punishment for the perceived imprudence of not having developed sufficiently language skills (provided people had a reasonable and fair chance to develop these). Such punishment has no relation to the omission of an action (i.e. developing a skill) and we can find much more useful ways to spend taxpayers' monies than keeping people in prison beyond justifiable terms.

Summarizing, to counter the social and natural challenges we face as a democracy of increasing complexity, we are more dependent on a civil society that is able to organize, analyze, debate and offer solutions using LLC. Putting oneself in a position in which one is obliged to free-ride from such civil efforts has to be morally condemned. Before diminishing the democratic character of society by making it too easy for people who could have developed adequate language skills to be represented or assisted by intermediaries who might not be as neutral as one may hope, we should be more open to reconsider policies that insist on continuous democratic education. Yet the development of LLC interpretation services continues to remain vital to include people with language and communication impairments.

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