

# Shall We?

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To a linguist, the most bizarre single moment in the whole post-election brouhaha last fall came during the oral presentations to the Florida Supreme Court, as the parties argued over what the word *shall* meant in the statute that stipulates when the Secretary of State is supposed to certify the vote. Was the outcome of an American presidential election really going to depend on the interpretation of a word that no American since Henry James has known how to use properly?

*Shall* is the flower of what the great grammarian H. W. Fowler called "the English of the English." But it never took root in American soil outside of the stony fields of old New England. It's certainly not the kind of linguistic fillip you can pick up in the course of a junior year abroad. As the nineteenth-century Bostonian Richard Grant White put it, the distinction between *shall* and *will* is too subtle for "persons who have not had the advantage of early intercourse with educated English people. I mean English in blood and breeding...."

Indeed, the rules for using *shall* and *will* are as thorny and tangled as an English bramble. Fowler devoted seven columns to his entry on *shall* (a model of conciseness when you compare it to the forty-three columns on *shall* and *will* in the *Oxford English Dictionary*). Even so, he doubted whether his explanation of the distinction would be of much use to anyone who hadn't had the advantages of a southern English upbringing; as he said, "Those who are not to the manner born can hardly acquire it."

Anyone who has wrestled with the rules will readily agree. For one thing, the meanings of *shall* and *will* change according to the subject. *You shall* or *he shall* express an obligation or makes a promise; *you will* or *he will* make a simple prediction or a statement of desire. When an Englishman tells you "You shall have your money," he means that he is going to pay you; when he says "You will have your money," you can whistle for it. But in the first person the meanings are reversed: here it's *I shall* that makes the prediction, and *I will* that expresses resolution or intention. The difference is

summed up in an old story about the Frenchman who is foundering in the waves off Brighton and yells, "I will drown and no one shall save me" — so nobody does.

We Americans, too, can have trouble keeping their heads above water when we extend our use of *shall* beyond those first-person-plural questions like "Shall we?" By Fowler's lights, General MacArthur got it backwards when he announced his intention to recapture the Phillipines by saying "I shall return." Fowler's would maintain that that's the sort of thing you say when you're going out for a quart of milk.

But then, why would any self-respecting American want to touch this word with a bargepole? When I hear an American reaching for a *shall*, I recall the flap when a protocol officer in Reagan's White House was photographed curtseying to Queen Elizabeth. As one critic remarked, "Didn't we fight a war about that?" And it's hard to escape the feeling that Americans who use *shall* are not entirely trustworthy — as James Thurber wrote, "Men who use *shall* west of the Appalachians are the kind who twirl canes and eat ladyfingers."

In fact the word *shall* is pretty shifty in its own right. When I ask lawyers why they are so attached to the word they usually tell me what their law school professors told them, that *shall* somehow avoids the ambiguities and imprecisions of ordinary English speech. But that's hardly the impression I get when I look up *shall* in the fourth edition of *Black's Law Dictionary* that I bought at a garage sale some years ago. It's true that Black's says that *shall* is "generally imperative or mandatory" when it's used in contracts or statutes. But it goes on to say that the word "may be construed as merely permissive or directory," and it adds that the word often implies "an element of futurity." In short, *shall* means *must*, except for when it means *may* or *should* or *will*. (And except for when it doesn't mean any of those. "This Act shall be known as the Penal Code of California" — does that mean that I could get in trouble if I call it something else?)

In Australia, where the movement to reform legal language has gained a lot of ground, one state has actually banned the use of the word *shall* from legislation as a way of expressing obligation, insisting that drafters use *must* instead. It's an eminently sensible move. Why would we want a word as slippery as *shall* determining the filing date for tax returns, much less the selection of a president?

But it's hard to imagine the American legal establishment tossing *shall* over the side. Maybe it's the symbolic value of the word — as the legal scholar Frederick Bowers puts it, *shall* is a kind of totem that conjures up the flavor of the law. Or maybe it's the way *shall* tends to infuse a document with the smell of old port and oak paneling. That has to be an appealing feature to a profession whose practitioners are rolling into the twenty-first century with the title *esq.* still appended to their names.