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# 'Plain' legal language by courts: mere clarity, an expression of civic friendship or a masquerade of violence?



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## ABSTRACT

In the Netherlands over the last decade, a range of initiatives have been launched by individual courts, mostly on their own initiative, to make court rulings more comprehensible to average citizens. At the outset, at least from the 'internal point of view' of legal practitioners, it might seem striking that these initiatives predominantly address the comprehensibility of legal language as an exclusively linguistic matter, independent of any jurisprudential stance as to what 'doing law' should consist of in this context. However, this linguistically-oriented approach is far from eccentric: it dovetails nicely with the dominant approach adopted by the plain legal language movement to make the law more comprehensible to citizens. Against the background of a language as activity view, this article analyses and evaluates the use of comprehensible legal language by courts. To do this, an integrative legal–ethical approach is employed, according to which the content and style of court rulings are inextricably linked. More specifically, the Aristotelian concept of civic friendship is introduced as having potential explanatory force for the practice of plain legal language use by Dutch courts. With reference to actual court rulings, it is argued that this concept allows us to conceive of a 'plain' court ruling as a potential expression of a civic-friendly attitude by the judge. In addition, the main dilemmas that civic-friendly judges will be likely to face when writing a comprehensible court ruling are identified. Finally, and on a more critical note, a fundamental concern is raised regarding the practice of plain legal language use by Dutch courts.

**KEYWORDS** Courts; plain legal language; legal language as activity; relation between content and style; civic friendship; empathy; law and violence

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## 1. Introduction

In the Netherlands, courts have increasingly committed themselves to using legal language that is comprehensible to average citizens.<sup>1</sup> In 2004, a nationally coordinated criminal law project, *Promis*,<sup>2</sup> was launched. Its purpose was to ‘improve the communication between the criminal court, the parties involved and society at large’ through clearly expressed sentencing decisions.<sup>3</sup> More than a decade later, a range of similar initiatives were launched by individual courts, mostly on their own initiative. For instance, in 2017, the Amsterdam District Court launched the WIEB<sup>4</sup> project, in which administrative judges receive feedback from linguists on the clarity of their rulings to improve comprehensibility.<sup>5</sup> In 2016, the Administrative Jurisdiction Division of the Council of State launched the project *Heerlijk Helder* to increase comprehensibility by, inter alia, improving the structure of the rulings and by avoiding technical legal terms or, if this is not possible, by offering clear definitions of these terms.<sup>6</sup> Most recently, the Dutch Supreme Court committed itself to ‘plain legal language’ – for instance, by avoiding Latinisms and by using shorter sentences. Concept rulings are read aloud to colleagues, and those who cannot finish a particular sentence without having to breathe again have to make it shorter.<sup>7</sup> Finally, since 2017, an annual national prize for best ‘plain legal language ruling’ (*Klare Taal Bokaal*) has been awarded to encourage judges to write in plain legal language. These initiatives indicate that, within the Dutch judiciary, serious efforts are made to make court rulings more comprehensible to average citizens.

At the outset, at least from the ‘internal point of view’ of legal practitioners, it might seem striking that these initiatives predominantly address the comprehensibility of court rulings as an exclusively linguistic matter, independent of any jurisprudential stance as to what ‘doing law’ should consist of in this context. However, this linguistically-oriented approach is far from eccentric: it dovetails nicely with the dominant

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<sup>1</sup>For a brief, incomplete overview of some of the initiatives, see the website of the Dutch Judiciary: De Raad voor de Rechtspraak, ‘De uitspraak 2.0: de rechtspraak en klare taal. Veel initiatieven binnen de Rechtspraak voor begrijpelijke uitspraken’, 20 November 2018, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/De-uitspraak-20-de-rechtspraak-en-klare-taal.aspx> (last accessed at 20 November 2021).

<sup>2</sup>An acronym for ‘Project motiveringsverbetering in strafvonnissen’ (Project for improving the explanation/justification of sentencing decisions).

<sup>3</sup>De Rechtspraak, ‘Eindrapport Pilot Promis: Project motiveringsverbetering in strafvonnissen’ (2005), 2.

<sup>4</sup>WIEB is an acronym for *Wat-ik-eigenlijk-bedoel* (What I actually mean). See Raad voor de Rechtspraak, ‘Project Wieb—Vragen en Antwoorden’ 201.

<sup>5</sup>This format is also used in the Rechtbank Midden-Nederland (District Court Midden-Nederland).

<sup>6</sup>Geerke van der Bruggen, ‘Een Kleine Stap voor een Rechter, een Reuzensprong voor de Rechtspraak: Afdeling Bestuursrechtpraak Maakt Werk van Begrijpelijke Uitspraken’ (2016) 6 *Jurisprudentie Bestuursrecht* 109.

<sup>7</sup>André Verburg, ‘De Rechter tussen Straattaal en Jargon: Op Weg Naar Begrijpelijke Uitspraken’ (2018) *Arq* 170.

approach adopted by the plain legal language movement to make the law more comprehensible to citizens.

Against the background of a language as activity view, this article analyses and evaluates the use of comprehensible legal language by Dutch courts. To do this, an integrative legal–ethical approach is employed, according to which the content and style of court rulings are intimately linked. More specifically, the Aristotelian concept of civic friendship is introduced as having potential explanatory force for the practice of plain legal language use by Dutch courts.

This article is structured as follows. First, I situate the development of plain legal language use by Dutch courts in the broader context of the plain language movement, relating this development to two different views of language: language as representation and language as activity (section 2). Next, against the background of the language as activity view, I propose an integrative approach according to which the content and style of court rulings are intimately linked. I introduce the Aristotelian concept of civic friendship as particularly apt to make sense of the relational, empathetic, and personal dimensions involved in plain court rulings (section 3). Next, I illustrate the potential explanatory force of this framework by means of three Dutch court rulings, identifying the main dilemmas judges may face when trying to write in a civic-friendly, comprehensible way (section 4). Finally, on a more critical note, I will address the concern that civic-friendly, comprehensible legal language in court rulings is liable to mask the potentially violent, unjust, and arbitrary character of legal decisions (section 5).

## 2. Plain legal language movement and two visions of (legal) language

As suggested in the introduction, the initiatives within the Dutch judiciary can be seen as forming part of the plain legal language movement. This movement derives from an old intellectual tradition in which a variety of authors – such as Thomas Jefferson, Jeremy Bentham, and Charles Dickens – ridiculed and criticised legal language for its unnecessary complexity and hence incomprehensibility to average citizens.<sup>8</sup> Indeed, concern over the law’s complexity and incomprehensibility, as Zódi observes, began in the Enlightenment, when the interests of ‘ordinary citizens entered the historical stage. Since

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<sup>8</sup>For a brief overview of the history of this movement, see Zsolt Zódi, ‘The Limits of Plain Legal Language: Understanding the Comprehensible Style in Law’ (2019) 15 *International Journal of Law in Context* 246, 248–250; Mark Adler, *The Plain Language Movement* (Oxford University Press 2012); and Anna Alsina Naudi, ‘Endeavours Towards a Plain Legal Language: The Case of Spanish in Context’ (2018) 3 *International Journal of Legal Discourse* 235.

then, it has been an ongoing complaint that legal texts and legal jargon cause problems for the average citizen'.<sup>9</sup>

An important catalyst for the development of the plain legal language movement was the appearance in the 1960s of Melinkoff's *The Language of the Law*<sup>10</sup> and the rise of the consumer movement, which focused on empowering consumers against companies by, for instance, demanding more comprehensible terms of contract.

The plain legal language movement started in English-speaking countries (the US, the UK, and Australia). In the last two decades, it has also gained traction in Latin America and in European countries, such as Sweden (*Klarspråksgruppen*), Italy (*Progetto Chiaro!*), and the Netherlands (*Klare Taal Beweging*).<sup>11</sup> Whereas the focus has generally been on written legal discourse – such as legal documents and legal sentences – attention has also been paid to the oral use of legal language, such as oral sentences provided by judges.<sup>12</sup>

Put simply, the plain legal language movement combines a critical and a constructive project with the aim of giving access to justice to average citizens, thereby addressing what Fuller defines as a necessary component of law: that it must be understandable to those subject to it.<sup>13</sup> Regarding the critical project, proponents have identified a variety of features of legal language ('legalese') that make it difficult for lay people to comprehend. The law's 'strange style' is emphasised<sup>14</sup>: its complexity, its verbosity, its vagueness, its archaic or rarely used lexical items, and its complicated grammar.

In the literature, these features have occasionally been understood as techniques to consolidate social power and privilege. As Mellinkoff puts it: 'What better way of preserving a professional monopoly than by locking up your trade secrets in the safe of an unknown tongue?'<sup>15</sup>

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<sup>9</sup>Zódi, 'The Limits of Plain Legal Language: Understanding the Comprehensible Style in Law', 248.

<sup>10</sup>David Mellinkoff, *The Language of the Law* (Little, Brown and Co. 1963).

<sup>11</sup>This paper does not offer an extensive overview of plain language movements or their many current manifestations as initiatives in legal institutions worldwide. For a recent extensive overview of current plain language projects in law, see Naudi, 'Endeavours Towards a Plain Legal Language: The Case of Spanish in Context'.

<sup>12</sup>In the Netherlands, the importance of courts using plain legal language has also been emphasised for oral sentences. See Bart van Meegen, 'Mondeling uitspraak: Een onderschatte kans?' (2018) 6 *Trema* <[https://trema.nvvr.org/uploads/documenten/downloads/2018-06\\_van\\_Meegen.pdf](https://trema.nvvr.org/uploads/documenten/downloads/2018-06_van_Meegen.pdf)> (last accessed November 20 2021).

<sup>13</sup>Lon L. Fuller, *The Morality of Law* (Yale University Press 1965) 39.

<sup>14</sup>Robert W. Benson, 'The End of Legalese: The Game is Over' (1984) 13 *New York University Review of Law and Social Change* 519, 523. Benson identifies the following categories in terms of which the 'strangeness' of legalese can be described: vocabulary, syntactic features, organization, and style.

<sup>15</sup>Mellinkoff, *The Language of the Law* 101. Benson makes a similar point: '[I]t is obvious to all of us that lawyers' language is power exercised by a power elite and that the stakes in it are very real and very high.' Benson, 'The End of Legalese: The Game is Over' 520; Anne Wagner and Sophie Cacciaguidi-Fahi, 'Searching for Clarity' in Anne Wagner and Sophie Cacciaguidi-Fahi (eds), *Legal Language and the Search for Clarity: Practice and Tools* (Peter Lang 2006) 20.

In addition to this critical project, the plain language movement's constructive project offers concrete proposals to improve the comprehensibility of legal language.<sup>16</sup> For instance, Mellinkoff, in addition to his critique of highly complex legal language, which he pejoratively pigeonholes as 'lawsick', offers guidelines for plain legal writing.<sup>17</sup> Similarly, Garner suggests that lawyers do the following: write for an ordinary reader, not a 'mythical judge who might someday review the document';<sup>18</sup> avoid needless words, such as 'shall';<sup>19</sup> avoid doublets<sup>20</sup> and triplets;<sup>21</sup> try to use the active voice;<sup>22</sup> and keep sentences short.<sup>23</sup> Since the rise of the plain language movement, numerous how-to books, training programmes, courses and other services have been introduced to train legal professionals in clear writing.

As already mentioned in the introduction, in the plain legal language movement, clear and comprehensible writing is predominantly understood as a linguistic matter: the comprehensibility of law can be achieved by removing the linguistic peculiarities of conventional legal language and by deploying a range of clearly definable linguistic rules. Zódi (critically) paraphrases the plain language project as follows: 'If we manage to eliminate surplus words, use verbs instead of nominalisations, prefer the active voice, use shorter sentences, arrange words carefully (Wydick, 2005), avoid 'archaic and inflated' vocabulary and poor organisation (Kimble, 2006), etc., the law will become comprehensible.'<sup>24</sup> This idea that legal reality can be clearly communicated to average citizens by means of using the right language is also expressed in the fact that the plain language movement assigns a crucial task to linguists and communication experts, who are to identify 'plain language rules that will help one choose the construct that will to the greatest extent facilitate rapid comprehension'.<sup>25</sup>

As such, it is not surprising that the project of the plain language movement has sometimes been connected to a representational theory of language – or, in a more critical vein, to what Louis Wolcher, following the later

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<sup>16</sup>Wagner and Cacciaguidi-Fahi, 'Searching for Clarity', 20.

<sup>17</sup>For instance, one such guideline reads as follows: 'To simplify legal writing, first get the law right. You can't simplify by omitting what the law requires or including what the law forbids.' David Mellinkoff, *Legal Writing: Sense and Nonsense* (West Group 1982) 100.

<sup>18</sup>Bryan A. Garner, *Legal Writing in Plain English* (University of Chicago Press 2001), 10.

<sup>19</sup>*ibid.*, 125.

<sup>20</sup>*ibid.*, 55–57.

<sup>21</sup>*ibid.*

<sup>22</sup>*ibid.*, 37.

<sup>23</sup>Garner, *Legal Writing in Plain English*, 110.

<sup>24</sup>Zódi, 'The Limits of Plain Legal Language: Understanding the Comprehensible Style in Law', 249.

<sup>25</sup>It is not uncommon for proponents of plain language movements to be linguists selling their plain language expertise on the market. Hence, the question has been raised as to what extent professional interests may influence (academic) discourse on plain legal language. See Christopher Balmford, 'Plain Language: Beyond a Movement' <<https://www.plainlanguage.gov/resources/articles/beyond-a-movement/>> (last accessed on November 21 2021).

Wittgenstein, dubbed a ‘magical view’ of language.<sup>26</sup> On this view, it is assumed that all linguistic signs stand for a particular object and that therefore (almost) all words have a determinate meaning. As Stark puts it: ‘The plain language school and the advocates of clarity [...] seem to accept the representational theory of language: that every unit of language reflects and expresses a real entity in a one-to-one relationship.’<sup>27</sup>

From the language as representation perspective, it makes in any case perfect sense that a major challenge faced by the proponents of plain legal language has been to convince sceptics that legal reality can be adequately represented in comprehensible terms – that is, that clarity for the average person will not come at the cost of legal accuracy. For instance, in an effort to convince the sceptics, Kimble has argued that ‘most of the time clarity and precision are complementary goals.’<sup>28</sup>

The comprehensibility of legal language from the perspective of language as representation will not be further addressed here.<sup>29</sup> This article’s approach to plain legal language in court rulings is inspired by the language as activity view, which the later Wittgenstein developed in his *Philosophical Investigations*. Rejecting the aforementioned magical view of language, Wittgenstein came to conceive of language as an activity, as ‘speech’, emphasising the different functions words have in different settings. In the words of Pitkin: ‘Wittgenstein explores the idea that language is founded on speaking and responding to speech, and that these things are things we *do*.’<sup>30</sup> Expressions by means of language are ways of knowing how to do certain things. As Wittgenstein famously puts it, ‘words are also deeds’.<sup>31</sup> To get a sense of how words are used, Wittgenstein invites us to ask ourselves, ‘On

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<sup>26</sup>Louis Wolcher, ‘How Legal Language Works’ (2006) 2 *Unbound: Harvard Journal of the Legal Left* 113. It is notable that proponents of plain legal language tend to (ab)use the early Wittgenstein to support their claim that language can express the legal reality clearly (I say ‘(ab)used’ because the reference does not do justice to the import of the philosophy of the early Wittgenstein). For instance, Peter Butt, an influential member of the plain legal language movement, explicitly refers to Wittgenstein when he states that ‘Everything that can be put into words can be put clearly’. Peter Butt, ‘Legalese Versus Plain Language’ (2001) *Amicus Curiae* 28, 32. Van der Bruggen, a proponent of the plain legal language movement in the Netherlands, also refers to Wittgenstein when stating that ‘impenetrability is not necessary at all. For, in the words of the philosopher Wittgenstein: “Everything that can be said can be said clearly.”’ Geerke van der Bruggen, ‘In de Bepanking Toont zich de Meester: Negen Kenmerken van Uitspraken in Klare Taal’ (2018) 10 *Tijdschrift Bestuursrecht* 68, 68.

<sup>27</sup>Jack Stark, ‘Should the Main Goal of Statutory Drafting Be Accuracy or Clarity?’ (1994) 15 *Statute L Rev* 207, 211.

<sup>28</sup>Joseph Kimble, ‘Answering the Critics of Plain Language’ (1994–1995) 5 *Scribes J Leg Writing* 51, 53.

<sup>29</sup>Due to the focus of this article, the treatment in these paragraphs is far from an in-depth study of the implied theory of language at work in the plain language movement.

<sup>30</sup>Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought* 36; Ludwig Wittgenstein, *Philosophical Investigations* (Blackwell 1953) para 546.

<sup>31</sup>Wittgenstein, *Philosophical Investigations*, para 546. The idea of language as ‘deed’ purportedly led Austin to develop his speech act theory. In *How to Do Things with Words*, Austin argues that certain words and phrases, which he calls ‘performatives’ (e.g., ‘I bet you 100 euros that we will face a lock down again soon’), are a way of ‘doing something rather than merely saying something’; see J. L. Austin, *How to Do Things with Words* (Harvard University Press 1975) 222.

what occasion, for what purpose, do we say this? What kinds of actions accompany these words (think of a greeting)? In what scenes will they be used; and what for?<sup>32</sup>

Importantly, from this perspective the practice of using words is not merely a subjective matter: it is rule-bound, guided by an often-implicit social understanding of norms of appropriateness. This normativity is embedded in what Wittgenstein calls a ‘language game’.<sup>33</sup> Language games are not practices that convey meaning: rather, they are intimately connected to all kinds of linguistic and non-linguistic behaviour – that is, with when and how to use certain words.<sup>34</sup> These language games are part of a ‘form of life’.<sup>35</sup> As Wolcher summarises it: ‘[E]very linguistic practice is woven into the fabric of the particular human activity that gives it its *raison d’être*.’<sup>36</sup>

Of course, the language as activity approach to legal language can also be found in the rhetorical tradition in legal scholarship – at least in that strand that does not conceive of rhetoric as merely the art of persuasion but as a highly relational, social activity.<sup>37</sup> Within this tradition, court rulings are in any case not to be read ‘merely as “results”, but as exercises precisely in *ethos* and *pathos*’.<sup>38</sup>

Hence, from a more pragmatic perspective, plain legal language is not to be understood as the outcome of a set of policy projects where, with the help of linguistic experts, the fog of legalese is lifted to make the ‘pure’ realm of law accessible to citizens. Rather, plain legal language is to be understood as legal professionals doing particular things with words<sup>39</sup> in specific language regions or professional ‘forms of life’. Think of legislation, legal drafting, and the writing of court rulings, all of which involve different implicit norms of appropriateness and different intentions on the part of the participants. To deepen the debate and to escape from the ‘clarity versus accuracy’ dichotomy, from a law as activity perspective it would for instance be interesting to see how the jurisprudential stances and

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<sup>32</sup>Wittgenstein, *Philosophical Investigations*, para 489.

<sup>33</sup>*ibid*, para 7.

<sup>34</sup>Pitkin, *Wittgenstein and Justice: On the Significance of Ludwig Wittgenstein for Social and Political Thought* 82. This dimension—often ignored as irrelevant to understanding language—is, according to Pitkin, ‘as regulated and systematic as any other aspects of our natural language.’ *ibid*.

<sup>35</sup>Wittgenstein, *Philosophical Investigations*, para 23.

<sup>36</sup>Louis Wolcher, ‘How Legal Language Works’, 95. Hence, the simple language of the builders in Wittgenstein’s example is inextricably linked to their simple way of living: ‘[C]alling out the names of the building materials they require for a job is all the language they need to be able to engage in their undemanding form of life.’ *ibid*.

<sup>37</sup>See for a brief overview of the rhetorical tradition within legal scholarship: Maksimilian del Mar, *Artefacts of Legal Inquiry* (Hart Publishing 2020), 79–88. Unfortunately, due to the constraints of this article, a thorough analysis of the use of plain legal language by courts from the perspective of the rhetorical tradition will need to be conducted elsewhere.

<sup>38</sup>*ibid*, 84.

<sup>39</sup>*cf* Joseph Kimble, *Lifting the Fog of Legalese* (Carolina Academic Press 2006).



professional ‘visions’ of the participants in this debate over what ‘doing law’ in a particular context is all about influences their ideas about how the law should be communicated.

### 3. Plain legal-language use by Dutch courts as part of a legal-ethical practice: the judge as civic friend?

Above, I proposed to address judges’ use of comprehensible legal language from a language as activity view, in which language use is conceived as embedded in different ‘forms of life’ or language games. By conceiving of language use as intimately linked with an often implicit understanding of what a particular practice is aiming at, this integrative perspective invites us to examine which legal–ethical stances or attitudes may be implicated in the practice of judges using comprehensible legal language. What is the best way to make sense of the concrete judicial practice in which judges write in comprehensible legal language?

In addressing this question, it is helpful to engage with a rich tradition both in ethics and in law exploring the relation between content and style. According to Nussbaum, discussing this relation in the context of ethics, ‘[s]tyle itself makes its claims, expresses its own sense of what matters’.<sup>40</sup> In a similar vein, Williams states that ‘to discover the right style is to discover what you are really trying to do’.<sup>41</sup> Also Murdoch emphasises the intimate relation between a person’s substantive views on what matters from an ethical point of view and *how* a person communicates.<sup>42</sup> According to Murdoch, ‘words are spirit’.<sup>43</sup> The texture of a man’s being or the nature of his personal vision is expressed, among other things, by ‘their mode of speech or silence, or choice of words’.<sup>44</sup>

This alleged inherent, intimate relation between style and content has also been discussed in the legal context – most notably, of course, in the discipline of law and language.<sup>45</sup> For instance, certain criticisms of formalism, such as expressed by Frank, Posner and Nussbaum suggest a correlation between judges who have internalised a formalist approach to law and writing in a

<sup>40</sup>Martha C. Nussbaum, *Love’s Knowledge: Essays on Philosophy and Literature* (Oxford University Press 1990) 3.

<sup>41</sup>Bernard Williams, *Morality: An Introduction to Ethics* (Cambridge University Press 1972), 19.

<sup>42</sup>Iris Murdoch, ‘Vision and Choice’ in Peter Conradi (ed), *Existentialists and Mystics: Writings on Philosophy and Literature* (Penguin Books 1997), 80–81.

<sup>43</sup>Iris Murdoch, ‘Salvation by Words’ in Peter Conradi (ed), *Existentialists and Mystics: Writings on Philosophy and Literature* (Penguin Books 1997), 241.

<sup>44</sup>Murdoch, ‘Vision and Choice’, 80.

<sup>45</sup>For an overview of the different approaches to studying the relation between law and language, see Penelope Pether, ‘Language’ in Austin Sarat, Matthew Anderson and Cathrine O. Frank (eds), *Law and the Humanities: An Introduction* (Cambridge University Press 2010).

legal style that is difficult to comprehend.<sup>46</sup> This link is most explicitly drawn by Posner. According to Posner, formalism emphasises the ‘logical, impersonal, objective, constrained character of legal reasoning’ and is often (and thus not necessarily) attended by a ‘pure style’:<sup>47</sup> impersonal, internally oriented to the professional group of judges and largely drawing on archaic jargon and legal language that is used in the past. A pure style according to Posner ‘uses technical legal terms without translation into everyday English, quotes heavily from previous judicial opinions, includes much detail concerning names, times, and places, complies scrupulously with whatever are the current conventions of citation form, avoids any note of levity, conceals the author’s personality, prefers familiar and ready-made formulations to novelties’.<sup>48</sup>

Despite their jurisprudential differences, Frank, Posner and Nussbaum all believe that judges should not address legal cases from a detached, abstract or technical point of view. Rather, judges should focus on the *human* realities at stake – be they Posner’s ‘world[s] of action’,<sup>49</sup> Nussbaum’s ‘people and their actual experiences’<sup>50</sup> or Frank’s ‘unique features of the particular case’.<sup>51</sup> Importantly, they link such a human reality oriented jurisprudential attitude to a particular style, that is, a style that is comparable (at least to some degree) to that of a literary artist, such as a poet or a novelist, which they see as best equipped to address and respond to human realities.<sup>52</sup> According to Frank, ‘We may well want judges “with a touch in them of the qualities which make poets” who will administer justice as an art and feel that the judicial process contains creative skill’.<sup>53</sup>

So conceived, it could be argued that one way of understanding the actual practice of judges using comprehensible legal language is to see it as part of a legal–ethical practice in which judges try to meaningfully address the human reality of a case. However, as suggested above, the reasons that such a human reality–oriented jurisprudential stance may come with, and is likely to be expressed in, language comprehensible to citizens remain largely implicit – not least because Frank and Nussbaum do not explicitly address the topic of the comprehensibility of court rulings in their discussions of good judging. At the risk of oversimplification, I will therefore try to make these reasons more explicit.

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<sup>46</sup>Jerome Frank, *Law and the Modern Mind* (first published 1931, Transaction Publishers 2009); Richard A Posner, ‘Judges’ Writing Styles (And Do They Matter?)’ (1995) 62 *University of Chicago Law Review* 1420; Martha C. Nussbaum, *Poetic Justice: the Literary Imagination and Public Life* (Beacon Press 1995);  
<sup>47</sup>Posner, ‘Judges’ Writing Styles (And Do They Matter?)’, 1433. As he puts it: ‘[T]he pure style fits naturally with formalist content.’

<sup>48</sup>*ibid.*, 1432.

<sup>49</sup>Posner, ‘Judges’ Writing Styles (And Do They Matter?)’, 1435.

<sup>50</sup>Nussbaum, *Poetic Justice: The Literary Imagination and Public Life*, 90.

<sup>51</sup>Frank, *Law and the Modern Mind*, 165.

<sup>52</sup>E.g. Nussbaum, *Poetic Justice: the Literary Imagination and Public Life*, 79–121.

<sup>53</sup>*ibid.*, 181.

First, if a judge is disposed to genuinely address human reality, it will be likely that in their ruling they will adopt a *narrative* style that adequately describes the particular at stake and as such honours the logic of everyday experience and on that account will be likely to be comprehensible for average citizens.<sup>54</sup> It may be for this reason that Nussbaum praises the way in which Posner, as a presiding judge in a case on sexual harassment at the workplace, narrates the facts in his judgement. Posner does so, in the words of Nussbaum, ‘in more detail than is strictly necessary’, ‘position[ing] himself as someone who [...] can imagine the likely impact of this conduct on a female employee’.<sup>55</sup>

Second, judges who are committed to address the human reality of the legal case will be likely to make use of thick value concepts, which are to be contrasted from thin value concept – such as ‘right’, ‘good’, ‘just’ or ‘reasonable’. Thick value concepts because of their considerable *descriptive* content, are well-equipped to address concrete particulars, such as a situation, a person or an act.<sup>56</sup> In the legal context, relevant thick concepts include abuse, neglect, brutality, (un)reliability, robbery, murder, damage, deceit, rioting, discrimination, abduction, hard-handedness, care, love, carefulness, neediness, danger, loyalty, insult, suffering, well-being and so on. For the average citizen, these concepts are relatively easy to comprehend, as they address common human concerns that are part and parcel of shared ‘forms of life’.<sup>57</sup>

Third, at least this link is made by Posner, a judge who focuses on addressing the human reality at stake in the legal case will arguably be more comprehensible because judges will deploy a more ‘personal, direct, and conversational style’<sup>58</sup>, expressing themselves as fellow citizens who happen to be fulfilling a particular institutional role.

However, although a human reality-oriented jurisprudential stance, as opposed to a formalistic one, may be more conducive to comprehensible

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<sup>54</sup>Here I draw on Aristotle’s notion of the particular as a fact that can be adequately discerned by means of experience; cf Daniel T Devereux, ‘Particular and Universal in Aristotle’s Conception of Practical Knowledge’ (1986) 39 *The Review of Metaphysics* 483; Martha C Nussbaum, ‘The Discernment of Perception: An Aristotelian Conception of Private and Public Rationality’ in Martha C Nussbaum, *Love’s Knowledge: Essays on Philosophy and Literature* (Oxford University Press 1990).

<sup>55</sup>Nussbaum, *Poetic Justice: The Literary Imagination and Public Life*, 10.

<sup>56</sup>Because of their descriptive content, Williams famously described thick concepts as ‘world-guided’, meaning that the world imposes constraints on their use. Bernard Williams, *Ethics and the Limits of Philosophy* (Fontana Press 1985), 14.

<sup>57</sup>Obviously, legal orders also contain specifically *legal* thick value concepts. These have more technical meanings and are therefore more difficult to comprehend for everyday citizens. Think of concepts such as gross negligence, infringement, culpable homicide, trespass, hate speech, libel, abusive process, fair trial, disability discrimination, distortion of competition, good faith, constitutional, and tortious. See Iris van Domselaar, ‘The Perceptive Judge’ (2018) 9 *Jurisprudence An International Journal of Legal and Political Thought* 71; David Enoch and Kevin Toh, ‘Legal as a Thick Concept’ in Wil Waluchow and Stefan Sciaraffa (eds), *Philosophical Foundations of the Nature of Law* (Oxford University Press 2013), 264.

<sup>58</sup>Posner, ‘Judges’ Writing Styles (And Do They Matter?)’, 1429.

legal language, it is a serious question whether it can also adequately account for the communicative and relational dimension of court rulings. That is, the primary focus of this stance is arriving at the right decision via human reality-oriented legal reasoning; as such it does not account for why a concrete ruling should also be clearly communicated to the relevant audiences.

Moreover, a human reality-oriented jurisprudential stance fails to explain the fact that judges may see an intimate link between writing a comprehensible court ruling and making the outcome acceptable to the losing party. For instance, according to Verburg, a Dutch judge and a passionate advocate of plain language, the need to write comprehensible rulings is not in itself related to language at all, but to contemporary authority: '[I]n our individualised society a citizen wants a judge to be interested in him, not as a name in a case-file, but as a valuable partner of this society. He wants the judge to listen to him and to show that he is making an effort to establish a professional relationship with him. Modern authority is personal, relational, communicative and responsive.'<sup>59</sup>

Hence, although a human-oriented stance may encourage the use of comprehensible legal language, it does not yet incorporate the relational dimension of judges communicating in a comprehensible way with legal parties who are directly affected by the decision and who have a specifically personal interest in the outcome. In order to grasp this relational and communicative dimension of comprehensible court rulings Aristotle's concept of civic friendship might be of value. According to Aristotle, friendship is a relation in which the parties have a genuine and effective concern for one another.<sup>60</sup> It is characterised by mutual well-wishing (*eunoia*) or 'good will between reciprocating parties'.<sup>61</sup> Each party is fully aware of this well-wishing, which fosters a sense of mutual trust.<sup>62</sup> Well-wishing means 'that the fact that the other person needs or wants, or would be benefited by something is taken by the agent as by itself a reason for doing or procuring that something'.<sup>63</sup> In a political community 'animated by civic friendship, each citizen has a certain measure of interest in and concern for the well-being of each other citizen just because the other *is* a fellow-citizen'.<sup>64</sup>

So, if we would conceive of adjudication as a legal-ethical practice in which judges aim to fulfil their judicial role as a civic friend this would in

<sup>59</sup>Verburg, 'De Rechter tussen Straattaal en Jargon. Op Weg Naar Begrijpelijke Uitspraken', 169.

<sup>60</sup>*ibid.*, 312.

<sup>61</sup>Aristotle, *Nicomachean Ethics* (Oxford University Press 2002), 1155b33–34. For this discussion I largely draw upon my earlier work on the value of the concept of civic friendship for the conceptualisation of the moral merits of adjudication. See: Iris van Domselaar, 'Moral Quality in Adjudication. On judicial Virtues and Civic Friendship' (2015) 44 *Netherlands Journal of Legal Philosophy* 24.

<sup>62</sup>Aristotle, *Nicomachean Ethics*, 1155b33–34.

<sup>63</sup>John M. Cooper, 'Aristotle on the Value of the Concept of Civic Friendship' in John M. Cooper (ed), *Reason and Emotion: Essays on Ancient Moral Psychology and Ethical Theory* (Princeton University Press 1999), 314.

<sup>64</sup>John M. Cooper, 'Political Animals and Civic Friendship' in John M. Cooper (ed), *Reason and Emotion: Essays on Ancient Moral Psychology and Ethical Theory* (Princeton University Press 1999), 371.

any case entail that they would have an empathetic attitude as to the concrete good at stake for the citizen(s) concerned. An empathetic judge will pursue that good as far as is compatible with their judicial role, thereby potentially using language that is apt to address the actual case at hand, using a narrative and literary style, and a complex mixture of legal and non-legal concepts, which stem from discourses used in different ‘forms of life’, for which different norms of appropriateness exists as to their use.

In addition, a judge, in taking seriously the needs and concerns of the actual litigating parties as subjects of the actual court ruling, will deliberately communicate with them in such a way that they comprehend and accept the ruling. Conversely, this view implies that, when a judge writes a court ruling that the average citizen cannot relate to or understand, they may be engaging in an act of civic unfriendliness.<sup>65</sup>

Importantly, this does not mean that each and every plain court ruling should be understood as an expression of civic friendship by the judge. Rather, the claim is that the concept of civic friendship has explanatory force for a particular use of comprehensible legal language by courts. In the next section, I support this claim with a discussion of three Dutch court rulings written in comprehensible legal language.<sup>66</sup>

#### 4. Court rulings as an expression of civic friendship: examples and some judicial dilemmas

The first example involves a juvenile judge who is deciding on the main residence of a child whose divorced parents are, after several years, still in conflict over their children’s care arrangements. In the ruling, the judge states that, because the child has expressed the desire to be heard, she will direct herself directly to the child. The judge: ‘[Y]ou and I have spoken. You then explained to me that you want to live with your father because you have the feeling that you are missing something. You don’t know

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<sup>65</sup>Cooper, ‘Aristotle on the Forms of Friendship’, 317. Importantly, friendship in this Aristotelian sense does not exclusively refer to the modern understanding of friendship as an intimate, highly personal relationship. It covers relations ranging from deep and lasting to shallow and transitory and also refers to professional or institutional relationships. Aristotle distinguishes three kinds of friendship: advantage friendship, pleasure friendship and character friendship. Advantage friendship works to the personal advantage of the friends involved, pleasure friendship is based on the pleasure it gives the friends and character friendship is based on goodness of character; cf Aristotle, *Nicomachean Ethics*, 1156a6–1156b32. Aristotle understands civic friendship as a species of advantage friendship, the advantage being the overall good that living together in society brings to each citizen. See for this point: Van Domselaar, ‘Moral Quality in Adjudication. On judicial Virtues and Civic Friendship’, 24.

<sup>66</sup>Of course, a language as activity approach to courts’ use of comprehensible legal language requires a more embedded way of describing such use. Ideally it should combine the following research: 1) desk research and case law research, 2) ethnographic, participatory research on how judges communicate in court with the affected legal parties, 3) qualitative research on how judges who use comprehensible legal language themselves understand the link between their use of language and their idea of what doing law amounts to in this specific context and 4.) qualitative research into the experience of citizens involved as receivers of the judge’s (plain) language.

what you're missing, but you think it would help to move in with your father.'<sup>67</sup>

Here, the judge, in making a decision about a crucial aspect of the child's life, addresses the child in a highly conversational style, using predominantly natural language. In doing these things, the judge expresses the relational dimension of the ruling.

Moreover, the comprehensibility of the judge's language appears intimately linked to the judge's attempt to empathise with the child, to understand how this situation must feel from the child's perspective. By using natural language and a conversational style, the judge gives expression to this empathetic approach. The judge acknowledges the child's troublesome situation by using concepts pertaining to family life, a non-legal 'form of life': 'Parents, in the sense of two adults acting together in your interest, you haven't had them for a long time. You have a father and a mother who seem to agree on nothing, who manage to get into conflict on everything, and you are somewhere in between. You try to prevent problems, to calm conflicts and above all not to make anyone feel like you are taking sides. You put your own interests and your own development last.'<sup>68</sup>

At the end of the ruling, the judge adopts a highly personal tone when defending the decision not to change the child's residency (as the father requested and the child wanted): 'I don't expect that by moving to your father you will discover what you are missing and that you will find it there, in the sense that your problem is solved. You have to work on your own development, from your own environment, with the people you now feel good with.'<sup>69</sup> In so doing, the judge's use of plain legal language is infused with a sense of personal engagement with the outcome. This suggests that the considerations the judge deems relevant are not exclusively drawn from the abstract language of formal legal rules.

One might object that this example involves a category error, as this ruling pertains to a highly specific area of law that is not only more conducive to comprehensible legal language but that positively requires it, at least vis-à-vis the children involved. In this area of law, judges are duty-bound to prioritise the actual interest of the child, allowing for reasons and speech pertaining to extra-legal 'forms of life' to play a prominent role; moreover, judges are also bound by the international guidelines on child-friendly justice to communicate their decisions in a child-friendly way.<sup>70</sup>

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<sup>67</sup>District Court North-Netherland, 31-08-2018, ECLI:NL: RBNNE:2018:3537.

<sup>68</sup>*ibid.*

<sup>69</sup>*ibid.*

<sup>70</sup>For instance, article 49 of the *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* states that 'Judgments and court rulings affecting children should be duly reasoned and

By means of a partial answer to this objection, it must first be stressed that despite the specifics of family law, the case nonetheless sheds light on a more general point: the potential intimate link of plain legal language and a civic-friendly attitude on the part of the judge. Also, to avoid the charge that the concept of civic friendship would only be relevant for child-friendly justice, two further rulings, in other legal areas, will be discussed. This brings us to the example in which a judge has to decide whether to allow an applicant to change his name by adding the name of his terminally ill daughter to his own.<sup>71</sup> What is notable in this decision is that the judge provides an extensive, detailed account of the applicant's viewpoint, using words that the applicant himself might have used to describe his situation. In addition, the judge uses a style that invokes an emotional response, making the request, as it were, fully intelligible for the reader:

‘The applicant states that when things are going badly with his daughter, he feels how fragile life can be and how immeasurable a love he feels for his daughter. When it seems that his daughter would not make it to the end of the [year], the applicant thought that it would be nice if he could always carry his daughter with him. Not only now, but also later, when the time has come to say goodbye. The applicant's way of achieving this is to change his first name in the sense that he inextricably links the name of his daughter with his own first name. For that reason, the applicant would like to be called [A] – [B].’<sup>72</sup>

Having read this narrative of the applicant's viewpoint, the reader will not be surprised to learn that the court ‘understands the applicant's deep-rooted wish to allow his daughter to continue to exist in his name, by changing it into ‘[A] – [B]’. ‘[O]ther ways of carrying [B] forever, for example by wearing jewellery or a tattoo, do not do justice to the exceptional bond that the applicant has with her.’<sup>73</sup>

Again, to conceive of this ruling as one that is merely written in plain legal language, understood as a merely linguistic matter, would miss an important dimension of the ruling. It would miss that the narrative style, the attention paid to the particular, and the empathetic summary of the applicant's viewpoint, which all increase the comprehensibility of the ruling, are intimately

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explained to them in language that children can understand, particularly those decisions in which the child's views and opinions have not been followed’. See: Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice* (Council of Europe Publishing, 2010), 28. For a brief discussion of child-friendly court rulings in the Netherlands and elsewhere, see Ton Liefwaard, ‘Child-Friendly Justice’ (*Leiden Law Blog*, 18 July 2017) at <<https://www.leidenlawblog.nl/articles/child-friendly-judgments>> (last accessed 20 November 2021).

<sup>71</sup>District Court Oost-Brabant, 12-12-2019, ECLI:NL:RBOBR:2019:7307.

<sup>72</sup>ibid.

<sup>73</sup>ibid.



linked to a civic-friendly attitude on the part of the judge – an attitude of concern towards the party involved.

Importantly, this link between a civic-friendly judicial attitude and the use of comprehensible legal language can also be found in more antagonistic settings, or in any case where the interests of more than one citizen are directly involved. The third example involves such a decision. In this case, two families are disputing how to wind up an estate after two young spouses tragically die, one right after the other, from food poisoning on their honeymoon. Because the spouses did not die at the same moment, the family of the spouse who died last went to court claiming to be the heirs of the estate of both spouses.

In their ruling, the court of appeal not only shows concern for the tragic fate of the families who lost their loved ones: the court also explicitly links the impacts of the facts and decision on the families to the need for comprehensible legal language. It deliberately uses comprehensible legal language as a way to make the decision acceptable for the losing party. As the court puts it: ‘It is clear that what happened to [testator 1] and [testator 2] is very distressing and that the suffering of their next of kin must be indescribable’. However, the court ‘annuls the [lower] court’s decision and declares that the testator who died last is the heir of the testator who first died. The court realises that this is not an easy message for the family of [testator I, who first died]. The court therefore finds it important to explain its decision to her as clearly as possible’.<sup>74</sup>

To summarise, by the discussion of these court rulings we have aimed to illustrate that comprehensible legal language, as it is used by Dutch courts, is sometimes constituted by empathetic utterances, a conversational, personal, and narrative style with extensive room to convey the human meaning of the facts. As such, plain legal language use by Dutch courts might well be analysed and evaluated from the perspective of the judge’s intention to fulfil their judicial role as a civic friend. One advantage of this perspective is that it identifies the concrete professional legal–ethical dilemmas judges might grapple with when using comprehensible legal language. In the remainder of this section, I address three such dilemmas.

First, judges’ rulings are never exclusively addressed to the directly involved legal parties. They are also addressed to society at large and to professional peers. Think, for instance, of cases in which fundamental public interests are at stake or in which judges deviate from established case law. Such decisions must be comprehensible to all citizens. As such, they will arguably require discourses that are more neutral, abstract, and general. In addition, because the actual rulings must also be explained to the legal

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<sup>74</sup>Court of Appeal The Hague, 12-05-2020, ECLI:NL:GHDHA:2020:891.



community, they are also likely to contain technical legal language, i.e. language pertaining to the professional form of life of legal professionals.

In such cases judges will have to grapple with the question of how to deal with cases involving different ‘forms of life’, each requiring different linguistic tools and language registers. Should these tools and registers be combined in one ruling – for instance, by reserving part of a ruling to directly address the interests of the affected parties, as if it were a personal letter? Or should the judge make a clear distinction between the language of the actual court session and the written legal ruling, reserving the more empathetic, conversational style for the court session because of the concrete encounter with the litigating parties? Should the more abstract, formal style or technical legal language then be reserved for the actual ruling because that ruling might play a role in future cases and social arrangements?

Moreover, in trying to combine different language registers, a judge might be confronted by certain terms – such as ‘discriminatory’, ‘neglect’, or ‘intentional’ – that have different meanings in the ‘form of life’ of the citizen than the more technical meanings found in the ‘form of life’ of legal professionals. The judge will then need to figure out how to use such terms in light of potential differences of meaning.<sup>75</sup>

Second, to the extent that comprehensible legal language is constituted by empathetic utterances, a conversational style, and extensive attention to the particular, it may be difficult to reconcile with the professional value of impartiality. Judicial impartiality not only requires that judges’ rulings be unprejudiced: it also requires that judges engage in ‘conduct which sustains confidence in judicial impartiality’.<sup>76</sup> Impartiality must not only be done; it must also be seen to be done.

A judge who aims to write in a civic-friendly, comprehensible way will therefore be likely to face the dilemma of how to avoid that the use of plain legal language will come at the cost of perceived impartiality.<sup>77</sup> Moreover, the judge will need to be wary of the fact that the extent to which they tend to empathise with a particular story or situation in which the litigating parties find themselves in, is not stemming from their own limited perspective. This difficulty is all the more pressing in view of the range of empirical studies that indicate that people in

<sup>75</sup>See for this point also: Linghao Wang and Lawrence B. Solum, ‘Confucian Virtue Jurisprudence’ in Amalia Amaya and Ho Hock Lai (eds), *Law, Virtue and Justice* (Hart Publishing 2013), 127.

<sup>76</sup>European Network of Counsels for the Judiciary, *Judicial Ethics Report 2009–2010* <<https://www.enj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>> (last accessed 20 November 2021).

<sup>77</sup>An outspoken version of the concern that empathetic judges will be biased can be found in Massaro’s critique of Henderson’s famous article in which she argues for an account of legality that includes empathy. See Lynn N. Henderson, ‘Legality and Empathy’ (1987) 85 *Michigan Law Review* 1574; Massaro TM, ‘Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?’ (2015) 87 *Michigan Law Review* 2099.

general are subject to bias in the extent to which they feel empathy for others.<sup>78</sup>

Thirdly, a judge may have doubts about whether it is fitting to express some kind of fellow feeling for the losing party for instance in cases where the outcome is harsh. Such utterances may well be received by the addressee as a rather narcissistic need to excuse oneself for having made a highly painful (and from the perspective of the losing party perhaps unfair) decision.

All these dilemmas are, of course, related to the fact that adjudication does not serve only one purpose, nor can a judge's professional attitude be captured by a single, homogenous intention. Therefore, the different goals aimed for within adjudication conceived as an legal-ethical practice, and the related aspects of the judge's professional attitude will have different and sometimes conflicting implications for the legal language that is used.

All this is not to say that such dilemmas cannot be solved or properly addressed. These dilemmas do underscore the point made by Frank, Posner, and Nussbaum that a judge must have the skills of a literary artist who possess the ability for situational appreciation in order to know what kind of language is fitting in the concrete setting.

## 5. A fundamental concern: plain legal language by Dutch courts as a masquerade of violence?

In the previous two sections we have tried to come to grips with the use of plain legal language by Dutch courts as it being potentially intimately linked to a civic-friendly attitude on the part of the judge. As part of a more critical evaluation of this actual practice, this section will address a fundamental concern: to the extent that court rulings consist of civic-friendly plain legal language, this might de facto distract from, or function as a masquerade for the potentially violent, unjust, and arbitrary character of actual legal decisions.

The idea that legal language masks the violent character of law has of course also been discussed in the context of formalist legal discourse, which represents the law as a neutral, logical system from which correct legal answers can be derived.<sup>79</sup> However, one might argue that civic-friendly, comprehensible legal language, precisely because of its personal idiom of concern and care, is even more apt to disguise the fact that, as Cover puts it, 'legal interpretation takes place in the field of death and pain' and that judges will often 'leave behind victims whose lives have been torn apart by

<sup>78</sup>Paul Bloom, *Against Empathy: The Case for Rational Compassion* (HarperCollins 2016).

<sup>79</sup>Robert Cover, 'Violence and the Word' (1985) 95 *Yale Law Journal* 1601; Louis Wolcher, *Law's Task: The Tragic Circle of Law, Justice and Human Suffering* (Ashgate 2008).

these organised, social practices of violence'.<sup>80</sup> Moreover, to the extent that plain legal language is constituted by a conversational, personal style it is also particularly apt to put to the background the dimension that legal language is one 'of elite or professionalised power [...] the language of authority'.<sup>81</sup> The conversational style may hide from view that the relation in question is highly asymmetrical, in that the addressee will never be able to respond with a similar authority.

This is not a merely theoretical concern. For instance, in the Netherlands, a substantial number of court rulings explicitly labelled by the Dutch judiciary as 'plain language' rulings concern out-of-home placements of children or the termination of certain parental rights – some of the most impactful decisions judges can make. Take for instance the case in which a judge has to decide whether a mother should lose parental authority over her child because of her psychiatric illness, her drug addiction and her limited prospects for improvement. In this ruling the court explains the applicable legal rules in comprehensible language, stressing that the ruling does not mean the woman will stop being a mother. The court, in addition, also praises the mother as courageous for acknowledging that it is better for the child to live with a foster family: 'During the hearing, the court already mentioned that it finds it courageous and positive that the mother has expressed that she knows her limitations'.<sup>82</sup>

What are we to think of this praise and the reassurance that the woman will still be the child's mother? These utterances may on the one hand be understood as expressions of civic friendship and, relatedly, perhaps even add to the perceived experienced legitimacy of the legal proceeding, as the empirical literature on perceived procedural justice suggests that what matters for the (losing) citizens involved in legal proceedings is, in the end, not only the actual outcome, but also that they feel that they have been taken seriously.<sup>83</sup>

However, because of the fundamental interests at stake, as well as the possibility of the actual outcome being clearly wrong, perhaps resulting from procedures characterised by unequal power relations, or being arrived at through reliance on highly controversial facts, plain court rulings deserve to be also assessed critically.<sup>84</sup> The risk that plain legal

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<sup>80</sup>Cover, 'Violence and the Word', 1601.

<sup>81</sup>Del Mar, *Artefacts of Legal Inquiry*, 85 (citing Goodrich).

<sup>82</sup>District Court Midden-Nederland, 04-03-2019, ECLI:NL:RBMNE:2019:1197, para 3.6.

<sup>83</sup>Tom R. Tyler, 'Procedural Justice and the Courts' (2007) 44 *Court Review: The Journal of the American Judges Association* 26; E. Allen Lind, 'The Study of Justice in Social Psychology and Related Fields' in E. Allen Lind (ed), *Social Psychology and Justice* (Routledge 2019).

<sup>84</sup>Also this point is far from theoretical. As a response to and in the wake of the notorious 'Childcare Benefit Scandal' (pointing to the fact that around 30.000 parents have between 2013 and 2019, wrongly accused making fraudulent benefit claims and were required to pay back the whole sum of the allowances they had receive) the legal-ethical quality of the Dutch legal system is currently seriously under dispute in particular in the areas of social benefit law, family law and asylum law, areas of law where fundamental interests of citizens are at stake. See for a brief discussion of the role of legal professionals in the Childcare Benefit Scandal': Iris van Domselaar, 'Where Were the Law Schools?' (2021) 1 *Netherlands Journal of Legal Philosophy* 3, 7-8.

language in court rulings can induce, to use Wittgenstein's terms, 'aspect-blindness'<sup>85</sup> on the part of the addressee as well as on the part of the public at large as to the ethical merits of the outcome, raises the important question of what institutional (background) conditions must be fulfilled as to the content of the law in order for civic-friendly plain legal language in court rulings to have genuine ethical import.

This question is also relevant from a viewpoint of access to justice, the right to contest a legal decision including: if civic-friendly, comprehensible language will in practice be used to legitimise actual judicial decisions in which fundamental interests are seriously harmed, the losing citizen may well forget that they have good reasons to object.<sup>86</sup>

## 6. Conclusion

In response to the plain legal language movement's increasing influence in the Netherlands, I proposed an integrative approach to the use of comprehensible legal language by courts that sees the content and style of court rulings as inextricably linked. More specifically, the Aristotelian concept of civic friendship was introduced as having potential explanatory force for the practice of plain legal language use by Dutch courts and for the dilemma's that judges who aim to write in a civic-friendly and comprehensible way may face. Finally, I raised a fundamental concern as to the use of plain legal language by Dutch courts, one that takes the potentially violent, unjust and arbitrary character of court rulings (more) seriously.

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<sup>85</sup>Wolcher, 'How Legal Language Works', 111.

<sup>86</sup>It goes without saying that this point becomes more urgent in the case that policies that aim to increase plain legal language by courts are combined with initiatives to constrain the position of lawyers in legal procedures because of the assumption that their role, as intermediaries between the law and the average citizen, would become superfluous. See for a fundamental critique of the idea that the law can directly speak to its citizens and hence that the legal system can do without lawyers: Rabeea Assy, 'Can the Law Speak Directly to its Subjects? The Limitation of Plain Language' (2011) 38 *Journal of Law and Society* 376.