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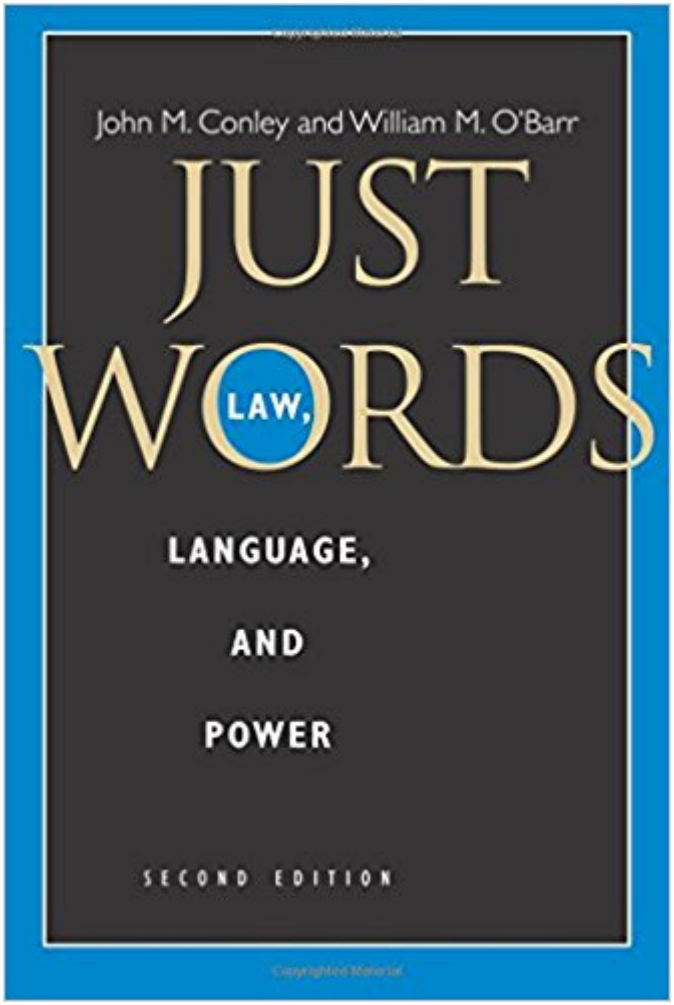
Just Words, Second Edition: Law, Language, And Power (Chicago Series In Law And Society)



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Synopsis

Is it "just words" when a lawyer cross-examines a rape victim in the hopes of getting her to admit an interest in her attacker? Is it "just words" when the Supreme Court hands down a decision or when business people draw up a contract? In tackling the question of how an abstract entity exerts concrete power, Just Words focuses on what has become the central issue in law and language research: what language reveals about the nature of legal power.Conley and O'Barr show how the microdynamics of the legal process and the largest questions of justice can be fruitfully explored through the field of linguistics. Each chapter covers a language-based approach to a different area of the law, from the cross-examinations of victims and witnesses to the inequities of divorce mediation. Combining analysis of common legal events with a broad range of scholarship on language and law, Just Words seeks the reality of power in the everyday practice and application of the law. As the only study of its type, the book is the definitive treatment of the topic that will be welcomed by students and specialists alike.

Book Information

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Customer Reviews

John M. Conley the is William Rand Kenan, Jr., Professor of Law at the University of North Carolina Law School. William M. O'Barr is professor of cultural anthropology at Duke University where he also holds appointments in the Departments of English and Sociology. Their many works include Rules versus Relationships, also published by the University of Chicago Press.

Combining the "science of talk" with the legal system is relatively new field, both in the academic world, as well as for myself. Conley and O'Barr strike an interesting chord in the study of the law in claiming that the study of language is inextricably intertwined with legal processes. In analyzing research and historical theories, Conley and O'Barr attempt to strengthen the school of thought that places added emphasis on the study of what and how things are said, as opposed to more simplistic analyses of the law.Yet in their discussion of the purpose of the study of law, language and all the assorted terms that come with them (power, equality, etc.), I found that Conley and O'Barr tacitly failed to prove their points, or provide substantiative evidence for their claims. From the very first chapter, the authors claim that "the fundamental question in American legal history (is) how a legal system that aspires to equality can produce such a pervasive sense of unfair treatment." Who are Conley and O'Barr to claim knowledge over the primary purpose of the legal system? Undoubtedly, there are many scholars who would contend that the purpose of the legal system is not to advocate for equality, but perhaps for equity. Still more would argue that America is not truly based upon foundations of equality, but a never-ending struggle for control over the power systems put in place throughout our nation. By treating the legal system as if it is the sole foundation for democracy in America, Conley and O'Barr forsake the utilitarian view of the law as quite important in controlling the structural and material makeup of our nation. This avoidance of the structural realities within the US legal system are apparent in several statements made by Conley and O'Barr about the inherent fairness of the law.Conley and O'Barr state that everyone is afforded the right to vote, which is clearly not the case. Immigrants, ex-felons, and children are all denied the ballot box, making the idea of "universal suffrage" quite laughable. Furthermore, Conley and O'Barr repeatedly invoke the idea that the law is meant to distribute equality amongst the masses, an argument that they fail to prove in a context which considers alternative theories of the law.This all being said, Conley and O'Barr do present interesting claims as to the field of language and law study, as well as the implications of combining the study of Law and Society with Sociolinguistic studies. I was particularly interested in the second chapter of Just Words as the discussion over the nature of the adversary process was quite remarkable. The idea that the legal system could facilitate the revictimization of rape victims isn't exactly a new idea, but the contention that the system itself disempowers victims through its very structure is quite intriguing and worthy of more social research. An interesting study could analyze the difference between the mostly adversarial nature of US courts with the mostly inquisitorial nature of European courts. In finding new realms of "truth," perhaps there could be better system of legal processes that benefit the majority of all. Clearly, the adversarial process analyzed in Just Words certainly does not provide evidence

towards the existence of a legal system that values equality.

A major point for Conley/O'Barr in this book is that the forms of discourse that they call most natural to women are subjugated in the legal system today, and therefore women are at a disadvantage. While I can see where characteristically feminine forms of discussion are generally not the very direct question/answer format of the formal trial in the American legal system, as a woman I felt very sold short by their own discourse on the subject matter. They repeatedly drove home the point that women are not assertive naturally and therefore are trampled in the male-dominated milieu of litigation. Running with this were the assumptions that most women now are like this, that women are less able to obtain higher education, and that even when the legal system tries to "accomodate" the female discourse via alternative dispute resolution, it still silences the voice of the woman in the case.The authors tend to use court transcripts in which women are not just being cooperative with counsel, but being particularly subdued and submissive. The impression is not that the trial situation is intimidating for anyone trying to make his/her case, but that women are unable to sum themselves up succinctly, and this causes their stories not to be heard.I was also surprised that, despite the relatively recent publishing date of the second edition, the authors still purported that part of this was due to women's limited access to higher education, even though at a considerable portion of American universities in this day and age women are the majority in undergraduate college classes. They position the women in these litigious circumstances as being fundamentally handicapped because they are presumedly not working, or at least not for as much money, and they will be "saddled" with the kids. I think that Conley/O'Barr consider only the extreme cases, not the cases of the modern woman who does work and bring in income, even cases where the woman may be the primary breadwinner. While I of course will acknowledge that there is still a significant portion of women who do choose not to work and this may be a difficult situation to handle in divorce, I still think that women are sold short as far as their abilities to take care of and defend themselves in this day and age.

In anthropology, linguistics is the smallest branch of the "four fields" (including biological anthropology, cultural anthropology, and archaeology). In linguistics, only a small segment of researchers study issues pertaining to the courtroom and legal issues in general. However, despite the relative scarcity of material related directly to legal linguistics, John M. Conley and William M. O'Barr in Just Words: Law, Language, and Power demonstrate the importance of this emergent field of research.Some of the findings discussed in this book are surprising. For instance, Conley and

O’Barr contend that although the mediation process seems like it would be more congenial toward women, women on average receive less favorable outcomes through the mediation process than if they had gone to trial. Through reading this work, it becomes clear that the Western-style legal system works against minorities and women by giving preferential treatment to those who have mastered the language of dominance - mainly white educated males.While social justice issues figure prominently in the book, the authors seek to provide material on all aspects relating to legal-linguistic studies. For instance, cross-cultural legal research and historical legal text studies are discussed as well as studies confined to the modern American courtroom. This book is ideally suited for anthropology, legal, and criminology students and lay readers alike.JW

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