

John Langshaw Austin: Law, common sense and language

By Kevin Tang

Introduction

John Langshaw Austin (26 March 1911 - 8 February 1960) was a mid-20th century philosopher of language who must not be mistaken for John Austin, the 19th century high priest of positivism. As an Oxford Don, J L Austin had only a few publications and he died young. His career was disturbed by WWII when he worked for the British Intelligence Corps on code breaking. He was highly decorated with an Order of the British Empire, the heroic French Croix de Guerre and the USA made him an officer of the Legion of Merit. However, his real eminence was as a thinker. After World War II, J L Austin returned to academic philosophy and became the White's Professor of Moral Philosophy at Oxford. J L Austin is famous for his philosophy of language and developing the theory of speech acts; the difference, if any, between what we say and what we do.

Common sense and the law intersect on many levels. Some would reduce the law to nothing more than common sense. As Lord Sumption said in an interview in the 1990s, when still at the London Bar appearing in *Ex Parte Pinochet Ugarte*,:

Legal practice needed a qualification that wasn't too difficult to obtain. Most law is only common sense with knobs on. Although we spend a lot of time looking through these ancient tomes, everyone knows what the answer is likely to be.

The irony is that common sense in the law is uncommon.

Language and common sense

In a nutshell, Austin asserted that we use language to do things as well as assert things. He wrote about the essence of language and its meaning- we often ask that others understand sentences and statements to mean a



particular thing, that is, we wish to elicit a certain reaction from the person we are speaking to. Common sense may help us along the way to understanding what we say to each other. This all might seem obvious. The common sense element comes in to assist with context and in understanding what a person says and means at a particular time.



Austin's account of the many ways in which we use language to describe things was explained in his most famous book *How to do Things with Words* (1955/1962). His central thesis was: philosophy reacts negatively to common sense because it does not appreciate the content of and commitments of common sense.

For example:

You are reading this page in a magazine. You are reading the words that have been printed on the page. Do you have any doubt that you are sitting down and reading this page?

Philosophers are suspicious of what common sense asserts is before their very eyes. Austin loved the example showing the difference between accidents and mistakes.

Two friends have the same dog (German short haired Pointer) and the dogs run around a small woodland daily at dusk. One day one of the friends decides that he doesn't like his dog anymore. He shoots it and it dies. To his shock and horror he discovers that he has shot his friend's dog. Has he shot the dog by accident or mistake? He goes to his friend and says 'I'm sorry I shot your dog by *accident*' or should that be *by mistake*?

Austin loved such an exquisite example of the difference in words and meanings and how the use of words such as 'accident' or 'mistake' can cast certain other meanings on how a dog was shot.

He used a many in his philosophical writings. The message is that perceptual experience is what it is, but the ways in which we use language might change our appreciation of it ie. what we understand another person to have said and what, in fact, the other person meant. Intended meaning of what we say, however

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subtle, is in the ear and mind of the listener.

Austin's views on common sense are contained in his book *Sense and Sensibilia* (1962). He said that our perceptual experiences - our experience of seeing, hearing, smelling, touching and tasting are all shaped or informed by other things which we experience.

Austin called these other common experiences 'drygoods' and in that stable of diurnal experiences he counted: hearing other's voices, seeing rivers, mountains, experiencing pictures on walls and on a screen in a cinema etc...

Other philosophers use illusions or delusions to justify or defend their view on which of our experiences can exist independently, of other worldly things we perceive. Hallucinations could create such an experience for you. To go back to our experience of reading a page in a magazine: you could be having an hallucination of the printed page in front of you. You would not be experiencing the printed page, it might be that you are experiencing nothing at all. You might merely seem to yourself to be experiencing something.

Austin's view asserts that the printed page shapes our experience. That is, the experience of seeing the printed page is of a different nature from the experience of having a hallucination about the printed page.

Austin was concerned about that last critical challenge: our inability to distinguish a genuine perceptual experience from its hallucinatory counterfeit experience. Austin argued: why can't it be that in a few cases, perceiving one sort of thing is exactly like perceiving another?

How do we conclude that those experiences must share the same nature? Things with different natures might appear like one another. For example, if I am told that an apple is different in nature from a piece of soap, do I expect that no piece of soap could look just like an apple? Or a golf ball shaped piece of soap is also an example. Austin did not say that things that appear



exactly alike must have the same nature.

Austin argued that traditional philosophical perplexities have arisen through a mistake. The mistake of taking as statements of fact, certain utterances which are either nonsensical or intended to be something quite different. That might be so. Common sense often comes to the rescue in order to understand the meaning intended.

Austin formulated some ingenious categories of utterances. The three types are:

1. A *locutionary act* is an utterance with a particular meaning, an act that can sometimes be classified by its content. If *I promise that I'll be home for dinner* or *I promise that I'll work late*, my actions are instances of two different locutionary acts. One with the content that *I'll be home for dinner*, and one with the content that *I'll work late*.
2. An *illocutionary act* is classifiable not only by its content but also by its force (as a case of stating, warning, promising etc...). If I promise that *I'll be home for dinner* and later state that *I'll be home for dinner*, my actions are instances of the same locutionary act: both actions involve the content that *I'll be home for dinner*. However, my actions are instances of different illocutionary acts. One has the force of a promise and the other has the force of a mere statement.
3. A *perlocutionary act* is an act classifiable by its 'consequential effects upon the feelings, thoughts, or actions of the audience, or of

the speaker, or of other persons'. If you warn that the ice is thin, in an illocutionary act, then i might achieve a variety of perlocutionary effects as a result. Eg. I may persuade someone to avoid it, or I might encourage someone to take a risk.

For Austin distinctions like these meant everything. There was failure to acknowledge the importance of the *illocutionary act*. When attempting to treat stating something as a *locutionary act* rather than an illocutionary act, as something that is achieved just by saying a meaningful sentence. For example '*I promise that I'll be home for dinner*', can be treated as a way of stating something about oneself (a *locutionary act*), or a way of promising something (a *perlocutionary act*). Austin also said that you can fail in stating something not because you use a nonsensical sentence, but because the right conditions for comprehension are not present.

Conclusion

Austin's broad approach to philosophy of language and action continues to fascinate. Even philosophers who do not like Austin's claims and arguments about language and common sense are likely to acknowledge the distinctions that he drew illuminate thought on the subtleties of common sense. Common sense does serious work in the lives of lawyers, especially when interpreting the meaning of what is said. Echoing Jonathan Sumption QC, as his Lordship was, the essence of the Law is common sense.