Sprache und Medialität des Rechts
Language and Media of Law

Band 2

Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts

Relaunching the International Language and Law Association (ILLA)

Edited by
Friedemann Vogel

Duncker & Humblot · Berlin

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Herausgegeben von

Ralph Christensen und
Friedemann Vogel

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Preface

Creating Law with Language – Crossing Borders and Connecting Disciplines from the Perspective of Legislative Practice

By *R. Alexander Lorz*

Law works through language. At least, language is the beginning of all laws. Whatever messages the law is supposed to communicate to its citizens, they must be transported through language. When the language of laws is transformed into executive action, other means might come into play. But first of all, every such action has to be programmed and determined through language. And since laws must be formulated before any such action can take place, the process of law-making marks the beginning of it all – with language forming the core of this activity.

The process of law-making follows somehow ancient rules even in the most modernized democracies. Laws must still be formally introduced in Parliament, run the gauntlet of various plenary readings and committee sessions and finally be voted upon by the full House (in systems with two Chambers often both legislative bodies), only to be promulgated and eventually implemented by the Executive Branch. Globalization and social conflicts deriving from it certainly play an important role in framing the regulatory issues to be dealt with by law, but the legislative process as such remains largely untouched by these developments. And modern media, although they are of course employed in facilitating research, the access to documents and thus in a general enhancement of transparency, do usually not alter the process itself, but rather serve auxiliary purposes in its context – save for the most advanced countries in this regard.

Nevertheless, even though legislative practice seems less prone to take legal linguistics beyond the borders than many other fields of legal activity, there is ample room for legal linguistics to thrive. In order to look at this in more detail, a brief distinction of the three major stages of law-making seems appropriate: First of all, the decision must be made to create a law at all. Montesquieu is usually credited for a famous proverb: "When it is not necessary to make a law, it is necessary not to make one" – and this should still hold true for current legislatures. Second, of course, a law needs to be formulated – which can be an arduous task and take the legislators deeply into detail. Finally, since even the most carefully deliberated and worded law can entail undesired and unforeseen effects due to the general inadequateness of human beings, and also because the permanent change of circum-

stances can render a law inadequate in the course of time, it is indispensable to constantly watch the law at work and to evaluate whether it (still) serves its purpose or not.

Starting with the decision whether to make a law at all, four constellations are to be distinguished, two of which seem obvious: either no law is (yet) needed because conceivable changes can be performed without touching the law, or there is no way of going forward without a new law, so the law is really needed at that point. The other two are more interesting because they leave ample room for political considerations: a law may not be strictly needed, but still be desirable; this is particularly true for laws reinforcing the normative impact of existing rules. Or a law is not needed, but nevertheless considered politically helpful: then we often talk about a kind of "symbolic legislation". Here legal linguistics can play an especially strong role because then it is necessary to achieve the political goal without giving up the determinative character of the law or falling into the trap of "legal lyrics".

Once the decision to enact a new law is made, many contributors come into play when it comes down to formulating the law in detail. Even before the formal legislative process gets started, a lot of political preparations are indispensable: in discussions within the own ranks, be it just the own party or – the regular case in Germany – a coalition of governing parties, a general consensus must be formed on how to proceed with the law. Depending on the concrete political system, a lot of technical advice will also pile up: The Ministries, the State Chancelleries and/or the Parliament's own legal service, all are supposed to provide support and formulations or simply to write the first draft of the law. Only then the parliamentary procedures will start – with hearings and deliberations in the competent committees or even debates on the floor (if the law is considered really important). It is apparent from this entanglement of various inputs that basically everybody who could somehow be concerned by the law will use the opportunity to chip in and try to influence the precise contents of the law – and at the end of the day, the final formulation of the law is the result of many more or less hard-fought compromises. A famous German saying according to which "many cooks can spoil the dough" seems like the appropriate description here.

But it is not just the necessity of compromise that can afterwards render working with the law difficult. Even in the case of (seemingly) greatest unity, every law is prone to (inevitable) misinterpretations. They can arise due to different (or lacking) perceptions of the factual background or can flow from different preconceptions of the termini used in the law – to provide an example: When the new curriculum for education in sexual matters was promulgated in Hesse, it used the word "acceptance" with regard to diverse sexual orientations. The idea behind it was to combat discrimination on the basis of sexual orientation. But many people read "acceptance" as a kind of official endorsement of specific sexual orientations and objected to that meaning. Eventually, even the best-formulated legal text will usually contain vaguenesses that may be the result of political compromise formulas, are de-

liberately inserted to avoid undesired effects or are brought about by implication of decisions of superior or co-ordinated institutions, such as the coordinating institutions in a federal state.

Moreover, even if at the beginning of a law no such discrepancies can be discerned, the practical day-to-day work with it will inevitably produce changes in the meaning and in the end necessitate ex-post adjustments. This is especially true when dependent authorities like administrative agencies start to explain the law through administrative norms and internal directives. In addition, there are independent players which usually do not get involved in the process of formulating the law, but come in at a later stage when the focus turns on implementation. In a state with an independent judiciary, this role is mainly filled by the courts; but an institution like the Court of Auditors can also point to problems in the implementation of a law that might require formal changes. In a state with a strong tradition of local self-administration or with more than one legislative chamber, dissents between municipal and state authorities or the various legislative chambers might also call the precise meaning of a law into question and call for formally touching it again.

What role can legal linguistics play in these diverse regards? There are certainly lots of contributions that linguistics can make, starting with putting the necessary legal formalities into a shape that satisfies the demands of linguistic precision or even aesthetics. Moreover, especially precision can be helpful to clearly define the realm and limits of legal certainty and thereby to facilitate the role of the courts or generally all interpreters of the law. And in principle, legal linguistics can come in at any stage of the legislative process, thereby ensuring a high quality standard of the law throughout its creation. However, a considerable amount of water is to be poured into that wine, to use another favorite German proverb in literal translation: For there are so many different actors representing so many divergent interests involved in that process – as could be seen from the remarks above – that very often considerations of linguistic precision or aesthetics will have to give way to symbolic terminology, vested political interests or simply the call for compromise. Thus, despite all possible support from the linguistic side, it is hardly imaginable that this kind of advice will convince in most cases or even prevail throughout. But this should not discourage legal linguistics from getting engaged: it is better at least to know the aspects that might be disregarded or perhaps integrate them into the formulation of the law than not to know what could have been made better at all.

And at this point, the role of the International Language and Law Association (ILLA) becomes pivotal: only an institutionalization of linguistic counselling can ensure that no chances are missed in this respect. Otherwise, the integration of linguistic expertise in the process of law-making will be dependent on happenstance and the personal interest and engagement of the concrete actors involved. The same is true for the establishment of the necessary systemic approach to linguistics as a part of legal education and training. And only an international association of this

kind can facilitate a transnational exchange for the benefit of enhancing the quality of legal practice across national borders. Thus, good luck for ILLA in taking on these tasks!

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Introduction

By *Friedemann Vogel*, Siegen

Before I began to discover the fabric of language and law in my own research about ten years ago, I remember, law was a bit strange to me: I did not understand it or – in the context of social engagement and student protests – I was afraid of it. Law seemed to be only a subject of dominance, of restriction, and of of its own esoteric self-protective and self-important insulation. You do not like letters from legal officials or courts consisting of strict deadlines, peculiar clinical words and a misleading syntax. I think this is a typical experience of most people in Germany. Law is like a problem, you don't like to get in touch with. If at all, in school you had to memorize the fundamental rights of the constitution, some nice sentences, but you do not really understand the idea behind them, the history of this important text as a fortress of humanity to prevent a second Nazi-Germany. You do not understand the coherence of constitution, other statutes and their interpretation in courts. – But you know judge Barbara Salesch from the TV, the humorous woman, fighting with bandits and murderers every day at lunchtime.

This was my impression of law when my Phd supervisor and colleague in Heidelberg, Ekkehard Felder, asked me in 2007 to do something within the research field of legal linguistics. He and the Heidelberg Group of Legal Linguistics – established by Friedrich Müller, Ralph Christensen, Dietrich Busse and Rainer Wimmer in 1984 – showed me a new way to understand law from a text pragmatic perspective.

From this perspective law or legal work is a work within texts and language. When lawyers work with norms they actually work with many different texts. They connect a text with other texts, for example statutes with prior court decisions, texts from the legal scientific community, legal commentaries, texts of external opinions of legal experts, and of course, texts describing the controversial "real facts". The modern constitutional state establishes an intertextual structure (Müller / Christensen / Sokolowski 1997; Vogel / Hamann / Gauer 2017). This is not just another attribute among others. The constitutional state is indeed a text structure in itself. Jurisprudence is a "science of text-based decisions" (Morlok 2015: 88, own translation).

The relationship between the legal system and text is rooted in two functions of language: First, language is the most important medium to share and negotiate legal and other social norms. Furthermore, and from my perspective more important, language-based constitutional democracy transforms the brute force of social conflicts into due process and a semantic struggle for arguments.

Such a pragmatic view on law draws the attention to concrete human actions and interactions, and to the responsibility of those interpreting and creating legal texts. It focuses on the active process of norm construction considering signs and media. Law, then, is neither only an abstract logical system of norms nor only words on paper, but a specific style to communicate about and to negotiate the fundamental organization of society.

This seems to be self-evident. But in fact, from this holistic perspective law becomes a quite complex linguistic, social and cultural phenomenon, which needs to be explored interdisciplinarily. Legal linguistics has accepted this challenge and has become a broad research field around the world by now. In the last fifteen years the first introductions, handbooks and series have been published, several working groups were established in many countries, and more and more empirical – not only theoretical – studies have arisen.

Nevertheless, the world of law has changed in the last decades: it has become more globalized, multilingual and digital. And, although we know a lot about conflict resolution, the world has not become more peaceful, rather the contrary. In many so called "democratic" or "civilized" countries, in fact, constitutional democracy is in danger and/or fundamental rights are restricted. Law is not only text, law is also power. Law often consists of abuse of power and/or at least of non-transparent practices (cf. Vogel (Ed.) 2017). To understand the role of language, communication and media of law, with its multiple interdependencies and explicit as well as implicit power contexts better, it is important to bring different disciplines together. This is why we need a permanent international platform where legal linguists can learn from each other, where they can develop new international projects, exploring the relationship between local and global contexts and where they can cultivate constitutional democracy.

Legal linguists Peter Tiersma, Lawrence Solan and Dieter Stein originally founded the International Language and Law Association (ILLA) in 2007. Their initiative was to create a network of linguists and lawyers around the world, working on the language matrix of law. In that framework, language is not simply seen as a subject in the legal context or an object of forensic analysis, but as the central medium of modern constitutional states, as the mediator of social conflicts and the core of legal methodology. Until 2017, ILLA had been a network sharing information about important events or published papers regarding language and law. To also establish ILLA as a living organization with a sustainable structure the association had been relaunched during ILLA's first international conference from September 7th-9th, 2017, hosted by Friedemann Vogel in Freiburg, Germany. Regarding the overall topic "Language and Law in a World of Media, Globalisation and Social Conflicts" there were 50 talks, keynotes and workshops discussing the constitution of law by language and media in the context of multilingualism, digitalization and social conflicts around the world. Among the 150 participants from 32 nations were also famous scholars and practitioners like Prof. Dr. Ninon Colneric, former judge of the Court

of Justice of the European Communities, and Minister of Education in Hesse (Germany), Prof. Dr. R. Alexander Lorz. At the last day of the conference, the plenary business meeting unanimously took the following decisions regarding the constitution and mode of operation of the society (chaired and recorded by Dieter Stein; see also https://illa.online/index.php/about/short-description, 6/14/2019):

1) "The society shall be governed by *two presidents and an executive committee.* One of the presidents shall come from linguistics, the other from law. One of the presidents is the conference director of a general meeting. Their term of office lasts from the end of one ILLA general conference to the end of the next one. The current presidents are the linguist, *Friedemann Vogel* (Freiburg [today Siegen], Germany), and the lawyer, *Frances Olsen* (UCLA, USA). Their term thus ends with the end of the next ILLA general conference in 2019.

2) In addition to the two presidents, the *executive committee* has another four members and shall consist equally of two linguists and two jurists. Every two years, at the end of the ILLA general meeting, one of the members of the executive is replaced by a scholar from the same respective discipline (i. e. either law or linguistics).
   The current members of the EC are the two presidents plus the following: *Anne-Lise Kjær* (Copenhagen, Denmark), *Ralf Poscher* (Freiburg, Germany), *Lawrence Solan* (New York, USA) and *Dieter Stein* (Düsseldorf, Germany).

3) All officers must be *members* of ILLA.

4) The *finances* of the society shall be managed by the presidents. Any surplus from conference organization or other income shall be transferred to the next conference director.

5) There are *two types of meetings:* a general meeting and focus meetings. The general meetings shall have a broad range of topics, while being under a broad umbrella theme and shall take place every two years. The conference director is one of the presidents of ILLA. Focus meetings may be held ad hoc on a specialized topic. The linguistic forensics meeting is an established focus meeting of ILLA. The executive committee approves the program of the general meeting and the decision and program of focus conferences."

According to the ILLA relaunch conference, this volume addresses three topics: First, the book gives a broad overview to the research field of legal linguistics, its history, research directions and open questions in different parts of the world. The contributions of *Lawrence Solan* (focusing the legal linguistics in the US), *Gatitu Kiguru* (legal linguistics in Africa), *Gianluca Pontrandolfo* (about the research areas in Italy and Spain), *Friedemann Vogel* (about Germany), *Emilia Lindroos* (about legal linguistics in Nordic countries) and *Svetlana Takhtarova* together with *Diana Sabi-*

rova (about Russia) illustrate the overlaps as well as the cultural differences as a basis for further research exchange[1].

The second section consists of contributions about the relation of language, law and justice in a globalized world. *Ninon Colneric* introduces to the rules about language governing and the communication between the EU institutions and Member States or citizens on the one hand and the intra- and interinstitutional communications of the EU on the other. She looks at practices of this language regime and at the difficulties inherent in drafting and interpreting multilingual supranational law. 'United in Diversity' or 'Tower of Babel'? Colneric's conclusion is cautiously optimistic:

> "We are united in spite of linguistic diversity. However, we could be more united without giving up multilingualism. Linguistic diversity has to be weighed against the principles of good administration and legal certainty. The present solutions are workable because they feature a good deal of pragmatism. However, a better balance between the values at stake could be struck. What is de facto already on the way, should be thought through to the end."

"Triumph of Law over Language?" – *Peter Schiffauer and Izabela Jędrzejowska-Schiffauer* present several case studies on multilingually negotiated EU-law illustrating inconsistencies and the "illusion of a stricter binding of administrative authorities and the judiciary by the very 'wording' of democratically legitimate normative texts". The functioning of the legal system could not be effectively limited by the wording of legal provisions. A uniform application of multilingual EU law would only be possible, "where the judicial interpretation and reasoning find extra-textual tools to deal with vagueness and ambiguity of the transnationally negotiated law and the divergences in its multilingual, but equally authentic language versions."

Łucja Biel and Vilelmini Sosoni also focus on EU legal culture and translation in the era of globalization on the example of competition law. The authors first report on the panel "EU Legal Culture and Translation" at the ILLA relaunch conference (2017) and summarize the discussion focussing the "hybridity of translator-mediated EU legal culture". Biel and Sosoni show, that EU terminology

> "is the result of the Europeanisation of law which is achieved through the convergence of national laws and law harmonisation, but is also strongly affected by global trends which are in turn influenced by socio-political and historical factors".

Of course, global trends also have influence on national and local procedures of legal text work. *Stefan Höfler* introduces to text linguistic analysis in the context of the Swiss legislation to make the law more transparent. He shows how concepts and methods of text linguistics can assist legislators to "identify and remedy impediments to the transparency of statutes and regulations at a functional, thematic and propositional level of textual structure." Although, an effective and clear legislation is an

[1] Unfortunately, a further contribution about Asia/China had been canceled.

important condition for any democracy, there is no general theory of legislative drafting and norm genesis (Vogel 2012) yet.

From a more general perspective, *Frances Olsen* concludes this second book section discussing the relation of law, language and justice. Using contributions from James B. White, Thucydides, and Harold Pinter, Olsen examines the dilemma that even in the face of horrific injustice the idealism expressed through language in principled political protest, however heartfelt or eloquent, would have little or no practical effect. She calls for a "move beyond nostalgic longing for the days of liberal democracy and to keep alive the possibilities of justice in the future". Lawyers and linguists could "play a useful role in developing and preserving a language that allows us to talk about justice realistically and without nostalgia".

The third section focuses on digitalization and mediatization of the law, without which recent global developments cannot be understood properly. *Ruth Breeze* introduces to this topic exploring practices of the "law across modes and media" and discussing challenges and opportunities for legal linguistics. Using the example of alternative dispute resolution (ADR) blogs, online dispute resolution (ODR) and automated ODR platforms, she illustrates the multimodality of recent law practices and the complex interplay of semiotic modes, technology, expert and laymen knowledge.

Victoria Guillén Nieto explores gender-based violence against the theoretical background of Natural Semantic Metalanguage and a multidimensional approach to the analysis of heteropatriarchal culture. How can linguistics help "to understand the overarching concept of gender-based violence better? Which roles do the news media play concerning gender-based violence? How do the news media and the law interact with each other? And which are the effects of this interaction?"

Last but not least, *Stanisław Goźdź-Roszkowski and Monika Kopytowska* discuss the relation of courts, constitutionality and conflicts in media representations using a case study about the Polish rule of law crisis. The authors give an overview to the recent conflict in Poland driven by the Poland's right wing ruling party "Law and Justice" (PiS) and their plan to overhaul the Polish judicial system, and present a computer assisted discourse analysis contrasting the Polish "Niezalezna.pl" and "The Guardian".

The fourth and last section documents three short and individual reports about the discussion at the ILLA relaunch conference in Freiburg, 2017. *Carole E. Chaski, Victoria Guillén Nieto and Dieter A. Stein* summarize the discussion of the preconference workshop on Forensic Linguistics; *Dieter Stein* gives a brief conference comment to the general discussion; *Yinchun Bai, Isabelle Gauer and Jana Werner* report from the first ILLA Junior Research Panel.

Literature

Morlok, Martin (2004): Der Text hinter dem Text. Intertextualität im Recht. In: Alexander Blankenagel / Ingolf Pernice / Markus Kotzur (Eds.): Verfassung im Diskurs der Welt. Liber Amicorum für Peter Häberle zum siebzigsten Geburtstag. Unter Mitarbeit von Peter Häberle. Tübingen: Mohr Siebeck, pp. 93 – 136.

Morlok, Martin (2015): Intertextualität und Hypertextualität im Recht. In: Friedemann Vogel (Ed.): Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung zwischen Introspektion und Automaten. Berlin, New York: Walter De Gruyter (linguae & litterae).

Müller, Friedrich / Christensen, Ralph / Sokolowski, Michael (1997): Rechtstext und Textarbeit. Berlin: Duncker & Humblot (Schriften zur Rechtstheorie).

Vogel, Friedemann (2012): Linguistik rechtlicher Normgenese. Theorie der Rechtsnormdiskursivität am Beispiel der Online-Durchsuchung. Berlin [u. a.]: De Gruyter (Sprache und Wissen, 9).

Vogel, Friedemann (Ed.) (2017): Recht ist kein Text. Studien zur Sprachlosigkeit im verfassten Rechtsstaat. Unter Mitarbeit von Friedrich Müller. Berlin: Duncker & Humblot (Sprache und Medialität des Rechts / Language and Media of Law, 1).

Vogel, Friedemann / Hamann, Hanjo / Gauer, Isabelle (2017): Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies. In: *Law & Social Inquiry (LSI)* 43 (4), pp. 1340 – 1363.

Legal Linguistics Around the World

Legal Linguistics in the US

Looking Back, Looking Ahead*

By *Lawrence M. Solan*, Brooklyn, New York

Abstract

This paper aims to provide a brief history of research into the relationship between legal and linguistic inquiry in the United States. The title may be a bit misleading, since "legal linguistics" is a term used more in Europe than in North America. Yet the term captures the breadth of interaction between the ways we govern ourselves under a system of rules and principles on the one hand, and the ways in which we communicate those rules and principles through our knowledge of language and our knowledge of how to use our knowledge of language.

Keywords: corpus linguistics, forensic linguistics, authorship, statutory interpretation, criminal law, trademark

I. Linguistics and Law Realize that they have Discovered Each Other

In the 1980s, linguists began to observe that linguistic evidence in the courts was becoming frequent enough to be seen as a phenomenon worth studying in its own right. The person who did the most to bring attention to the budding partnership between these two fields was Judith Levi, who taught linguistics at Northwestern University in Chicago. In 1982, Levi compiled a bibliography of works on issues in language and law, updated and published twelve years later by the American Bar Association (Levi 1994a). Much of the early literature was journalistic in nature. Linguists would write about their experiences in analyzing trademark cases, the interpretation of contracts, speaker recognition, authorship attribution.

Levi's 1989 article, "The Invisible Network," was perhaps the first piece to recognize and summarize the trend, amplified by the bibliography she compiled, which demonstrated that many linguists were writing about applications of their work in legal settings. Her book, *Language in the Judicial Process* (1990), edited with Anne Graffam Walker, published articles emanating from a 1985 conference with the same title held at Georgetown University in Washington. Forensic linguistics

* My thanks to Tammy Gales, Friedemann Vogel and Roger Shuy for very helpful comments on an earlier draft. Thes research for this article was largely conducted during my fellowship at the Käte Hamburger Center for Advanced Study in the Humanities, University of Bonn. I am grateful for the Center's support.

is not mentioned in that book. Neither is it mentioned in Pupier and Woerhling's (1989) collection, in which "The Invisible Network" was published.

What characterized this period most saliently is that the participants were well-trained linguists, specializing in such areas as semantics, syntax, phonology, and pragmatics. They not only had degrees in linguistics, but their careers were as academic linguists. On the continent, linguist Hannes Kniffka entered the field from that perspective. In the UK, Malcolm Coulthard, a prominent scholar in discourse analysis, took up legal linguistic issues as well. In the US, linguists who consulted in legal cases and came to write about it included Bethany Dumas, Ronald Butters, Georgia Green, Jeffrey Kaplan and Ellen Prince.

As we will see, this case-oriented approach attracted the term, "forensic linguistics" world wide. Yet that term has remained controversial. Roger Shuy (2002: 8), a major player in language and law in the US, has said that he does not use the term "forensic linguistics" because, if practiced properly, the field is nothing other than applying the substance of linguistics to address problems that happen to occur in legal contexts. In the early days, his perspective was descriptively an accurate picture of the field. In fact, to the extent that he was right, there was no field.

Many European legal linguists have also avoided the term, since much of the research on the continent is not case-specific, but rather seeks to make more general jurisprudential contributions, whether they be in the realm of characterizing historical trends in legislation in terms of developments in language usage, or problems of translation in construing the multilingual laws of the European Union.

Along with these linguists, the team of William M. O'Barr and John Conley began their writing partnership in the 1980s. Their books, written in the following decade, remain classics (e. g., Conley and O'Barr 1990; 1998). Both trained as anthropologists (Conley is also trained as a lawyer), Conley and O'Barr made important contributions, especially with respect to how speech in legal contexts reflects the power relationships among the actors.

The 1980s also saw the beginning of Peter Tiersma's illustrious career as a contributor to the study of language and law. Beginning with his early writings, Tiersma was especially interested in explaining the linguistic phenomena that were at the root of many legal doctrines, perhaps aligning his early work more closely with the budding field of Legal Linguistics in Europe. His best work in this period was his explanation of phenomena in contract law, using speech act theory (Tiersma 1986; 1992). The articles are still cited by legal theorists who write about contract law and who would otherwise not have access to these insights.

At the time, Tiersma was one of a kind in the field, trained as both a linguist and a lawyer. Thus, unlike most of the work produced at that time, Tiersma wrote in terms of broad legal phenomena with which linguistic theory may offer insight, rather than about individual cases on which he had worked. Later, we met and became close colleagues and friends, writing together many articles and publishing two books (Solan /

Tiersma 2005; Tiersma / Solan 2012). Tiersma brought with him an enormous range of knowledge about law, linguistic theory, history, and technology. His 1999 book, *Legal Language*, remains a classic and is not likely to be superseded any time in the near future.

This early period also saw linguists concerning themselves with the comprehensibility of jury instructions. This began with a seminal article by Robert and Veda Charrow in the *Columbia Law Review* (Charrow / Charrow 1979). Before long, others joined the fray, including Peter Tiersma (e. g., Tiersma 2001), Bethany Dumas (2000), Judith Levi and Shari Diamond (Diamond / Levi 1996). Similarly, linguists began to study the comprehensibility of warnings of all kinds, from *Miranda* warnings to the warnings on product labels (see, e. g., Dumas 1992; Tiersma 2002).

The 1990s was a time of great expansion in the field of language and law in the US, which led to consequences both good and bad. One positive advance was a collaboration between linguists and legal academics. I played a minor role in that development. In 1993, my book, *The Language of Judges* was published by the University of Chicago Press. At the time, I was a partner in a small New York law firm. A review of that book appeared in the *Yale Law Journal*, co-authored by a law professor, Clark Cunningham, and three linguists: Judith Levi, Georgia Green, and Jeffrey Kaplan (Cunningham et al. 1994). Entitled "Plain Meaning and Hard Cases," the review suggested that the kinds of linguistic analysis I had used in the book to criticize prior decisions of judges, particularly the justices of the Supreme Court of the United States, could be used in advance of judicial decisions to aid the courts in analyzing linguistic issues in legal interpretation. They made their point by providing linguistic analysis of issues then before the Supreme Court.

Of course, they were right. If linguists can participate in the legal system early enough to assist judicial decision makers in performing their jobs, it would be better to hear from them early than to hear from them after the fact, complaining about the lack of linguistic sophistication in the judiciary. In essence, these writers invited the application of forensic linguistics to help courts resolve disputes over meaning.

The collaborative efforts continued. In 1993, the Supreme Court decided a case entitled *Smith v. United States.*[1] Smith had attempted to trade an unloaded machine-gun for cocaine. The woman on the other side of the transaction, without Smith's knowledge, had become an agent of the police. Smith was caught and prosecuted for "using a firearm during and in relation to a drug trafficking crime." The case has drawn a lot of attention over the years because by a 6–3 margin, the Supreme Court held that by attempting to exchange his gun for the illegal drugs, Smith had "used" the gun, which is what the law requires for a conviction. Justice Scalia, famously dissenting from the left, remarked that when one speaks of using a gun, one almost always means using it as a weapon, not merely as a thing of value.

[1] 508 U.S. 223 (1993).

When, for example, one speaks of using a cane, the expression is understood as using the cane *as* a cane, not as mounting an antique cane on a wall.

Both sides of the Court agreed that the law should be given its ordinary meaning. The majority correctly found that while it may be unusual to use a gun as a thing of value, as though it were a piece of jewelry, once one does just that, it does not sound strange to say that the person "used" the gun in that way. The dissent, too, was right. It is strange to use a gun that way, which means that careful investigation, say by searching a corpus of American English, will not uncover many occurrences of "use" being written or uttered in that context.[2]

Two years after *Smith*, the Supreme Court decided *Bailey v. United States.*[3] Bailey had drugs in the glove box of his car, a gun in the trunk, as he drove to a drug deal. He was charged with the same crime as Smith, federal prosecutors seemingly emboldened by the earlier decision.

Clark Cunningham, the law professor who co-authored the book review, teamed up this time with linguist Charles Fillmore, a prominent linguist at the University of California at Berkeley (Cunningham and Fillmore 1995). In an article circulated to the Supreme Court justices prior to their hearing arguments in *Bailey,* Cunningham and Fillmore posited that the verb "to use" has two distinct senses, only one of which is relevant to construing the statute. The senses are the active and passive meanings, as reflected in the following sentence, which they included in their article:

> I use a gun to protect my house, but I've never had to use it.

Someone uttering this sentence will have intended the first "use" to mean "have" and the second "use" to mean "shoot" or "brandish." Accepting the earlier decision in *Smith*, that to trade a gun is to use it, Cunningham and Fillmore argued that at the very least, the statute should be limited to the sense of the word in which something active has to have occurred. Otherwise, the legislature could have used the word "possess" instead of "use" in the statute.

The Supreme Court agreed. It reversed Bailey's conviction by a vote of 9–0. The Court's decision went as far as to quote the example sentence provided by Cunningham and Fillmore, although it did so without attribution to them (one of many prerogatives enjoyed by judges in the US).

At around this same time, Cunningham and Levi teamed up to hold a conference in 1995 at Washington University in St. Louis, where Cunningham then taught, attended by a group of linguists and legal academics who write about the interpretation of stat-

[2] Below, I return to Smith and related cases in the context of corpus linguistic analysis, which has become popular among a group of legal analysts in recent years. In fact, "use a gun" is rarely if ever uttered to mean trading a gun, but "trade" and related verbs are used, suggesting that Justice Scalia's dissenting position was even stronger: People indeed speak of exchange transactions concerning firearms, but when they do, they employ verbs other than "use."

[3] 516 U.S. 137 (1995).

utes and the US Constitution. The list of attendees from both fields was impressive. The conference, was billed as a "summit" meeting between the two groups. The proceedings produced yet another important collaboration, this one between Judith Levi and William Eskridge, who was and still is a leading US legal scholar in the interpretation of statutes (Eskridge and Levi 1995).

Meanwhile, as all of this happy coming together was happening, forensic linguistics was establishing itself as a new academic field. Most significant in this regard was the formation of the International Association of Forensic Linguists in 1993, and its journal, then called *Forensic Linguistics*, more recently renamed the *International Journal of Speech, Language and the Law.*

Before getting into this institutional history, it is worth pointing to a serious rift that developed among practitioners of forensic linguistics in the early 1990s, a rift that has still not been fully repaired today. The issue involved authorship attribution and the insistence of one practitioner, Carole Chaski, that the methods employed in actual cases first be tested and validated, based on their ability to perform accurately in test cases in which the ground truth is known. She has further argued that developing a set of criteria that can be applied across cases is an essential aspect of developing valid methodology. This appears to me to be simply an effort to bring ordinary scientific methodology to a particular forensic identification task (see, e. g., Chaski 2001; 2012).[4] Two reports (National Research Council (2009) and President's Council of Advisors (2016)) have harshly criticized the forensic identification sciences generally for a lack of rigor and the failure to validate methods. Yet Chaski's suggestion was not well-received at the time (see, e. g., Grant / Baker 2001), and a cultural gap remains, although there has been a new sense of collaboration and common effort growing in the past few years, a trend to which I return later.

II. Forensic Linguistics Becomes a Field

In July 1993, the first meeting of the International Association of Forensic Linguists (IAFL) was held at the University of Bonn, where Hannes Kniffka, one of organization's founders, taught linguistics. The next year, the first issue of the journal, *Forensic Linguistics,* was published under the editorship of Malcolm Coulthard and Peter French, both English scholars. An article by Levi, summarizing the growing trend of linguists participating in the legal system in North America, appropriately enough inaugurated the new journal (Levi 1994b).

At the time, the term, "forensic linguistics" was still not used widely, at least not in the United States. In 1968, Jan Svartvik wrote a small book with that term in its title, but the term did not catch on generally. Only one published case in US courts involved any reference to forensic linguistics prior to the turn of the 21st century (a

[4] Chaski's specific proposals have been the subject of controversy, however. See, e. g., Grant / Baker (2001), Solan / Tiersma (2005).

1983 published case), and until 1990 it appears only very sporadically in books and articles.

A few authors writing at the time did understand the increase in linguistic participation in the courts as announcing a discipline of which the legal system should take note. Hannes Kniffka foresaw the development of the field, using the term "Forensische Linguistik" in various articles, and in the title of an edited book published in 1990. Rieber / Stewart's (1990) collection of articles on linguistic experts in court also spoke of "forensic linguistics" in the courts.

The initial scarcity of the term "forensic linguistics" does not reflect an act of rebellion against a movement to define a field. In fact, there barely was a field and nothing to rebel against. Rather, these were all linguists, well-trained and accomplished to various extents depending upon their age and experience, excited to see their training put to use in a way far more practical than they had anticipated when they enrolled in graduate school.

The field has now matured with books bearing titles that include the words "forensic linguistics," biennial and regional conferences of IAFL, the journal begun in 1994 now in its 26th year, and articles galore. Students can now study forensic linguistics at the graduate level in several programs around the world.

Yet the term continues to cause discomfort in some who study issues of language and law that do not involve court testimony. In much of continental Europe, the term "legal linguistics" predominates, with "forensic linguistics" being limited to the use of linguistics in court cases. Other researchers (including myself) continue to speak of "language and law" without either designation. People engaged in translation studies, multilingualism, semiotics, philosophy and other such disciplines are less likely to self-identify as forensic linguists, notwithstanding the efforts of the forensic movement to become all-inclusive as an umbrella term (Gibbons 2003). Lexis searches of both cases and law journal articles shows the shift in terminology from "legal linguistics" to "forensic linguistics" in the US.

The formation of graduate programs in forensic linguistics has, to my mind, been a mixed blessing. On the positive side of the ledger, it has led to a healthy increase in the number of people in the field, creating all kinds of opportunities for dialogue. Yet the expansion comes at a cost. The educational programs are not limited to those who already hold doctorates in linguistics. Rather, they offer masters and doctor degrees to those interested in the field but without sophisticated education either in linguistics or in law. As a result, much of the linguistic training comes in the context of methods that might seem useful in forensic analysis, especially given the interests of the faculty. This includes intensive study in discourse analysis and pragmatics, and far less (if any) in such fields as syntax, formal semantics, phonology, or morphology. Training in the field of forensic phonetics is less limiting because students really are trained as phoneticians, and the field really employs phonetic analysis in its ordinary professional sense. The University of York in England has played a leading role in that field.

As for forensic phonetics, it has had a very mixed history in the US. The invention of the sound spectrograph permitted engineers and linguists to actually look at pictures of acoustic information coming from the human voice. Over time, some involved in the invention itself, along with people involved in law enforcement, began to claim that one can distinguish between one speaker and another simply by comparing the spectrograms, which became known as voice prints. The problem is that no one ever conducted sufficient on-the-ground testing to determine whether this claim had validity, especially in forensic contexts, where it is often the case that young people in the same speech community go out of their way to sound alike.

In 1979, the National Research Council (National Research Council 1979) published a report acknowledging the limitations of spectrogram comparison as a means of identifying speakers by their voices. To its credit, it was the linguistic community – the community of academic phoneticians in particular – that determined the inadequacy of this method. Peter Ladefoged, a UCLA professor, was especially instrumental (see Solan / Tiersma 2005 for detailed recounting of this history).

III. Some Areas of Cross-Disciplinary Collaboration

Speaker Recognition. Speaker identification by professional linguists is still not commonplace in US Courts, although it is not unheard of. Among the leading practitioners is Sandra Disner of the University of Southern California. The methods and the science behind those methods has improved exponentially over the decades, especially in the realm of automatic and semi-automatic speech recognition technology. Of special importance is the role of the National Institute of Standards and Technology (NIST), an arm of the US Department of Commerce. For many years, NIST held competitions among labs around the world engaged in developing computer models that could extract various features of the human voice, and make comparisons. Various laboratories in both academic and law enforcement environments participate. Because not all prominent labs use fully automated systems, sometimes arrangements are made for those who blend computer analysis with ordinary phonetic analysis. Results are progressively more impressive. In fact NIST has now established its own research group in speaker recognition to help develop consensus on best methods. In the UK, the situation is more complicated, with public disagreement between those who use automated technology, and those who use phonetic analysis enhanced by acoustic information gleaned through computer assisted analysis.

Procedural Rights in Criminal Cases. Since the mid 1990s, perhaps chief among the areas in which language and law research has taken hold is the linguistic analysis of encounters between citizens and law enforcement agents. Different disciplines have gotten into the act, with significant work produced by Janet Ainsworth (a lawyer who is astoundingly sophisticated as a self-educated linguist and soon to become president of IAFL; see Ainsworth 1993), psychologist Janice Nadler, who teaches at Northwestern University (e. g., Nadler / Trout 2012), and linguist Roger Shuy.

Among Shuy's major contributions is his work on the comprehensibility of the *Miranda* warnings, a topic also of interest to psychologists (see Shuy 1997). Shuy has also written a series of books about his many experiences as an expert consultant in legal cases, many of which involve criminal justice (see, e. g., Shuy 2011; 2012; 2013; 2014). Shuy embeds scholarly analysis in well-written narratives, making these books a pleasure to read. Ainsworth has written about the difficulty in asserting one's rights to remain silent, and to have a lawyer present during questioning (Ainsworth 2012). Nadler has contributed important work on the nature of consent in contexts where a person stopped by the police is invited to consent to having his or her property or person searched. Recently, a group of linguists, lawyers and others have participated in creating a set of best practices for presenting rights to non-native speakers of English. The group has been led by Australian linguist Diana Eades, and has already had significant influence around the English speaking world (Communication Rights Group 2016).

In the UK, there has been considerably better cooperation between the law enforcement and linguistic communities, with the police caution, the British version of *Miranda* warnings, revised to be more comprehensible. Also in Britain, there are fewer nominal rights, such as the right to remain silent without risk that one's silence can be used against him, but the rights that actually do exist appear to be enforced more fully (see, e. g., Rock 2007).

Trademark Cases. While I will not summarize each area in detail, there are many other ways in which linguists contribute to the resolution of legal cases. Among the most prominent is trademark law. Trademarks, when valid at all, are given different degrees of strength, depending upon the extent to which they are merely descriptive of the product. A brand of milk called "Milk" would receive no trademark protection. Exactly how descriptive a name is may be subject to linguistic analysis, using various relevant corpora from the economic sector in the case to determine whether the terms in question are used generally. A number of linguists, including Roger Shuy (2003) and Ronald Butters (2008), engage in such analyses.

Trademarks are also subject to linguistic analysis when the question is whether two brands sound so similar that one is likely to confuse one with the other. I am currently working on a project investigating the phonetics of when names are likely to be confused, along with phonetician Silvia Dahmen, phonologist Kevin Tang, and psychologist Jennifer Coane. The project is funded by the International Association of Forensic Phonetics and Acoustics.

Threats and Perjury. Other areas that have been investigated by US researchers include the assessment of threats, with respect to what constitutes a threat ("I want to kill you?" means something different from an organized crime figure speaking to a potential witness than it does from someone who is a sore loser in table tennis), who made the threat, and whether a person making a threatening statement is likely to carry it out (see, e. g., Gales 2015; Fraser 1998; Solan / Tiersma 2005). Similarly, there has been a robust literature on the nature of perjury thanks in large part to

Laurence Horn (2018). Peter Tiersma and I have also chimed in (Solan / Tiersma 2005).

Courtroom Interpreting. Courtroom interpreting has long been a topic of interest in the US, less so the interpretation of multilingual laws or other aspects of multilingual legal systems, so central to discussions in Europe and elsewhere in the world. (Berk-Seligson 2002; Angermeyer 2015; Trinch 2006). Issues that arise include the fact that the English version of testimony, spoken by the interpreter, becomes the official record of the case, notwithstanding that it may not always be accurate, and the temptation for interpreters to play a more substantive role in the testimony that they have been retained to interpret.

Statutory and Constitutional Interpretation. Various aspects of interpretation, including vagueness, ambiguity, plain language, the nature of "ordinary meaning," and so on, have also been ripe for study, both in the US and in Europe. Ralf Poscher of Freiburg University has been a major contributor in Europe. Many of the areas that have shown themselves to be prominent in the US are represented in the *Oxford Handbook of Language and Law*, which Peter Tiersma and I published in 2012. We actually devoted rather limited space to forensic issues, more to matters of interpretation and conceptualizing various areas of law, such as the definitions and limits of criminal conduct. As for linguistic approaches to interpretive issues, Brian Slocum's 2015 book on ordinary meaning, and my own 2010 book, *The Language of Statutes*, engage the intersection of law, linguistics and to some extent, philosophy. Moreover, in the US now, there are quite a number of scholars who are sophisticated in law, and in linguistics or the philosophy of language. Among them are Janet Ainsworth, Laurence Solum (I'm not kidding), Brian Bix, Gideon Yaffe, Scott Soames, Stephen Neale, and Andre Marmor. A number of them are full-time law professors, others have their base in philosophy. These scholars also write more about the relationship between legal phenomena and linguistic phenomena generally than they do about individual cases on which they consulted.[5]

Throughout this period, two US legal scholars – Steven Winter and Robert Tsai (see Tsai 2004), produced excellent work on the relationship between legal argumentation and metaphor, following the work of George Lakoff and others. Much of Winter's work is collected in his book (Winter 2001).

IV. Some Encouraging Trends

In the past few years some positive developments have been occurring, in my opinion. I would like to describe them and to speculate on the future.

[5] There are also quite a number of linguists who focus on case work, further solidifying the presence of linguistics in the legal world, although more often in the courtroom than in the journals.

First, let us return to authorship attribution analysis. A serious development displayed itself at the 2017 IAFL conference, which was held in Porto, Portugal. In the past, there has been significant tension between on the one hand methods like Chaski's, which attempt to find a set of criteria which, taken together, lead to correct results in a statistically significant set of cases based on experimentation with ground truth data, and on the other hand methods that rely upon identifying salient similarities which vary from case to case and that draw the attention of the investigator.

With very few exceptions, the second approach was absent from this conference, even though in past years this conference was home to it. Rather, people in the field, from the US and various countries in Europe, reported on their ground truth experimental results. Some, like Carl Vogel and Patrick Juola who spoke in Porto, are computer scientists. Some are computational linguists. Sometimes the two groups collaborated, which is a healthy development, since each body of learning has something to contribute to the endeavor. Researchers differed in the kinds of linguistic features they used (for example, characters, parts of speech, words), the value of N in the N-gram, what other than N-Grams they looked at, the size of the known writings from various authors, often consisting of a suspect and a number of foils, and the amount of text being evaluated. Typically, the greater the reference corpus (often used in machine learning protocols), the smaller the sample that can be evaluated.

Somewhat influential in bringing about this rapprochement, I believe, is a conference on authorship identification held at Brookyn Law School in October 2012. Represenatives from both camps were present and interacted productively. It was recognized that computer scientists could benefit from learning more about linguistic regularity from linguists, and that linguists were often under-trained in computational methods.Professors Vogel and Juola (mentioned above) were among the participants, as were other linguists and computer scientists from the US and Europe.[6]

In short, while there are still no received "best practices" in the field of authorship attribution, it appears that consensus is developing about what it means to do meaningful work in the field. The most significant development is the recognition that methods employed in case law must be tested to determine how well the method performs on data relevant to the case at hand. This reflects one of the so-called "Daubert criteria," named after the well-studied case of *Daubert v. Dow Merrill Pharmaceuticals, Inc.*,[7] decided by the Supreme Court in 1993. Ms. Daubert had been taking a drug called Bendectin to combat morning sickness during pregnancy. When her son was born with birth defects, she sued the drug manufacturer. At the trial, she presented a scientist who relied on animal studies to argue that the drug caused the birth defects. The Supreme Court ruled that the testimony should not have been allowed, since the inferences the expert drew did not satisfy ordinary scientific standards. Among the criteria on which the Court relied was knowing the rate of error in apply-

[6] The proceedings of that conference are published in Journal of Law & Policy, Vol. 21(2) (2013).

[7] 509 U.S. 579 (1993).

ing the method that the expert used. Without that, it is not feasible to infer how likely it was that the expert's opinion was correct.

Of course, without adequate testing, we really cannot be sure that those practitioners who rely on tested algorithms get results superior to those who rely on common sense inferences based on examples that appear clear on their face (see Solan 2013). Nonetheless, the field now seems to recognize that the only way for it to advance and to demonstrate its legitimacy is by virtue of employing transparent, tested methods.

A second recent development concerns the adoption of corpus linguistics as a tool in legal interpretation for both legal scholars and judges. It has an interesting background story. Stephen Mouritsen had been trained in linguistics at Brigham Young University in Utah, the home of the major corpora of American English, thanks largely to linguist Mark Davies, who is a member of the linguistics department there. Mouritsen then attended Brigham Young's law school, and subsequently became a law clerk to Justice Thomas Lee, who had been a law professor at Brigham Young before his appointment to the Supreme Court of Utah. In the US, the words in statutes are presumed to have been intended to be construed in their ordinary sense, as a matter of law. The presumption is defeasible, although there is no consensus on *how* defeasible it is. Thus, courts at least sometimes must make judgments about which meaning is ordinary in order to do their jobs properly. There is also no consensus on what makes one meaning, but not another the "ordinary meaning."

Judges have typically made judgments of ordinary meaning using their intuitions as native speakers of English. Recent work in linguistics by Jon Sprouse and others (Sprouse et al. 2013) has shown that the intuitions of linguists making grammaticality judgments in the linguistic literature matches the judgments of groups of participants in a survey study to a high degree of reliability.

However, it is not likely that this result obtains for judgments about the distribution of different meanings of the same term. For one thing, people do not all experience the same distribution of meanings in the utterances they read and hear. For another, people are subject to the "false consensus bias". In an experimental study, Dan Osherson, Terri Rosenblatt and I (2009) presented participants with a story about a person injured in a factory that manufactures sand blasting equipment. Sand is used in the process, and the ambient sand in the air can cause injury to the respiratory system. We asked whether this injury in a worker was caused by "pollution," an inquiry relevant to insurance coverage. We told half the participants that if the injury was caused by pollution it would trigger insurance coverage for the manufacturer of the equipment, and we told the other half that if the injury was caused by pollution it would prevent coverage for the equipment manufacturer. It turned out that the subjects responded equally for these two conditions, so we combined the results.

About 40 per cent said the injury was a pollution injury, about 40 per cent said it was not a pollution injury and about 20 per cent said they could not tell.

We then asked these same people how many out of 100 people just like them who participated in the study do they think gave the same answers they did. The mean response was between 60 and 70 per cent, a huge overestimation of how "ordinary" their understanding of the language is.

We presented the same study to judges and asked them how many judges out of 100 who participated agreed with their answers. Even though only 15 per cent of the judges said the injury was caused by pollution, the judges estimated that they were in a 60–70 per cent majority as well.

This suggests that a more empirically-based method for determining ordinary meaning could help the judiciary. Recognizing this, Justice Lee has applied corpus methodology in a few of his opinions written in the Supreme Court of Utah. In a 2015 case, *State v. Rasabout*, a gang member fired 12 shots from an automatic weapon into a house as he drove by. He was charged with 12 separate crimes of "discharging a firearm" from an automobile. There is an interpretive problem. The verb "to discharge" when used in this context can mean either to fire a shot, or to empty the weapon of its ammunition. If the former, Rasabout committed and could be sentenced for 12 crimes, if the latter, only one crime. Using Brigham Young's Corpus of Contemporary American English (called "COCA"), Lee found that the word "discharge" used in this context was almost always used to describe a single shot fired from the weapon. He thus concluded that construing "discharge" in its ordinary sense required that he concur with the majority, which had come to the same result using dictionaries. Rasabout is serving his sentence for the twelve crimes.

Corpus linguistics is a tool, not a substantive answer to all interpretive dilemmas. I praise Justice Lee for his work in this regard. He and Stephen Mouritsen have written an article on the use of corpus linguistics in finding ordinary meaning, which appeared recently in the *Yale Law Journal* (Lee / Mouritsen 2018), showing that corpus linguistics is gaining more and more attention in the legal academic community. Mourtisen, as a law student, had earlier published an article, appropriately given credit for bringing this technology to the attention of the legal community (Mouritsen 2010).

The tool has some limits, however. Tammy Gales and I have written an article published in the *Brigham Young University Law Review* describing the conditions under which corpus analysis can be most efficacious in determining ordinary meaning (Solan / Gales 2018). We identify four such conditions:

First, the court must decide that the ordinary sense of the word's usage is the intended one. This is a good rule of thumb, but may not always reflect the legislature's intention. For example, a civil rights law in the US, the Voting Rights Act, makes it illegal for a state to hold elections in a way to make it unlikely that a candidate from a racial minority will get elected. This has to do with how voting districts are drawn, among other things. The law refers to the election of "representatives." In Louisiana, not only are legislators and the governor elected, but so are justices of the state supreme court. A law suit was brought against state officials for defining voting districts

in such a way as to reduce the likelihood that an African American candidate would be elected to the Supreme Court of Louisiana. The state defended by arguing that the Voting Rights Act applies only to the election of representatives, and judges are not routinely spoken of as representatives. A majority in the US Supreme Court acknowledged the linguistic fact, but held nonetheless that Congress could not possibly have intended to create a safe harbor for racist elections of judges in southern states, and held the voting scheme illegal, despite the ordinary meaning rule. There are a number of other examples of the Court placing teleology over the distribution of usage in everyday life, although there is no consistency in the matter.

This last point is an important one. A movement in the interpretation of statutory law, dubbed "the new textualism," holds that courts should avoid looking at most extra-textual context in construing laws, relying as much as possible on inferences drawn from the statutes themselves (see Scalia and Garner 2010). But not everyone is a textualist. Many American theorists believe that context, including the reports of the legislature on what the law is intended to accomplish, provides crucial information (see, e. g., Katzmann 2014). Textualism is intended to limit contextual investigation in individual cases, opting instead for an "objectified" sense of the meanings of the words themselves. That objective analysis is taken from the ordinary meaning of a statute's terms. A similar perspective pervades current "originalism" theory with respect to the interpretation of the Constitution. In that realm theorists speak of "original public meaning," a reconstruction of how the population of educated people at the time of the Constitution's adoption would understand the words used in the document. It should thus not come as a surprise that corpus analysis has become a tool favored by the politically conservative theorists who espouse these perspectives.[8]

Second, one must have a sense of what ordinary meaning means. I return to this issue directly. Is it a matter of counting the instances in which each of the competing meanings is instantiated, or is it a matter of determining whether a meaning shows up enough in the corpus to reflect its being comfortably accepted by the relevant speech community?

Third, if one is to use a corpus, one must know what to search. In a sequel to *Smith*, the "use a gun" case, the Supreme Court decided *Muscarello v. United States*[9] in 1998. The same law that imposes a longer sentence for "using" a gun in a drug trafficking crime, imposes the same longer sentence for "carrying a gun" in a drug trafficking crime. Muscarello had the drugs in the glove box, the gun in the trunk, just like Bailey. Was he carrying the gun? Justice Breyer, writing for a majority of five Supreme Court justices, said he was indeed. Part of his analysis involved a search of newspaper articles with the words "gun" and "carry" in close proximity to "vehicle". He found that about one third of the hits involved carrying the gun in a vehicle. An

[8] Corpus analysis is itself neutral as to the contexts in which it is employed. My point is that conservative theorists will rely on ordinary meaning approaches in a greater proportion of cases interpreting laws and the Constitution.

[9] 524 U.S. 125 (1998).

angry dissenting opinion argued that carrying a gun on one's person is the most normal way to use the term.

As Mouritsen (2010) has pointed out, Justice Breyer's search predicts his answer. Breyer should have looked at instances without the word "vehicle" to see how the term is ordinarily used. Mouritsen did just that using COCA. The result was that about one third of the time "carry" clearly meant carry on one's person, and about two thirds of the time, one could not tell whether the weapon was carried in a vehicle or on one's person.

This result leads to other inquiries. The fact that so much of the time the result was uncertain suggests the expression is ambiguous. If both interpretations are well within our repertoire of ordinary usage, a legal principle dictates that the ambiguity be resolved in favor of the accused. In addition, it would be interesting to determine how the word is understood when not modified by a manner phrase. Do we default more in those instances to carrying the gun on one's person?

Also with respect to controversy over the appropriate search terms, in *People v. Harris*,[10] all seven justices of the Supreme Court of Michigan decided to use COCA to determine ordinary meaning, but they divided four-to-three on what search to use and how the case should come out.

A police officer stopped a vehicle, then physically assaulted the driver without provocation, while his two colleagues stood by and watched. A disciplinary action was brought against them, based in large part on a video of the incident that the officers did not know existed. They all lied in the disciplinary hearing and were later prosecuted criminally for obstruction of justice. A Michigan law exempts "information" provided by a law enforcement officer in a disciplinary proceeding from being used against that officer in a subsequent criminal case. The reason is that the officer would have a right to refuse to testify at the hearing if the testimony can later be used to incriminate him. Thus, the law exempting the testimony from further use makes it possible for the state to compel the testimony in the disciplinary action.

The officers were convicted of obstruction of justice, and appealed to the Supreme Court of Michigan. The four justices in the majority noted that "information" appears in COCA along with modifiers such as "false" and "inaccurate," concluding that the law exempts statements from being used in a subsequent prosecution even if they were untrue. The dissent noted that only when "information" is modified by one of these terms does it include untruths. Perhaps the rule of lenity, which says that indeterminacy in legislation should be resolved in favor of the accused should have prevailed here.

A fourth difficulty with corpus analysis to determine ordinary meaning is the problem of how to interpret the absence of hits in the corpus. Traditional linguistic analysis separates starred expressions from legitimate ones:

[10] 497 Mich 958 (2015).

Did you finish the project?

**Finished you the project?*

But the absence of an expression, or even words used in close proximity in a corpus can mean either that no one happened to talk about such a thing, or that the expression is linguistically uncomfortable (i.e., ungrammatical or infelicitous), and therefore it would not be expected to appear. Moreover, most corpora only consist of written language and not transcripts of speech. This relates to the problem raised earlier: What does the legal system mean when it speaks of ordinary meaning? Does it speak of central tendency, in which case counting relative occurrences in a corpus is good practice, or does it speak of speakers' comfort using an expression in a certain way, in which case the co-existence of two meanings in substantial numbers does not answer the question of ordinary meaning? The latter would require the analyst to determine that the expected entries in the corpus are missing because they are starred. The former requires no such analysis. The courts seem to be of two minds when it comes to this issue.

Let us return to Mr. Rasabout – the gang member who is serving twelve consecutive prison sentences for "discharging" a firearm from a car. As noted, corpus analysis shows that this term is almost always used to refer to an individual shot, rather than to emptying the gun of its ammunition entirely. But that does not answer the question of ordinary meaning without some additional analysis. It is possible that the second meaning is just as legitimate as the first, and the absence from the corpus reflects only that we speak more often of individual gunfire than we do of firing all of the bullets out of a gun. To determine whether the problem is a matter of linguistic knowledge, or merely a matter of which of two kinds of events, equally describable in the same language, happens to occur more often, it is necessary to see whether the second meaning appears in the corpus, but does so using language other than "discharge." Tammy Gales and I (Solan / Gales 2018) did just that, and found instances in COCA of "emptying" and "unloading" used to describe firing all the ammunition from a gun. We speak of this as "double dissociation," and argue that it bolsters Justice Lee's analysis. That is, when people speak of shooting all the bullets from a gun, in ordinary speech they do not use the word "discharge," even though they could. Subsequent research (not yet published) shows that the same holds true for "using" a gun by trading it for cocaine. We found in COCA instances of talk about "trading" but not instances of talk about "using" when the subject was an exchange transaction involving a firearm.

These limitations do not strike me as serious obstacles for bringing empirical methodology to the task of legal interpretation, however. Rather, they suggest that more collaboration between the linguistics and legal communities is in order. This sort of cooperation, led by the legal community's interest in corpus methodology, is especially promising. For this reason, it is a good time to be a legal linguist in the US, whatever terminology one uses to describe the field.

V. Conclusion

My goal in this essay is to introduce readers to some of the issues and much of the culture that has characterized language and law work in the US over time. I end with an optimistic note, and with a touch of caution. To an unprecedented extent, judges, legal scholars and linguists are working in tandem to improve the workings of the legal system. I both hope and anticipate that this collaborative effort will continue. I also hope that the excitement of the collaboration will not overtake the need for rigorous standards in its development.

VI. Literature

Ainsworth, Janet E. (1993): In a Different Register: The Pragmatics of Powerlessness in Police Interrogation. In: *Yale Law Journal* (103), pp. 259–322.

Ainsworth, Janet E. (2012): The Meaning of Silence in the Right to Remain Silent. In: Peter M. Tiersma / Lawrence M. Solan (Ed.): Oxford Handbook of Language and Law Oxford: Oxford University Press, pp. 287–298.

Angermeyer, Philipp S. (2015): Speak English or What? Codeswitching and Interpreter Use in New York City Courts. New York: Oxford University Press.

Berk-Seligson, Susan (2002): The Bilingual Courtroom. Court Interpreters in the Judicial Process. Chicago: University of Chicago Press.

Butters, Ronald (2008): A Linguistic Look at Trademark Dilution. In: *Santa Clara High Technology Law Journal* (24), pp. 507–519.

Charrow, Robert P. / Charrow, Veda R. (1979): Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions. In: *Columbia Law Review* (79), pp. 1306–1374.

Chaski, Carole E. (2001): Empirical Evaluations of Language-Based Author Identification Techniques. In: *Forensic Linguistics* (8), pp. 1–65.

Chaski, Carole E. (2012): Author Identification in the Forensic Setting. In: Peter M. Tiersma / Lawrence M. Solan (Ed.): Oxford Handbook of Language and Law. Oxford: Oxford University Press, pp. 489–503.

Communication of Rights Group (2016): Guidelines for Communicating Rights to Non-native Speakers of English in Australia, England and Wales, and the USA (http://hallidaycentre.cityu.edu.hk/ ila/materials/Communication_of_Rights_OctoAAAL.pdf).

Conley, John M. / O'Barr, William M. (1990): Rules Versus Relationships: The Ethnography of Legal Discourse. Chicago: University of Chicago Press.

Conley, John M. / William M. O'Barr (1998): Just Words: Law, Language, and Power. Chicago: University of Chicago Press.

Cunningham, Clark. D. / Levi, Judith N. / Green, Georgia / Kaplan, Jeffrey P. (I994): Plain Meaning and Hard Cases (review of Solan 1993). In: *Yale Law Journal* (103), pp. 1561–1625.

Cunningham, Clark D. / Filmore, Charles J. (1995): Using Common Sense: A Linguistic Perspective on Judicial Interpretations of "Use a Firearm." In: *Washington University Law Quarterly* (73), pp. 1159 – 1214.

Diamond, Shari S. / Levi, Judith N. (1996): Improving Decisions on Death by Revising and Testing Jury Instructions. In: *Judicature* (79), pp. 224 – 231.

Dumas, Bethany (1992): An Analysis of the Adequacy of Federally Mandated Cigarette Package Warnings. In: *Tennessee Law Review* (59), pp. 261 – 304.

Dumas, Bethany (2000): Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues. In: *Tennessee Law Review* (67), pp. 701 – 742.

Eskridge, William N., Jr. / Levi Judith N. (1995): Regulatory Variables and Statutory Interpretation. In: *Washington University Law Quarterly* (73), pp. 1103 – 1115.

Fraser, Bruce (1998): Threatening Revisited. In: *Forensic Linguistics* (5), pp. 159 – 173.

Gales, Tammy (2015): Threatening Stances: A Corpus Analysis of Realized vs. Non-Realized Threats. In: *Language and Law/Linguagem e Direito* (2), pp. 1 – 25.

Gibbons, John (2003): Forensic Linguistics: An Introduction to Language in the Justice System. Malden, Massachusetts: Blackwell Publishing Company.

Grant, Tim / Baker, Kevin (2001): Identifying Reliable, Valid Markers of Authorship: A Response to Chaski. In: *Forensic Linguistics* (8), pp. 66 – 79.

Horn, Laurence (2018): Telling it Slant: Towards a Taxonomy of Deception. In: Janet Giltrow / Dieter Stein (Ed.): The Pragmatic Turn in Law: Inference and Interpretation in Legal Discourse Berlin: Walter de Gruyter, pp. 23 – 55.

Katzmann, Robert A. (2014): Judging Statutes. Oxford: Oxford University Press.

Kniffka, Hannes (Ed.) (1990): Texte zu Theorie und Praxis Forensicher Linguistik. Tübingen: Niemeyer.

Lee, Thomas / Mouritsen, Stephen (2018): Judging Ordinary Meaning. In: *Yale Law Journal* (127), pp. 788 – 1105.

Levi, Judth N. (1989): The Invisible Network: Contemporary Research in the USA on Language and the Legal Process. In: P Pupier / J. Woehrling (Ed.): Language and Law [Langue et Droit]: Proceedings of the First Conference of the International Institute of Comparative Linguistic Law. Montreal: Wilson & Lafleur, pp. 519 – 550.

Levi, Judith N. (1994a): Language and Law: A Bibliographic Guide to Social Science Research in the U.S.A. Chicago: American Bar Association.

Levi, Judith N. (1994b): Language as Evidence: The Linguist as Expert Witness in North American Courts. In: *Forensic Linguistics* (1), pp. 1 – 26.

Levi, Judith N. / Walker, Anne Graffam (Ed.) (1990): Language in the Judicial Process. New York: Plenum Press.

Mouritson, Stephen (2010): Note, The Dictionary is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning. In: *Brigham Young University Law Review* 2010, pp. 1915 – 1978.

Nadler, Janice / Trout, J. D. (2012): The Language of Consent in Police Encounters. In: Peter M. Tiersma / Lawrence M. Solan (Ed.): Oxford Handbook of Language and Law. Oxford: Oxford University Press, pp. 326 – 339.

National Research Council (1979): On the Theory and Practice of Voice Identification. Washington, D.C.: National Academy of Science.

National Research Council (2009): Strengthening Forensic Science in the United States: A Path Forward, Washington, D.C.: National Research Council (https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf).

President's Council of Advisors on Science and Technogogy, Executive Office of the President (2016): Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature Comparison Methods. (https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf).

Pupier, Paul / Woehrling, Jose (Ed.) (1989): Language and Law. Proceedings of the First Conference of the International Institute of Comparative Linguistic Law. Montreal: Wilson & LaFleur.

Rieber, Robert W. / Stewart, William A. (Ed.) (1990): The Language Scientist as Expert in the Legal Setting. New York: New York Academy of Science.

Rock, Frances (2007): Communicating Rights: The Language of Arrest and Detention. Hampshire, UK: Palgrave Macmillan.

Scalia, Antonin / Garner, Bryan (2012): Reading Law: The Interpretation of Legal Texts. St. Paul, Minn.: Thomson/West.

Shuy, Roger N. (1997): Ten Unanswered Language Questions about Miranda. In: *Forensic Linguistics* (4), p. 175 – 196.

Shuy, Roger N. (2002): Linguistic Battles in Trademark Disputes. New York: Oxford University Press.

Shuy, Roger (2011): The Language of Perjury Cases. New York: Oxford University Press.

Shuy, Roger (2012): The Language of Sexual Misconduct Cases. New York: Oxford University Press.

Shuy, Roger (2013): The Language of Bribery Cases. New York: Oxford University Press.

Shuy, Roger (2014): The Language of Murder Cases. New York: Oxford University Press.

Slocum, Brian G. (2015): Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation. Chicago: University of Chicago Press.

Solan, Lawrence M. (1993): The Language of Judges. Chicago: University of Chicago Press.

Solan, Lawrence M. (2010): The Language of Statutes. Chicago: University of Chicago Press.

Solan, Lawrence M. (2013): Intuition vs. Algorithm: The Case of Forensic Authorship Identification. In: *Brooklyn Journal of Law and Policy* (21), pp. 551 – 576.

Solan, Lawrence M. / Gales, Tammy (2018): Corpus Linguistics as a Tool in Legal Interpretation. In: *BYU Law Review:* (2017), pp. 1311 – 1357.

Solan, Lawrence M. / Rosenblatt, Terri / Osherson, Daniel (2009): False Consensus Bias in Contract Interpretation. In: *Columbia Law Review* (108), pp. 1268 – 1300.

Solan, Lawrence M. / Tiersma, Peter M. (2005): Speaking of Crime: The Language of Criminal Justice. Chicago: University of Chicago Press.

Solum, Lawrence B. (2015): The Fixation Thesis. In: *Notre Dame Law Review* (91), pp. 1 – 78.

Sprouse, John / Schütze Carson T. / Almeida, Diogo (2013): A Comparison of Informal and Formal Acceptability Judgments Using a Random Sample from Linguistic Inquiry 2001 – 2010. In: *Lingua* (134), pp. 219 – 248.

Svartvik, Jan (1968): The Evans Statements: A Case for Forensic Linguistics. Göteborg, Sweden: University of Göteborg.

Tiersma, Peter M. (1986): The Language of Offer and Acceptance: Speech Acts and the Question of Intent. In: *California Law Review* (74), pp. 189 – 232.

Tiersma, Peter M. (1992): Reassessing Unilateral Contracts: The Role of Offer, Acceptance and Promise. In: *University of California, Davis Law Review* (26), pp. 1 – 86.

Tiersma, Peter (1999): Legal Language. Chicago: University of Chicago Press.

Tiersma, Peter (2001): The Rocky Road to Legal Reform: Improving the Language of Jury Instructions. In: *Brooklyn Law Review* (66), pp. 1081 – 1191.

Tiersma, Peter (2002): The Language and Law of Product Warnings. In: J. Cotterill (Ed.): Language in the Legal Process. New York: Palgrave Macmillan, pp. 54 – 74.

Tiersma, Peter M. / Solan, Lawrence M. (Ed.) (2012): The Oxford Handbook of Language and Law. Oxford: University Press.

Trinch, Shonna (2006): Bilingualism and representation: Locating Spanish-English contact in legal institutional memory. In: *Language in Society* (354), pp. 559 – 593.

Tsai, Robert L. (2004): Fire, Metaphor, and Constitutional Myth-Making. In: *Georgetown Law Journal* (93), pp. 181 – 239.

Winter, Steven L. (2001): A Clearing in the Forest: Law, Life, and Mind. Chicago: University of Chicago Press.

Legal Linguistics in Africa

Framing the Agenda for an Emerging Discipline in a Nebulous Space

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Abstract

"The continent is too large to describe. It is a veritable ocean, a separate planet, a varied, immensely rich cosmos. Only with the greatest simplification, for the sake of convenience, can we say 'Africa'. In reality, except as a geographical appellation, Africa does not exist."
Ryszard Kapuściński, The Cobra's Heart

As the scientific study of language, linguistics lends itself to varied interdisciplinary application, given the centrality of language in human affairs. One area where such cross-disciplinary application manifests is the language-law nexus. Legal linguistics, an interdisciplinary field that straddles law and language, represents the acknowledgement that the law and language are intertwined. This interdisciplinary field has matured in some countries and regions of the world but is still budding in others. This article seeks to illuminate some of the shared factors that shape the budding law-language research on, *for the sake of convenience*, the African continent. However, the *varied, immensely rich cosmos* of the geopolitical space in question dictates that the discussion remains generic. For this reason, any specific review made and illustration given, in the course of the discussion, cannot be taken to be applicable across board. They are, at best, indicative of the challenges and opportunities the emerging field faces and presents across a nebulous space.

Keywords: language, law, legal linguistics, forensic linguistics, traditional dispute resolution systems, customary law

I. Introduction

The juxtaposed terms in *legal linguistics* are symbolic of the replacement of rigid borders that seek to define disciplinary purity with porous ones that recognise the interconnectedness of social reality. In the abstract, a case can be made for the relationship between language and the law by arguing that the latter finds expression in former, and that the language of the law reveals our legal reasoning and our beliefs about what the law can do. However, the case can be made at a more immediate and practical level: Our actions in society are bound by rules which are couched in language, and these are, on a daily basis, transmitted, enforced and disputed through the medium of the spoken and written language. Our knowledge of what is right and

wrong is thus inextricably tied to our knowledge of the language used to demarcate between right and wrong.

From the offset, this article acknowledges that in defining the interdisciplinary, the question of whether the terms *legal linguistics* and *forensic linguistics* are synonyms or descriptions of separate fields of study is moot. We take the stand that whereas the two terms may express differences in emphasis and focus in scholarship regarding how language and law relate; the shared interest remains language and law.

Coulthard (2010) opines that the concerns of forensic linguistics are threefold: studies on the language of legal texts, investigations into the spoken and written language of the legal process and the linguist as an expert witness. Olsson and Luchjenbroers (2013) note in their foreword that "Forensic linguistics is not a single science or study, but an umbrella discipline composed of many facets". Some of the "facets" addressed in their thematically arranged text include language as forensic evidence, language in the legal process and the language of the law. Coulthard and Johnson (2010) have edited a thirty-eight chapter handbook on forensic linguistics with contributions arranged under three themes: the language of the law and legal process, the linguist as expert in legal processes, new debates and new directions. These seminal texts affirm that various interrelated themes emerge when we examine language and the law and or the language of the law, the umbrella term we use for them not withstanding. This article will therefore use the terms *legal linguistics* and *forensic linguistics* interchangeably.

The texts cited above set out an agenda for forensic linguistics as a field interested in wide ranging issues which include (but certainly not limited to) language crimes, forensic stylistics, forensic phonetics, language as evidence, communication in legal contexts, authorship and trademark disputes, and language disadvantage in legal contexts. Given this expansive scope of interest, it could be said that since Svartvik's (1968) case for forensic linguistics, the interdisciplinary field continues to grow and expand its boundaries.

It is in the spirit of mapping the expanding boundaries that this article presents an overview of the emerging interdisciplinary field with reference to Africa. There is no uniform research agenda on the continent in language and law studies. However, this article argues that there are largely uniform historical and current realities that have shaped the development of law in Africa. These realities stand in a cause-effect relationship with regard to the language-law relationship, and are, therefore, likely to shape the research agenda in this area in the continent. These realities are constituted by the following facts:

1) Current legal systems in Africa and their formal institutions are inherited.
2) The language of the law in Africa is inherited and the place and role of indigenous languages in forensic linguistics is far from defined.
3) Indigenous legal systems in Africa remain largely non-formalised.

4) The composition and reasoning behind traditional dispute resolution systems in Africa are at times at crossroads with modern yardsticks for human rights and fair trial.

The listing above is by no means exhaustive and is only meant to scaffold the discussion as an exposition of one reality includes the other(s).

II. An Inheritance of Laws

The legal traditions, as well as the judicial systems and institutions in modern African states are inherited. This particular point needs elucidation because it is a critical determinant of the evolution and current understanding of the concept of law on the continent, and it informs any reform agenda targeting judicial institutions. Legal systems are products of culture; they reflect a people's collective thought on what is acceptable and unacceptable and the redress to seek in the face of the latter. Indeed, the centrality of language in law stems from this fact of the law being a product of culture. It is through the medium of language that culture finds expression. The modern legal culture and infrastructure in Sub-Saharan Africa is a transplant of colonialism. This article argues there is need for more critical inquiry into the degree to which the transplant can be said to have found acceptance in the host body.

Joireman (2001: 1) notes that "Effective colonization in Africa demanded a legal system to both maintain control of a country and resolve disputes within it". The consequence was that each colonial power introduced its own systems of laws and institutions of dispute resolution in the regions it controlled. As a result, a layered patchwork of legal systems and traditions were established in Africa, depending on which colonial power controlled which region. The establishment of these *new* legal systems was informed by the collective attitude of the colonial administrator and missionary: the continent needed 'civilizing'. Joireman (2001) therefore notes that the reasoning behind the new laws and structures was that the existing systems of dispute resolution were primitive and/or suitable for the indigenous population only. Indeed, this was the colonial view of all pre-existing social institutions on the continent, be they religious, educational or legal. Consequently, colonialism was largely an exercise of uprooting the *'backward and barbaric'*, and transplanting it with the *'new and progressive'*. Thus, traditional governance, religious and dispute resolution systems were replaced or at best given a modernising makeover.

Therefore, the 'new' legal institutions were a means for achieving the wider goal of colonialism: the de-indigenization of the colonized populations as a means of achieving social, economic and political dominance over them. Consequently, new laws were imposed on the old laws and, in some cases, there were systematic attempts at dismantling the old laws. In most colonial jurisdictions, the traditional laws were tolerated only insofar as their application did not touch on the European settler or the commercial and property rights as envisaged by the colonial architecture (Aiyedun / Ordor 2016; Mancuso 2008). It needs to be acknowledged that at the advent of col-

onialism, African societies did not have written down codes, and this (among other factors) was and remains to be a ground for viewing African legal systems as inferior (Nonkoyana 2018).

However, colonial administrators saw value in some aspects of traditional dispute resolution systems (and these were renamed *customary law*) in as far as they helped maintain law and order among the colonised native populations. Nevertheless, customary law was restricted to adjudicating over issues touching on personal matters such as marriage and divorce. In contrast, the criminal and civil law of the metropole was adopted for criminal matters and for civil matters that touched on the European part of the population in the protectorate territories, or that threatened the economic and political order established by colonial authorities.As mentioned, modern African states are a mosaic of a layered patchwork of legal systems that tell of a hybrid inheritance. First, there are countries where Islamic law is entwined with civil law, common law and or customary law. Second are countries that have a mix of civil and common law traditions, and third are those that have customary law co-existing with either common law or civil law (Mancuso 2008; Mingset 1988). The common denominator for legal systems in Africa seems to be customary law.

The customary legal system falls in what most scholars group under the umbrella of "other legal systems" (Mancuso 2018). This vague grouping perhaps brings to life an old debate on just what constitutes customary law. Morris (1970) observes that both small and large ethnic groups in Africa have a distinctive body of law. He further notes that the question of whether these constitute a body of what can be called African Customary Law, or an innumerable number of customary laws, is a moot point. We argue that legal linguistics has the knowhow and tools to contribute significantly to this debate part of which invites an answer to the question: What language features characterise traditional law in African societies? A set of shared features of language usage can form the basis of a typology of African Customary Law.

Indeed, scholars observe that part of the difference between civil and common law traditions is defined by the use of language during trial (Hadfield 2006; Tetley 2000). Common law is adversarial in approach, and an impartial fact-finder or jury listens to a competing set of facts before delivering a verdict. Litigants present competing sets of facts in a process tightly controlled by rules of procedure, some of which touch on language. In contrast, the process in civil law is inquisitorial and the fact finder is at the center of discovering facts through direct questioning of witnesses. There is emphasis in applying the provisions of written codes to determine cases under the civil law tradition, while common law relies heavily on precedence set during previous trials.

Therefore, studies focusing on particular communities or comparative studies (national, sub-national, regional and continental) could help document the similarities and/or contrasts in language use in traditional dispute resolution systems. There is acknowledgement that such systems use a local language and simple (comprehensible) rules of procedure (Nonkonyana 2018). Holomisa (2009) contends that tradition-

al systems encouraged community participation, consultation, consensus and an acceptable level of transparency through a council or open, consultative meetings. This article argues these are language based features but that there is little language based evidence on how they are discursively achieved and negotiated in specific communities. In fact, there is real danger that Holomisa's views might be construed as an appeal to a glorious, idealistic past – a past where it would seem that the ideals of justice (participation, consultation, consensus and transparency) were fully entrenched in dispute resolution systems in Africa. This would be a grave oversimplification, as it does not address the issue of power in dispute settling processes. It is an issue that will be picked up in the subsequent section.

Another often-cited feature of customary law in Africa is that it is/was based on reconciliation, arbitration, negotiation and mediation (Aiyedun / Ordor 2016; Ajayi / Buhari 2014; Kariruki 2015; Olowu 2018; Osei-Hwedie / Rankopo 2012; Owor 2012; Huyse / Salter 2009; Tafese 2016). Indeed, these scholars share the general view that reconciliation is the feature that contrasts the African customary legal system from the Western ones. The argument is that African dispute resolution aimed at restoring harmony among the parties in disagreement and thus served the function of cementing social relations for the good of all. In contrast, Western legal systems lean more toward retribution: punishing the wrongdoer with little regard to what happens to the litigating parties after a particular case is won or lost.

The scholars cited above give very illuminating descriptions of the traditional dispute resolution mechanisms of various communities in Africa. The institutions for dispute resolution include elders, religious leaders, rulers, chiefs and even the family and the scope of disputes range from personal to criminal. However, there is a tendency to use terms that gloss over critical issues without any attempt to unpack them. What is dispute resolution through consensus? How is consensus arrived at? We argue that consensus is not a fruit on a tree that one can reach out and pick. Consensus is a discursively defined and achieved process. The view of consensus as a process is important because it acknowledges that there can be a true consensus or a coerced consensus. The difference between the two can be revealed through a language analysis. Just how were the traditional disputes processing institution in Africa structured? What language yardstick can measure this? Our review of literature on traditional dispute resolution systems in Africa has revealed a paucity of studies oriented to such concerns.

III. The Power Structure in Customary Law Systems

It needs to be acknowledged that there is a lot of literature on the traditional dispute resolution systems in Africa. Kariuki (2015) focuses on the institution of elders among various traditional communities in Rwanda, Bostwana, South Africa, Uganda, Ethiopia and Kenya. Ajayi and Buhari (2014) examine the same institution among selected communities in Nigeria and South Africa. Olowu (2018) focus on commun-

ities in South Africa while Tafese (2016) and Owor (2012) highlight traditional dispute settling mechanisms in Ethiopia and Uganda respectively. Grande's (1999) interest is in the region known as the Horn of Africa, spanning Eritrea, Djibouti and Northern Somalia.

A common thread in these works is an exposition of the differences between traditional dispute resolution mechanisms and the later date systems that were introduced by colonial authorities. Although none of these works takes a linguistic outlook or approach in analysis, some language based issues can be inferred. Specifically, these works highlight the philosophy that informed dispute processing in traditional societies. Grande (1999: 64) notes that in the African traditional context:

> The dispute resolution system is therefore only incidentally individual. What matters is the group, and what is important is either peace within the group or between one group and its neighbours.

This observation underlines the fact that the maintenance of group cohesion (as opposed to righting individual wrongs) was the driving force behind dispute resolution under this system.

On their part, Ajayi and Buhari (2014) conclude that the goal of dispute resolution was to "preserve and ensure harmony" and thus achieve "collective well-being and happiness". We caution that this idyllic picture of people settling disputes by reconciling and maintaining social harmony might be an oversimplification. As already mentioned, any discussion on the traditional system for dispute processing needs to address the question of power.

The fact finders in the traditional legal systems in Africa derived power from tradition, i. e. the prevailing norms, beliefs and value systems. These, in turn, shaped the dominant worldview including the view on concepts like justice and power and the custodianship of the same. Kariuki (2015) identifies the institution of elders (acting individually as patriarchs at family level or as a collegiate at clan or tribe level) as the dominant institution for governance and dispute resolution in traditional African societies. He further notes that:

> Socialties, values, norms and beliefs and the threat of excommunication from the society provided elders with legitimacy and sanctions to ensure their decisions were complied with (Kariuki 2015: 2).

The elders (and chiefs, rulers and kings in some communities) constituted the traditional regime of power, and, like any other power regime, had mechanisms for ensuring order, restoration of order when it broke down, and mechanisms of perpetuating the regime's power. We argue that in settling disputes, those presiding over the traditional dispute resolution mechanisms must have been very much aware of the power dynamics in their respective spheres of adjudication. Further, we argue that part of their mandate must have been to maintain harmony by maintaining the existing order of things.

A linguistic analysis of specific disputes and the process of their resolution would reveal the power asymmetries among participants, unequal bargaining positions and, in some cases, instances of exclusion of certain social groups. Indeed, there is acknowledgement in literature that the processes in traditional dispute resolution systems in Africa may not measure up to modern human rights standards (Aiyedun / Ordor 2016; UNHR 2016). Judicial systems should among other things guarantee rights to a fair trial, counsel, appeal as well as trial without delay. In addition, there should be guarantees against discrimination for the vulnerable groups such as children, women and people with disabilities. Keeping in mind the highly patriarchal organisation of traditional African societies, one can understand the concerns about human rights. Dispute resolution by consensus can just be a mechanism of perpetuating traditional inequalities that infringe on human rights. Whether this is/was the case, or not, can only determined through linguistic analysis.

Traditional dispute processing systems in Sub-Sahara Africa, as is the case elsewhere, were shaped by the social, political and economic realities of their time. The systems were ruler or elder-based, and their role was on group preservation. Decisions made were mainly meant to maintain the age old order of things, even when this meant trampling on what, in modern day parlance, are considered individual human rights. The systems were largely patriarchal and thus guilty of having been discriminatory against women. Modern legal systems are based on the notions of human rights which are conceived with the individual, rather than the group, in mind. The modern system is founded on written codes and very standardised procedures meant to protect the process of disputing and hold it to certain thresholds of fairness. The co-existence of the two systems, and attempts to merge the two in an exercise, is balancing between group rights and individual rights as well as traditional values, customs and beliefs to modern realities.

IV. An Inheritance of Languages

The language of the 'new' legal systems in Africa was the language of the colonialist. This point needs emphasis, because language is a determinant of access to justice. Indeed, even in Western societies, literature abounds on the formal properties of legal language that make the law alien to many a layperson. The formal features, that make legal language incomprehensible and inaccessible to the layperson, are well documented, and the shared conclusion is that legalese makes the law alien to the very people it governs. One wonders whether there are degrees to this alienation. Is the native speaker of a language from which a legal register derives on the same footing, in the scale of alienation, as a second or foreign speaker of such a language? Given that, in the African context, the language, from which the incomprehensibility of legal language is argued, was, and still remains, alien to many, we propose that these are valid research questions which could offer insights on the state of the law in Africa.

The language through which the law is articulated is critical because it is the key ingredient in the choreography of a hearing. This choreography determines the phases in a trial, the roles of different actors in these phases, and, more significantly for this article, language use in the dispute process. Language use in courts of law in the modern legal systems differs markedly from that in dispute processing in the African traditional set up.

To begin with, the official language of the formal courts in Africa may not be the language of the majority of people in the court's jurisdiction. Most languages with official status in Africa are in fact second languages in the wider social setting. Bamgbose (2011; 1991) summarises the language situation in Africa (with regard to official languages) thus:

> The net effect of the colonial legacy is that the dominance of imported languages which began in the colonial period has persisted till today…of 53 countries, indigenous African languages are recognised as official languages in only 10 countries, Arabic in 9, and all the examining 46 countries have imported languages as official languages as follows: French in 21 countries, English in 19, Portuguese in 5 and Spanish in 1 (Bamgbose, 2011: 2).

The language situation in Africa is a complex one and certainly outside the scope of this paper. However, given that part of what makes a language official is its use in drafting laws and in courts of law, it is a situation that merits mention.

The acquisition and levels of competencies in official languages is largely linked to the formal school system. There are no statistics on the competencies in official languages in Africa but an inference can be made on statistics on literacy levels. The 2017 UNESCO report on global literacy observes a positive rise in global literacy rate but notes that:

> The lowest literacy rates are observed in sub-Saharan Africa… Adult literacy rates are below 50 %… [and] youth literacy rates remain low in several countries, most of them in sub-Saharan Africa, which suggests problems with low access to schooling, early school leaving or a poor quality of education (UNESCO 2017: 3).

If we assume that the statistics on literacy level are an indirect indicator of competency in the language of the school, then we can conclude that large parts of the populace in different countries are likely to have low competencies in the official language oft he law in their respective countries.

This could in turn have an impact on the legal literacies: to what extent do people know the law and understand the formal procedures of its enactment in a trial? To what extent do litigants understand the phases of civil and criminal proceedings and the language features (turn taking mechanisms, examination through questioning, cross examination through questioning, insistence of facts and chronology, objectionable contributions from witnesses etc.) that define them? Eades (2000) notes that dominant Anglo-American ways of speaking in legal systems (especially the use of questions to elicit and challenge versions of facts) are very alien to most cultures in

different parts of the world. To what extent can such be said to be a source of vexation with the law by lay litigants in the African context?

The language of the law debate also manifests at another level: the entrenchment of the rule of law. Kaufmann, Kraay and Mastruzzi (2010) contend that the concept of the rule of law refers to the degree to which people have confidence in, and abide by the law. They further suggest that indicators of a healthy entrenchment of the rule of law include the quality of enforcement of the law by the police and the courts. Isanga (2016) gives a very comprehensive and insightful analysis of the state of the rule of law in African countries. His conclusion is that the concept is almost non-existence on the continent, and this, he argues, is the reason why Africa has not achieved economic development. Isanga (2016) ties the rule of law to economic prosperity but his analysis does factor in the language of the law as a possible cause for the lack of entrenchment of the rule of law on the continent. This is in no way a shortcoming on the analytical strength of his paper, but a failure by legal linguists, with an interest in Africa, to highlight the centrality of language in law.

It is a failure that needs to be addressed now. It needs to be pointed out that the rule of law is dependent on people understanding the law; its language, its institutions and its processes. The language and processes of the law can alienate to an extent that the general populace loses faith in the institutions that enforce the law. It is for legal linguists to expose such alienation. Indeed, this article has already noted that both the modern legal systems and the language of the law, were superimposed on the existing traditional system and indigenous languages. We now further assert that the independence wave that swept across the continent from the 1950s, did little to redress this imposition. The leadership on the continent, at independence, consisted of an elite group that had been largely Westernised. It is to them that governance and social institutions established during colonialism were handed. There was little debate then as to whether the modern legal systems served the interests of the general public. It is now that the observation that the legal systems in African countries are not working is taking shape with calls for judicial reforms and the introduction of alternative dispute resolution systems. It is important that the language question is addressed in this clamour for reform.

The language question is also live with the current push for alternative dispute resolution systems (ADRs). The ADR debate is not an African debate; it is a global one. In most countries, there is recognition that formal courts do not have a limitless capacity to resolve disputes. Issues of volume as well as time and monetary costs make the formal courts unattractive to many that seek legal redress. Some countries have ADR systems that are anchored in law. We argue that African countries should adopt ADR systems but go further by using ADR as a means to address the longstanding tension between customary law and civil or criminal law based systems. The introduction and entrenchment in law of ADR systems in Africa presents an opportunity to break what Blyden (cited in Davidson 1992: 43) calls “the curse of an insa-

tiable ambition for imitation of foreign ideas and foreign customs" that continues to plague many on the African continent.

Further, we submit that it would be an opportunity missed if the language question is not, at the very least, asked. Ntuli (2018: 34) makes this case eloquently, arguing that:

> […] although ADR may have useful components to improve access to justice in Africa, it cannot be viewed or introduced as a new concept coming from developed countries. Doing so perpetuates imperialistic attitudes, disempowers millions of people by disregarding their cultural practices and invalidates systems which have been in use for centuries. It also does little to address the challenges of foreign concepts and language in the formal justice system, which creates a barrier to access to justice. Instead, when introducing ADR in Africa, knowledge should be drawn from the traditional justice systems to ensure that the final product, considers the cultural context and produces familiar ways of resolving disputes.

This calls for a critical interrogation of existing elitist views about language that perpetuate the dominance of colonial languages in Africa, even when the net effect is the continued disfranchisement of the majority. The question of the place and role African indigenous languages in legal linguistics must be rigorously pursued. Opportunity is ripe for legal linguists to input into the language based challenges in modern legal systems and, in doing so, contribute to ways of making ADR in Africa a system that is sensitive and responsive to the cultural and language realities of litigants.

V. Themes in Budding Research

This section reviews some research, focused on the nexus between language and law. Specifically, the review will highlight courtroom discourse and court interpreting as they are two thematic areas in legal linguistics that have received some degree of scholarly attention in Kenya and Nigeria. The two countries are members of the Commonwealth and thus their court system parallels the British one in terms of language and procedure (Kiguru 2014; Aina / Anowu / Opeibi 2018). However, the choice of the two countries is not meant to be an exemplar of research in other countries across the continent. The choice is convenient; allowing us to highlight research findings on language challenges in multilingual courtrooms. The common factor between Kenya and Nigeria, a part from the inherited British legal traditions, is the dominance of English in the justice system meant to serve a population for who the language is, at best, a second language. Levels of competence in English in the two countries are dependent on many factors, such as level of schooling and the competence of the teachers in *English as a Second Language* (ESL) class one is instructed in.

1. Court Interpreting – Kenya

The challenges faced by court interpreter and categories of interpreter errors in the Kenyan context is a topic that has received a lot of scholarly attention in recent years with recommendations for training programmes for the lay court interpreters (Kiguru 2008; Onsongo 2010; Owiti 2015; Wangui 2015).

The studies above source data from subordinate courts in interpreter mediated proceedings. Since 2010, English and Kiswahili are official languages in Kenya. Beforehand, English was the sole official language in Kenya. Despite the 2010 constitutional change that elevated Kiswahili to official language status, English still dominates the courtroom as the de facto language of writing charge sheets, taking down the court record, writing of judgement and the delivery of the same. It is also the language used to make oral presentations before court by counsel and expert witnesses (Kiguru 2014). However, not all litigants are conversant with English, necessitating the use of interpreters.

Most interpreters in Kenyan subordinate courts are bilinguals who are employed as clerical officers. Training or aptitude in interpreting is not a factor in hiring. Yet, it is these clerical officers, who are expected to mediate between the languages and cultures, that meet in the courtroom. The study by Kiguru (2008) documents the language-based challenges faced by these lay court interpreters, and also highlights the problem solving strategies they employ. The challenges are sorted into three categories: legal jargon, culturally bound expressions and slang/colloquialisms. The interpreter has to find equivalents for English legal jargon in languages that do not have a legal register. The study shows how legalese like a *minor*, *interstate*, *mitigation* and *personal bond* as used by legal professionals, and words like *rape*, *defilement*, *lacerations* and *high calibre weapon* as used by expert witnesses are a constant challenge to a lay interpreter. At the heart of the problem is the reasoning that anyone who can speak two languages can interpret across them. As such, there has been little effort to equip interpreters with knowledge, skills and tools to deal with jargon for which, to put it bluntly, there is no simple equivalent in local languages.

Equally problematic are culturally bound expressions in local languages that have no equivalents in English. The study shows that idioms and proverbs, colour terms, euphemisms and kinship terms are a source of challenge for interpreters. Euphemisms are particularly noticeable because both witnesses and the interpreters use them. The study notes that there is tendency to use euphemistic expressions when discourse touches on sex, sexuality and bodily functions. This can be problematic in rape and defilement cases, where the lack of specificity in euphemisms can water down testimony. In contrast, euphemisms can also lead to erroneous conclusions, as the following example illustrates (source: Kiguru 2008).

> Witness: On examination, *it was found that the patient's vagina and vulva were bruised. The hymen was also broken. This was conclusive evidence that somebody had had carnal knowledge of her that involved actual penetration.*

Interpreter: Daktari alipomkagua *alipata ushahidi kuwa ulimfanyia kitendo hicho.*
(*When the doctor examined her, he found evidence that you had done that act on her.*)

The witness in this rape case is a medical doctor. The doctor's testimony is about the physical signs he saw on the patient that proved that she had had sexual intercourse. The evidence is not linked to any one person nor does it mention the word rape; this being the charge that the accused is facing. The doctor's statement is: "This was conclusive evidence that somebody had had carnal knowledge of her that involved actual penetration" (Kiguru 2008: 97). The interpreter version avoids the descriptions that mention sex organs and the act of sex. Instead, the interpreter gives a summary rendition in which she categorically asserts that the doctor's examination had found evidence the accused had *done that act.* This example shows the inherent danger of using untrained interpreters in courtroom settings where determination of guilt or otherwise hinges on a reconstruction of events to which the fact finder was not party to. In such a setting, alteration of utterances can lead to the wrong 'facts' getting into the court record, or, as in the case in the example above, to a litigant getting erroneous information, which could in turn affect his defence strategy.

It is such errors that Kiguru (2008) highlights under nine categories namely grammatical errors, distortion, lexical errors, omission, and errors arising from lack of definition of the interpreter's role, procedure and ethics. Other categories of errors are added information, ambiguity, literal translation, and errors arising from the work environment.

However, the study also reveals the problem solving strategies the lay interpreters use to deal with legal jargon, culturally bound expressions and slang/colloquial expressions. Overall, the data for the study shows a total of ten interpreting strategies in use by the court interpreters. The most frequently used was *definition* (38 %) while *equivalence* (16 %) and *explicitation* (10 %) came in second and third respectively. The fourth most used strategy was *amplification* (7 %) while the fifth was *adoption* (2 %). The other strategies; *compression, nativization, modulation, paraphrasing* and *transposition* account for 1 % each (Kiguru 2008). However, this study fails to show the impact that both the challenges and problem solving techniques revealed have on case outcomes. Indeed, there is need for research into interpreter-mediated litigation to determine levels of satisfaction by both litigants and judicial officers.

The studies by Onsongo (2010), Owiti (2015) and Wangui (2015) still focus on the challenges faced by lay interpreters in different sociolinguistic contexts in Kenya. All the studies acknowledge the difficult language and cultural situation, the Kenyan court interpreter works in, and they all share in the call for training programmes for the interpreters.

2. Power in Courtroom Discourse – Nigeria

The concept of language and power in courtroom discourse has also attracted scholarly interest across the continent. Kiguru (2014) highlights the plight of pro se litigants in Kenyan courts by comparing their use of language strategies to formulate a defence to those of lawyers. In the South African setting, Moeketsi (1999) focuses on the linguistic involvement, or lack thereof, of unrepresented litigants who are additionally uneducated, less legally prepared and less powerful. However, we focus on the Nigerian courtroom where, like in the Kenyan context, the English language dominates proceedings.

Aina / Anowu / Opeibi (2018) show how information seeking interrogatives, which are assumed to be the friendliest to witnesses as they give them a free reign to tell their story uninhibited, end up being a means of witness control by counsel. The study shows that examining counsel build in presuppositions into their questions which, in answering the question, the witness may not be able to deny. Such presuppositions are then made into subjects of contention, and the lawyers force witnesses to respond to contradictions that arise from the presuppositions embedded into questions. Another mode of control is the framing of the questions so that a witness is tied to an answer that directly responds to the *wh-* element without room for elaboration. These, coupled with other conducive questioning strategies, give power to the attorneys to shape the narrative and answers of the witness to suit a particular version of facts. One notes that the issues addressed, and indeed the findings by these scholars, are universal. They too acknowledge the vast literature that exists on the way legal professionals use questions to control witnesses and constrain answers.

The findings on the pragmatics of the discourse by Aina / Anowu / Opeibi (2018) capture a unique character of courtroom discourse in Nigeria. They document that the "Nigerian socio-cultural setting encourages legal counsel to exercise absolute control of courtroom" (ibid: 154). The counsel represent a class set apart by their prowess in a foreign language and legal training. The confrontational nature of adversarial litigation gives a chance for the lawyers to dominate through forceful display of masterly of the English language. By so doing, the professionals intentionally exploit the tendency in African societies to confer respect and authority to those with a high ability to manipulate linguistic resources. In the face of such display of power, the less powerful participants are reduced to silence. This is a sad example of how the advantaged position of colonial languages can still be used to disadvantage a large section of the society in formal settings, years after the continent attained *freedom.*

The authors further note that even among the class of counsel a hierarchy exists. They cite the example of those who have earned the title of *Senior Advocate of Nigeria* as being at the pinnacle of power in the legal arena. The scholars assert that even presiding judges accord them first place in speaking. While the pecking order of seniority in formal setups is always a source of power everywhere in the world, it becomes a concern if this can be used to the disadvantage of a litigant whose life, property or liberty might be at stake. The findings by these scholars is by no means con-

clusive in this regard but point to an area that could benefit from more in depth research.

Another study in this context is Sanni's (2016) of face threatening acts in cross-examination discourse in selected cases. The researcher's concern is with the fact that lawyers:

> […] verbally exploit witnesses by being harsh, rude, and brash, deploying mockery, sarcastic tones, facially confronting witnesses and sometimes pointing accusing fingers to the witness. These actions sometimes have psychological implications on the witness who sometimes feel threatened, and intimidated (ibid: 9).

There is nothing uniquely *Nigerian* about these observations and concerns regarding the conduct of lawyers in an adversarial system. However, we propose that an ethnographic analysis of such use of language could help determine the extent to which the adopted legal systems alienate those that seek justice (we note, without any criticism, that this is not the thrust of argument by Sanni's [2016] article). The language question here would be whether adversarial ways of speaking help or hinder the entrenchment of the rule of law in Africa. The validity of this question lies in the social organisation of many African societies, where age comes with status and respect. Elders can confrontationally question the youth but the reverse is frowned upon. The very nature of adversarial proceedings overrules this order of things, given that the cross examined draws power from formal training and may therefore be younger than the cross examiner. This is a different form of power dynamics in the courtroom which legal linguists illuminate and, in doing so, make recommendations on ways of speaking in litigation that are sensitive to social context.

These studies provide evidence of the language challenge in the day-to-day administration of justice to ordinary citizens on the continent. The challenge of establishing the culture of the rule of law on the continent is bemoaned by many (*Justice delayed and denied* 2017; Mingst 1988). However, we argue that little has been done to entrench the management of language as a way of enhancing access to justice and as a means of ensuring that justice is seen to be done in the courts. We question the logic of judicial reforms that focus on increasing the numbers of judges, magistrates and courtrooms (as undertaken in Kenya in the present decade) but fails to address the problem of a judicial system that uses bilingual court clerks who have no training in law. It is through such studies that the challenges and opportunities the language-law nexus presents can be highlighted.

VI. The Emergence of a Discipline: Challenges and Opportunities

This point, on the language of law in Africa, leads us to a related one: the place of legal linguistics in *the order of things* in Africa. Coulthard (2010: 2) celebrates the growth of forensic linguistics asserting that:

> […] there has been a rapid growth in the frequency with which legal professionals and courts in a number of countries have called upon the expertise of linguists. Forensic Linguistics has now come of age as a discipline.

This quotation captures the *very applied* nature of forensic linguistics: linguistics being called upon to lend their expertise to court. The application could also be in the form of research findings in forensic/legal linguistics being used in the formulation of policy and or best practices.

The areas of application are indeed many. One of these areas is communication during investigations (police interviews, police interrogations and witness statements taken/written by the police). Farinde (2009) has a chapter devoted to police-suspect interrogations in Nigeria. However, this remains an exception to the norm in a continent where security agencies operate in shrouds of secrecy hard to explain. The starting point for forensic linguists is lobbying for access and uptake of research findings. There is need to make a case for the methods and solutions of forensic/legal linguistics. Otherwise, little is achieved by research for research's sake, especially in a field that has tangible practical applications. However, the language case needs to be made to all that work in areas where language-law research can find application.

Issues of power asymmetry in the courtroom, language and speech styles of litigants and the overall experience of litigants in the courts are real concerns to which legal linguistics can shed light. Indeed, it is findings on such issues that should drive the debate on the need for and the form of alternative ADR systems in Africa. Moreover, such studies can play an advocacy role for the place indigenous languages in legal settings. This would be an important step toward addressing the common misconception that to use an African language is to step out of formality. We argue that this is a notion born of neo-colonial tendencies, and is perpetuated by those that benefit from the professional mystification of the public through language.

As noted earlier, forensic/legal linguistics themes such as trademark disputes, voice identification, authorship determination and communication in investigative and courtroom settings, lend themselves to research that has tangible application in determination of cases of the training of law enforcement and judicial officers on best practices. A notable area is hate speech, which is criminalised in several African countries (Kenya, Rwanda and South Africa). However, Kenyan courts have been unable to convict anyone using this law due to, among other things, lack of a language criterion for determining what constitutes the crime of hate speech. Thus, the coming of age celebration for forensic/legal linguistics alluded to by Coulthard (2010) needs more preparation before it can be staged in Africa.

To this end, notable strides have been made. The *International Association of Forensic Linguists* (IAFL) held the 1st Regional Conference South Africa in July 2018. The conference was dubbed "the first to be held in Southern Africa, and South Africa" and was hosted by Cape Peninsula University of Technology in affiliation with Rhodes University. The conference book of abstracts features papers covering di-

verse topics in forensic/legal linguistics. Moreover, conference aims included the creation opportunities to interact with practitioners and to enable the creation of collaborations that can foster research. Such fora are important avenues for linguists to show case their methods, tools and solutions to practitioners and policy makers.

We argue for more conferences and workshops at national, regional and continental level as a way marshalling forensic/legal linguists and making their research endeavours visible. In addition, there is need for the establishment of chapters of international forensic/legal linguistics associations at country or regional levels. This can form avenues for lobbying with practitioners. Moreover, professional associations can facilitate a transfer of skills, knowledge and trainings between the Global North and the Global South countries and establish collaborations between South-South countries.

The role of universities in the growth of the emergent discipline cannot be overemphasised. It is hard to give statistics on forensic/legal linguists in Africa and even of universities that offer courses in this area. An internet-search-engine research reveals a number of post-graduate programmes at universities in South Africa, Kenya and Nigeria. However, such a search cannot be exhaustive, given that the results are dependent of search words used. We cannot assume that courses touch on the law-language relationship must have the words *forensic linguitics* or *legal linguistics* in them. However, we share the Omachonu and Wakawa's (2010) concern about universities in Africa tendency to "do linguistics in its formal and bookish fashion", even when the concerns are applied. There is need for an audit of courses oriented to law-language research to reveal the levels at which the thematic issues in the discipline are being addressed, the areas that have been focused on and those that have been neglected.

VII. Conclusions

Thrust of this article has been to highlight foundational issues that are likely to shape the law-language research debate in Africa. The article has noted the varied legal-systems reality on the continent that can be traced to systems imposed on, the continent by colonial authorities, and superimposed on existing traditional dispute resolution mechanisms. The grafting of different legal traditions took many forms and success is chequered. However, the article has shown the need for more language-oriented research into the workings of either the modern or traditional legal systems, in order to shed light on the overall experience of the consumers of justice and account for any dissatisfaction. Such research would feed into the wider agenda on entrenching the rule of law and ensuring access to justice for all.

There is nothing inherently wrong with grafting systems onto others or completely replacing an old system with a new one. However, the process can take many forms, some more radical than others. The modern legal system in Africa came as a capsule package: the judicial machinery, the elitist personnel terms and the dress code neatly

wrapping up the philosophy, the law, and the language of the law. Whereas the present legal systems in Africa may be here to stay, it is time to unwrap the package. Some level of unwrapping has indeed happened in form of constitutional review, judicial reforms and the formalisation of some traditional dispute resolution institutions. Legal linguistics provides tools and methods of unwrapping the modern legal systems in Africa further, and thus promote a debate on issues at the language and law intersect. Such a debate can shed light on parts of the system that may not be serving the intended purpose and those that could be improved through a counter transplant from traditional systems.

VIII. Literature

Aina, Oluwasola A. / Anowu, Anthony E. / Opeibi, Tunde (2018): The nature of power and control in the interrogative patterns of selected Nigerian courtroom discourse. In: Dennis Kurzon / Barbara Kryk-Kastovsky (Eds.): Legal Pragmatics. New York: John Benjamins Publishing Company, pp. 133 – 156.

Aiyedun, Adenike / Ordor, Ada (2016): Integrating the traditional with the contemporary in dispute resolution in Africa. In: *Law, Democracy and Development* 20. DOI: http://dx.doi.org/10.4314/ldd.v20i1.8.

Ajayi, Adeyinka T. / Buhari, Lateef O. (2014): Methods of conflict resolution in African traditional society. In: *African Research Review* 8 (2), pp. 138 – 157. DOI: http://dx.doi.org/10.4314/afrrev.v8i2.9.

Bamgbose, Ayo (2011): African languages today: The challenge of and prospects for empowerment under globalization. In: Eyamba G. Bokamba (Ed.): Selected Proceedings of the 40th Annual Conference on African Linguistics, pp. 1 – 14. Somerville, MA: Cascadilla Proceedings Project.

Bamgbose, Ayo (1991): Language and the nation. Edinburgh: Edinburgh University Press.

Coulthard, Malcolm (2010): Forensic linguistics: The application of language description in legal contexts. In: *Langage et société* 2 (132), pp. 15 – 33. DOI 10.3917/ls.132.0015.

Coulthard, Malcolm / Johnson, Alison (Eds.) (2010): The Routledge handbook of forensic linguistics. New York: Routledge.

Davidson, Basil (1992): The black man's Burden: Africa and the curse of the nation state. New York: Three Rivers Press.

Farinde, Raifu O. (2009): Forensic linguistics: An introduction to the study of language and the law. München: Lincom Europa.

Grande, Elisabetta (1999): Alternative dispute resolution, Africa and the structure of law and power: The Horn in context. In: *Journal of African Law* 43 (1), pp. 63 – 70.

Hadfield, Gillian K. (2006): The quality of law in civil code and common law regimes: Judicial incentives, legal human capital and the evolution of law. University of Southern California Gould School of Law.

Holomisa, Nkosi P. (2009): According to tradition: A cultural perspective on current affairs. Johannesburg: Real African Publishers.

Huyse, Lucien / Salter, Mark (2009): Traditional justice and reconciliation after violent conflict – Learning from African experiences. In: *Journal of African Law* 53 (2), pp. 321–325.

Isanga, Joseph M. (2016): Rule of law and African development. In: *North Carolina Journal of International Law and Commercial Regulation* 42, pp. 1–60.

Joireman, Sandra F. (2001): Inherited legal systems and effective rule of law: Africa and the colonial legacy. *In: Journal of Modern African Studies* 39 (4), 2001.

Justice delayed and denied: Why justice in Africa is slow and unfair (2017, Jul 1). In: *The Economist*, https://www.economist.com/middle-east-and-africa/2017/07/01/why-justice-in-africa-is-slow-and-unfair (accessed 10. 10. 2018).

Kariuki, Francis (2015): Conflict resolution by elders in Africa: Successes, challenges and opportunities. In: *Alternative Dispute Resolution* 3 (2), pp. 30–53.

Kaufmann, Daniel / Kraay, Aart / Mastruzzi, Massimo (2010): The worldwide governance indicators: Methodology and analytical issues 4. In: World Bank Policy Research, Working Paper No. 5430. http://ssrn.com/abstract=1682130 (accessed 12. 10. 2018).

Kiguru, E. G. (2008): Strategies employed by court interpreters and categories of interpreter error in selected Kenyan courts. Unpublished M.A. Dissertation. Kenyatta University, Nairobi.

Kiguru, Gatitu (2014): A Critical Discourse Analysis of language used in selected courts of law in Kenya. Unpublished doctoral thesis. Kenyatta University, Nairobi.

Mancuso, Salvatore (2008): The new Africa law: Beyond the difference between common law and civil law. In: *Annual Survey of International and Comparative Law* 14 (1), pp. 39–60.

Mingst, Karen A. (1988): Judicial systems of Sub-Saharan Africa: An analysis of neglect. In: *African Studies Review* 31 (1), pp. 135–147.

Moeketsi, Rosemary H. (1999): Some observations on answers to courtroom questions. In: *South African Journal of African Languages* 19 (4), pp. 237–244.

Morris, Henry F. (1970): Some perspective on East African legal history. Söderström; Finn: Uppsala: The Scandinavian Institute of African Studies.

Nonkoyena, Mwelo (2018, Jan 29): Stop ignoring the African legal system https://www.timeslive.co.za/ideas/2018-01-29-stop-ignoring-the-african-legal-system/ (accessed 10. 10. 2018).

Olowu, Oladejo J. (2018): Indigenous approaches to conflict resolution in Africa: A study of the Barolongpeople of the North-West Province, South Africa. In: *Journal of Law and Judicial System* 1 (1), pp. 10–16.

Olsson, John / Luchjenbroers, June (2013): Forensic linguistics. London: Bloomsbury.

Omachonu, Gideon S. / Wakawa, Abubakar S. (2010): Cracks in the wall: Towards a re-orientation of linguistic study research in Nigeria. In: *Unizik Journal of Arts and Humanities* 11(1), pp. 95–100.

Onsongo, Bush O. R. (2010): Effectiveness of language interpretation in case management at the Chief Magistrate's Court at Kisumu. Retrieved from University of Nairobi Digital Repository: http://erepository.uonbi.ac.ke/bitstream/handle/11295/5919/Onsongo_Effectiveness%20of%20language%20interpretation.pdf?sequence=1 (accessed 15. 10. 2018).

Osei-Hwedie, Kwaku / Rankopo, Morena J. (2012): Indigenous conflict resolution in Africa: The case of Ghana and Botswana. IPSHU English Research Report Series 29, pp. 33 – 51.

Owiti, Beatie (2015): Meaning loss in Interpretation: A judgment ruling In Nyando Magistrate's Court Kenya. Retrieved from Academia: https://www.academia.edu/9502888/MEANING_LOSS_IN_INTERPRETATION_A_JUDGMENT_RULING_IN_NYANDO_MAGISTRATE_S_COURT_KENYA (accessed 15. 10. 2018).

Owor, Maureen (2012): Creating an independent traditional court: A study of Jopadhola clan courts in Uganda. In: *Journal of African Law* 56 (2), pp. 215 – 242.

Sanni, Oluwole O. (2016): The role of forensic linguists in courtroom cross-examinations. In: *Ife Studies In English Language* (ISEL) 12 (2), pp. 1 – 12.

Svartvik, Jan (1968): The Evans statement: A case for forensic linguistics. Retrieved from www.thetext.co.uk/Evans%20Statements%20Part201.pdf (accessed: 27. 01. 2019).

Tafese, T. (2016): Conflict management through African indigenous institutions: A study of the Anyuaa community. In: *World Journal of Social Science* 3 (1), pp. 22 – 32.

Tetley, William (2000): Mixed jurisdictions: Common law v. civil law (codified and uncodified). In: *Louisiana Law Review* 60 (3), pp. 677 – 738.

UNESCO (2017): Literacy rates continue to rise from one generation to another. In: Factsheet No. 45 FS/2017/LIT/45 (accessed 08. 10. 2018).

United Nations Human Rights (2016): Human rights and traditional justice systems in Africa. United Nations Publication No. E.16.XIV.1 ISBN: 978-92-1-154216-5 E-ISBN: 978-92-1-057937-7 (accessed 08. 10. 2018).

Wangui, Rachel B. (2015): Training as a minimum requirement to improve court interpretation in Kenya: A case study of Milimani Chief Magistrate's Courts. Unpublished M.A. Dissertation. Center for Translation and Interpretation, University of Nairobi.

Legal Linguistics in Italy

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Abstract

The aim of this chapter is to provide an overview of the interdisciplinary academic field of legal linguistics in Italy. More specifically, it traces the evolution of this branch in this country with a practical approach, that is to say, mapping the bibliographic scenario that constitutes the whole body of research in Italian legal linguistics. The paper is structured in six core sections. After an introduction to law and language, it provides an overview of the main fields of research in Italy, the most important research activities, the academic situation and the editorial panorama, and a final overview that takes stock of the research map. The results of this brief scrutiny confirm that legal linguistics is an established and increasingly growing field of research in Italy and that a gradual move is now taking place from the historical and traditional studies on the typical traits of legal language into a more interdisciplinary area of research in which the notion of legal genre and the contribution of computer-assisted methods become crucial.

Keywords: legal linguistics, law and language, research, didactics, research groups, Italy

I. Introduction

"Law does not need language but it is language itself" (Cortelazzo 1997: 39). This famous quote from the renowned Italian scholar Michele Cortelazzo, constantly referred to in many papers dealing with legal language (it. *linguaggio giuridico* or *lingua del diritto*), stresses the pivotal role played by language as a vehicle for this central area of our lives; the language allows the transmission, interpretation and enforcement of the legal acts, it is the tool of the trade of legal experts and its importance in the legal field is paramount compared to other *languages for special purposes* (LSP). While this statement has never been questioned so far, it is true that only recently citizens, state administrations and legal operators have demonstrated a renewed interest in language, with a particular attention to the understanding and communicative efficacy of legal texts.

The branch of legal linguistics (it. *linguistica giuridica*), conceived as an interdisciplinary area in which law and language communicate and share research objects,

[1] This chapter is partially framed within the project entitled "Discurso jurídico y claridad comunicativa. Análisis contrastivo de sentencias españolas y de sentencias en español del Tribunal de Justicia de la Unión Europea" (FFI2015-70332-P), financed by the Spanish *Ministerio de Economía y Competitividad* and FEDER funds (Principal investigator: Prof. Estrella Montolío Durán, *Universitat de Barcelona*).

has been increasingly gaining attention in Italy over the last sixty years, and today it can be considered a full-blown sub-field of Italian linguistics.

The present chapter traces the evolution of this branch in Italy by guiding any person interested in legal linguistics to move smoothly among the different subfields of research that now make up this academic discipline. The references quoted in the text are conceived as a tentative map, as it would be virtually impossible to quote every single study carried out in our country.

II. Research in Italian Legal Linguistics

Legal linguistics has been the subject of extensive research in Italy. Many scholars from different backgrounds have explored the intersections of *language* and *law* and have even gone beyond them, recognising its close connection with many other neighboring fields (political science, sociology, philosophy, etc.).

Trying to map the historical and recent research in legal linguistics in Italy is not an easy task, due to the vast literature produced in the last decades. An excellent bibliographic map of the research carried out on legal Italian has been drawn up by Dario Mantovani (University of Pavia)[2], who has drafted a complete bibliographical overview of the wide array of perspectives with which law and language have been and are being explored in time in Italy. A more general approach is also provided in Barbera et al. (2014), who trace the main trajectories on legal linguistics, focusing especially on recent methods like corpus linguistics.

The aim of this section is to underline some of the research areas that have received attention over the last sixty years. In order to map the field with a systematic approach, the outputs produced in this interdisciplinary area have been classified into seven main groups, which reflect how legal linguistics has evolved in Italy and where it is heading. It is obvious that it is not possible to cover all research on legal linguistics and legal language, and that the studies mentioned may pertain to more than one group due to the inner interdisciplinarity charactersing this research, so the borders of each area need to be considered as flexible limits.

1. Early studies on Italian legal language

Early studies on law and language in Italy centered around the historical and sociological profiles of legal language (see: De Mauro 1986) and tended to concentrate on legislative texts (De Mauro 1963; Fiorelli 1994). The merit of these early studies has been providing a first general overview of the typical traits of legal language (Lumia 1992) that distinguished it from general language. The studies carried out in these years have been instrumental to the following descriptive research on legal language and its history.

[2] http://lalinguadeldiritto.unipv.it/bibliografia.html (03/11/2018).

2. Studies on the simplification of legalese

One of the first academic fields of research on the binomial law and language concerned the simplification of legal and administrative language. Simplification of legal language (or *legalese*) is one of the most fashionable topics that has been gaining attention throughout the last forty years, also due to the inner interdisciplinary aspects related to the task itself, which inevitably requires synergies between legal and linguistic experts. The need to draw citizens closer to legal and institutional texts is now a global trend that has been translated worldwide into a huge number of initiatives. One of the first attempts dates back to the 1970s and was carried out in the Anglophone countries within the framework of the so-called *Plain Language Movement* (see: Mattila 2013: 328–331), whereas most recent initiatives can be traced both at a supranational level by the European Union (see the campaign "Write Clearly"/"Fight the Fog") and at national and federal levels. Many governments, public institutions, bodies and scholars from different traditions have staked heavily on plain language.

The need for accessibility (*the right to understand and be understood*) lied at the heart of many studies developed in Italy. Even though there is no specific target as *legalese* tends to characterise every legal genre, in Italy, the simplification programmes[3] have tended target to legislative/normative texts, especially bureaucratic ones (the so-called *burocratese*). Since the famous public attack by the novelist Italo Calvino (1965/1995) against the *anti-language*[4], epitomising the debate about the (complicated) language used by institutions with citizens, a number of Italian scholars have reflected upon legislative writing, trying to propose guidelines for simplifying legalese. Worth mentioning is the 1993 *Stylistic Code of written communications for the public administration*, followed by the *Style manual* edited by Fioritto (1997). Extensive research carried out by Michele Cortelazzo (University of Padova) focuses on legislative drafting and good practices (see: Cortelazzo / Pellegrino 2003); his portal[5] represents a point of reference for any scholar interested in clear and simple administrative language. This area has always been characterised by a practical approach: Scholars have been involved in proposing guidelines to improve the readability of Italian legal (administrative) texts.

[3] Most of the guidelines and manuals available to this day concentrate on administrative language (Fioritto 1997; Cortelazzo / Pellegrino 2003; ITTIG / Accademia della Crusca 2011), with some exceptions focusing on legislative writing (e. g. Pattaro / Sartor / Capelli 1997; the "Circolare n. 1/1.1.26/10888/9.92" of 2 May 2001; the 2007 "Regole e suggerimenti per la redazione dei testi normative" supported by the Italian Interregional Legislative Observatory), together with some important theoretical studies (among others: Libertini 2012; Zaccaria 2012).

[4] http://www.matteoviale.it/biblioteche/antologia/ant_calvino.html (03/11/2018).

[5] http://www.maldura.unipd.it/buro/ (03/11/2018).

3. Legal language as LSP: features and genres

When conceived as a language of special purpose, legal Italian is a diaphasic and diastratic variety. The study of legal Italian as LSP has been undertaken by scholars with an expertise in text linguistics and pragmatics (but also in sociolinguistics), who have been interested in the features that distinguish it from other LSP (medicine, economics, politics, etc.), ranging from the micro-textual level (lexical and terminological, morphosyntactic, phraseological features) to the macro-textual dimension (e. g. rhetorical moves). This strand of research tends to focus on the single text-types (expositive, informative, regulative, argumentative, narrative) and genres (normative, interpretative and applied texts).

Among the studies dealing with the general traits of legal language, it is worth mentioning the seminal book by Mortara Garavelli (2001), one of the first studies of the *words of the law* in Italy[6]. The typical features of legal Italian had already been mentioned in earlier studies by Scarpelli / Di Lucia (1994) and Cortelazzo (1997). Another overview of the main features of this LSP is provided by Ondelli (2007) and later by Garzone / Santulli (2008); both contributions underlined the key role of texts/genres in the description of legal language(s). The idea behind these earlier studies is that there is no single *legal language* but many *languages* according to the types of genres, and each variety has its own typical traits.

As far as the research on texts is concerned, Italian scholars have been investigating different genres of legal texts over the last sixty years.

Particularly relevant for the impact it had on legal linguistics is the strand of research dealing with *normative or legislative texts*, which has significantly contributed to the description and understanding of legal Italian. Scholars have devoted attention to the language of Italian laws/acts (*leggi*) (see among others: Sabatini 1998, 2005; Marchesiello 2013; Viale 2014) as well as to the language of national Codes (e. g. Civil Code, Belvedere 1994; Criminal Code of Procedure, Cortelazzo 2001). The Italian Constitution has also been studied by some Italian famous linguists (De Mauro 1998; Mortara Garavelli 2011) but also legal experts (e. g. Silvestri 1989).

Judicial texts have also been explored with a strong focus on texts produced within civil and criminal proceedings, especially judgments. Indeed, the linguistic and discursive features of Italian judgments have been widely investigated by many scholars who have provided a detailed profile of this judicial genre, which is one of the most studied genres in Italy (among others: Santulli 2008; Garavelli 2010; Ondelli 2012; Dell'Anna 2013).

Notary texts (contracts and wills/testaments) have received less attention compared to the other legal genres (among the exceptions see Mortara Garavelli (2006) on notarial deeds, Visconti (2013) on contracts).

[6] A good and brief introduction to the essential features of Italian legal language is found in Serianni (2003) (Chapter 8).

Finally, *administrative and bureaucratic genres*, generally targeted as texts needing simplification (see II.2.), have been studied by a well-fed group of Italian scholars, who have focused on texts produced by public administrations, addressed to single persons or to the public in general, and aimed at communicating some legal acts or actions (see among others: Viale 2008; Cortelazzo 2014; Lubello 2014).

4. Theories of legal linguistics: philosophy, semantics, sociolinguistics

Many theoretical and philosophical studies focused on legal language and especially on normative texts. Studies on the relationship between law and language in this area have always been characterised by the insights of analytical philosophy. At the beginning of the sixties, scholars of philosophy of language began to investigate legal speech acts and deontic logic based on seminal works by Austin (1962) and Searle (1969). This strand of research was framed within legal semiotics (the study of law as a set of signs), and the contributions of the scholars working in this area tended to concentrate on the semantics and pragmatics of legal language (Scarpelli 1969; Conte 1989, 1994, 2001). As pointed out by Mantovani in his overview (see footnote 3), these theoretical and philosophical studies differ from other studies because they are not focused on a specific natural language (say legal Italian), but on structures and universal features of legal language. In her edited volume of 2010 on the language of law, Visconti provides an overview of interdisciplinary perspectives, ranging from the role of custom law (Sacco 2010) to the vagueness of norms (Luzzati 1990), from problems of interpretation (Chiassoni 2010; Guastini 2010) to the concept of legal act (Di Lucia 2010).

In this line of research, it is also worth mentioning the sociolinguistic and pragmatic studies carried out in the field of judicial rhetoric, as the extensive research carried out by Patrizia Bellucci (see: LALIGI in III.1.; Orletti / Mariottini 2017).

5. Legal translation theory and comparative law

In the second half of the XIX century, the philosophical and hermeneutical reflection shed light on the historical relationship between linguistic expressions and legal objects, thus contributing to the development of an interesting body of research dealing with the techniques of linguistic transposition of legal concept from one language/culture to another (see: Cavagnoli / Ioratti Ferrari 2009). The categorisation of legal objects and the comparison of legal institutes and concepts have been the research object of many scholars, the majority of them legal experts (law scholars), who studied legal translation theory from the perspective of comparative law.

Seminal works by Rodolfo Sacco (1992, 1994) or Barbara Pozzo (University of Insubria) (Pozzo / Timoteo 2008) helped legal linguists to get a better understanding on how legal systems work (Gambaro / Sacco 1996; Ajani 2006) and how legal translators can approach legal texts (see: Frosini 1992).

This research field, which lies at the intersection of contrastive linguistics and legal translation studies, is nowadays a productive area for many comparative lawyers[7], who are widening the research interests of many Italian scholars interested in legal linguistics.

6. Legal discourse and stylistics

An interesting field of research in Italy has been focusing on the discursive and pragmatic features of specific genres. The study of language in context has proved to be particularly fruitful, especially from a contrastive perspective. An example among others is the study of legal discourse markers as a textual feature distinguishing legal texts from other general and technical texts. A remarkable example is the study conducted by Jaqueline Visconti (University of Genova) in 2000. Framed within the area of legal lexical semantics, Visconti analysed the areas of similarity and differences between English and Italian conditional discourse markers (e. g. *dato che*, *a patto che*, *qualora*, etc.). Her study provided new insights into contrastive linguistics and diachronic research, and inspired other contrastive studies (see: Garofalo 2006; Pontrandolfo 2014).

Another research field explored the stylistic traits of legal texts. An important area of research has involved the style of legal genre; judgments, for example, have been extensively analysed in terms of style by many scholars (e. g. Gorla 1967, 1968; Cordero 1986; Ondelli 2012), especially from a contrastive view (e. g. common-law vs. civil-law judgments) (see: Pontrandolfo 2016: 63 – 68).

Other scholars have investigated style from a different angle, that is to say, the differences between original legal language and translated one (at the EU level) (Nystedt 2000). EU Italian as a kind of eurolect, considered as a subcode, radicated into a European situational and communicative context, and born from the constant operation of interlinguistic transposition, has nowadays received the attention of many Italian scholars, who often adopt a corpus-based perspective to study the distinctive traits of EU Italian and national legal Italian (see: Pontrandolfo 2011; Ondelli 2013; as well as the international project on the Eurolect coordinated by Laura Mori, UNINT University of Rome, Mori 2018: 1).

7. Legal linguistics and computer science

Studies in this area deal with the computer-assisted data processing on a wide array of perspectives. One of the earliest studies conducted in this field was that of Giovanni Rovere (University of Heidelberg), who was one of the first Italian schol-

[7] To mention some names: Angela Carpi (University of Bologna), Letizia Casertano (University of Insubria), Valentina Jacometti (University of Insubria), Piercarlo Rossi (University of Torino), Raffaele Caterina (University of Torino), Mauro Bussani (University of Trieste), Gigliola Di Renzo Villata (University of Milano).

ars introducing corpus linguistics methodologies for the study of Italian legal language (see: Rovere 2005). Even though the corpus approach was not fully explored in his volume, he had the great merit of underlining the advantages of using corpora in legal linguistics when approaching specific linguistic and discursive traits (e. g. the use of articles, pronouns, suffixes like *-ità*, the position of adjectives in technical noun phrases, constructions with *da* + infinitive, the distribution of instrumental adverbs, as well as verbs and discourse markers). Indeed, his study paved the way for many other corpus-based studies in legal linguistics.

As a matter of fact, statistical software is commonly used in combination with corpora of legal texts to assess the differences in terms of lexical richness, lexical density, readability, etc. of Italian legal texts, also in comparison with other legal languages (see: Ondelli / Pontrandolfo 2015).

As far as legal corpora are concerned, an overview of the main collection publicly available for the study of legal Italian is provided in Pontrandolfo (2012). One of the most important and pioneering bilingual (English-Italian) legal comparable corpora is BoLC[8], developed at the University of Bologna under the supervision of Rema Rossini Favretti. Another corpus of Italian legal academic texts is CADIS[9], developed at the University of Bergamo within the activities carried out by the CERLIS group. A subcorpus of CADIS contains English and Italian legal texts, which have been quantitatively and qualitatively scrutinised.

Relying on empirical data helps scholars confirm their hypotheses and strengthen their methodological awareness.

8. Legal translation & interpreting research

The focus of this subsection is exclusively on legal translation and interpreting in Italy and not on legal comparative studies and legal translation theory (*comparazione giuridica*), which has been dealt with in 5. The scholars mentioned in this section, unlike the others referred to in 5. who have a strong legal background, are linguists (translators and/or interpreters), who have specialised in legal linguistics and translation.

The interest for legal translation (and later on interpreting) as a teaching and research field was awakened by a first international conference held in 1995 and organised by the Linguistic Center of the Bocconi University in Milan. Scholars from different parts of the world gathered together to debate around legal language from three basic angles: the nature and general features of legal Italian, French, English, German and Spanish, the analysis of the translation challenges related to the discursive genres typical of the legal communication, and the reflection upon some teaching experi-

[8] http://corpora.dslo.unibo.it/bolc_eng.html (03/11/2018).

[9] http://dinamico.unibg.it/cerlis/page.aspx?p=245 (03/11/2018).

ence at university level of the above-mentioned legal languages. The proceedings of the conference were published in 1997 and edited by Schena (1997).

The conference was followed by another important event, the Second International Conference held in Milan at the Bocconi University within the framework of an agreement between the former Faculties of Translation and Interpreting of Trieste and Bologna. The novelty of this second international event lied in the presence of translators and legal experts/lawyers at the same roundtable. The topics dealt with ranged from strictly linguistics issues, such as lexical, syntactical and phraseological features of legal languages, to the translation of contracts, international agreements, judgments, as well as some insights into court and parliamentary interpreting, etc. A whole section of the conference was also dedicated to teaching legal language and translation. The main goal of the conference was laying the foundation for overcoming what at that time was considered the incommunicability of the methodological tools of analysis adopted by legal scholars, linguists and translators, when interpreting and comparing legal discourse. The proceedings of this second conference were published in two volumes and edited by Schena / Snel Trampus (2000, 2002).

From 2000 onwards, legal translation has been increasingly attracting attention in Italy, not only as a relatively new academic discipline to be taught in university degrees in Specialised Translation (see IV.2.), but also as an interdisciplinary research field.

As far as legal translation theory is concerned, it is worth mentioning one of the earliest papers on the inner challenges of translating the law by Maurizio Viezzi (University of Trieste) (1994). A complete introduction to the field was provided by Fabrizio Megale from the UNINT University of Rome (2008), in which he carries out a detailed survey of the main theories of comparative law and applied linguistics, advocating for an interdisciplinary approach to the study of law and translation. The paper by Wiesmann (2011) provides an insight into the nature of legal translation, examining text-internal and text-external factors by which the translation of legal texts differs from the translation of other specialised texts.

Legal translation between Italian and other languages is today a solid niche of research. Legal translation between English and Italian has been explored by a number of scholars, among whom: Federica Scarpa (University of Trieste), in her works dedicated to the translation of the common-law judgment (Scarpa / Riley 2000); Katia Peruzzo (University of Trieste) with her investigations into the translation of the Italian Code of Criminal Procedure in English (Scarpa / Peruzzo / Pontrandolfo 2017). Legal translation between Dutch and Italian was only analysed in the early 90 s by Rita Snel Trampus (1989). As far as legal German is concerned, in addition to the already mentioned works by Magris, Rega and Wiesmann, it is worth mentioning the research carried out by Fabio Proia (UNINT University of Rome), who focused on the translation of a specific technical genre (patents). Legal translation between French and Italian has been the focus of a 2013 publication edited by Michele De Gioia (University of Padova), whereas the Spanish-Italian combination has been

the interest of many pieces of research by Giovanni Garofalo (University of Bergamo) (2003, 2009) and Gianluca Pontrandolfo (University of Trieste) (2016, 2017).

A recently new and promising research field in Italy is legal interpreting. Some theoretical insights into the profession of court interpreters and mediators are found in a recent volume by Rudvin / Spinzi (2015), as well as in other papers by different Italian scholars, like Sandrelli (2011), Ballardini (2005) and Falbo / Viezzi (2014).

III. Research activities

There is a number of outstanding projects currently ongoing in many Italian universities. The following sections present the scholars involved in these research activities, also mentioning those Italian researchers who regularly carry out their studies in Italy but work with other legal languages and not directly with Italian.

1. Research groups and projects in Italy

There are many groups and projects involved in Italy's legal linguistics research. One of the first research group was the already mentioned initiative coordinated by Michele Cortelazzo (University of Padova) – called *Linguaggio amministrativo chiaro e semplice* – who set up many activities, both at training and research levels, devoted to the simplification of administrative language. The portal, mentioned in II.2. (see footnote 5), contains useful resources for the legal linguists interested in this subfield: guidelines to write clear administrative texts, the TACS corpus, a collection of administrative texts re-written and simplified according to the criteria of linguistic simplification and communicative efficiency, a number of bibliographic references, links to other interesting webpages, etc.

Another interesting project is the *REI (Rete d'eccellenza dell'italiano istituzionale)*[10]. The main objective of this network was improving the quality of institutional texts produced by national and international public administrations. Created in 2005, it was conceived as a point of contact among translators, linguists and other operators involved in institutional communication in Italian. Legal language, with a special focus on terminology, was one of the working areas of the group.

A full-blown center, specialised in legal linguistics and informatics, is the *ITTIG* (*Institute of Legal Information Theory and Techniques*)[11]. Located in Florence, the ITTIG belongs to the Italian National Research Council (CNR) and was born as the Institute for Legal Documentation (IDG) in 1968, then became ITTIG in 2002. The center conducts research in the field of legal informatics and information

[10] http://www.treccani.it/magazine/lingua_italiana/speciali/burocratese/murillo.html (03/11/2018).

[11] http://www.ittig.cnr.it/IndexEng.htm (03/11/2018).

technology law. It carries out its research with a constant interaction between the academic and the scientific world; its applied research focuses on the relationship between law and legal science, and information and communications technologies. One of the great merits of the Institute is that of working closely with public administrations on topics related to e-government. It produces and distributes legal databases and makes specialised software and tools for online legal information, online dissemination, and for the interoperability of government data. One of its areas of expertise is the so called *legimatics* (computing for legislation), which deals with model-creation of the legal reasoning and procedure related to the legislative process, applied to both the drafting of legislative texts and to political, decision-making and feasibility analysis.

Another important and historical center was the *LALIGI*[12] (*Laboratorio di Linguistica Giudiziaria*), founded in 1996 by Patrizia Bellucci (University of Firenze). Even though it is known as *Forensic Linguistics Laboratory* in its English translation, the center did not deal exclusively with the current meaning of the term *forensic linguistics* (see: Tiersma's renowned definition[13]). It was one of the pioneering research centers dedicated to the analysis of the legal and judicial world; it carried out an extensive research on criminal proceedings, taking into consideration the aspects and problems of linguistic nature, but with strong applied consequences. The *LALIGI* was one of the first Italian academic centers that fully explored the interdisciplinarity between law and language, taking advantage of the synergy of different but complementary methodological viewpoints: from dialectology to variationist sociolinguistics to conversational analysis to ethnography of communication, declined under the interpretive or interactionist perspective. Bellucci was actually one of the first scholars introducing judicial sociolinguistics; she was definitely a forerunner of corpus-based studies of oral judicial communication (analysis of transcriptions of judicial proceedings) (2005) (see: II.4.).

Among the recent research centers, it is worth mentioning the *TRANSJUS*[14] (University of Trento) (*Laboratorio di comparazione, traduzione e linguistica giuridica*), coordinated by Elena Ioratti Ferrari. The goal of the project is developing constructive synergies among different competences, by means of terminological descriptions, scientific reflections on legal translation theories and methods applied to the transposition of EU legal concepts and institutes, as well as training scholars in the interdisciplinary field of legal translation. From the research perspective, the *TRANSJUS* members have been actively involved in three core areas: legal linguistics, legal translation and comparative law.

A very active research center is the *CRILL* (*Centre for Research in Language and Law*)[15], established by the English Language Chair within the Department of Law of

[12] http://www.patriziabellucci.it/laligi/objectives_eng.htm (03/11/2018).

[13] http://www.languageandlaw.org/FORENSIC.HTM (03/11/2018).

[14] http://www.jus.unitn.it/transjus/ (03/11/2018).

[15] http://www.crill.unina2.it/ (03/11/2018).

the University of Campania Luigi Vanvitelli (formerly: *Seconda Università degli Studi di Napoli*). It aims at disseminating scientific information and fostering dialogue on all aspects of the interface between language and law. The research center promotes the development of research output by bringing together national and international scholars, research students as well as practitioners from a variety of disciplines. The *Centre* organises conferences, seminars and visiting lectures, and undertakes research projects by a combination of individual and collaborative research of the highest international quality.

A recent international research project is the *Eurolect Observatory*[16] coordinated by Laura Mori (UNINT University of Rome). The objective of the research group is the analysis of the EU varieties of legal language (eurolect, it: *euroletto*, *eurogergo*, *eurocratese*), which have originated and become established within the linguistic dia-systems of some Member States or in parts of them: England (United Kingdom), Finland, France, Germany, Greece, Italy, Latvia, Malta, the Netherlands, Poland, and Spain. The research is based on a large multilingual corpus of EU directives and national implementing acts aimed at confirming or disconfirming the hypothesis of the existence of different EU legal varieties.

Finally, the *IUSLIT Department* of the University of Trieste[17] is now capitalising on the co-existence of the two sections of the structure (law and linguistics/translation and interpreting) with the participation in a number of research projects, both at national and international level. Among the international projects, it is worth mentioning the *QUALETRA* project devoted to quality in legal translation training and profession; *TransLaw*, aimed at exploring legal interpreting service paths and transcultural law clinics for persons suspected or accused of crime and *AVIDICUS 3*, assessment of videoconference-based interpreting in the criminal justice services. Among the national ones, the development of a terminological multilingual knowledge base in the legal field[18] (coordinated by Marella Magris), hybrid textual productions in the European context (Stefano Ondelli), and legal (and police) interpreting in criminal settings (Maurizio Viezzi and Caterina Falbo).

2. Research scholars working in Italy in legal languages different than Italian

The study of the Italian legal language is strictly connected with the study of other legal languages that are taught and researched in Italy. Although the focus of this chapter is on legal Italian, it is worth mentioning some research groups and activities of scholars (most of them Italian), based in Italian university, doing research with and

[16] http://www.unint.eu/en/research/research-groups/39-higher-education/490-eurolect-observatory-interlingual-and-intralingual-analysis-of-legal-varieties-in-the-eu-setting.html (03/11/2018).

[17] http://iuslit.units.it/it/ricerca (03/11/2018).

[18] https://lextrain.units.it/?q=termit (03/11/2018).

teaching other legal languages, as they significantly contribute to the field of legal linguistics, proposing methods, discussing problems and introducing comparative perspectives. Indeed, some Italian scholars working with other legal languages carry out contrastive studies. Interesting pieces of research are for example the seminal work by Giuliana Garzone on performative acts in English and Italian legal texts (1996), or the volume edited by Daniela Veronesi from the University of Bolzano devoted to German and Italian legal linguistics (2000).

As far as legal English is concerned, the *CRILL* group (see: III.1.) has been actively involved in the dissemination of a wide range of topics related to legal English, from the pedagogy of legal language (Girolamo Tessuto, Giuliana Garzone, Rita Salvi) to the complexities of legal discourse (among others: Christopher Williams, Girolamo Tessuto). One of the great merits of the *CRILL* school has been that of attributing the right importance to discourse studies. The research group investigates both the social and professional context, i. e. the ways professional legal communities use language, as well as legal genres, key contexts in which authority, power, ideology, areas of hybridity, intertextuality, interdiscursivity and recontextualization are pivotal issues.

Members of the University of Bergamo and of the *CERLIS* group (see: III.2.), leaded by Maurizio Gotti, have been involved in the study of academic legal discourse in English (Michele Sala) and investigations into international commercial arbitration practices, also from a contrastive perspective (among others: Maurizio Gotti, Patrizia Anesa).

Scholars of the University of Modena and Reggio Emilia have also been studying English legal linguistics from various angles: judicial/courtroom and argumentative discourse (Davide Mazzi, Silvia Cavalieri, Nicholas Bromwich), legal semantics and pragmatics (Marina Bondi, Giuliana Diani, Nicholas Bromwich, Silvia Cacchiani), and contrastive phraseological studies (Giuliana Diani).

Scholars from La Sapienza University in Rome, namely Rita Salvi and Judith Turnbull, have been actively involved in the study of the dissemination of legal English and the key role played by popularisation in this process.

As far as legal Spanish is concerned, seminal works by Carmen Sánchez Montero and Giovanni Garofalo have initially focused on legal translation between Spanish and Italian. Spanish legal linguistics is nowadays a solid research perspective of some Italian scholars, dealing with Spanish legal discourse, including terminology and phraseology (Gianluca Pontrandolfo, Giovanni Garofalo, Roberta Giordano), judicial argumentation, courtroom pragmatics, and forensic communication (Laura Mariottini).

Legal French is a niche research field in Italy. One of the first studies was devoted to the pedagogy of legal French (Leandro Schena). Works by Chiara Preite from the University of Modena e Reggio Emilia have investigated lexicographic and popularising aspects of legal French; Danio Maldussi, from the University of Bologna-Forlì,

has dedicated part of his research on LSP to legal language, especially from a comparative/contrastive and translation perspective; Micaela Rossi from the University of Genova has been actively involved in the study of LSP terminology and metaphor; some of her works deal with legal French.

As far as legal German is concerned, works by Marella Magris and Lorenza Rega from the University of Trieste and Eva Wiesmann from the University of Bologna-Forlì have explored the features of this LSP, especially from a contrastive and translation point of view.

IV. Legal Linguistic in Italian academia

The following sections briefly present the place of legal linguistics in Italian academic institutions by shedding light on the departments in which law and language officially co-exist, as well as on the didactics of legal linguistics.

1. Departments Law & Language

The idea that law and language could coexist within the same academic structure was tested officially for the first time in two Italian University Departments: the Department of Law, Economics and Cultures of the Insubria University and the Department of Legal Language, Interpreting and Translation Studies (IUSLIT) of the University of Trieste.

In line with the growing tendency to form larger departments, also due to technical and administrative reasons, in Italy there are a number of new departments that are exploring interdisciplinarity. A few of them are actually combining the linguistics and the law dimension, such as the Department of linguistic-literary, historical-philosophical and legal studies (DISTU, Tuscia University of Rome).

2. Teaching of legal linguistics

If one excludes the teaching of legal languages carried out at the Faculties of Law (both at BA and MA level) and focuses exclusively on the terminological and textual features of such LSP (see: Pontrandolfo 2017: 234–235), then legal linguistics as an academic discipline in Italy is taught only at a postgraduate level. An interesting training initiative was the Masters in Law and Language, organised by the Trentino School of Management in 2012/2013[19], aimed at introducing both lawyers and linguists to aspects of legal linguistics from an interlinguistic and intercultural perspective. The teaching modules were structured to provide specific training on a number

[19] https://www.tsm.tn.it/documenti/master/lingua_e_diritto/2012.brochure.MASTER_IN_LINGUA_E_DIRITTO.pdf (03/11/2018).

of issues, like law, culture and legal terminology, legal languages and disciplines, applied linguistics, pragmatic legal linguistics, etc.

It is also worth stressing the training initiatives organised within the *Transjus* research group[20] (see: III.1.), coordinated by Elena Ioratti (University of Trento).

The only training initiative that is still active in Italy and specifically devoted to legal language is the Masters, organised by the University of Pavia, entitled "The language of the law"[21]. Its main objective is training future experts in legal drafting with skills in law and applied linguistics. Although its scope is limited to linguistic aspects (legal writing), it is framed within a wider project aimed at mapping the research perspectives of legal linguistics, conceived as an applied discipline able to detect and propose solutions to the problems related to the use of language in the production, communication and interpretation of law.

As far as legal translation and interpreting is concerned, three Italian universities have been involved in training professional legal translators and interpreters: the UNINT University of Rome (Masters in Translation and Interpreting in the legal and judicial field, 2012/2013); the IUSLIT Department of the University of Trieste (Masters in Legal Translation, 2012/2013, 2014/2015); and the Department of Modern Languages and Cultures of the University of Genova (Masters in Specialised Translation in the legal field). The Trieste's Masters has now been replaced by a full-blown BA degree in *Interlinguistic Communication Applied to Legal Professions*, a highly innovative interdisciplinary training path, which is a unique reality in Italy.

3. Editorial panorama

The editorial panorama of specialised journals and book series on law and language is limited to two series, which confirms that legal linguistics still needs to develop to become a full-blown academic discipline, at least from the editorial point of view. The first one is a series edited by Barbara Pozzo, entitled *Le lingue del diritto* (The languages of the Law)[22] within the renowned publishing house Giuffrè, specialised in legal research publications. The second one is a series edited by Girolamo Tessuto, *Explorations in Language and Law*[23] (Novalogos, Rome), an internationally interdisciplinary series that publishes research as well as articles and book reviews on the interface between language and law in academic, professional and institutional discourse contexts.

[20] http://www.jus.unitn.it/transjus/formazione/home.html (03/11/2018).

[21] http://lalinguadeldiritto.unipv.it/ (03/11/2018).

[22] https://shop.giuffre.it/collane/le-lingue-del-diritto-collana-a-cura-di-barbara-pozzo.html (03/11/2018).

[23] http://www.novalogos.it/drive/File/Explorationscollana.pdf (03/11/2018).

It is worth mentioning that some Italian journals have dedicated special issues to law and language; for example, issue 2/2015 of the Italian journal Textus was edited by Federica Scarpa and Jan Engberg and focused on English legal language and translation[24].

V. Old and new directions in LL in Italy

The overview provided in this section has confirmed that legal linguistics is an established and increasingly growing field of research in Italy.

The last decades have witnessed a gradual move from the historical and traditional studies on the typical traits of legal language into a more interdisciplinary area of research, in which the notion of legal genre becomes crucial. This has been eased by the advent of computer-assisted methods and, in general, by the availability of a larger quantity of texts from different institutions. Indeed, the multilingual scenario of European and international institutions and organisations, such as the EU, UN, WTO, have strengthened the role of legal linguistics and shifted the focus from a single legal language to many legal languages, stressing the fact that our national language is inevitably influenced by the supranational varieties. Emphasis is increasingly being put on the use of a European legal Italian (see: Mori 2018) and its role in the emerging EU legal culture.

A growing body of research is focusing now on the non-sexist use of legal language. Avoiding discriminations and getting an equal linguistic treatment between men and women has become an objective of a good legal culture. The focus has been placed so far on legislative texts (see: Robustelli 2011; Dell'Anna 2014) but it is being applied to other genres as well, and to legal and judicial society in general (see: Cavagnoli 2013; Morra / Pasa 2015).

A promising area of research, which is proving very fruitful, is the use of computer-assisted methods of corpus linguistics as well as *Natural Language Processing* applied to legal linguistics. The advantages of these methods lie in that they allow for methodological eclecticism (i. e. the possibility to triangulate different methods), reducing speculation, as well as offering the possibility to verify hypotheses or to test common beliefs on legal linguistics more systematically. Moreover, the use of Corpus-Assisted Discourse Studies (CADS) will definitely increase in the near future in Italy due to the advantages of allowing scholars to combine corpus (more quantitative) insights and qualitative investigations into discourse types.

These new approaches will gain momentum in the years to follow and will definitely contribute to enhancing the understanding of the subtle nuances of this fascinating interdisciplinary field.

[24] http://www.carocci.it/index.php?option=com_carocci&task=schedafascicolo&Itemid=257&id_fascicolo=708 (03/11/2018).

VI. Literature

Ajani, Gianmaria (2006): Sistemi giuridici comparati. Lezioni e materiali. Torino: Giappichelli.

Austin, John Langshaw (1962): How to do things with words. Cambridge, Mass: Harvard University Press.

Ballardini, Elio (2005): L'interprete nel processo penale italiano: profilo professionale e ipotesi di formazione. In: M. Russo / G. Mack (Eds.): Interpretazione di trattativa. La mediazione linguistico-culturale nel contesto formativo e professionale. Milano: Hoepli, pp. 167 – 179.

Barbera, Manuel / Carmello, Marco / Onesti, Cristina (2014): Traiettorie sulla linguistica giuridica. Tricase: Youcanprint.

Bellucci, Patrizia (2005): A onor del vero: fondamenti di linguistica giudiziaria. Torino: UTET.

Belvedere, Andrea (1994): Linguaggio giuridico. In: Digesto delle discipline privatistiche, Sez. civile, X. Torino, pp. 21 – 31.

Calvino, Italo (1965/1995): L'antilingua. In: Una pietra sopra. Discorsi di letteratura e società. Milano: Arnoldo Mondatori Editore, 1995, pp. 149 – 154 (first publication on *Il Giorno*, 03/02/1965).

Cavagnoli, Stefania (2013): Linguaggio giuridico e lingua in genere. Una simbiosi possibile. Alessandria: Edizioni dell'Orso.

Cavagnoli, Stefania / Ioratti Ferrari, Elena (Eds.) (2009): Tradurre il diritto. Nozioni di diritto e di linguistica giuridica. Padova: CEDAM.

Cavalieri, Silvia (2013): Courtroom Discourse in the Witness Examination. The case of the Public Inquiry. Saarbrücken, Germany: LAP Lambert Academic Publisher.

Chiassoni, Pierluigi (2010): Analisi linguistica e teoria dell'interpretazione giuridica. Ancora sulla sempiterna disputa tra scettici e misti(ci). In: J. Visconti (Ed.): Lingua e diritto: livelli di analisi. Milano: LED, pp. 75 – 96.

Conte, Amedeo Giovanni (1989): Filosofia del linguaggio normativo. I. Studi 1965 – 1981. Torino: Giappichelli.

Conte, Amedeo Giovanni (1994): Filosofia del linguaggio normativo. II. Studi 1982 – 1993. Torino: Giappichelli.

Conte, Amedeo Giovanni (2001): Filosofia del linguaggio normativo. III. Studi 1995 – 2001. Torino: Giappichelli.

Cordero, Franco (1986): Stilus curiae (analisi della sentenza penale). In: A.A. V.V.: La sentenza in Europa. Metodo, tecnica e stile. Atti del Convegno internazionale per l'inaugurazione della nuova sede della Facoltà. Ferrara, 10 – 12 ottobre 1995, Padova: CEDAM, pp. 293 – 312.

Cortelazzo, Michele (1997): Lingua e diritto in Italia. Il punto di vista dei linguisti. In: L. Schena (Ed.): La lingua del diritto: difficoltà traduttive, applicazioni didattiche. Atti del I convegno internazionale. (Milano, Centro linguistico dell'Università Bocconi, 5 – 6 ottobre 1995), Roma: CISU, pp. 35 – 50.

Cortelazzo, Michele (2001): Indicazioni linguistiche e testuali nel codice di procedura penale. In L. Schena / R. Snel Trampus (Eds.): Traduttori e giuristi a confronto. Interpretazione traducente e comparazione del discorso giuridico. Bologna: CLUEB, pp. 17 – 23.

Cortelazzo, Michele / Pellegrino, Federica (2003): Guida alla scrittura istituzionale. Bari: Laterza.

Cortelazzo, Michele (2014): L'italiano nella scrittura amministrativa. In: S. Lubello (Ed.): Lezioni d'italiano. Riflessioni sulla lingua del nuovo millennio. Bologna: Il Mulino, pp. 85–104.

De Gioia, Michele (Ed.) (2013): Autour de la traduction juridique. Padova: Padova University Press.

De Mauro, Tullio (1963): Storia linguistica dell'Italia unita. Bari: Laterza, pp. 424–435.

De Mauro, Tullio (1986): Linguaggio giuridico: profili storici, sociologici e scientifici. In: CEPIG (Centro Pontino di Iniziative Giuridico-sociali), Linguaggio e giustizia. Ancona: Nuove Ricerche, pp. 11–20.

De Mauro, Tullio (1998): Il linguaggio della costituzione. In: S. Rodotà (Ed.): Alle origini della costituzione, Bologna: Il Mulino, pp. 25–42.

Dell'Anna, Maria Vittoria (2013): In nome del popolo italiano: linguaggio giuridico e lingua della sentenza in Italia. Roma: Bonacci.

Dell'Anna, Maria Vittoria (2014): Genere e generi. Donne e rappresentazione linguistica al femminile nei testi del diritto e dell'amministrazione in Italia. In: Linguaggio giuridico e lingua di genere. Atti del Convegno organizzato dal Comitato Pari Opportunità dell'Ordine degli Avvocati di Milano. Milano: Aula Magna del Palazzo di Giustizia, 21 novembre 2014.

Di Lucia, Paolo (2010): Il concetto di valenza nella filosofia dell'atto giuridico. In: J. Visconti (Ed.): Lingua e diritto. Livelli di analisi. Milano: LED, pp. 43–59.

Falbo, Caterina / Viezzi, Maurizio (Eds.) (2014): Traduzione e interpretazione per la società e le istituzioni. Trieste: EUT.

Fiorelli, Piero (1994): La lingua del diritto e dell'amministrazione. In: L. Serianni / P. Trifone (Eds.): Storia della lingua italiana, II. Torino: Einaudi, pp. 553–597.

Fioritto, Alfredo (Ed.) (1997): Manuale di stile. Strumenti per semplificare il linguaggio delle amministrazioni pubbliche. Proposta e materiali di studio. Bologna: Il Mulino.

Frosini, Vittorio (1992): Traduzione e interpretazione dei testi giuridici In: La Traduzione. Saggi e documenti (I). Quaderni di Libri e Riviste d'Italia n. 28. Roma: Ministero per i beni culturali e ambientali, pp. 105–118.

Gambaro, Antonio; Sacco, Rodolfo (1996): Sistemi giuridici comparati. Torino: UTET.

Garavelli, Mario (2010): I giudici e il linguaggio. In: J. Visconti (Ed.): Lingua e diritto. Livelli di analisi. Milano: LED, pp. 97–102.

Garofalo, Giovanni (2003): La Ley orgánica 4/2000, de Extranjería: analisi e traduzione del testo nell'ottica della linguistica contrastiva e pragmatica. Padova: Padova University Press.

Garofalo, Giovanni (2006): I connettivi condizionali complessi nei testi normativi spagnoli. In: *Rivista Internazionale di Tecnica della Traduzione*, n. 09/2016, pp. 75–97.

Garofalo, Giovanni (2009): Géneros discursivos de la justicia penal. Un análisis contrastivo orientado a la traducción. Milano: FrancoAngeli.

Garzone, Giuliana (1996): Performatività e linguaggio giuridico: una proposta di classificazione, con osservazioni contrastive inglese-italiano. Milano: Centro Linguistico. Università Commerciale Luigi Bocconi.

Garzone, Giuliana / Santulli, Francesca (Eds.) (2008): Il linguaggio giuridico: prospettive interdisciplinari. Milano: Giuffrè.

Giaufret, Anna / Mesmaeker, Bernard / Rossi, Micaela (2005): Le français dans les textes juridiques. Napoli: Simone.

Gorla, Gino (1967): Lo stile delle sentenze. Testi commentati. In: Quaderni de Il Foro Italiano. Bologna: Zanichelli, pp. 314 – 362.

Gorla, Gino (1968): Lo stile delle sentenze. Ricerca storico-comparativa. In: Quaderni de Il Foro Italiano. Bologna: Zanichelli, pp. 314 – 362.

Guastini, Riccardo (2010): Introduzione alla teoria dell'interpretazione. In: In: J. Visconti (Ed.): Lingua e diritto. Livelli di analisi. Milano: LED, pp. 61 – 74.

ITTIG / Accademia della Crusca (2011): Guida alla redazione degli atti amministrativi. Regole e suggerimenti, http://www.ittig.cnr.it/Ricerca/Testi/GuidaAttiAmministrativi.pdf (03/11/2018).

Libertini, Raffaele (2012): L'osservatorio sulla qualità degli atti amministrativi. In: R. Zaccaria (Ed.): La buona scrittura delle leggi. Roma: Camera dei Deputati, pp. 151 – 155.

Lubello, Sergio (2014): Il linguaggio burocratico. Roma: Carocci.

Lumia, Giuseppe (1992): Osservazioni sul linguaggio giuridico. In: *Cassazione penale*, pp. 789 – 792.

Luzzati, Claudio (1990): La vaghezza delle norme: un'analisi del linguaggio giuridico. Milano: Giuffrè.

Mantovani, Davide (n.a.): Per una mappa bibliografica dell'italiano giuridico. http://lalinguadeldiritto.unipv.it/bibliografia.html (03/11/2018).

Marchesiello, Michele (2013): Il linguaggio della legge. In: A. Mariani Marini / F. Bambi (Eds.): Lingua e diritto. Scritto e parlato nelle professioni legali. Pisa: Pisa University Press, pp. 133 – 148.

Mattila, Heikki E. S. (2013): Comparative Legal Linguistics. Language of Law, Latin and Modern Lingua Francas. 2nd edition. Farnham, Burlington: Ashgate.

Megale, Fabrizio (2008): Teorie della traduzione giuridica: fra diritto comparato e Translation Studies. Napoli: Editoriale scientifica.

Mori, Laura (Ed.) (2018): Observing Eurolects. Corpus analysis of linguistic variation in EU law. Amsterdam, Philadelphia: John Benjamins.

Morra, Lucia / Pasa, Barbara (Eds.) (2015): Questioni di genere nel diritto: impliciti e crittotipi. Torino: Giappichelli.

Mortara Garavelli, Bice (2001): Le parole e la giustizia. Divagazioni grammaticali e retoriche su testi giuridici italiani. Torino: Einaudi.

Mortara Garavelli, Bice (2006): L'occhiale del linguista su testi notarili. In: E. Marmocchi (Ed.): L'atto pubblico fra tecniche di redazione e forme di comunicazione. Milano: Giuffrè, pp. 83 – 98.

Mortara Garavelli, Bice (2011): L'italiano della Repubblica: caratteri linguistici della Costituzione. In: V. Coletti / S. Iannizzotto (Eds.): L'italiano dalla nazione allo stato. Firenze: Le Lettere, pp. 211 – 218.

Nystedt, Jane (2000): L'italiano nei documenti della CEE: le sequenze di parole. In: D. Veronesi (Ed.): Linguistica giuridica italiana e tedesca. Padova: Unipress, pp. 273 – 284.

Ondelli, Stefano (2007): La lingua del diritto. Proposta di classificazione di una varietà dell'italiano. Roma: Aracne.

Ondelli, Stefano (2012): La sentenza penale tra azione e narrazione. Un analisi pragmalinguistica. Padova: CLEUP.

Ondelli, Stefano (Ed.) (2013): Realizzazioni testuali ibride in contesto europeo: lingue dell'UE e lingue nazionali a confronto. Trieste: EUT.

Ondelli, Stefano / Pontrandolfo, Gianluca (2015): La negazione multipla nei testi giuridici: veramente non si può negare che sia un tratto caratteristico? In: *RITT (Rivista Internazionale di Tecnica della Traduzione/International Journal of Translation)*, vol. 16, pp. 153 – 176.

Orletti, Franca / Mariottini, Laura (Eds.) (2017): Forensic Communication in Theory and Practice. A Study of Discourse Analysis and Transcription. Cambridge: Cambridge Scholars Publishing.

Pattaro, Enrico / Sartor, Giovanni; Capelli, Alessandra (1997): Codice per la redazione degli atti normativi – Norma System. http://www.maldura.unipd.it/buro/manuali/norma.pdf (03/11/2018).

Pontrandolfo, Gianluca (2011): Phraseology in Criminal Judgments: A Corpus Study of Original vs. Translated Italian. In: *Sendebar* (22), pp. 209 – 234.

Pontrandolfo, Gianluca (2012): Legal Corpora: An Overview In: *Rivista Internazionale di Tecnica della Traduzione* (14) 2012, pp. 121 – 136.

Pontrandolfo, Gianluca (2014): Marcadores argumentativos del contraste y discurso judicial: un estudio propedéutico para la traducción. In: *Hermes Journal of Business and Communication*, pp. 99 – 124.

Pontrandolfo, Gianluca (2016): Fraseología y lenguaje judicial. Las sentencias penales desde una perspectiva contrastiva. Roma: Aracne.

Pontrandolfo, Gianluca (2017): Los corpus como recursos en la enseñanza del español jurídico: aprender descubriendo. In: C. Espaliu Berdud / C. de Miranda Vazquez / R. Jiménez Yañez (Eds.): ¿Cómo la innovación mejora la calidad de la enseñanza del derecho? Propuestas en un mundo global. Pamplona: Aranzadi, pp. 231 – 252.

Pozzo, Barbara / Timoteo, Marina (Eds.) (2008): Europa e linguaggi giuridici. Milano: Giuffrè.

Robustelli, Cecilia (2011): Pari trattamento linguistico di uomo e donna, coerenza terminologica e linguaggio giuridico. In: R. Zaccaria (Ed.): La buona scrittura delle leggi. Roma: Camera dei Deputati, pp. 181 – 198.

Rovere, Giovanni (2005): Capitoli di linguistica giuridica. Ricerche su corpora elettronici. Alessandria: Edizioni dell'Orso.

Rudvin, Matte / Spinzi, Cinzia (2015): L'interprete giuridico: profilo professionale e metodologie di lavoro. Roma: Carocci.

Sabatini, Francesco (1998): Funzioni del linguaggio e testo normativo giuridico. In: I. Domeninghetti (Ed.): Con felice esattezza. Economia e diritto tra lingua e letteratura. Bellinzona: Ed. Casagrande, pp. 125–137.

Sabatini, Francesco (2005): I testi normativi giuridici: un uso prototipico della lingua. In: AA.VV.: Lingua e diritto. La presenza della lingua italiana nel diritto svizzero. Lugano: CFPG, pp. 17–25.

Sacco, Rodolfo (1992): Trattato di diritto comparato. Introduzione al diritto comparato, Torino: UTET.

Sacco, Rodolfo (1994): La traduzione giuridica. In: U. Scarpelli / P. Di Lucia (Eds.): Il linguaggio del diritto. Milano: LED, pp. 475–490.

Sacco, Rodolfo (2010): Azione, pensiero, parola nella creazione del diritto. In: J. Visconti (Ed.): Lingua e diritto. Livelli di analisi. Milano: LED, pp. 21–41.

Sandrelli, Annalisa (2011): Gli interpreti presso il tribunale penale di Roma. Un'indagine empirica. In: *InTRAlinea* (13).

Santulli, Francesca (2008): La sentenza come genere testuale: narrazione, argomentazione, performatività. In: G. Garzone / F. Santulli (Eds.): Il linguaggio giuridico. Prospettive interdisciplinari. Milano: Giuffrè, pp. 207–238.

Scarpa, Federica / Riley, Alison (2000): La traduzione della sentenza di common law in italiano. In: *Traduzione, società e cultura* (9), pp. 1–91.

Scarpa, Federica / Peruzzo, Katia / Pontrandolfo, Gianluca (2017): Methodological, terminological and phraseological challenges in the translation into English of the Italian Code of Criminal Procedure: What's new in the second edition. In: M. Gialuz / L. Luparia / F. Scarpa (Eds.): The Italian Code of Criminal Procedure. Critical Essays and English Translation. Milano: Wolters Kluwer Italia, pp. 57–95.

Scarpelli, Umberto (1969): Semantica giuridica. In: *Novissimo Digesto Italiano* (16), pp. 979–999.

Scarpelli, Umberto /Di Lucia, Paolo (Eds.) (1994): Il linguaggio del diritto. Milano: LED.

Schena, Leandro (1997): La lingua del diritto: difficoltà traduttive, applicazioni didattiche. Atti del I convegno internazionale (Milano, Centro linguistico dell'Università Bocconi, 5–6 ottobre 1995). Roma: CISU.

Schena, Leandro / Snel Trampus, Rita (2000): Traduttori e giuristi a confronto: interpretazione traducente e comparazione del discorso giuridico. Vol. 1. Bologna: CLUEB.

Schena, Leandro / Snel Trampus, Rita (2002): Traduttori e giuristi a confronto: interpretazione traducente e comparazione del discorso giuridico. Vol. 2. Bologna: CLUEB.

Searle, John (1969): Speech Acts. An Essay in the Philosophy of Language. Cambridge: Cambridge University press.

Serianni, Luca (2003): Italiani scritti. Bologna: Il Mulino.

Silvestri, Gaetano (1989): Linguaggio della costituzione e linguaggio giuridico: un rapporto complesso. In: *Quaderni costituzionali* (9.2), pp. 229–255.

Snel Trampus, Rita (1989): La traduzione e i linguaggi giuridici olandese e italiano: aspetti e problemi. Trieste: Italo Svevo Ed.

Veronesi, Daniela (Ed.) (2000): Linguistica giuridica italiana e tedesca. Padova: Unipress.

Viale, Matteo (2008): Studi e ricerche sul linguaggio amministrativo. Padova: CLEUP.

Viale, Matteo (2014): Quale italiano per le leggi? In: S. Novelli (Ed.): Nel labirinto del burosauro, Speciale Treccani Lingua Italiana. www.treccani.it/lingua_italiana/speciali/burosauro/Viale.html (03/11/2018).

Viezzi, Maurizio (1994): Introduzione alle problematiche della traduzione giuridica con particolare riferimento alla traduzione di testi in lingua inglese. In: *Traduzione, società e cultura* (05), pp. 1 – 48.

Visconti, Jacqueline (Ed.) (2010): Lingua e diritto: livelli di analisi. Milano: LED.

Visconti, Jacqueline (2013): Il testo scritto: il contratto. In: A. Mariani Marini / F. Bambi (Ed.): Lingua e diritto. Scritto e parlato nelle professioni legali, Pisa: Pisa University Press, pp. 121 – 134.

Zaccaria, Roberto (Ed.) (2012): La buona scrittura delle leggi. Roma: Camera dei Deputati.

Wiesmann, Eva (2011): La traduzione giuridica tra teoria e pratica. In: *InTRAlinea* (Special Issue: Specialised Translation II) http://www.intralinea.org/specials/article/la_traduzione_giuridica_tra_teoria_e_pratica (03/11/2018).

Legal Linguistics in Spain

By *Gianluca Pontrandolfo*, Trieste[1]

Abstract

The aim of this chapter is to provide an overview of the emerging interdisciplinary academic field of legal linguistics in Spain. After introducing the features of the complex relation between law and language in Spain, the chapter aims at mapping the most important areas of research of Spanish scholars, underlining the main research foci. Emphasis is put on traditional linguistic studies, legal genres, discourse analysis, modernisation of legal discourse, forensic linguistics, legal translation, and interpreting studies. The paper also mentions the main research groups and projects, the editorial panorama devoted to Spanish legal linguistics, as well as the training initiatives carried out for legal and linguistic experts. The overview confirms that, notwithstanding the inexistence of a long-standing tradition in this field and the difficulty in drawing clear-cut lines of research, legal linguistics is constantly growing in Spain and it is witnessing a consolidation from an academic perspective.

Keywords: legal linguistics, law and language, research, didactics, research groups, Spain

I. Introduction

The last four decades have witnessed a consolidation of the relationship between law and language in Spain, so much that legal linguistics (sp. *lingüística jurídica*, *lingüística forense*, *lingüística legal*) is now starting to be considered as a full-blown discipline, declined into a wide range of theoretical and applied perspectives (Taranilla 2011: 32–47; Ballesteros / López Samaniego 2017: 43–44).

The idea that linguists can put their knowledge at the service of other disciplines and take part in contemporary society is nowadays widely accepted. However, when it comes to Spain, as Taranilla puts it (2011: 41), most of legal linguistics studies in Spain are conceived, at least at the dawn of this emerging discipline, within the English linguistics sphere of influence, Translation Studies or teaching of *Language for Specific Purposes* (LSP). This means that the contrastive perspective has always prevailed over the monolingual one, with the final result that the interest in Spanish legal

[1] This chapter is partially framed within the project entitled "Discurso jurídico y claridad comunicativa. Análisis contrastivo de sentencias españolas y de sentencias en español del Tribunal de Justicia de la Unión Europea" (FFI2015-70332-P), financed by the Spanish *Ministerio de Economía y Competitividad* and FEDER funds (Principal investigator: Prof. Estrella Montolío Durán, *Universitat de Barcelona*).

linguistics has not produced unified, specific lines of research, but a number of different yet complementary perspectives (Cassany et al. 2007: 466)[2].

The present chapter discusses some of the most important research perspectives, bearing in mind that it would be impossible to mention every single study carried out in this field. Moreover, tracing the trajectories of legal linguistics through theoretical perspectives and analytical tools would be a hard task since most of the scholars who studied legal linguistics did so by selecting a specific genre and describing its features, combining heterogeneous analytical tools. For this reason, research in legal linguistics in Spain is, in Taranilla's words, "atomised" in the sense that there are many individual studies on specific genres, most of them isolated, which rarely propose a theoretical and methodological perspective of investigation, thus limiting the dialogue and interactions with other genres and the systems of genres (2011: 43–44).

II. Topics and directions

In order to map the research fields, the areas of interest and topics of Spanish scholars have been categorised in the following groups:

1) analyses of legal language: the linguistic description of the typical features of legal language distinguishing it from other *Languages for Special Purposes* (LSP); these preliminary analyses focused on specific functional varieties, initially tackled from the lexical and morphosyntactic perspective;
2) analyses of legal genres: the notion of discursive genre, fruit of the interest of linguistics for the communicative and pragmatic dimensions of texts, arose in Spain thanks to the seminal works by Swales (1990) and Bhatia (1993), whose insights were then applied to the analysis of Spanish LSP;
3) studies on the relationship between the linguistic form and the linguistic function in legal contexts (legal language in context, e. g. the linguistic process of questioning suspects or accused persons in criminal proceedings) (see among others: Figueras 2001; Ridao 2009; Taranilla 2011);
4) pragmatic analyses of legal language: due to the inner features of legal discourse, Pragmatics has always been a privileged area of research for legal scholars: speech acts and politeness are just two illustrative examples (see: Ridao 2009; Taranilla 2009);
5) conversation analyses in legal contexts: communication ethnography and conversational analysis, the study of the nature and functions of language in the negotiation of social order within the framework of legal semiotics (Mattila 2013: 13);

[2] This is confirmed also by Mattila: "In the Spanish-speaking world, the term [legal linguistics] appears not well established. Indeed, it did not appear at all in the source texts for the chapter on legal Spanish" (2013: 7).

6) studies on the social conditions in which legal discourse is generated (production conditions of legal texts, ideology, power in the administration of justice);
7) studies at the interface of *Applied Linguistics and Law*, such as forensic linguistics and simplification of legal language;
8) legal translation and interpreting studies.

The following sections emphasise some of these perspectives – more specifically, lines 1., 2), 6), 7) and 8) – chosen for being particularly representative of the current research trends in Spain. An overview of legal linguistics in Spanish-speaking countries (not limited to peninsular Spanish), especially from the point of view of legal Spanish, has also been carried out by Mattila (2013: 273–304).

1. Traditional studies on legal language

The first and most productive research area is the investigation into the typical traits of legal language. This area corresponds to what Mattila considers as "the real nature of legal linguistics", that is to say, the study of "the development, characteristics, and usage of legal language; studies in this discipline may equally concern vocabulary (notably terminology), syntax (relationship between words), or semantics (the meaning of words) of the language" (2013: 11).

Influenced by seminal books on English legal language (e. g. Mellinkoff 1963; Tiersma 1999), this strand of research has been characterised by the identification of the linguistic and discursive features that distance legal language from ordinary language.

Interestingly, the very first studies on law and language were carried out by legal experts (e. g. Rodríguez-Aguilera 1969; Hernández Gil 1987; Prieto de Pedro 1991; Martín del Burgo y Marchán 2002; Cazorla Prieto 2007). These earlier studies, drafted by experts in law, are characterised by a *philosophical* approach to the study of law and language: the legal perspective prevails over the linguistic one and the considerations on the inner features of legal language are just embryonal.

The first systematic work from the linguistic perspective is that of Alcaraz Varó / Hughes (2001), who targeted the book to translation and interpreting specialists (both students and professionals). The book is still a point of reference for many scholars working in Legal Translation studies (see: II.6.): it contains a study of Spanish legal language and particularly of legal terms and concepts analysed from the linguistic perspective (lexical, syntactical and stylistic features) and translated into English and French. The study was followed by other similar pieces of research, focused exclusively on the linguistic perspective (Hernando Cuadrado 2003; Samaniego 2004).

Many of these *traditional* studies on the features of legal language have been focusing on terminological and lexicographic aspects of legal texts (see among others: Cruz Martínez 2002; Fernández Bello 2008; Giráldez Ceballos Escalera 2007; Felices Lago 2010).

2. Research on legal genres

Swales' (1990) and Bhatia's (1993) theories of genre, considered as "a class of communicative events, the members of which share some set of communicative purposes" (1990: 58), highly influenced the *GENTT* (Textual Genres for Translation) (see: II.6.) research group of the *Universidad Jaume I de Castellón* (among its members: Anabel Borja Albi, Isabel García Izquierdo and Esther Monzó Nebot).

García Izquierdo's (2007) and Borja Albi's (2007) chapters on genre in LSP and legal genres[3] respectively were one of the first studies in which the genre theory was systematically applied to the analysis of legal texts and later applied to translation (García Izquierdo 2005) and legal translation (Monzó 2002; Borja Albi 2005).

The idea behind these first studies is that legal language is not a homogeneous variety, but a prism of different varieties highly influenced by the discursive genres, which acquires a theoretical status able to justify how language works in legal settings. The characterisation of legal genres is the core of other works (Castellón 2000, 2001; López Samaniego 2010; Taranilla 2010; López Samaniego / Taranilla 2012).

As far as the single genres are concerned (see Borja Albi 2007 for a detailed classification), research has focused on the following macro-genres:

– *administrative texts* (see among others: Calvo 1980, 1985; Castellón 1998, 1999, 2000, 2001; de Miguel 2000; Duarte 1997; Etxebarría 1997; Reig 2005; Ricós 1998)
– *legislative texts* (see among others: Calvo 2007, Montolío 2000; Taranilla 2010)
– *judicial texts* (especially judgments) (Tomás Ríos 2005; López Samaniego 2006; Montolío y López Samaniego 2008; Henríquez Salido / Valera Portela 2010; Taranilla 2011)

3. Discourse analysis

A rich contribution to the study of Spanish legal discourse comes from the *EDAP* group[4] of the *Universitat de Barcelona.* Leaded by Montolío Durán, they have been investigating the inner relationship between law and language from a *discourse* point of view in different contexts.

A strand of research has been studying the relationship between legal language and the media (see: Yúfera et al. 2013; Polanco / Yúfera 2015) which is a topic

[3] Legal discourse encompasses a large number of genres (wills, agreements, powers of attorney, statutes, law text books, law reports, legal opinions, etc.) which are organised into different subsets of interdependent genres and have interacting purposes and forms (Borja Albi 2000, 2013: 34).

[4] http://www.ub.edu/edap/?page_id=424 (03/11/2018).

that deserves attention, since legal discourse is often distorted when popularised online.

Other scholars have investigated the discursive traits of legal language, ranging from the enumeration strategies in judicial texts (Yúfera / Polanco 2012) to the organisation of discourse through paraphrastic constructions (Polanco Martínez / Yúfera Gómez 2013).

Some scholars have also investigated the domestic violence discourse, a topic for which Spain has always been a pioneer country in Europe. A contrastive perspective is offered by Orts Llopis (2017), whereas an interpreting point of view (see: II.6.) is provided in the research of Maribel del Pozo Triviño, *Universidad de Vigo* (see: del Pozo Triviño / Álvarez Escobar 2014). An important contribution is also offered by legal experts: Blanca Rodríguez-Ruiz from the *Universidad de Sevilla*, who, for example, has been researching on gender in constitutional discourses on abortion (2016).

As far as the works carried out in Spain by scholars working with other legal languages (not Spanish), there are many researchers studying English legal linguistics and discourse: Ruth Breeze (*Universidad de Navarra*) has extensively published on legal discourse; María Ángeles Orts Llopis (*Universidad de Murcia*) and Esther Vázquez del Árbol (*Universidad Autónoma de Madrid*) who have also investigated legal translation between English and Spanish; Miguel Ángel Campos Pardillos (*Universidad de Alicante*) who is one of the first scholars who studied metaphors in legal settings; Teresa Fanego (*Universidad de Santiago de Compostela*) who, in many of her studies, adopts also a diachronic perspective on English legal discourse (see: the CHELAR project[5]).

4. Simplification of legalese

The problem of the quality and readability of legal texts has always been a topic of interest among Spanish scholars, both linguists and legal experts (Cassany 2005; Mattila 2013: 294–297).

The baroque style of Spanish legal texts, characterised by a number of "ills" (Mattila 2013: 289) or "patologías" (CMLJ 2011: 9–10) – such as over-long sentences, repetitive and formal expressions, over-use of nouns and nominalisations, use of capital letters and punctuation marks contrary to the recommendations of language specialists – has been the target of many initiatives aimed at simplifying legal (especially administrative and judicial) texts.

The Spanish government has always been very active and devoted great attention to the topic of a clear administrative language. Since the 80s, importance has been attributed to the language of public administrations (Castellón 1998: 31, 2006).

[5] http://www.usc-vlcg.es/CHELAR.htm (03/11/2018).

The interest for a clear and understandable administrative language culminated in 1990 with the publication of the *Manual de estilo del lenguaje administrativo* by the Spanish Ministry of Public Administration. Several other publications followed on administrative language (Calvo 1980; Prieto de Pedro / Abril 1987; Prieto de Pedro 1996; Duarte 1997; Duarte / Martínez 1995; Etxebarría 1997; Castellón 2000, 2001) as well as on legislative language (see: GRETEL 1989).

Starting from the XX century and following the recurrent criticism to the opacity of Spanish legal discourse, both by citizens and specialists in law and language (among others: Rodríguez Aguilera 1969, 1974; Prieto de Pedro 1996; de Miguel 2000; Alcaraz Varó / Hughes 2001; Bayo Delgado 1997; Campos Pardillos 2007; Cazorla 2007; González Salgado 2009; López Samaniego 2010), the initiatives began to spread also to justice administration with the approval of the *Carta de derechos de los ciudadanos ante la justicia* (Ministerio de Justicia 2002), the first official sign of the necessity to simplify legal matters to citizens. Following this line, the *Plan de Transparencia Judicial*, approved by the Spanish Ministries on October 2005, created the *Technical Advisory Team of the Legal Language Modernisation Commission*, whose members were academic, legal and institutional personalities guided by the joint objective of drafting some guidelines for the improvement of legal discourse in Spanish. By means of a government agreement, dated 30 of December 2009, in 2011 the most important Spanish institutions interested in language and justice (the Real Academia Española, the Ministry of Justice, among others) signed a Framework cooperation agreement to promote the clarity of the legal/administrative language. The results of the report[6] represent an extremely useful tool for legal linguists, since they systematically map the features of legalese and propose a series of recommendations to correct some of the *pathologies* of this professional language. A huge contribution to the field has been given by the EDAP group (*Universitat de Barcelona*) whose members have been particularly interested in the clarification of legal language, especially in legislative and judicial texts (see: Montolío / Samaniego 2008).

In 2013, the first *Jornadas internacionales de modernización del discurso jurídico: acercamiento de la justicia al ciudadano* (International days for the modernisation of legal discourse: drawing closer justice to citizens) were organised by the VALESCO group in Spain (*Universitat de Valencia*)[7]. The event proved to be a fruitful arena to share some thoughts on the clarification of legal language since it gathered, at the same roundtable, legal experts, lawyers/judges and linguists. The 2012 volume edited by Montolío Durán summarises Spain's status quo on the topic and proposes useful and practical guidelines to approach legal discourse.

Today the interest in the topic is still profound, as witnessed by a recent contribution by Jiménez Yáñez (2016), with a strong training perspective on how to

[6] The reports are available on the VALESCO group's website: http://valesco.es/justicia/informes-modernizacion-del-lenguaje-juridico/ (03/11/2018).

[7] http://valesco.es/justicia/ (03/11/2018).

write clearly or the recent publication of the *Libro de estilo de la justicia* edited by Muñoz Machado (2017), conceived with the support of the *Real Academia Española* and the *Consejo General del Poder Judicial.* The editorial project also stems from the effort put in the elaboration of the *Diccionario del español jurídico* (DEJ) (2016) which has become a fundamental reference work for any scholar interested in Spanish legal linguistics.

5. Forensic Linguistics

This section focuses on forensic linguistics conceived within its strict meaning, that is to say, as the activities that see linguists participate in judicial proceedings using linguistic methods and tools, especially applying linguistic analyses to questions related to judicial evidence (Taranilla 2011: 39).

If this subfield is nowadays recognised in Spain as a productive area of research, it is thanks to the outstanding work of Maria Teresa Turell i Julià (*Universitat Pompeu Fabra de Barcelona*). President of the International Association of Forensic Linguists (IAFLM) as of 2011 and Academic Director of the University Master in Forensic Linguistics, the first course of its type in Spain, she directed several competitive projects in the field of Forensic Idiolectometry which were pioneering in Spain, Catalonia and around the world. In the legal sphere, over the last few years she acted as an expert witness in more than sixty civil and criminal cases in Catalonia, Spain and the United States. She was head of the Forensic Linguistics Laboratory (*ForensicLab*) at *Institut Universitari de Lingüística Aplicada* (IULA) (see: III.), a center at *Universitat Pompeu Fabra* that developed teaching and research activities in forensic linguistics, and made use of linguistic evidence for forensic purposes in Court (1993 – 2013).

Turell's contributions to the field are inestimable since she helped defining the conceptual space of Forensic Linguistics, underlining the main concepts, methods and application (see the volume she edited in 2005). Even though the *ForensicLab* is no longer active, there are still some research initiatives in Spain (especially at the UPF of Barcelona) devoted to the interaction between linguistics and forensic settings[8].

6. Legal translation & interpreting

The panorama of legal translation and interpreting in Spain shows a varied picture but confirms an active research focus.

One of the first scholars researching on legal translation in Spain was Roberto Mayoral Asensio (*Universidad de Granada*), author of the renowned 2003 book on translating official documents. Emilio Ortega Arjonilla (*Universidad de*

[8] See for example: https://www.upf.edu/web/uval/projectes/-/asset_publisher/uKgNfnoCAQ5K/content/id/8593203/maximized#.W8mOUnszY2w (03/11/2018).

Málaga) and Pedro San Ginés Aguilar (*Universidad de Granada*) also contributed to the field, theoretically distinguishing sub-sectors of legal translation, such as sworn translation (*traducción jurada*) and judicial translation (*traducción judicial*) (see: 1996a, 1996b). They had the merit of opening up a line of research in the training of legal translators, which was later followed by, among others, Borja Albi (2007) in her seminal book on the strategies, materials and tools for legal translation between English and Spanish.

Legal translation between English and Spanish was obviously one of the first fields of research in Spain, due to the influence of English legal linguistics on Spanish studies (see: I.). The *Universidad Jaume I de Castellón* (see: II.2.) has always been very active (Anabel Borja Albi, Esther Monzó Nebot)[9], together with the *Universidad de Granada* (Catherine Way), the *Universidad Autónoma de Barcelona* (Mariana Orozco Jutorán, Carmen Bestué), the *Universidad de Salamanca* (Rosario Martín Ruano) or the *Universidad Pablo de Olavide de Sevilla* (Francisco Javier Vigier Moreno).

Legal translation between French and Spanish is one of the most studied combination in Spain, as confirmed by different foci of research throughout Spain: *Universidad de Granada* (Esperanza Alarcón Navio, Silvia Parra Galiano, María del Carmen Acuyo Verdejo, Guadalupe Soriano Barabino), *Universidad de Málaga* (Emilio Ortega Arjonilla, Tanagua Barceló Martínez, Iván Delgado Pugés), *Universidad Pablo de Olavide de Sevilla* (Juan Jiménez Salcedo), *Universidad de Salamanca* (Cristina Valderrey Reñones). Legal translation between German and Spanish is studied and researched at the *Universidad de Salamanca* (Pilar Elena, Iris Holl). Members of the *Universidad de Alcalá de Henares*, leaded by Carmen Valero, have been investigating legal interpreting within the framework of public service interpreting (see III.).

III. Research activities

There are a few full-blown research centers in Spain specifically devoted to legal linguistics, but many research groups and projects.

One of the first pioneer centers in legal linguistics in Spain was the above-mentioned *ForensicLab*[10] (see: II.5.) at *Institut Universitari de Lingüística Aplicada* (IULA) (*Universitat Pompeu Fabra of Barcelona*). It was founded in 1993 by Turell who directed it until 2013. The center developed teaching and research activities in forensic linguistics, and made use of linguistic evidence for forensic purposes in Court.

[9] An important bibliographic map for the study and practice of legal, court and official translation and interpreting is offered by Monzó (2010): https://www.erudit.org/fr/revues/meta/2010-v55-n2-meta3880/044245ar/ (03/11/2018).

[10] https://www.upf.edu/en/web/uval/forensiclab (03/11/2018).

Among the research groups active in disseminating the results of important investigations into language and law (and translation), it is worth mentioning the *GENTT* (Textual Genres for Translation)[11] (see: II.2.), a research group within the Department of Translation and Communication at the *Universitat Jaume I in Castellón* (Spain), focusing on the application of the concept of textual genre to the analysis of specialised multilingual communication. Since it was set up in the year 2000 it has obtained continuous funding through public tenders (over 20 projects funded). Within the context of *GENTT*, a sub-group has been created (*JudGENTT*, see: Borja Albi 2013), an action research project, aimed at improving the working processes of court translators by designing an intelligent multilingual legal documentation management system that makes it possible to automate processes of retrieval, indexing, semi-controlled composition and assisted translation of texts generated in judicial environments, always taking account of the needs, habits and processes of the end users of the texts, in this case legal translators, and in particular, criminal court translators.

As far as research projects are concerned, the *Law10n project*[12], developed at the *Universitat Autònoma de Barcelona* (*UAB*) under the supervision of Olga Torres-Hostench, is an interesting research on legal terminology and translation. The project analysed all the relevant aspects of the translation of software licensing agreements and proposed models of translation which, on the one hand, fulfil the requirements of Spanish law, and, on the other, remain faithful to the spirit and legal effects of the source text. The translation records (*fichas terminológicas*) are now available online[13] and prove to be extremely useful for legal translators and terminologists.

Members of the *UAB* (Carmen Bestué and Mariana Orozco Jutarán) have also been actively involved in another project on legal interpreting (*TIPp*, Traducción e Interpretación en los procesos penales[14]) within the *MIRAS* group[15] (Mediation and Interpretation: Research in the Social Area). The project – entitled *Quality in translation as an element to safeguard procedural guarantees in criminal proceedings: development of resources to help court interpreters of Spanish-Romanian, Arab, Chinese, French and English* – is highly innovative in its methodology since it is based on the analysis of real criminal proceedings held in Spain.

Legal interpreting lies at the heart of many projects developed at the *Universidad de Alcalá* de Henares and leaded by Carmen Valero. The *Training and Research on*

[11] http://www.gentt.uji.es/en/ (03/11/2018).

[12] http://lawcalisation.com/ / http://grupsderecerca.uab.cat/tradumatica/en/content/law10n-research (03/11/2018).

[13] http://lawcalisation.com/fichas (03/11/2018).

[14] http://pagines.uab.cat/tipp/en (03/11/2018).

[15] http://grupsderecerca.uab.cat/miras/en (03/11/2018).

Public Service Translation and Interpreting Group (*FITISPos*)[16] is actively involved in training and research in public services translation and interpreting.

As mentioned in II.4, members of the *Universitat de Barcelona* are now involved in the *JustClar* project, a contrastive corpus-based analysis of judgments delivered by the Spanish Tribunal Supremo, and judgments in Spanish delivered by the Court of Justice of the European Union (see: Garofalo 2018; Pontrandolfo forth.). The hypothesis upon which the project relies is that there are currently two varieties of judicial Spanish: the traditional one used in Spanish courts and a recent one corresponding to the language of the judgments written in Spanish by the Court of Justice of the EU. The project seeks to determine to what extent this European variety of judicial Spanish, or the judicial Spanish currently used in Spain, meet the international principles of clear wording, looking into the process of clarification of legal discourse, setting and evaluating what linguistic and discursive features of these two Spanish judicial modes make them more understandable to the average citizen.

Another interesting project, which straddles computational and corpus linguistics, *Natural Language Processing* (*NLP*) and comparative legal terminology has been carried out at the *Universidad de Granada* under the supervision of Ángel Felices Lago[17]. The *Globalcrimeterm* project aimed at developing a subontology based on a specific area of criminal law (international cooperation against terrorism and organized crime) within the architecture of *FunGramKB*[18], a multipurpose lexico-conceptual knowledge base for *NLP* systems (see: Felices Lago 2015).

As far as events and conferences specifically devoted to legal linguistics are concerned, a pioneering event that reflects the interest in legal linguistics is the Jurilingustics Conference[19] organised by the *Universidad Pablo de Olavide* (Seville, Spain) (Juan Jiménez Salcedo, *Universidad Pablo de Olavide de Seville*, and Javier Moreno Rivero, *University of Cambridge*), now at its second edition[20]. The purpose of the event was not only to offer a solid background into the professionalisation in this hybrid field, but also to explore new areas of study and/or research. The conferences emphasised the synergies between language and law, recognising jurilinguistics as a full-blown paradigm of analysis; the interaction among the methods existing in both disciplines (Comparative Law, Applied Linguistics, Jurisprudential Analysis,

[16] https://www.uah.es/en/investigacion/unidades-de-investigacion/grupos-de-investigacion/Formacion-e-investigacion-en-traduccion-e-interpretacion-en-los-servicios-publicos/#Coordinador (03/11/2018).

[17] "Elaboración de una subontología terminológica en un contexto multilingüe (español, inglés e italiano) a partir de la base de conocimiento FunGramKB en el ámbito de la cooperación internacional en materia penal: terrorismo y crimen organizado" [FFi2010-15983], PI: Prof. Ángel Felices Lago (*Universidad de Granada*).

[18] http://www.fungramkb.com/default.aspx (03/11/2018).

[19] https://www.jurilinguistica.com/ (03/11/2018).

[20] The first edition was held in 2016 and titled *"From Legal Translation to Jurilinguistics: Interdisciplinary Approaches to the Study of Language and Law"*; the second one in 2018 (*"Interdisciplinary Approaches to the Study of Language and Law"*).

Terminology, Corpus Linguistics, Text Linguistics, etc.) is giving its fruits, as can be seen from the eclectic approach presented by the attendees of the conference. Such symposia have become a meeting point for professionals and researchers from these fields.

IV. Editorial panorama

One of the most important journals specialised in law and language in Spain is the *Revista de Lengua i Dret/Journal of Language and Law*[21]. Founded in 1983 and directed by Eva Pons Parera (*Universitat de Barcelona*), it collects academic papers about administrative and legal language, linguistic law and language policy, and sociolinguistics.

As far as the editorial houses are concerned, it is worth mentioning *Thomson Reuters Aranzadi*[22], *Ariel Derecho*[23] and *Dykinson*[24], specialised in the publication of volumes devoted primarily to legal topics but also legal linguistic ones. The series *Interlingua* of the editorial house *Comares*[25] (edited by Emilio Ortega Arjonilla, *Universidad de Málaga*) has been publishing many volumes on legal linguistics and translation.

V. Training initiatives

Events dedicated to the training of experts in legal writing and communication are increasingly being held in Spain, organised both by legal and linguistic sectors (see also: Espaliú Berdud et al. 2017).

The *Escuela Judicial de España* (Consejo General del Poder Judicial)[26] is one of the key training centers in Spain dedicated to the training of judges. It is interesting to note, from the legal linguistics perspective, that the center has included specific training in linguistics (legal writing and communication techniques) (see: Montolío Durán / López Samaniego 2008), which strengthen the collaboration between legal and linguistic experts.

The *Universidad Internacional Menéndez Pelayo* usually organises similar events (e. g. *Seminario de Comunicación para Juristas*[27]), thus confirming the importance of mutual collaborations between the two areas.

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[21] http://revistes.eapc.gencat.cat/index.php/rld/index (03/11/2018).

[22] https://www.thomsonreuters.es/es/tienda.html (03/11/2018).

[23] https://www.planetadelibros.com/coleccion-ariel-derecho/0000930000 (03/11/2018).

[24] https://www.dykinson.com/ (03/11/2018).

[25] https://www.comares.com/coleccion/interlingua/ (03/11/2018).

[26] http://www.poderjudicial.es/cgpj/es/Temas/Escuela-Judicial/ (03/11/2018).

[27] http://www.uimp.es/agenda-link.html?id_actividad=6311&anyaca=2016-17 (03/11/2018).

As far as legal translation and interpreting is concerned, apart from the numerous Masters degrees organised by many Spanish universities (especially by faculties of Translation and Interpreting) in specialised translation – which include legal translation – there are a few specific programmes entirely devoted to this specialisation. One of them is the *Masters in Legal Translation and Judicial Interpreting* of the *Universitat Autònoma de Barcelona*[28].

VI. Concluding remarks

The overview carried out in this chapter has shown that legal linguistics is an emerging field of research in Spain. Most of the studies conducted so far have focused on the features of Spanish legal language (also compared to other languages and cultures), from a wide range of perspectives (lexico-terminological, phraseological, pragmatic, etc.) and in different written and oral genres. Attention has also been paid on how to modernise and clarify Spanish legal discourse, traditionally attacked for its baroque style which makes it too difficult to understand for laypersons.

Computer-assisted legal linguistics will definitely play a pivotal role in the future of Spanish legal linguistics; the interest in the use of corpus and *NLP* techniques for the analysis of legal discourses has been confirmed by the research projects mentioned in this chapter. Another interesting area of research, which might grow in the future, is the intersection between law and other discourses (such as politics or media discourse, see, for example, the research carried out by Ruth Breeze from the *University of Navarra*).

Future directions of legal linguistics in Spain will also be influenced by the international importance legal Spanish is acquiring and will gain in the years to come, thanks to the role Spanish plays in international organisations, such as the *UN, WTO* and *Mercosur* (see: Mattila 2013: 304[29]), as well as to the widespread use of Spanish (also as a lingua franca) in the USA and Latin America. This will undoubtedly foster Spanish legal linguistics and, hopefully, give rise to new research avenues.

[28] http://pagines.uab.cat/tijuridica/es (03/11/2018).

[29] "The position of Spanish in communication between lawyers from different countries is somewhat modest beyond the Spanish-speaking and Portuguese-speaking worlds. It is nevertheless useful to know that Spanish possesses official status in many international organisations, where it is also used in certain cases as a working language. Of particular note is the *United Nations*, where Spanish, apart from an official language, is also one of the working languages. The same applies for the *World Trade Organisation*, *Mercosur* (unsurprisingly) and the EU" (Mattila 2013: 304).

VII. Literature

Alcaraz Varó, Enrique / Hughes, Brian (2001): El español jurídico. Barcelona: Ariel.

Ballesteros, Mapi / López Samaniego, Ana (2017): Lengua y derecho: perspectivas de estudio. In: *Anuari de Filologia. Estudis de Lingüística* 7/2017, pp. 43–50.

Bayo Delgado, Joaquín (dir) (1997): Lenguaje judicial. In: Cuadernos de Derecho Judicial. Madrid: Consejo General del Poder Judicial.

Bhatia, Vijay K. (1993): Analysing genre: language use in professional settings. Harlow: Longman.

Borja Albi, Anabel (2000): El texto jurídico inglés y su traducción al español, Barcelona: Ariel.

Borja Albi, Anabel (2005): Organización del conocimiento para la traducción jurídica a través de sistemas expertos basados en el concepto de género textual. In: I. García Izquierdo (Ed.): El género textual y la traducción. Reflexiones teóricas y aplicaciones pedagógicas. Bern: Peter Lang, pp. 37–68.

Borja Albi, Anabel (2007): Estrategias, materiales y recursos para la traducción jurídica: inglés-español. Castelló de la Plana: Universitat Jaume I, Madrid: Edelsa.

Borja Albi, Anabel (2013): A genre analysis approach to the study of the translation of court documents. In: L. Biel / J. Engberg (Eds.): Research models and methods in legal translation. 12/2013, Issue of Linguistica Antverpiensia, Themes in Translation Studies, pp. 33–53.

Calvo, Luciana (1980): Introducción al lenguaje administrativo. Madrid: Gredos.

Calvo, Luciana (1985): El subcódigo de la etiqueta en el lenguaje administrativo castellano. In: *Revista de Llengua i Dret* (5), pp. 75–92.

Calvo, Luciana (2007): Gramaticalidad y gramática normativa en el discurso legal castellano. In: *Revista de Llengua i Dret* (48), pp. 99–130.

Campos Pardillos, Miguel Ángel (2007): El lenguaje de las ciencias jurídicas: nuevos retos y nuevas visiones. In: E. Alcaráz Varó / J. Mateo Martínez / Yus Ramos, Francisco (Eds.): Las lenguas profesionales y académicas. Barcelona: Ariel, pp. 155–166.

Cassany, Daniel (2005): Plain Language in Spain. In: *Clarity: Journal of the international association promoting plain legal language* (53), pp. 41–44.

Cassany, Daniel / Gelpí, Cristina / López Ferrero, Carmen (2007): El español de los ámbitos laborales. In: M. Lacorte (Coord.): Lingüística aplicada del español. Madrid: Arco/Libros, pp. 449–482.

Castellón, Heraclia (1998): Análisis normativo del lenguaje administrativo. In: *Revista de Llengua i Dret* (30), pp. 7–45.

Castellón, Heraclia (1999): El vocabulario administrativo y los diccionarios. In: *Revista de Llengua i Dret* (31), pp. 9–39.

Castellón, Heraclia (2000): Los textos administrativos. Madrid: Arco/Libros.

Castellón, Heraclia (2001): El lenguaje administrativo: formas y uso. Granada: La Vela.

Castellón, Heraclia (2006): Empleos actuales del lenguaje administrativo. Enfoques recientes de estudio. In: *Revista de Llengua i Dret* (46), pp. 181–203.

Cazorla Prieto, María (2007): El lenguaje jurídico actual. Pamplona: Aranzadi.

CMLJ (Comisión para la Modernización del Lenguaje Jurídico) Montolío Durán E. (Ed.): Estudio de campo: Lenguaje Escrito. Comisión para la modernización del lenguaje jurídico. Madrid: Ministerio de Justicia, 2011.

Cruz Martínez, María Soledad (2002): La colocación léxica y gramatical en el proceso penal inglés. In: *Ibérica* (4), 2002, pp. 129 – 143.

de Miguel, Elena (2000): El texto jurídico-administrativo. Análisis de una orden ministerial. In: *Revista de Lengua y Literatura Españolas* (2). Madrid: Real Academia Española, pp. 6 – 31.

del Pozo Triviño, Maribel / Álvarez Escobar, Paloma (2014): Análisis comparado de los recursos existentes en la actualidad para la formación de intérpretes en contextos de violencia de género. In: Sendebar: *Revista de la Facultad de Traducción e Interpretación* 25/2014, pp. 247 – 268.

Duarte, Carles (1997): Lenguaje administrativo y lenguaje jurídico. In: Bayo Delgado, Joaquín (dir) (1997): Lenguaje judicial. Cuadernos de Derecho Judicial. Madrid: Consejo General del Poder Judicial, pp. 39 – 86.

Duarte, Carles / Martínez, Anna (1995): El lenguaje jurídico. Buenos Aires: A-Z editora.

Espaliú Berdud, Carlos / Jiménez-Yáñez, Ricardo María / de Miranda Vázquez, Carlos (Eds.) (2017): ¿Cómo la innovación mejora la calidad de la enseñanza del derecho? Propuestas en un mundo global. Pamplona: Aranzadi.

Etxebarría, Maitena (1997): El lenguaje jurídico y administrativo. Propuestas para su modernización y normalización. In: *Revista Española de Lingüística* 27(2), pp. 341 – 380.

Felices Lago, Ángel (2010): Axiological Analysis of Entries in a Spanish Law Dictionary and Their English Equivalents. In: D. S. Giannone / C. Frade (Eds.): Researching Language and the Law: Textual Features and Translation Issues. Bern: Peter Lang, pp. 179 – 198.

Felices Lago, Ángel (2015): Foundational considerations for the development of the Globalcrimeterm subontology: A research project based on FunGramKB. In: *Onomázein* 31, pp. 127 – 144.

Fernández Bello, Pedro (2008): Las colocaciones en el lenguaje jurídico. In: C. Mellado Blanco (Ed.): Colocaciones y fraseología en los diccionarios. Frankfurt: Peter Lang, pp. 69 – 84.

Figueras, Carolina (2001): Modalidad y género discursivo: la diligencia policial como tipo de texto específico. In: M. Gotti / M. Dossena (Eds.): Modality in Specialized Texts (Selected papers of the 1st CERLIS Conference). Bern: Peter Lang, pp. 261 – 287.

García Izquierdo, Isabel (2005): El género textual y la traducción: reflexiones teóricas y aplicaciones pedagógicas. Bern: Peter Lang.

García Izquierdo, Isabel (2007): Los géneros y las lenguas de especialidad (I). In: E. Alcaráz Varó, J. Mateo Martínez / Yus Ramos, Francisco (Eds.): Las lenguas profesionales y académicas. Barcelona: Ariel, pp. 119 – 126.

Garofalo, Giovanni (2018): La contraargumentación del Tribunal Supremo de España y del Tribunal de Justicia de la UE: hacia una interpretación funcionalista. In: *Cuadernos AISPI* (12), pp. 137 – 168.

Giráldez Ceballos-Escalera, Joaquín (2007): Las colocaciones léxicas en el lenguaje jurídico del derecho civil francés. Tesis doctoral, Madrid: UNED.

González Salgado, José Antonio (2009): El lenguaje jurídico del siglo XXI. In: Themis. Revista de Derecho, pp. 236 – 245.

GRETEL (1989): Curso de técnica legislativa. Madrid: Centro de Estudios Constitucionales.

Henríquez Salido, María do Carmo / Valera Portela, Concepción (2010): La lengua especializada en la doctrina del Tribunal Constitucional, In: *Revista de Llengua i Dret* (54), pp. 33 – 78.

Hernández Gil, Antonio (1987): Saber jurídico y lenguaje. Tomo VI de Obras Completas. Madrid: Espasa-Calpe.

Hernando Cuadrado, Luis Alberto (2003): El lenguaje jurídico. Madrid: Verbum.

Jiménez Yáñez, Ricardo María (2016): Escribir bien es de justicia. Cizur Menor: Thomson Reuters-Aranzadi.

López Samaniego, Ana (2006): Los ordenadores del discurso enumerativos en la sentencia judicial: ¿estrategia u obstáculo? In: *Revista de Llengua i Dret* (45), pp. 61 – 87.

López Samaniego, Ana (2010): El género profesional del informe jurídico. Recomendar e interpretar la ley. In: L. Chierichetti / G. Garofalo (Eds.): Lengua y derecho: líneas de investigación interdisciplinaria. Bern: Peter Lang, pp. 161 – 188.

López Samaniego, Ana / Taranilla, Raquel (2012): Análisis contrastivo de la formulación de recomendaciones en dos géneros jurídicos. In: *Ibérica* (23), pp. 65 – 88.

Martín del Burgo y Marchán, Angel Martín (2002): El lenguaje del derecho. Barcelona: Bosch.

Mattila, Heikki E. S. (2013): Comparative Legal Linguistics, 2nd edition, translated by Christopher Goddard, Ashgate, Farnham/Burlington.

Mellinkoff, David (1963): The language of the law. Boston: Little, Brown & Co.

Ministerio de Justicia (2002): *Carta de Derechos de los ciudadanos ante la Justicia.* Proposición no de Ley aprobada por el Pleno del Congreso de los Diputados, por unanimidad de todos los Grupos Parlamentarios, el día 16 de abril de 2002.

Montolío Durán, Estrella (2000): Les estructures condicionals [si, p, q] I la seva rellevància en les formulacions legislatives, administratives i jurídiques. In: *Revista de Llengua i Dret* (34), pp. 67 – 91.

Montolío Durán, Estrella / López Samaniego, Ana (2008): La escritura en el quehacer judicial. Estado de la cuestión y presentación de la propuesta aplicada en la Escuela Judicial de España. In: *Revista Signos* 41/66, Pontificia Universidad Católica de Valparaíso, pp. 33 – 64.

Montolío Durán, Estrella (Ed.) (2012): Hacia la modernización del discurso jurídico. Contribuciones a la I Jornada sobre la modernización del lenguaje jurídico español. Barcelona: Publications i Edicions de la Universitat de Barcelona.

Monzó, Esther (2002): La traducción jurídica a través de los géneros de especialidad. El transgénero y la socialización del traductor en los procesos de enseñanza/aprendizaje. In: Discursos. Estudos de Traduçao 2, pp. 21 – 36.

Monzó, Esther (2010): E-lectra: A Bibliography for the Study and Practice of Legal, Court and Official Translation and Interpreting. In: *Meta* (55), Numéro 2, juin 2010, pp. 355 – 373.

Muñoz Machado, Santiago (Ed.) (2017): Libro de estilo de la justicia. Madrid: Espasa.

Ortega Arjonilla, Emilio / San Ginés Aguilar, Pedro (1996a): Introducción a la traducción jurídica y jurada (inglés-español): orientaciones metodológicas para la realización de traducciones juradas y de documentos jurídicos. Peligros: Comares.

Ortega Arjonilla, Emilio / San Ginés Aguilar, Pedro (1996b): Introducción a la traducción jurídica y jurada (francés-español): orientaciones metodológicas para la realización de traducciones juradas y de documentos jurídicos. Peligros: Comares.

Orts Llopis, María Ángeles (2017): Terror at Home. On the Rhetoric of Domestic Violence Legislation in the United Kingdom and Spain. In: *Journal of Intercultural Communication* (44).

Polanco Martínez, Fernando / Yúfera Gómez, Irene (2013): La construcción parafrástica en las sentencias judiciales. Una propuesta de optimización del discurso. In: *Revista de Educación y Derecho* (7), pp. 1 – 19.

Polanco, Fernando / Yúfera, Irene (2015): Aspectos de integración multimodal en la prensa digital de tema jurídico y de tema científico. In: *CLAC, Círculo de Lingüística Aplicada a la Comunicación* (64), pp. 32 – 57.

Pontrandolfo, Gianluca (forthcoming 2020): National and EU judicial phraseology under the magnifying glass: a corpus-assisted discourse study. In: *Perspectives.*

Prieto de Pedro, Jesús José / Abril, Gonzalo (1987): Reflexiones y propuestas para la modernización del lenguaje jurídico administrativo castellano. In: *Revista de llengua i dret* (10), pp. 7 – 31.

Prieto de Pedro, Jesús José (1991): Lenguas, lenguaje y derecho. Madrid: Civitas.

Prieto de Pedro, Jesús José (1996): La exigencia de un buen lenguaje jurídico y estado de derecho. In: *Revista de administración pública* (140), pp. 111 – 130.

Reig, Assela (2005): Argumentación y procedimientos discursivos en la documentación pública de la Comunidad de Madrid. Tesis doctoral. Madrid: Universidad Complutense.

Ricós, Amparo (1998): La pasiva con se agentiva en los textos jurídico-administrativos: su incidencia pragmática. In: *Hesperia. Anuario de Filología Hispánica* (I), pp. 125 – 141.

Ridao, Susana (2009): El interrogatorio en los contextos judiciales: análisis del tipo y la frecuencia de las preguntas utilizadas en los juzgados de lo penal de Almería capital. In: *Interlingüística* (18), pp. 940 – 950.

Rodríguez Aguilera, Cesáreo (1969): El lenguaje jurídico. Barcelona: Bosch.

Rodríguez Aguilera, Cesáreo (1974): La sentencia. Barcelona: Bosch.

Rodríguez-Ruiz, Blanca (2016): Gender in Constitutional Discourses on Abortion. Looking at Spain from a Comparative Perspective. In: *Social and Legal Studies* 25 (6), pp. 699 – 715.

Samaniego, Eva (2004): El lenguaje jurídico: peculiaridades del español jurídico. In: P. Fuertes (Ed.): Lengua y sociedad: investigaciones recientes en Lingüística Aplicada. Valladolid: Universidad de Valladolid, pp. 273 – 310.

Swales, John (1990): Genre analysis: English in academic and research settings. Cambridge: Cambridge University Press.

Taranilla, Raquel (2009): La gestión de la propia imagen en las argumentaciones del Tribunal Constitucional: la función retórica de las estrategias de cortesía. In: *Revista de Llegua i Dret* (52), pp. 117–149.

Taranilla, Raquel (2010): Forma y función de los enunciados jurídicos de recomendación: las Recomendaciones de la Comisión Europea. In: L. Chierichetti / G. Garofalo (Eds.): Lengua y derecho: líneas de investigación interdisciplinaria. Bern: Peter Lang, pp. 249–272.

Taranilla, Raquel (2011): La configuración narrativa en el proceso penal. Un análisis discursivo basado en corpus. Tesis doctoral, Universitat de Barcelona.

Tiersma, Peter (1999): Legal language. Chicago: Chicago University Press.

Tomás Ríos, José (2005): Las sentencias judiciales: estudio y análisis sociolingüístico. In: *Tonos digital: Revista electrónica de estudios filológicos* (9).

Turell, Maria Teresa (Ed.) (2005): Lingüística forense, lengua y derecho: conceptos, métodos y aplicaciones. Barcelona: IULA.

Yúfera, Irene / Polanco, Fernando (2012): La enumeración en las sentencias judiciales: de la lista de datos a la enumeración. In: El español de las profesiones. Artículos seleccionados del IV congreso internacional de español para fines específicos (CIEFE). Madrid: MECD, pp. 12–26.

Yúfera, Irene / García Asensio, Ángeles / Polanco, Fernando (2013): El léxico jurídico en el periodismo digital: mecanismos de clarificación. In: *Lingüística Española Actual* 35 (2), pp. 275–302.

Legal Linguistics in Germany

History, Working Groups, Concepts[1]

By *Friedemann Vogel*, Siegen

Abstract

Legal linguistics in Germany deals, as a branch of the discipline of language and legal science, with the linguistically-communicative 'constitution' of the societal institution of law. The German-speaking research regarding language and law harks back to the antiquity, but it is only since the age of the Enlightenment, that attempts have been made to collect, describe, and criticize legal language (I). The modern legal linguistics consolidates as academic discipline since the 70s of the 20th century. On the way of professionalization, interdisciplinary working groups, important publications, initial degree programs as well as the practical usage in context of legislation, evolved (II). To the established working areas of German legal linguists, does count especially the work with legal expertise, legal as technical language or rather written and spoken communication as well as institutionalized procedures of interpretation in the legal theory and practice (III). Still unclear are the consequences of digitalized and supranational legal (text) work, the possibilities and limits of corpus-linguistics as a toolkit to legal semantics, as well as the procedures of norm-genesis and legislation (IV).

Keywords: Legal linguistics, Germany, Semantics, Pragmatics, Language criticism

I. The linguistic constitution of society and law

The work with the mediality and the linguistic character of the law *sui generis* is not an invention of modern legal linguistics. Reflections about, in which manner and why norms of the societal cohabitation need to be composed and processed, can be found since the antiquity and the medieval times. This is where the German legal language and with it, German-speaking legal linguistics have their roots.

One of the earliest explicit testimonies for contemplations about, in which form over social norms and society should be discussed, is to be found in Platos philosophic dialogue *Phaedrus* (274b – 278e, [6]2011). In this fictional, approximately in the 4th century before Christ occurred dialogue, Socrates and the Athenian Phaedrus dis-

[1] Basis of this text is a reduced version of: Vogel, Friedemann (2017): Rechtslinguistik: Zur Bestimmung einer Fachrichtung. In: Ekkehard Felder / Friedemann Vogel (Eds.): Handbuch Sprache im Recht, pp. 209 – 231. Berlin, Boston: Mouton de Gruyter (Handbücher Sprachwissen, 12). Thank you very much to Leonie Lück (University of Siegen) for her great support to translate this text.

cuss the question, if it is possible to negotiate about what is good and just, and with this ultimately also about the Greek Polis (*Politeia*) as well in written form, if so the medium of writing could be a medium of awareness and criticism. Socrates (and with him Plato) negates this: The script is – as an 'garden of Adonis' (Adonisgärtchen) – created just as medium of the beautiful play (literature), but inappropriate for the process of judgement, because it is voiceless and helpless against argumentative attacks and misunderstandings. Only the vivid speech could promote dialectic perception (cf. Szlezák 1985: 7–19, 386–405).

The metadiscursive relation of textuality and orality also plays an important role from the early Middle Ages until the Reformation, as far as it stands for the competing cultural-hegemonial relation of (old) Roman and (strengthening) Germanic social order and legal culture, or more general, between Latin-speaking reign- and "colloquial"-speaking subaltern classes.

From such confrontation between Latin text- and legal-culture and Germanic oral-based legal culture, testifies implicitly already the in the 6th century under the German-Franconian King Chlodwig I. authored *Malbergischen Glossen.* The latter are no glosses in the common sense, but rather colloquial additions and explanations (so called *Bußweistümer*) to the first Latin version of *Pactus Legis Salicae* and do belong to the oldest layer of the Germanic legal-language (Roll 1972; Schmidt-Wiegand et al. (Ed.) 1991; Schmidt-Wiegand 1998a: 76 f.).

Two centuries later *Charlemagne* (Karl der Große, 747–814 A.D.) strove for textualization of spoken law in form of the '*Carolingian capitularies*' ('karolingischen Kapitularien') and mandated 802/3, that the judges should judge from now on only after written law (ibid. 77).

From the same time, (8th/9th century) there is also a lot of evidence of the expression *theodiscus* documented (Jakobs 2011: 37 f.). This word (lat. for 'vernacular language'), which later on also gained the meaning 'German', has its historical origin in the context of law. As *theodisca lingua* served it as marker of legal expressions to emphasize their procedural as well as for the judgement relevant functional role in the ancient Germanic law. All law-words of *lingua theodisca* are Franconian words, accentuate the Franconian claim to power in the word (*sicut Franci dicunt*) and refer to an on orality established law (ibid.).

In the 13th century the famous, under the hand of Eike von Repgows occurred and often copied *Sachsenspiegel*, follows the motivation of Charlemagne by capturing, so far only orally passed on, not-Latin legal culture of the state of Saxony in writing and partly extensively pictorial illustrations for posterity. The *Sachsenspiegel* generates a specific juridical terminology and a kind of specialists' syntax for the first time and establishes the new German legal-sources genre of law books (1200–1500; cf. Schmidt-Wiegand 1998a: 80 ff.). These books were not only to preserve the law. Much more they have been part of the attempt of making law-texts in Latin available for the people and understandable for a bigger target audience (Deutsch 2013: 35 ff.). They testify implicitly from a very early reflection of language as a mediating author-

ity between the law system (which apart from that was only available for academics) and legal practice (which all subalterns belonged to).

If religion and church are understood as major institutions of the social structure and as influential instance of the whole legal culture, the German Reformation is as well an important discursive battlefield for the linguistic constitution of norms and their scope of application in the 16th/17th century. Martin Luther didn't just want to make the testament commonly understandable through its translation. With the sola-scriptura-principle, he valorized the gospel in the reformation theology and separated the scripture from the sovereignty of interpretation of the pope and councils (Blickle 2000: 52 ff.). From now on, every person could and should create his own picture of the God-given order of life, even though still among the standards of the biblical text. This authority of the scripture (the *verbum externum)*, was in turn rejected by Thomas Müntzer in his "antithetic of scripture and spirit" (*Antithetik von Schrift und Geist*, ibid. 76) while he instead, determined the individual experience of God (*verbum internum)* as dominant. For Müntzer, the scripture without spirit was dead, but the spirit without scripture perfectly viable.

In the 17th and 18th century, language-patriotic and enlightening motives were developed, which discussed the – from now on in particular written – constitution of the law.

Even though a scolding of 'legal jargon' is already to be found in *Ackermann aus Böhmen*, of the Prague notary Johannes von Tepl (around 1400) or in Luther's works, a systematic, culture-patriotic framed cultivation of language and with this, efforts towards a German standard language occur not until the 17th century (Schmidt-Wiegand 1998b: 90; von Polenz [2]2013: 117 ff.). Significant forces at this were formed by different language-communities like the *Fruitbearing Society* (Fruchtbringende Gesellschaft, so-called "Palmenorden", 1617 – 1680). Numerous of their members were lawyers ("Dichterjuristen"), which strove for a cultural-political idealized 'pure' German language. The objective was the exemption of the German language from foreign (linguistic) influences, and the Germanization of Latin and French words. For instance, Justus Georg Schottelius (1612 – 1676), as well as the founder of the *Teutsch-gesinnten Genossenschaft*, Philipp von Zesen (1619 – 1689) had a partially sustainable impact on legal language (Schmidt-Wiegand 1998b: 91).

In the context of linguistic reflection (in the age of Enlightment), the lawyer and philosopher Christian Thomasius (1655 – 1728) held his first lecture in German language in 1687 in Leipzig and paved the way for a German legal language as well in the area of science (Thomasius 1699). His student Christian Wolff (1679 – 1754) developed numerous juristic definitions and *termini technici* which were stable in use, in order to ensure "clarity and transparency of the legal language based on logically defined terms in a consistent system of concepts [Begriffspyramide]" (Schmidt-Wiegand 1998b: 92; König 2001; own translation). In 1748, Montesquieu (1689 – 1755) demanded a short style and comprehensibility as a basis for reasonable thinking, in terms of his "Vernunftlehre" (Schmidt-Wiegand 1998b: ibid.). Furthermore, Gott-

fried Wilhelm Leibniz (1646–1716) also had special influence as president of the *Royal Prussian Academy of Sciences* (*Sozietät der Wissenschaften in Preußen*) and his initiative for the purity of the German language. Under the general inspectorate (11.07.1700) of the Elector of Brandenburg, Friedrich III., he endeavored to create an inventory of the current and a collection of the historical legal words, and motivated by this the emergence of numerous reference works in terms of legal language (Kronauer/Garber 2001: 1; Gardt 2001).

The objective pursued by the enlighteners was above all, to have commonly comprehensible laws (for instance in form of the *General State Laws for the Prussian States* (Preußisches Allgemeines Landrecht)), so that even juridical laymen could distinguish between right and wrong (Deutsch 2013: 60). The importance of language and linguistic history, as well for the juridical methodology (for reflection see Bühler 2001), was finally discovered by Friedrich Carl von Savigny (1779–1861). The founder of the influential historical law-school stated, "the law as well as the language [lives] in the awareness of the people" (own translation; already in similar words: Johann Gottfried Herder, cf. Schmidt-Wiegand 1998a: 73) and asked for

> each person, who has a sense for appropriate style, and who does not see the language as a cruel device, but rather as a medium of art, if we have a language, in which a legal code could be written (Savigny 1814: 52; own translation).

A reformation of the officialese was – above all, driven by the Viennese lawyer Joseph von Sonnenfels (1732–1817), as well as the librarian and linguistic researcher Johann Christoph Adelung (1732–1806) – negotiated under the guiding concept of *Geschäftsstil* ('business style') (Asmuth 2013). In distinction from the scorned elder 'barbaric' *law-style* (Kanzleistil) of the 15th century, Sonnenfels and Adelung developed textbooks for the formulation of authority texts like notices, protocols, petitions etc. (Adelung 1785: 82). According to Sonnenfels, a well-formulated *Geschäftsstil* follows in compliance with the *virtutes elocutionis* of the antique rhetoric, the principles of distinctness, accuracy, brevity, decency as well as baldness (Asmuth 2013: 86). The stylistics of the two, have had a great effect on the juridical and administration education, as well as – with Sonnenfels as an editor – an impact even on the law editorial department under Joseph II. (cf. Kocher 2013: 211).

At the beginning of the 19th century, the first lexicographic and grammatical approaches for the systematic description of legal language developed. As the first one and through influence of his teacher Savigny, Jacob Grimm (1785–1863) investigated the historical relation of law and language (Grimm 1815/1972) and developed a first grammar of law with a view on words, formulas, symbols i.a. (Grimm 1828/1899; cf. Schmidt-Wiegand 1998a: 73 f.). The *Weisthümer* (1840–1878/1957) which are also published by Jacob Grimm, form a for empirical purposes systematic collection of historical legal sources, which preserve apart from that only orally passed down legal traditions.

The lexicographic works of the Brothers Grimm laid the foundation for the modern, in the range of subjects established, legal lexicography (for – the largely unexplored – field-history of the legal lexicography see Speer 1989). Classified as central follow-up projects are especially the *Dictionaries of Historical German Legal Terms:* The *Deutsches Rechtswörterbuch* (DRW, 1917-; ibid. and Deutsch (Ed.) 2010) as well as the *Handwörterbuch zur deutschen Rechtsgeschichte* (HRG, 1917).

II. To the professionalization of research, teaching and practice

1. Research interests and objectives of legal linguistics

The German legal linguistics as a university discipline, beyond the lexicographic research interest, did not develop until the 20th century, the expression appears sporadically since the 1970s (Nussbaumer 1997: 10). Until the end of the 90s, it is controversial to what extent it should be spoken of an "established" discipline (ibid.). Even ten years later, professorships with a denomination like "legal linguistics" are rather an exception, in contrast to those of "legal history" or "linguistic history". Nevertheless, in the meantime it is possible to outline a core of legal-linguistic interests and objectives, whose professionalization proceeds continuous in terms of research, teaching and practice (2):

(a) Modern legal linguistics deal, as an established sub-discipline of linguistics and legal studies, with the *linguistically-communicative constitution of the societal institution of law.* It investigates empirically, with the help of qualitative and quantitative methods, linguistic as well as multimedia forms and their symbolic use in the context of legislation, judiciary and administration, jurisprudential research, teaching and legal commentaries.

(b) Legal linguists often associate the classification and description of linguistic phenomena with an *emancipatory attitude* in view of an appropriate theory and methodology of the legal practice as well as their transparency towards all legal subjects, especially juridical laymen.

(c) Beyond the classic phenomenal domain of general philology, legal linguistics dedicates itself *intensified to the following aspects:* legal semantics, processes of understanding and (institutionalized) procedures of interpretation, as well as argumentation in the legal theory and practice (from the normative text to the decision); law as (inter-)textual network; the conflictual relation between legal register (expertise) and common linguistic varieties (everyday knowledge); conversations in court and in the administration; as well as explicit and implicit language theories in law.

(d) The *more recent phenomenal domain* of legal linguistics, overlaps in multiple cases with those of other (sub-)disciplines, such as in particular sociology (legal and non-legal norms, semiotic patterns of behavior in the law), media linguistics (interdependency of media and law), political communication (political

language), sociolinguistics (language policy, linguistic human rights), language criticism (comprehensibility, gender), discourse linguistics (negotiation of epistemes and power through legal language), computational linguistics (analysis of legal language patterns) and legislation doctrine (norm(text)genesis).

(e) The *forensic linguistics* ("Forensische Linguistik") and forensic phonetics ("Forensische Phonetik") of the German-speaking area in contrast, does not aim primarily at the phenomenal domain of a 'constitutional state as text structure', but rather implements application-oriented services as a contribution to the clarification of circumstances in trial and prosecution (especially according to the speaker- and author-recognition), since the 70s (in context of the RAF-terrorism) on the basis of (general-)philological theory and methodology. In this sense, forensic linguistics are highly professionalized, reaching up to the training of crime departments.

(f) Current *research desiderata* of legal linguistics in Germany are in the areas of (in detail hereto chapter IV):

– digitality of law (law as hypertext);
– corpus- and computational linguistic approaches to the law (analogous to the USA);
– accessibility of legal-texts in general and specifically for research and teaching (Provision of large legal-text-corpora);
– language-mediated norm-genesis across to specialist's and general language both in general and in empirical case studies;
– problems of multilingualism in context of supranational legal area.

2. Issues of legal linguistics professionalization

To what extent one could speak of "established" legal linguistics in Germany (and other German-speaking countries, especially Switzerland), can be verified by the degree of professionalization, especially regarding working groups (a), publications and references (b), the formation of university profiles (c) as well as implementations in the context of legislation (d).

a) Interdisciplinary working groups on language and law

A large portion of today's research basis, was and is being developed within the scope of interdisciplinary working groups, consisting of linguistic and legal scientists, practicing lawyers (advocates, judges) as well as occasionally philosophers, historians and social and computer scientists. In the Federal Republic of Germany at least the following groups can be documented:

The *Darmstadt group "Analysis of the juridical language"* ("Analyse Darmstädter Gruppe") is today being regarded as earliest working group, which dealt on the initiative of lawyers and computer scientists from 1970 until 1974 within several congresses with the topic of language and law (cf. Rave / Brinkmann / Grimmer (Ed.) 1971). The subject matter was especially the development of automated (mechanical) procedures for law analysis and interpretation ("subsumption-machines" in the literal sense), whereat linguists had only played a minor role though. The group dispersed very soon, what can nowadays be traced back to the adherence to law-positivism and ignorance of hermeneutic basic knowledge (cf. Busse 2000: 804 ff.).

In 1984, the legal scholar Friedrich Müller (Heidelberg) and the linguist Rainer Wimmer (Trier/Mannheim) jointly founded the *Heidelberger working group of legal linguistics* (Heidelberger Arbeitsgruppe der Rechtslinguistik). Since its foundation, different linguists and legal scholars from theory and practice constantly meet up in Heidelberg; since 2014, the working group has been coordinated by the legal linguist, Friedemann Vogel (Siegen). In the meantime, many dissertations (i.a. Christensen 1989; Jeand'Heur 1989; Li 2011; Vogel 2012; Luth 2015), habilitations (such as Busse 1992; Felder 2003) as well as different joint publications (Müller (Ed.) 1989, 2007; Müller / Wimmer (Ed.) 2001; Müller / Burr (Ed.) 2004, Vogel (Ed.) 2015, 2017) have evolved out of this. The group is united by the theoretical basis, that law is an institutionalized form of textual work and this work could be described on the one hand, based on the "Strukturierende Rechtslehre", and on the other hand, on the theories of linguistic pragmatics and professional communication research (cf. as well http://www.recht-und-sprache.de/, 27. 11. 2013).

The *interdisciplinary working group language of law* (Interdisziplinäre Arbeitsgruppe Sprache des Rechts) from the Berlin-Brandenburg Academy of Sciences, revealed a three-volume publication around the legal scholar and project coordinator Dr. Kent D. Lerch, between 2001 and 2005 (Lerch (Ed.) 2004 – 2005).

The working party *Language and Law* (Sprache und Recht) at the University of Regensburg, founded and instructed by the legal scholar Christian Lohse, hosts regularly interdisciplinary congresses and awards a prize for young academics, annually since 2008, which addresses the collective main subject (http://www-spracheundrecht.uni-regensburg.de, 29. 11. 2013).

In the *research network language and knowledge* (Sprache und Wissen), founded in 2005, is a domain of knowledge *law* established (led by linguist Ekkehard Felder, Heidelberg and lawyer-linguist Markus Nussbaumer, Bern). The idea of the network domain is to compare two ways of thinking and speaking – professional legal thinking versus every day knowledge – and to identify mediating bridges between both perspectives.

In 2015, lawyer Hanjo Hamann (Bonn) and linguist Friedemann Vogel (Siegen) initiated the *International Research Group on Computer Assisted Legal Linguistics* (CAL^2). The working group develops and uses computer supported procedures for the analysis of legal text work on the basis of very large amounts of data. The

group develops the largest reference corpus (text collection) of the German-language law as well as a research and experimental platform for the investigation of juridical semantics (Vogel / Hamann / Gauer 2017; see chapter IV.2.).

b) Milestones of publications and resources in German Legal Linguistics

Traces of the increasing profiling of an academic legal linguistic are especially to be found in the publications. That is why a series of *print and online bibliographies* do exist by now (such as Bülow / Schneider 1981; Reitemeier / Bettscheider 1985; Levi 1994 or the online bibliographies of Ruth Morris and Ludger Hoffmann). Also noteworthy is the detailed and commented bibliography of Nussbaumer (1997), as well as the online bibliography DORES (http://www.dores.admin.ch/, 21.04. 2015), which has been supervised by Nussbaumer until 2016.

German-language introductions, student- and handbooks regarding legal linguistics, or rather its subject area, are so far still manageable: Fobbe 2011; Rathert 2006; Felder / Vogel (Ed.) 2017.

German-language legal linguistics publishes predominantly in national publication organs, as well as – increasingly – in international *periodicals: The International Journal of Speech, Language and Law* (IJSLL, since 1994 journal of the *International Association of Forensic Linguists*), *Language & Law* (E-Journal since 2012 of the *International Language and Law Association*), the *International Journal for the Semiotics of Law* (since 1987) as well as the *International Journal of Law, Language & Discourse* (www.ijlld.com; since 2011). A little younger is the *Zeitschrift für Europäische Rechtslinguistik* (ZERL; Journal of European Legal Linguistics). Since 1996, there is the German monograph series *Rechtslinguistik* (edited by Claire Kramsch, Claus and Karin Luttermann; LIT); since 2017, a broader bilingual (German/English) monographic series on *Language and Media of Law* is published by the traditional publisher Duncker & Humblot (edited by Ralph Christensen and Friedemann Vogel).

The *domain* www.rechtslinguistik.de is registered since 2007; on 5th of June 2004, the first *Wikipedia article* of the lemma *Rechtslinguistik* (*legal linguistics*) was created by an anonymous computer scientist.

c) Study paths

As measured by the research volume and the increasing relevance of legal linguistics worldwide, it is surprising that this special field does only have very few institutional education bases within the German-language academic landscape, apart from particular research focusses of individual scientists. Under the direction of the linguist Isolde Burr-Haase, the bachelor′s program *European legal linguistics* (Europäische Rechtslinguistik) has started in winter semester 2007/2008, at the University of Cologne. The study enhances, besides legal and linguistic main areas, especially the

acquisition of multilingual competences. With an eye towards the prospective occupations in the EU, the degree program provides special services for the professionalization of legal linguistics. Since the winter semester 2008/2009, a master's degree can be acquired as well.

d) Legal linguists in the context of legislation

The greatest degree of professionalization has been reached in terms of the increasing establishment of legal-linguistic specialists, in the last twenty years, in context of cross-lingual law-editing. Against the backdrop of increased language criticism about "incomprehensible" legislative texts, different projects and approaches were formed towards a citizen-friendly legal language, since the 70 s (Nussbaumer 1997: 6). In this context, so-called "linguistic-services" have been created at different administrative places (especially in the legislation), in which linguists und lawyers work together for an optimization of legal texts (laws, regulations etc.). The linguistic-services of the Swiss Federal Chancellery under the responsibility of Dr. Markus Nussbaumer (Nussbaumer 2002) have become pioneering in theory and practice. Since 1966, the editorial staff of the *Association for the German Language* (Gesellschaft für Deutsche Sprache (GfDS)) in the *Bundestag* (parliament) offers editorial and general language advice to the members of legislature and executive. The remit of the editorial staff is laid down in § 80a of the rules of procedure of the Bundestag (GOBT), according to which he for instance

> due to a resolution of the responsible commission, has to examine a draft law for linguistic accuracy and comprehensibility and give recommendations to the commissions if needed (§ 80a GOBT; own translation).

Subsequent to the pilot project *Comprehensible laws* (Verständliche Gesetze (2007–2008)) of the GfDS at the *Federal Ministry of Justice* (BMJ), an *editorial panel of the parliament* (Redaktionsstab Rechtsprache) with up to nine legal linguists, under the direction of the lawyer and linguist Stephanie Thieme was established in 2009. § 42 of the *Common Ministerial Rules of Procedure* (Gemeinsamen Geschäftsordnung der Bundesministerien, GGO) requires, that in principle draft laws need to be supplied to the new editorial staff, to be checked for their linguistic accuracy and comprehensibility (cf. Vogel 2017).

III. Established working areas of German legal linguistics

The essential, established working areas of German-language legal linguistics are extensively documented in the handbook "Sprache im Recht" (Language in the law, Felder / Vogel (Ed.) 2017). The three following phenomenal domains will be emphasized at this point:

1. Terminology, general language and their conflicting relation to each other

A large part of legal linguistic research in Germany, Austria and Switzerland deals with the lexical-grammatical specifics of the written and spoken legal terminology in contrast to the general language or rather other terminologies (cf. at a glance: d'Heur 1998; Felder 2011), whereat the domains of legal-lexicography as well as conversation analysis in context of communication in court seem to be the most renowned. In this context, it was quickly recognized, that legal language does not only include *termini technici*, but also large parts consisting of expressions of the general language use. That the latter ones, have partially adopted a discipline-specific meaning in the institutional use and that this is especially for laymen not detectable, has also contributed to the considerable criticism about the lack of clarity of law, in an early stage. The discussion about if and how legal language should be made "commonly comprehensible", remains unabated in the general linguistics (above all, language criticism), as well as even stronger in language associations and linguistic layman-clubs (Schendera 2004; Sternberger 1981; Lerch (Ed.) 2004; Eichhoff-Cyrus / Antos (Ed.) 2008).

Within the legal linguistics, the insight, that the scale of "comprehensibility" must be differentiated target audience specific, has been implemented by now (Nussbaumer 2002, 2004). A norm- or administrative text can therefore only be optimized in reference to its specific group of target recipients. "Common comprehensibility" of the legal language itself, is, of course, desirable in a democracy, but from a language-theoretical as well as practical point of view is a general comprehensibility not considered feasible under the present societal regulatory framework (Busse 2004).

Against this backdrop, many different reception studies and projects for the improvement of administrative language were formed (cf. for a project in cooperation with the city of Bochum: Händel et al. 2001; Fluck 2004, 2007). The *linguistic services* of the Swiss Federal Chancellery, as well as the editorial panel of legal linguistics (Redaktionsstab Rechtssprache) at the Federal Ministry of Justice (cf. II.2.d), whose work is hardly empirically supported until now (cf. IV.3), strive for the professional optimization of norm-texts at the level of legislation (Nussbaumer 2007).

2. Legal semantics: legal work as textual work

The close collaboration between lawyers and linguists, especially in the *Heidelberger group of legal linguistics* (Heidelberger Gruppe der Rechtslinguistik; II.2.a) has emerged various publications, which reflect the role of language in legal theory, methodology and practice. What they all have in common, is the criticism of the positivistic linguistic model of traditional legal doctrine, which assumes a reliable, solid bond of meaning (i. e. norm as well) and expression (i. e. often norm-text). Language is a tool on this model, an "Instrument of selection […], a kind of conveyer belt, which brings the 'normative meaning-substance' contained in the language to the

user." (criticized by Christensen / Kudlich 2002: 239 f., Christensen / Jeand'Heur 1989: 12; Christensen / Sokolowski 2002; own translation). There are no communicators or responsible ones for the interpretation, in this mechanistic image of language. The legislative text seems to speak for itself, the judge is degraded to a mouth of the law (Montesquieu), who only 'interprets' the semantic 'included' in the text.

In contrast legal linguists stress the constructive contribution of the speaker-writer to the legal work as textual work with pragmatic arguments (Busse 1992, 1993; Müller / Christensen / Sokolowski 1997). In this research perspective, the institutionalized procedures of textualization – beginning with the first description of 'facts' and their linguistic preparation for the legal case (Seibert 1981) right up to the text of a decision – come to the fore. The studies investigate, how the different input data are processed in the text, and how controversial issues as well as legal standards are or are not integrated (Felder 2005, 2010). According to that, a statute (an institutionalized norm-text) is and has to be the central reference point of legal argumentation, but it is only the tip of the iceberg: "The legal text is not container of the legal norm, but rather transit area of competing interpretations." (Müller / Christensen / Sokolowski 1997: 19; own translation).

Based on this hermeneutical theory frame, the pragmatic aspects in law were explored for numerous parts of legal theory and methodology, for example, regarding: litigation as semantic fight in judicial (Felder 2010; Li 2011; Luth 2015) and legislative (Vogel 2012) discourses, the rule of law (Christensen 1989), the canons of interpretation (Kudlich / Christensen 2004), as well as further questions of the legal reproduction of knowledge and norm text interpretation (cf. Müller / Christensen [11]2013; Müller / Christensen / Sokolowski 1997 i.a.; Busse 1989, 1998, 2000, 2001, 2004; Felder 2003, 2005).

3. Communication in court

While the analysis of legal text types (text genres) in German still holds large desiderata (Busse 2000a, 2000b), the verbal communication in court is deemed to be well explored in comparison (overview in Hoffmann (Ed.) 1983, 1989, 2001, 2017). In the focus of the ethno-methodological, sociolinguistic, conversation- and speech-analytical studies, are explicitly the procedures of understanding and misunderstanding, the contextualization of different actors (Gumperz 1982), as well as their rituals and styles of communicative interaction depending on habitual variables (origin, educational background, age, gender etc.). All levels of social-symbolism, like facial expressions, gestures, prosody, proxemics and their contribution to the relationship level of communicative microstructures are being considered with the help of auditory and audiovisual recordings.

The studies show: The apparently only given "case" of a social conflict, is, in fact, the result of a complex interactive (re)construction of facts and the involved oppo-

nents are narrators of a (usually) controversial story (to "story construction" see Benett / Feldman 1981). Which success the actors do achieve, for example by the presentation of "facts", "will be seen in the light of […] [their] presentation of personality." (Hoffmann 2001: 1541; cf. earlier already Wodak 1975, own translation). Self-presentation, face work and trustworthiness (Wolff 1995; cf. also Pick 2015) become a central currency for process participants, which can determine the outcome of the institutionalized as well as ritualized procedure in court (Atkinson / Drew 1979; Drew 1985) and equally in the arbitration procedure at the arbitral tribunal (e. g. Nothdurft / Stickel (Ed.) 1995, Nothdurft 1997).

IV. Pending issues and new research fields

1. Digitization of the law

The implementation and continuous increase of computer-based work processes has already reached the legal system: By now, several specialized professional databases are available for lawyers, which replace, or at least modify the traditional textual sources and the related working routines. Large databases like *Juris* or *Beck Online* keep millions of texts available "at a mouse-click" at any time and poses more frequently a problem of "information overload" to lawyers and other law workers (Morlok 2015). At the same time, they enable an effective search and filtration for pertinent precedents regardless of the location. Court decisions can be "pre"scribed with the help of appropriate software, that means, store and (re)assemble text components or successful chains of arguments if needed. This building-block technique can contribute to standardization and legal certainty; but it can also lead to a concentration on easily available (and with that, explicitly new) precedents, the information overload to a tendency to *argumentum ab auctoritate* or tendency towards fragmentation (selection of suitable things, while negligence of the respective contextual correlations, de-contextualization). It is also unclear, to what extend the digitization of texts will contribute to a monopoly position of few publishers and if this position would produce methodological boundaries in the future (that means, that those who 'only' print or that what 'only' is printed, becomes factually less important). On the other hand, law becomes more transparent through the new media format of the hypertext (that means in particular digitally-supported interactivity and non-linearity of text processing, cf. Sager 2000); hypertext visualizes the intertextuality of law (Morlok 2004, 2014; Müller / Christensen ^{3}2012: 235 ff.) and falsifies the common assumption of traditional legal methodology (Christensen / Lerch 2005: 111 f., Kudlich 2009: 21).

This and other consequences of the new mediality of the law for the institutional practice are in Germany and international so far uninvestigated or at the state of unverified hypothesis (a first sorting, as well as an overview of the mediatization of the law, displays Vogel (Ed.) 2015).

The internet has not only facilitated the access to legal information for lawyers, but also for legal laymen: In the meantime, legal layman can find almost all laws for personal research digitally. In addition, there are new communication formats, like – for example analogous to the *netdoctor* – legal (remote) consultation through wiki's, forums or commercial providers, both between laymen and between specialized lawyers and laymen. It remains unclear, how these new procedures of information procurement and knowledge-configuration, as well as the associated interplay of legal terminology and laymen language, will effect on concrete legal procedures and the other way around, how legal incidents of norm genesis will be processed in the 'internet community'. With that it must be taken into account, that the easier access to regulatory texts, likewise brings up so far unconsidered problems: Because it conceals, that the relevant texts of legal interpretation – comments, essays, court decisions – cannot, or only can be called up selectively for a large fee. Especially the commercialization and access restriction of fundamental texts for the legal system, like the mentioned above, should also be accompanied critically by legal linguists and if necessary be reviewed by the courts.

2. Computer-assisted methods to explore legal semantics

Attempts to calculate legal meaning or even decisions in court automatically with the computer and by that to put the, from a legal linguistic perspective, misguiding concept of the "subsumption automaton" into practice, exist since the early 1970s (cf. Kudlich 2009, also chap. II.2.a). These approaches however failed up to now, because of their mechanistic theory of language as well as their insufficient consideration of the cognitive-constructive complexity of juridical case- construction (Jeand'Heur 1998: 1292).

In particular originating from a criticism at the introspection of legal interpretation (for example, regarding the question, what the *general linguistic use* of the 'average citizen' be, Hamann 2015), new approaches of computer-assisted analysis of language in legal context developed, both in the Anglo-Saxon area and Germany since the early 2000s. What the approaches do have in common, is the usage of (corpus-linguistic) specialist software, as well as prepared text corpora for inductive-empirically calculations and the following interpretation of language use patterns in close interdisciplinary cooperation with the respective specialist lawyers. These new empirical analysis methods compete with traditional and intuitive practices like the judge's preference for dictionaries as 'language codes' (Mouritsen 2010, 2011); other studies try to explore recurrent language patterns in big corpora as sediments of legal dogmatics (Vogel 2012, Christensen / Vogel 2013; Vogel et al. 2015; Vogel 2017a).

The greatest challenge for future corpus-linguistical oriented legal linguistics is currently the construction of edited legal text-corpora. Several smaller project-corpora do exist in the meantime. From 2015 until 2017, the worldwide first reference-corpus of German-language law, which takes all relevant subject areas of the legal

system (judiciary, legislature, executive, jurisprudence) into account, was established (*JuReko* or *CAL*^{2} *Corpus of German Law*) under the direction of Friedemann Vogel and Hanjo Hamann and with support of the *Heidelberg Academy of Sciences and Humanities* (Heidelberger Akademie der Wissenschaft) (cf. Vogel / Hamann / Gauer 2017; http://www.jureko.de).

The heuristic added-value of the new methodological accesses beyond core interests in linguistics (description of the legal language and communication) for the practical legal work needs to be tested further. First considerations show that quantitative assisted (not qualitative methods replacing) interpretation can review speculative hypothesis in the legal-theory due an empirical grounding. This means that also basic principles of legal methodology are under consideration. Finally, there are possible applications in the legislation, especially in the effort for a consistent legal language (cf. Baumann 2015).

3. Legislation and norm-genesis

The procedures of text production and knowledge-genesis in courts from the first input data up to the decision can be considered as well investigated. In contrast still widely unexplored, are the discursive processes, as well as concrete textualization-procedures at the other end of norm-genesis, namely in context of legislature and executive (along with ministries and associated institutions).

There are many reasons for this. For one thing, is already the access to empirical data in contrast to the judicial processes notably restricted. While the majority of relevant texts in the trial is not only available for those who are involved in the process, but in anonymized or generalized form also for all legal subjects, the majority of the legislative negotiation and textualization processes takes place behind closed doors. Only rarely and usually only with controversial legislative initiatives, do find earlier versions of a norm text and/or politically motivated accompanying texts, which allowed conclusions for the underlying procedure, into the public.

Another reason is the complexity or problematic restriction of the object of investigation: Where does the norm-genesis ‘start’ (in the parliament, in the ministerial working groups, in the conflicting lifeworld etc.), where does it end (with resolution, with publication in the Federal Law Gazette, with “validity” of a norm text, his implementation in the executive, his acceptance in the population etc.)? Which age groups and discourse domains are relevant for the respective process and require consideration in which manner (actors or texts from judiciary, legislature, executive, media, jurisprudence etc.)?

These and other methodological questions are subject of a first legal linguistic study (Vogel 2012), which reproduces the different connections of life, norm and textual world, on the example of the so called “Online-searches” (Online-Durchsuchung) in police and security law.

4. Multilingualism in the supranational legal sphere

Numerous research questions which are still pending or already examined in the national legal system, arise in the supranational area in exponentiated complexity. The background to this is the especially with the clash of different legal cultures connected multilingualism (Müller / Burr (Ed.) 2004). By now, 24 official languages face each other on the EU level, which have an equal status and constitute the common EU-law after article 55 of the EU treaty (EUV). The problem can be illustrated as follows:

> the community law needs a common language to arrive in the reality. Only then it is practicable. But at the same time, it has to respect the national languages. Only then it is comprehensible for its citizens. By that, the language becomes the decisive point for the impact of the community law (Müller / Christensen [3]2012: 27; own translation).

By the construction of the *Tower of Babel* – how can multilingual law guarantee both, practicability and legal certainty? – legal linguists worked at different central areas, beginning at the legal methodology (language comparative interpretation; on an empirically based criticism on the methodology of the European Court of Justice (ECJ) cf. Schübel-Pfister 2004) up to extensive interpretation and translation work. By this, it is already in general controversial, if the normative enshrined multilingualism is only an administration problem that has to be resolved, or if it not also presents opportunities for national and supranational legal cultures. Braselmann (1992, 2002), for instance, problematizes that the normative prescribed diversity of the officialese covers up, as "fiction", the factual dominance of the French (and English) in the legal language. She pleads therefore analogous to the public international law in favor of a transparent "principle of primacy of the original version" ("Prinzip des Vorranges der Urfassung"; own translation; Braselmann 2002: 252). C. / K. Luttermann (2004) and Luttermann (2007) also perceive a divergence of the actual and target state, as well as difficulties for the European communication and plead therefore in favor of a "reference language model" ("Referenzsprachenmodell"; own translation) for the EU law, based on a system of two reference languages for all European legislative acts as well as subordinated administrative languages.

Müller / Christensen ([3]2012: 268 ff.) also consider numerous practical difficulties reasoned due to the supranational multilingualism. Though they emphasize the methodological added value regarding the ECJ: The multilingualism shifts the theoretical focus from 'the' norm text and 'the' norm towards the subject, which has to assume responsibility for its methods, data and arguments constructing the law. By this, Article 55 EUV forces "the judge, to leave the apparent certainty of the own language. He has to shift into the insecure area of different languages." (ibid., 29; own translation). A reduction to only two reference languages would even be a "disadvantage", according to that (Wimmer 2009: 237): "The more linguistically formulated/fixed aspects a court can take into account, all the more certain can it be that a judgement will be accepted." (ibid.; Engberg 2009; own translation). The same

would apply for the legislation as well, insofar the multilingual formulation of norm texts promotes their accuracy:

> Multilingual law has all opportunities to be clearer, more comprehensible law. Poor is a community that does not know how to use this. Does the European Union know it? (Nussbaumer 2007: 40; own translation).

V. Literature

Adelung, Johann Christoph (1785): Ueber den deutschen Styl 2/3. Zweyter Theil. Besondere Arten des Styles. Dritter Theil. Hülfsmittel der guten Schreibart. Berlin: Voß.

Asmuth, Bernhard (2013): Geschäftsstil. Seine Prägung durch Sonnenfels und Adelung um 1784. In: Andreas Deutsch (Ed.): Historische Rechtssprache des Deutschen. Heidelberg: Winter (Akademiekonferenzen, 15), pp. 175–206.

Atkinson, J. Maxwell / Drew, Paul (1979): Order in Court: The Organization of Verbal Behavior in Judicial Settings. Atlantic Highlands, NJ: Humanities Press.

Baumann, Antje (2015): Bedeutung in Gesetzen: Wie man eine spezielle Textsorte mit korpuslinguistischen Mitteln verständlicher machen könnte. In: Friedemann Vogel (Ed.): Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung zwischen Introspektion und Automaten. Berlin, New York: Walter De Gruyter (linguae & litterae), pp. 254–274.

Bennett, W. Lance / Feldman, Martha S. (1981): Reconstructing Reality in the Courtroom. London et al.: Tavistock.

Blickle, Peter (2000): Die Reformation im Reich. Stuttgart: UTB.

Braselmann, Petra (1992): Übernationales Recht und Mehrsprachigkeit. Linguistische Überlegungen zu Sprachproblemen in EuGH-Urteilen. In: *Europrarecht* (1), pp. 55–74.

Braselmann, Petra (2002): Gleiches Recht für alle – in allen Sprachen? In: Ulrike Haß-Zumkehr (Ed.): Sprache und Recht. Berlin, New York: Walter De Gruyter, pp. 240–254.

Bühler, Axel (2001): Zum Anwendungsproblem in der juristischen Hermeneutik der Aufklärung. In: Ulrich Kronauer / Jörn Garber (Ed.): Recht und Sprache in der deutschen Aufklärung. Tübingen: Niemeyer, pp. 27–36.

Bülow, Edeltraud / Schneider, Rolf-Hubert (1981): Materialien zu einer Bibliographie der Rechtslinguistik. Münster: Inst. f. Allg. Sprachwissenschaft.

Busse, Dietrich (1989): Was ist die Bedeutung eines Gesetzestextes? Sprachwissenschaftliche Argumente im Methodenstreit der juristischen Auslegungslehre – linguistisch gesehen. In: Friedrich Müller (Ed.): Untersuchungen zur Rechtslinguistik. Interdisziplinäre Studien zu praktischer Semantik und strukturierender Rechtslehre in Grundfragen der juristischen Methodik. Berlin: Duncker & Humblot, pp. 93–148.

Busse, Dietrich (1992): Recht als Text. Linguistische Untersuchungen zur Arbeit mit Sprache in einer gesellschaftlichen Institution. Tübingen: Niemeyer.

Busse, Dietrich (1998): Rechtssprache als Problem der Bedeutungsbeschreibung. Semantische Aspekte einer institutionellen Fachsprache. In: *Sprache und Literatur in Wissenschaft und Unterricht* 29 (81), pp. 24–47.

Busse, Dietrich (2000): Die juristische Fachsprache als Institutionensprache am Beispiel von Gesetzen und ihrer Auslegung. In: Lothar Hoffmann (Ed.): Fachsprachen. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft. Berlin: De Gruyter, pp. 1382 – 1391.

Busse, Dietrich (2000): Textlinguistik und Rechtswissenschaft. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven F. Sager (Ed.): Text- und Gesprächslinguistik. Ein internationales Handbuch zeitgenössischer Forschung. Berlin: De Gruyter, pp. 804 ff.

Busse, Dietrich (2000): Textsorten des Bereichs Rechtswesen und Justiz. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven F. Sager (Ed.): Text- und Gesprächslinguistik. Ein internationales Handbuch zeitgenössischer Forschung. Berlin: De Gruyter, pp. 658 – 675.

Busse, Dietrich (2001): Semantik der Praktiker. Sprache, Bedeutungsexplikation und Textauslegung in der Sicht von Richtern. In: Friedrich Müller (Ed.): Neue Untersuchungen zur Rechtslinguistik. Berlin: Duncker & Humblot, pp. 34 – 81.

Busse, Dietrich (2004): Verstehen und Auslegung von Rechtstexten – institutionelle Bedingungen. Vortrag vor der AG Sprache des Rechts der Berlin-Brandenburgischen Akademie der Wissenschaften. In: Kent D. Lerch (Ed.): Recht verstehen. Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: Gruyter, pp. 7 – 20.

Busse, Dietrich (2010): Juristische Semantik. Grundfragen der juristischen Interpretationstheorie in sprachwissenschaftlicher Sicht. 2nd ed. Berlin: Duncker & Humblot.

Christensen, Ralph (1989): Was heisst Gesetzesbindung? Eine rechtslinguistische Untersuchung. Berlin: Duncker & Humblot.

Christensen, Ralph / Jeand'Heur, Bernd (1989): Themen einer problembezogenen Zusammenarbeit zwischen Rechtstheorie und Linguistik. In: Friedrich Müller (Ed.): Untersuchungen zur Rechtslinguistik. Interdisziplinäre Studien zu praktischer Semantik und strukturierender Rechtslehre in Grundfragen der juristischen Methodik. Berlin: Duncker & Humblot, pp. 9 – 12.

Christensen, Ralph / Kudlich, Hans (2002): Die Auslegungslehre als implizite Sprachtheorie der Juristen. In: *Archiv für Rechts- und Sozialphilosophie* (ARSP) (2), pp. 230 – 246.

Christensen, Ralph / Lerch, Kent D. (2005): Performanz. Die Kunst, Recht geschehen zu lassen. In: Kent D. Lerch (Ed.): Die Sprache des Rechts. Recht Vermitteln: Strukturen, Formen und Medien der Kommunikation im Recht. Berlin: Walter De Gruyter, pp. 55 – 132.

Christensen, Ralph / Sokolowski, Michael (2002): Wir normativ ist die Sprache? Der Richter zwischen Sprechautomat und Sprachgesetzgeber. In: Ulrike Hass-Zumkehr (Ed.): Sprache und Recht. Berlin, New York: Walter De Gruyter, pp. 64 – 79.

Deutsch, Andreas (Ed.) (2010): Das Deutsche Rechtswörterbuch. Perspektiven. Kolloquium der Forschungsstelle "Deutsches Rechtswörterbuch". Heidelberg: Winter.

Deutsch, Andreas (2013): Historische Rechtssprache des Deutschen – Eine Einführung. In: Andreas Deutsch (Ed.): Historische Rechtssprache des Deutschen. Heidelberg: Winter, pp. 21 – 80.

Drew, Paul (1985): Analyzing the Use of Language in Courtroom Interaction. In: Teun Adrianus van Dijk (Ed.): Handbook of discourse analysis. London: Academic Press, pp. 133 – 147.

Eichhoff-Cyrus, Karin M. / Antos, Gerd (Ed.) (2008): Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion. Mannheim: Duden.

Engberg, Jan (2009): Durchschaubarkeit durch Vielfalt – Vorteile eines mehrsprachigen Rechtssystems und ihre linguistische Beschreibung. In: *Muttersprache. Vierteljahresschrift für deutsche Sprache* 119 (3), pp. 181–191.

Erler, Adalbert / Stammler, Wolfgang / Cordes, Albrecht (Ed.) (1971–1998): Handwörterbuch zur deutschen Rechtsgeschichte. Berlin: Schmidt.

Felder, Ekkehard (2003): Juristische Textarbeit im Spiegel der Öffentlichkeit. Berlin: De Gruyter.

Felder, Ekkehard (2005): Alltagsweltliche und juristische Wirklichkeitskonstitution im Modell der "Juristischen Textarbeit". Ein sprachhandlungstheoretischer Beitrag zur Kommunikation im Recht. In: Kent D. Lerch (Ed.): Die Sprache des Rechts. Recht Vermitteln: Strukturen, Formen und Medien der Kommunikation im Recht. Berlin: Walter De Gruyter, pp. 133–168.

Felder, Ekkehard (2010): Semantische Kämpfe außerhalb und innerhalb des Rechts. In: *Der Staat* 49 (4), pp. 543–571.

Felder, Ekkehard (2011): Juristische Fachsprache. In: Albrecht Cordes / Heiner Lück / Dieter Werkmüller / Ruth Schmidt-Wiegand (Ed.): Handwörterbuch zur deutschen Rechtsgeschichte (HRG). 2nd ed. Berlin: Erich Schmidt Verlag, pp. 1443–1449.

Felder, Ekkehard / Vogel, Friedemann (Ed.) (2017): Handbuch Sprache im Recht. Berlin, Boston: Mouton de Gruyter.

Fluck, Hans-R. (2004): Sprachliche Aspekte der Bürger-Verwaltungs-Kommunikation – Situationsbeschreibung und Forschungsperspektiven. In: *Muttersprache. Vierteljahresschrift für deutsche Sprache* 114 (3), pp. 193–205.

Fluck, Hans-R. (2007): Optimierung der Verwaltungssprache – gestern und heute. In: *Estudios Filológicos Alemanes* (13), pp. 57–70.

Fobbe, Eilika (2011): Forensische Linguistik. Eine Einführung. Tübingen: Narr.

Gardt, Andreas (2001): Das rationalistische Konzept der Fachsprache: Gottfried Wilhelm Leibniz. In: Ulrich Kronauer / Jörn Garber (Ed.): Recht und Sprache in der deutschen Aufklärung. Tübingen: Niemeyer, pp. 37–52.

Grimm, Jacob (1899): Deutsche Rechtsalterthümer. 4. verm. Ausg., besorgt durch Andreas Heusler / Rudolf Hübner. Ed. by Rudolf Hübner. Leipzig: Dieterich.

Grimm, Jacob (1957 [1840–1878]): Weisthümer. 2nd ed., unveraend. fotomechan. Nachdr. der 1. Aufl. von 1840–1878. Ed. by Ernst Friedrich Johann Dronke. Darmstadt, Berlin: Wiss. Buchges.: Akad.-Verl.

Grimm, Jacob (1972 [1815]): Von der Poesie im Recht. Unveränd. reprogr. Nachdr. d. Ausg. von 1957. Darmstadt: Wiss. Buchges.

Gumperz, John J. (1982): Fact and Inference in Courtroom Testimony. In: John J. Gumperz (Ed.): Language and social identity. Cambridge: Cambridge Univ. Press, pp. 163–195.

Hamann, Hanjo (2015): Der "Sprachgebrauch" im Waffenarsenal der Jurisprudenz. Die Rechtspraxis im Spiegel der quantitativ-empirischen Sprachforschung. In: Friedemann Vogel (Ed.): Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der

Mediatisierung zwischen Introspektion und Automaten. Berlin, New York: Walter De Gruyter, pp. 184 – 204.

Händel, Daniel / Fluck, Hans-R.; Förster, Michael; Blaha, Michaela (2001): Bürgernahe Verwaltungstexte: ein Kooperationsprojekt der Stadt Bochum und der Ruhr-Universität zur Textoptimierung. In: *Fachsprache* 23 (3 – 4), pp. 139 – 152.

Heidelberger Akademie der Wissenschaften (1932-): Deutsches Rechtswörterbuch. Weimar: Böhlau.

Hoffmann, Ludger (1983): Kommunikation vor Gericht. Tübingen: Narr.

Hoffmann, Ludger (Ed.) (1989): Rechtsdiskurse. Untersuchungen zur Kommunikation in Gerichtsverfahren. Tübingen: Narr.

Hoffmann, Ludger (2001): Gespräche im Rechtswesen. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven F. Sager (Ed.): Text- und Gesprächslinguistik. Ein internationales Handbuch zeitgenössischer Forschung Berlin: De Gruyter, pp. 1540 – 1555.

Hoffmann, Ludger (2013): Onlinebibliographie zu Sprache und Recht, Kommunikation vor Gericht (http://home.edo.uni-dortmund.de/~hoffmann/Biblios/Recht.html, 29. 11. 2013)

Hoffmann, Ludger (2017): Mündlichkeit im Recht: Kommunikationsformen/ Gesprächsarten. In: Ekkehard Felder / Friedemann Vogel (Ed.): Handbuch Sprache im Recht. Berlin, Boston: Mouton de Gruyter, pp. 67 – 90.

Jeand'Heur, Bernd (1989): Sprachliches Referenzverhalten bei der juristischen Entscheidungstätigkeit. Berlin: Duncker & Humblot.

Jeand'Heur, Bernd (1998): Die neuere Fachsprache der juristischen Wissenschaft seit der Mitte des 19. Jahrhunderts unter besonderer Berücksichtigung von Verfassungsrecht und Rechtsmethodik. In: Lothar Hoffmann et al. (Ed.): Fachsprache: ein internationales Handbuch der Fachsprachenforschung und Terminologiewissenschaft. Berlin: De Gruyter, pp. 1286 – 1295.

Kocher, Gernot (2013): Rechtsvereinheitlichung und Rechtssprache von Maria Theresia bis Franz Joseph I. In: Andreas Deutsch (Ed.): Historische Rechtssprache des Deutschen. Heidelberg: Winter, pp. 207 – 218.

König, Peter (2001): "Idiomate patrio dicitur": die Stellung deutscher Rechtsausdrücke in Wolffs "Jus naturae". In: Ulrich Kronauer / Jörn Garber (Ed.): Recht und Sprache in der deutschen Aufklärung. Tübingen: Niemeyer, pp. 113 – 127.

Kronauer, Ulrich / Garber, Jörn (Ed.) (2001): Recht und Sprache in der deutschen Aufklärung. Tagung "Recht und Sprache in der Deutschen Aufklärung". Tübingen: Niemeyer.

Kudlich, Hans (2009): Information als Herausforderung und Informatik als Hilfsmittel für die Rechtsanwendung im Straf- und Strafprozessrecht. In: Jürgen Taeger / Irini Vassilaki (Ed.): Rechtsinformatik und Informationsrecht im Spannungsfeld von Recht, Informatik und Ökonomie. Edewecht: OlWIR-Verl, pp. 13 – 23.

Kudlich, Hans / Christensen, Ralph (2004): Die Kanones der Auslegung als Hilfsmittel für die Entscheidung von Bedeutungskonflikten. In: *Juristische Arbeitsblätter*, pp. 74 – 83.

Lerch, Kent D. (Ed.) (2004): Recht verstehen. Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: Gruyter.

Lerch, Kent D. (Ed.) (2004 – 2005): Die Sprache des Rechts. 3 Vol. Berlin: Walter De Gruyter.

Levi, Judith N. (1994): Language and Law: A Bibliographic Guide to Social Science Research in the U.S.A. Washington, DC: American Bar Association.

Li, Jing (2011): "Recht ist Streit". Berlin: De Gruyter.

Luth, Janine (2015): Semantische Kämpfe im Recht. Eine rechtslinguistische Analyse zu Konflikten zwischen dem EGMR und nationalen Gerichten. Heidelberg, Neckar: Winter.

Luttermann, Claus / Luttermann, Karin (2004): Ein Sprachenrecht für die Europäische Union. In: *Juristenzeitung* (20), pp. 1002 – 1010.

Luttermann, Karin (2007): Mehrsprachigkeit am Europäischen Gerichtshof. Das Referenzsprachenmodell für ein EU-Sprachenrecht. In: Dorothee Heller / Konrad Ehlich (Ed.): Studien zur Rechtskommunikation. Bern: Lang, pp. 47 – 80.

Montesquieu, Charles Louis de Secondat de (1992 [1748]): Vom Geist der Gesetze. Unter Mitarbeit von Ernst Forsthoff. 2nd ed. Tübingen: Mohr.

Morlok, Martin (2004): Der Text hinter dem Text. Intertextualität im Recht. In: Alexander Blankenagel / Ingolf Pernice / Markus Kotzur (Ed.): Verfassung im Diskurs der Welt. Liber Amicorum für Peter Häberle zum siebzigsten Geburtstag. Tübingen: Mohr Siebeck, pp. 93 – 136.

Morlok, Martin (2015): Intertextualität und Hypertextualität im Recht. In: Friedemann Vogel (Ed.): Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung zwischen Introspektion und Automaten, pp. 69 – 90. Berlin, New York: Walter De Gruyter.

Morris, Ruth: A bibliography on court & legal interpreting http://aiic.net/page/235/a-bibliography-on-court-legal-interpreting/lang/1, 29.11.2013).

Mouritsen, Stephen C. (2010): The Dictionary Is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning. In: *Brigham Young University Law Review*, pp. 1915 – 1980.

Mouritsen, Stephen C. (2011): Hard Cases and Hard Data: Assessing Corpus Linguistics as an Empirical Path to Plain Meaning. In: *The Columbia. Science and Technology Law Review* (8), pp. 156 – 205.

Müller, Friedrich (Ed.) (1989): Untersuchungen zur Rechtslinguistik. Interdisziplinäre Studien zu praktischer Semantik und strukturierender Rechtslehre in Grundfragen der juristischen Methodik. Berlin: Duncker & Humblot.

Müller, Friedrich (Ed.) (2007): Politik, [neue] Medien und die Sprache des Rechts. Berlin: Duncker & Humblot.

Müller, Friedrich / Burr, Isolde (2004): Rechtssprache Europas. Reflexion der Praxis von Sprache und Mehrsprachigkeit im supranationalen Recht. Berlin: Duncker & Humblot.

Müller, Friedrich / Christensen, Ralph (2013): Juristische Methodik. Grundlegung für die Arbeitsmethoden der Rechtspraxis. 11nd ed. Berlin: Duncker & Humblot.

Müller, Friedrich / Christensen, Ralph / Sokolowski, Michael (1997): Rechtstext und Textarbeit. Berlin: Duncker & Humblot.

Müller, Friedrich / Wimmer, Rainer (Ed.) (2001): Neue Studien zur Rechtslinguistik. Dem Gedenken an Bernd Jeand'Heur. Berlin: Duncker & Humblot.

Nothdurft, Werner (1997): Konfliktstoff. Gesprächsanalyse der Konfliktbearbeitung in Schlichtungsgesprächen. Berlin, New York: De Gruyter.

Nothdurft, Werner / Stickel, Gerhard (Ed.) (1995): Streit schlichten. Gesprächsanalytische Untersuchungen zu institutionellen Formen konsensueller Konfliktregelung. Berlin: De Gruyter.

Nussbaumer, Markus (1997): Sprache und Recht. Heidelberg: Julius Groos.

Nussbaumer, Markus (2002): "Es gibt nichts Gutes, ausser man tut es" – Arbeit an der Verständlichkeit von Gesetzestexten in der Schweizerischen Bundeskanzlei. In: *Hermes. Journal of Linguistics* (29), pp. 111–123.

Nussbaumer, Markus (2004): Von Schwärmern und Skeptikern und ein Versuch, Realist zu sein. Bilanz und Entwurf des Sprachspiels vom unverständlichen Gesetz. In: Kent D. Lerch (Ed.): Recht verstehen. Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: Gruyter, pp. 285–295.

Nussbaumer, Markus (2007): Gesetzestext und Wissenstransfer? – Welche Funktionen Gesetzestexte erfüllen müssen und wie man sie optimieren kann. In: Dorothee Heller / Konrad Ehlich (Ed.): Studien zur Rechtskommunikation. Bern: Lang, pp. 17–46.

Onlinebibliographie der International Language and Law Association (ILLA, http://www.illa.org/BIBLIO.HTM, 29. 11. 2013).

Pick, Ina (2015): Das anwaltliche Mandantengespräch: linguistische Ergebnisse zum sprachlichen Handeln von Anwalt und Mandant. Frankfurt: Lang.

Plato / Kurz, Dietrich / Robin, Léon / Schleiermacher, Friedrich (2011): Phaidros = Phaidros. Parmenidēs = Parmenides. Epistolai = Briefe. 6th ed. Darmstadt: Wiss. Buchges.

Polenz, Peter von / Moulin-Fankhänel, Claudine (2013): Deutsche Sprachgeschichte vom Spätmittelalter bis zur Gegenwart. Vol. 2, 2nd ed. Berlin: De Gruyter.

Rathert, Monika (2006): Sprache und Recht. Heidelberg: Winter.

Rave, Dieter / Brinkmann, Hans / Grimmer, Klaus (Ed.) (1971): Paraphrasen juristischer Texte. Darmstadt: Dt. Rechenzentrum.

Reitemeier, Ulrich / Bettscheider, Otmar (1985): Studien zur juristischen Kommunikation. Eine kommentierte Bibliographie. Tübingen: Narr.

Roll, Hans-Achim (1972): Zur Geschichte der Lex-Salica-Forschung. Vol. N. F., 17. Untersuchungen zur deutschen Staats- und Rechts-Geschichte. Aalen: Scientia-Verlag.

Sager, Sven F. (2000): Hypertext und Hypermedia. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven F. Sager (Ed.): Text- und Gesprächslinguistik. Ein internationales Handbuch zeitgenössischer Forschung. Berlin: De Gruyter, pp. 587–603.

Savigny, Friedrich Carl von (1814): Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft. Heidelberg: Mohr und Zimmer.

Schendera, Christian F. G. (2004): Die Verständlichkeit von Rechtstexten: Eine kritische Darstellung der Forschungslage. In: Kent D. Lerch (Ed.): Recht verstehen. Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: Gruyter, pp. 321–375.

Schmidt-Wiegand, Ruth (1998a): Deutsche Sprachgeschichte und Rechtsgeschichte bis zum Ende des Mittelalters. In: Werner Besch / Gerold Ungeheuer / Hugo Steger (Ed.): Sprachge-

schichte. Ein Handbuch zur Geschichte der deutschen Sprache und ihrer Erforschung. 2nd ed. Berlin: De Gruyter, pp. 72–87.

Schmidt-Wiegand, Ruth (1998b): Deutsche Sprachgeschichte und Rechtsgeschichte seit dem Ausgang des Mittelalters. In: Werner Besch / Gerold Ungeheuer / Hugo Steger (Ed.): Sprachgeschichte. Ein Handbuch zur Geschichte der deutschen Sprache und ihrer Erforschung. 2nd ed. Berlin: De Gruyter, pp. 87–98.

Schmidt-Wiegand, Ruth / Hüpper, Dagmar / Höfinghoff, Hans (1991): Stammesrecht und Volkssprache. Ausgewählte Aufsätze zu den Leges barbarorum. Festgabe für Ruth Schmidt-Wiegand zum 1. 1. 1991. Ed. by Dagmar Hüpper. Weinheim: VCH Acta Humaniora.

Schübel-Pfister, Isabel (2004): Sprache und Gemeinschaftsrecht. Die Auslegung der mehrsprachig verbindlichen Rechtstexte durch den Europäischen Gerichtshof. Univ., Berlin, Bayreuth.

Seibert, Thomas-Michael (1981): Aktenanalysen. Zur Schriftform juristischer Deutungen. Tübingen: Narr.

Speer, Heino (1989): Das Deutsche Rechtswörterbuch. Historische Lexikographie einer Fachsprache. In: *Lexicographica* (5), pp. 85–128.

Sternberger (1981): Staatliche Zwangsgewalt und bürgerliche Kommunikation. Eine Notiz zum Generalthema. In: Ingulf Radtke (Ed.): Die Sprache des Rechts und der Verwaltung. 2 Vol. Stuttgart: Klett-Cotta, pp. 16–19.

Szlezák, Alexander (1985): Platon und die Schriftlichkeit der Philosophie. Interpretationen zu den frühen und mittleren Dialogen. Berlin.

Thomasius, Christian (1699): Summarischer Entwurff Derer Grund-Lehren / Die einem Studioso Iuris zu wissen / und auff Universitäten zu lernen nöthig / nach welchen D. Christian Thomas. Künfftig / so Gott will Lectiones privatissimas zu Halle / in vier unterschiedenen Collegiis anzustellen gesonnen ist. Halle.

Tiersma, Peter M. (2000): Legal language. Chicago: Univ. of Chicago Press.

Tiersma, Peter Meijes / Solan, Lawrence (Ed.) (2012): The Oxford handbook of language and law. Oxford: Univ. Press.

Vogel, Friedemann (2012): Das Recht im Text. Rechtssprachlicher Usus in korpuslinguistischer Perspektive. In: Ekkehard Felder / Marcus Müller / Friedemann Vogel (Ed.): Korpuspragmatik. Thematische Korpora als Basis diskurslinguistischer Analysen. Berlin: De Gruyter, pp. 314–353.

Vogel, Friedemann (2012): Linguistik rechtlicher Normgenese. Theorie der Rechtsnormdiskursivität am Beispiel der Online-Durchsuchung. Berlin: De Gruyter.

Vogel, Friedemann (Ed.) (2015): Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung zwischen Introspektion und Automaten. Berlin, New York: Walter De Gruyter.

Vogel, Friedemann / Christensen, Ralph (2013): Korpusgestützte Analyse der Verfassungsrechtsprechung: Eine Abwägung von Prinzipien findet nicht statt. In: *Rechtstheorie* 44 (1), pp. 29–60.

Vogel, Friedemann (2017): Sprache im Gesetzgebungsverfahren und der Normgenese. In: Ekkehard Felder / Friedemann Vogel (Ed.): Handbuch Sprache im Recht. Berlin, Boston: Mouton de Gruyter, pp. 349 – 365.

Vogel, Friedemann (2017a): Calculating legal meanings? Drawbacks and opportunities of corpus-assisted legal linguistics to make the law (more) explicit. In: Janet Giltrow / Dieter Stein (Ed.): The Pragmatic Turn in Law. Inference and Interpretation in Legal Discourse. Berlin, Boston: De Gruyter, pp. 287 – 306.

Vogel, Friedemann (Ed.) (2017): Recht ist kein Text. Studien zur Sprachlosigkeit im verfassten Rechtsstaat. Unter Mitarbeit von Friedrich Müller. Berlin: Duncker & Humblot.

Vogel, Friedemann / Christensen, Ralph / Pötters, Stephan (2015): Richterrecht der Arbeit – empirisch untersucht. Möglichkeiten und Grenzen computergestützter Textanalyse am Beispiel des Arbeitnehmerbegriffs. Berlin: Duncker & Humblot.

Vogel, Friedemann / Hamann, Hanjo (2015): Vom corpus iuris zu den corpora iurum – Konzeption und Erschließung eines juristischen Referenzkorpus (JuReko). In: Jahrbuch der Heidelberger Akademie der Wissenschaften für 2014. Heidelberg: Winter.

Vogel, Friedemann / Hamann, Hanjo / Gauer, Isabelle (2017): Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies. In: *Law & Social Inquiry (LSI)* 43 (4), pp. 1340 – 1363. http://onlinelibrary.wiley.com/doi/10.1111/lsi.12305/full (15. 10. 2017).

Wimmer, Rainer (2009): Zur Verflechtung von Spracharbeit und Rechtsarbeit in der EU. In: *Muttersprache. Vierteljahresschrift für deutsche Sprache* 119 (3), pp. 234 – 239.

Wodak, Ruth (1975): Das Sprachverhalten von Angeklagten bei Gericht. Ansätze zu einer soziolinguistischen Theorie der Verbalisierung. Kronberg: Scriptor Verl.

Wolff, Stephan (1995): Text und Schuld. Die Rhetorik psychiatrischer Gerichtsgutachten. Berlin, New York: Walter De Gruyter.

Legal Linguistics in the Nordic Countries

Past Developments and Future Directions

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Abstract

Based on the realization that language is indispensable to law, legal linguistics has emerged as a modern interdiscipline integrating legal science and linguistics as its main components. Recognizing the significance and the necessity of legal-linguistic knowledge and skills in the practical work of legal professionals and legal translators and interpreters, many universities and institutions have introduced diverse programmes and courses in language and law, legal linguistics, or forensic linguistics. Furthermore, related associations that have been founded (e. g. *International Language and Law Association*, ILLA, *Germanic Society for Forensic Linguistics*, GSFL, *Österreichische Gesellschaft für Rechtslinguistik*, ÖGRL) and numerous conferences that are being organized annually indicate a surge of interest in the intersections and many facets of language and law. The purpose of this article is to provide a short overview of legal linguistics as an academic discipline in the Nordic countries. The main focus is on Finland, but also some selected developments and projects in Sweden, Norway, and Denmark are discussed.

Keywords: language and law, legal linguistics, comparative legal linguistics, nordic countries, legal education

I. Introduction

Language in the context of law has been the subject of extensive research for decades, be it from the perspective of the application and interpretation of legal concepts, legal argumentation, languages for specific/special purposes (LSPs), or legal communication as legal discourse in a more broad societal context. Numerous previous studies and ventures into the language of the law, i. e. *legal language* (fi. *oikeuskieli*, sv. *rättspråk*, no. *rettsspråk*, da. *rettssprog*), have underlined the dependency of law on language and demonstrated that legal language is indeed a significant subject in need of further explorations, first and foremost because of the fact that legal effects are brought about through legal speech acts as legal-linguistic operations (Austin 1962; Searle 1969; Galdia 2009: 141 – 245). Based on the findings of previous research and motivated by the new challenges posed by the internationalization, globalization, and digitalization of law, the field of language and law, or *legal linguistics* (fi. *oikeuslingvistiikka,* sv. *rättslingvistik*, no. *rettslingvistikk*, da. *retslingvistik*), as an

independent discipline focusing on the relationship and intersections of language and law is known in the Nordic countries, has emerged in many countries across the world (see e. g. Tiersma 1999; Müller 1989; Müller / Wimmer 2001; Cornu 2005; Tiersma / Solan 2012; Mattila 2013a, 2017; Solan / Ainsworth / Shuy 2015; Felder / Vogel 2016; Galdia 2009, 2017). Defined in many different ways, the field focuses on the profoundly linguistic nature of law, enriching our knowledge and deepening our understanding of the role and functions of language in the drafting, construction, interpretation and application of law.

In legal linguistics, recent years have seen a broadening of views, standpoints, and approaches, objects studied and methods applied – an overall expansion of the scope of the field. Rapid developments in the legal sphere and in technology create new challenges which necessitate active and continued dialogue across cultural and disciplinary boundaries, simultaneously opening up a wide and multifaceted research agenda and new opportunities for scholars working with language and law. Against this background, although so implied by the word combination itself, *legal linguistics* as "an interdisciplinary branch of knowledge" (Galdia 2009: 19) should not be reduced to the mere combination of legal science and linguistics. As discussed by Engberg and Kjær (2011: 7), the field has a close connection to history, political science, psychology, anthropology, philosophy, and sociology, and thus, in legal-linguistic research, knowledge must often be drawn from these neighbouring fields in order to reach an in-depth and contextualized understanding of the characteristics, functions, and usage of legal language. The ambitious aim is to achieve a well-balanced synthesis of the scientific ingredients that are necessary to answer the research question at hand (Engberg / Kjær 2011: 7; Mattila 2013a: 11). This also means that, from the perspective of legal linguistics, thematically overlapping and often also mutually beneficial research is conducted not only in law (in legal theory, legal history, legal sociology, comparative law, European law, and international law) and in language sciences (e. g. LSP research, translation studies, studies in rhetoric), but also in the disciplines mentioned above. In consequence, it becomes difficult to draw precise boundaries between legal linguistics and the neighbouring, partially overlapping fields, especially when the label of legal linguistics is not explicitly used.

In the globalized world of today, it is an undisputable fact that linguistic and cultural diversity is of ever-growing significance. Language matters – in particular in the field of law, where legal reality is constantly being constructed, altered, and interpreted through language (e. g. Helin 1998). In the light of recent developments at European level, legal linguistics as an academic enterprise should no longer need a justification for its existence. However, despite the increasing interest in the intersections of language and law and in particular in *forensic linguistics* (e. g. Gibbons 2003; Coulthard / Johnson / Wright 2017; Galdia 2017: 94–95) as a sub-field of legal linguistics (Mattila 2013a: 7), the heterogenous field of legal linguistics has yet to fully secure its footing in the academia and to realize its full potential in Northern Europe. For the purposes of shedding light on legal linguistics in the Nordic countries, this article strives to give a short overview of selected developments, accom-

plishments and challenges in the field in Finland and in other Nordic countries, restricted here to Denmark, Sweden and Norway.

II. Finland

As a multilingual society with Finnish and Swedish as its two official languages, Finland provides fertile ground for legal linguistics as a discipline. With a legal historical background as part of the Kingdom of Sweden (ca. 1100–1809) and subsequently as an autonomous Grand Duchy under Russian rule (1809–1917), Finland became an independent state on 6 December 1917 and celebrated its 100 years of independence in 2017. After the Finnish Declaration of Independence in 1917, the principle of bilingualism, providing equal status for Finnish and Swedish, was established in the 1919 Constitution (fi. *Suomen Hallitusmuoto* 94/1919) and in the 1922 Language Act (fi. *Kielilaki* 148/1922). Currently, the legislative basis for linguistic rights as fundamental rights is laid down in Section 17 of the Finnish Constitution (fi. *Suomen perustuslaki* 731/1999) with more detailed provisions contained in the revised Language Act (423/2003)[1] as well as in other Acts:[2]

> The Constitution of Finland (731/1999)
>
> Section 17 – *Right to one's language and culture*
>
> The national languages of Finland are Finnish and Swedish.
>
> The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.
>
> The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.[3]

[1] An unofficial English translation of The Language Act (423/2003) is made available by the Ministry of Justice of Finland online at https://www.finlex.fi/en/laki/kaannokset/2003/en20030423.pdf. It must be noted that The Language Act does not apply to Åland; for further information see the Act on the Autonomy of Åland (1144/1991), available online at https://www.finlex.fi/en/laki/kaannokset/1991/en19911144_20040068.pdf.

[2] For a more detailed description of multilingualism in Finland in English see e. g. Tallroth (2012) and Mattila (2013: 68–72).

[3] The English translation of the legislative text presented here stems from the unofficial English translation of the Constitution of Finland (731/1999) made available by the Ministry of Justice of Finland online at https://www.finlex.fi/en/laki/kaannokset/1999/en19990731_20111112.pdf (25. 9. 2018).

In the light of its history, multilingualism is a specific feature of the Finnish legal system, with linguistic rights situated at its core.[4] In Nordic law as a legal family based on legal-cultural similarities between the Nordic countries (cf. Zweigert / Kötz 1996: 270–280; Husa 2011a), the movement of Scandinavian Legal Realism (Uppsala School) influenced legal dogmatics in Nordic countries in the first half of the 20th century (see e. g. Helin 1988). In the second half of the century, linguistic philosophy (primarily Wittgenstein) was introduced to the study of law in analytical legal theory, as can be seen in the work of Finnish legal scholars Zitting (1951), Makkonen (1959), Aarnio (1983), Helin (1988), and Siltala (2003).[5] As stated by Galdia (2009: 71, 2017: 83), Finnish legal linguistics is rooted in legal theory, in the framework of which theoretical studies on legal language have contributed towards creating a solid basis for the development of legal linguistics as an academic discipline (Mattila 2002: 1119).

1. General developments in Legal Linguistics

Legal linguistics as an academic discipline in Finland was founded in a joint effort of the Language Centre and the Faculty of Law of the University of Lapland in the mid-1990s, after Finland had joined the European Union in 1995 and the demand for legal professionals with cultural and linguistic competence had become apparent in the EU institutions. In order to meet the practical needs arising in the labour market, this emerging discipline was established as part of legal education to provide law students with necessary cultural and linguistic expertise to enable them to embark on an international career. Located in Rovaniemi on the Arctic Circle, the University of Lapland as the northernmost university of Finland and European Union has to this day been the leading university in the field in Finland: the Faculty of Law accommodated the only Chair in Legal Linguistics in the country from 2003 until 2009, and subsequently, a combined Chair in Legal Culture and Legal Linguistics from 2010 until 2014. In addition to the closely related field of legal informatics[6], legal linguistics has been integrated into studies of law in the Bachelor's and Master's degree programmes, both fields classified as "research priorities" in the research profile of the Faculty of Law[7].

[4] On linguistic rights see the *Action Plan for the Strategy for the National Languages of Finland* published by the Ministry of Justice on 28 February 2017, available online at https://oikeusministerio.fi/documents/1410853/4734397/ActionPlan_StrategyfortheNationalLanguages.pdf/5513fe14-d092-4404-9ec1-d3a6e6a354af/ActionPlan_StrategyfortheNationalLanguages.pdf.pdf.

[5] For further information on legal theoretical and philosophical developments in Finland in the 20th Century, see e. g. Lindroos-Hovinheimo (2016).

[6] See the Website of the Institute of Legal Informatics at the University of Lapland at https://www.ulapland.fi/EN/Units/Institute-for-Law-and-Informatics.

[7] For more information on research at the Faculty of Law see https://www.ulapland.fi/EN/Units/Faculty-of-Law/Research.

A handful of academic scholars have been involved in developing, teaching, and promoting legal linguistics as an academic discipline at the Faculty of Law of the University of Lapland – namely Dr. Heikki E. S. Mattila, Dr. Tarja Salmi-Tolonen, Ms. Iris Tukiainen, Mr. Richard Foley, Ms. Birgitta Vehmas, Dr. Jaakko Husa, and the author of this article.[8] As it still seems quite rare for scholars in the field to have a formal education both in law and in linguistics, the differences in educational background, practical work experience, and research interests are reflected in the diversity of aspects and approaches emphasized in research and teaching of legal linguistics. Nevertheless, in Finland the discipline is perceived to be firmly rooted in legal science, and having the ambitious aim of striking a balance between language and law. This is notable in particular because the achievement of an equally thorough understanding of relevant legal and linguistic theories, methods, and aspects can be seen as the main challenge – and also the major pitfall affecting the validity and usefulness of research results – in legal-linguistic research.

2. Research in Legal Linguistics

In Finland, legal-linguistic research has thus far addressed a wide variety of topics, and correspondingly, employed a variety of methods. Taking into account the historical background and especially the close legal, cultural and linguistic ties between Finland and Sweden as well as the influence of German legal science (conceptual jurisprudence, de. *Begriffsjurisprudenz*), it is not surprising that lexicological research and (legal) translation have played an important role in the development of Finnish legal language.[9] In the 20th century, substantial societal developments and the shift in paradigm in social sciences due to the linguistic turn necessitated changes in law and legal thinking. A widening of perspective from traditional legal positivism, reducing law to a set of norms, towards a broader, contextualized understanding of the law as a culturally embedded, dynamic phenomenon in society has occurred (e. g. Tuori 2000, 2002). As regards research on legal language in the framework of Finnish legal theory, due to the broadening understanding of the concept of language, focus has shifted in a parallel manner from the observation of small units of meaning in a language, such as single legal concepts (see e. g. Merikoski 1939), to a more comprehensive view of language, i. e. to explorations of the textual level of law and, based on the social constructionist theory (Berger / Luckmann 1966), to the discursive construction and functioning of the legal system (e. g. Niemi-Kiesiläinen et al. 2006). In recent times, legal linguistics has ventured into new territories, a devel-

[8] It must be noted that also other scholars as well as teachers at Language Centres have made contributions towards the establishment and development of the discipline in Finland. However, this article is limited to discussing the work of the scholars at the University of Lapland who are specifically mentioned in the text.

[9] The first Finnish-Swedish legal dictionary, *J. G. Sonckin Ruotsalais-suomalainen laki – ja virkakielen sanasto*, was published in 1903, see Mattila (2009: 1176–1177).

opment which to a large extent can be attributed to the transnational and digitalized character that law has acquired.

Known as the Finnish pioneer of the field, Professor Emeritus of Legal Linguistics, Dr. Heikki E. S. Mattila, held the Chair in Legal Linguistics at the University of Lapland from 2003 until 2009. During his distinguished career, he has published widely in the field, covering themes from the heritage of legal Latin and the ambiguity of legal abbreviations to diverse legal text genres, major European legal cultures, legal languages, challenges in legal translation, and legal semiotics (e. g. Mattila 2002, 2005, 2008, 2009, 2010, 2011, 2013a, 2013b, 2017). His contribution to the birth and evolvement of legal linguistics in Finland and beyond has been remarkable not only by means of his legal-linguistic research projects, publications and activities in the academia, but also in his capacity as the Editor-in-chief of the *Encyclopædia Iuridica Fennica* (EIF, 1990 – 1999), the legal encyclopedia of Finland (published in 1994 – 1999, 7 volumes, see Wirilander 2000), as co-author of the Finnish legal abbreviations dictionary *Oikeuselämän lyhennesanakirja* (2004), and as Editor-in-chief of the online database of Finnish legal terms *Oikeustieteen termitietokanta*[10] (since 2012). Of central importance to the understanding of legal linguistics in Finland is his comprehensive book *Vertaileva oikeuslingvistiikka* (first published in Finnish in 2002, second updated edition in 2017, English version *Comparative Legal Linguistics* first published in 2006, second updated edition in 2013, translated into English by Christopher Goddard[11]) which has been used as a handbook in legal linguistics at the Faculty of Law of the University of Lapland ever since it was published. Illustrating Mattila's immensely broad knowledge of law and languages, both editions of the English version have been praised by many reviewers (see e. g. Landqvist 2007; Mooney 2008; Galdia 2013).

Legal linguistics, as defined by Mattila in his book (2013a: 11), can be characterized broadly as a discipline which "[…] examines the development, characteristics, and usage of legal language", focusing on the "[…] vocabulary (notably terminology), syntax (relationships between words), or semantics (the meaning of words) of the language". The type of research endeavours which do not focus on a single system-bound legal language, but instead "[…] compare the development, structure, and vocabulary of two or more legal languages" and, thus, emphasize the comparative legal perspective, can be called *comparative legal linguistics* (Mattila 2013a: 17).

With his research interests focusing on combining comparative law, legal history, and legal linguistics, in his numerous publications Mattila has not only discussed the theoretical foundations of the discipline, but also through insightful empirical studies

[10] http://tieteentermipankki.fi/wiki/Luokka:Oikeustiede.

[11] Christopher Goddard is a researcher of legal linguistics (see e. g. Goddard 2009, 2010, 2011) and the founder of the Master's programme in legal linguistics (LL.M., 60 ECTS) at the Riga Graduate School of Law (RGSL) in Latvia. The legal linguistics programme was founded in 2007 but is currently not offered, for more information on current programmes see https://www.rgsl.edu.lv/programmes.

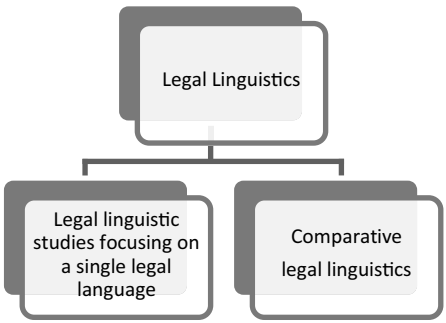

Figure 1: The field of legal linguistics according to Mattila (2013, 2017)

demonstrated the necessity and usefulness of employing perspectives and knowledge from other fields, such as sociology, in legal-linguistic research. Illuminating the fact that legal language as a LSP is a historically developed dynamic phenomenon, tied to a legal system and embedded in the culture of the society, a good example of such contextualized legal linguistic research is his interesting comparative study on cross-references in court decisions (Mattila 2011). This investigation of legal languages, using the concept of legal culture as an explanatory factor, shows how findings on the surface level of system-specific legal texts (here: cross-references in judgments) are connected to historically conditioned legal thinking, legal practices, and legal traditions. Displaying Mattila's obvious love of languages and law, his impressive body of research builds bridges between academia and practice and is therefore of both theoretical and practical value, providing legal professionals, legal translators and interpreters as well as legal lexicographers fruitful information and tools to assist them in their daily work.

On the basis of Mattila's works, further attention to the significance of language in law has been given in the valuable publications of legal linguist, researcher Tarja Salmi-Tolonen (e. g. 2004, 2005, 2008a, 2008b, 2011, 2013, 2014) and legal comparatist, Professor Jaakko Husa (e. g. 2007, 2008, 2009, 2011, 2012, 2015). Salmi-Tolonen, who defended her doctoral thesis in legal linguistics with the title *Language and the Functions of Law: A Legal Linguistic Study* at the University of Lapland in 2008, has in her work researched inter alia multilingual judicial procedures (2004), language risks and international commercial arbitration (2014), and expanded the Finnish perspective on language and law to forensic linguistics (Salmi-Tolonen 2008b). She has stated that she perceives "[…] law and all legal activity as communication […]" (2004: 1167), defining the purpose of legal linguistics as to "[…] study the language of the law, in all its forms,[…][8] and its development and usage in order to create new knowledge of the interplay between language, law and society" (2004: 1169). Specifying Mattila's definition of the field, Salmi-Tolonen (2011: 3) views legal linguistics in the following way: "[…] there is, first of all, the general legal linguistics, which is not bound to any particular legal language (legal English,

legal French, legal Finnish, etc.) but rather studies special features of legal language that are shared by all – or at least most – Western legal systems and languages. This part also encompasses the formation and methodology of general theory. Then, there is the particular or special legal linguistics which examines the judicial language of a single legal culture or legal order that is dependent on a single given language – Finnish, English, French, etc. – or compares two or more judicial languages and cultures".

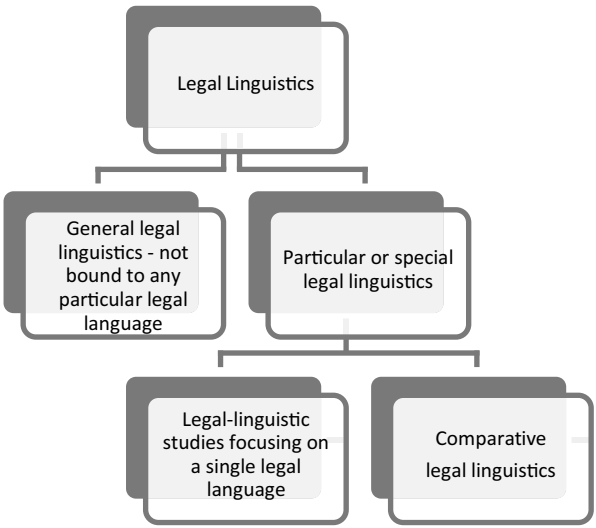

Figure 2: The field of legal linguistics according to Salmi-Tolonen (2011)

Comparative legal linguistics, in particular the interdependence of legal translation and comparative law, has been specifically accentuated by Husa, who held the Chair of Legal Culture and Legal Linguistics at the University of Lapland from 2011 until 2014. Acknowledging the fact that the connection between language and law often doesn't seem to be "explicitly present" or consciously reflected upon in the work of legal professionals (Husa 2012: 161), Husa places legal linguistics among the general sciences of law, i. e. legal history, legal philosophy, legal theory, and comparative law (Husa 2008: 22). With the vast field of comparative law as frame of reference, he justly stresses that legal scholars employing comparative methodologies simultaneously engage in legal translation, and thus in comparative law, characterized by a transnational, pluralistic view of legal systems, legal cultures, and legal languages, legal translation becomes a crucial factor, a prerequisite for understanding foreign law (e. g. Husa 2011b). As regards the implications of these observations for the training of future legal professionals, he states that "[…] legal education

ought to respond more seriously to the globalisation of law" (Husa 2009: 913), a statement underlining implicitly also the role of legal linguistics.

This short article striving to describe the status quo of legal linguistics in the Nordic countries in a summarized manner can only offer glimpses to those developments in the field that can be considered important. Thus, although it is not possible to cover all research on legal linguistics and legal language, it should be mentioned that further relevant research related to or overlapping with legal linguistics has been conducted by Finnish scholars both in legal science and in legal translation and interpreting – noteworthy articles, doctoral dissertations and works published in the last two decades include but are not restricted to the following: a compilation of articles on legal language edited by Jyränki (1999); the doctoral thesis on the understanding of foreign law by Henrÿ (2004); the doctoral thesis on criminal trial as a speech communication situation by Välikoski (2004); the doctoral thesis on translation as a source of law by Kinnunen (2006); a comprehensive book containing articles on the development of Finnish legal language edited by Mattila, Piehl, and Pajula (2010); articles on teaching legal German courses to law students by Meyer (e. g. 2011, 2012); articles on the impact of German law on Finnish legal language and on characteristics of legislative language by Fonsén (e. g. 2011, 2014); the doctoral thesis on legal interpreting in criminal trials by Isolahti (2014) and the doctoral thesis on German and Finnish criminal judgments by Lindroos (2015). As regards the quality of legal language used by national authorities and institutions, plain language usage is being researched and promoted in Finland especially by *the Institute for the Languages of Finland* (fi. *Kotimaisten kielten keskus, KOTUS*), which is an institute functioning under the auspices of the Finnish Ministry of Education and Culture and devoted to the study and language planning of Finnish and Swedish and coordinating the activities of the Saami, Romani, and Sign Language Boards.[12]

Alongside legal-linguistic research, both qualitative and quantitative in nature, the dedication of Finnish scholars at the University of Lapland to the advancement of legal linguistics can also be seen in the organization of international conferences devoted to language and law. In 2001, a conference entitled *Law and Language: Prospect and Retrospect* was organized in Levi, Finnish Lapland, to celebrate the founding of the Chair in legal linguistics, and in 2010, the Chair of Legal Linguistics, the Legal Linguistics Association of Finland (fi. *Suomen Oikeuslingvistinen Yhdistys ry*, sv. *Föreningen för Finlands Rättslingvistik rf*) founded in 2000[13] and the University of Lapland hosted a conference by the name *Law and Language in Partnership and Conflict* in Rovaniemi. With Prof. Salmi-Tolonen (Chair), Ms. Tukiainen and Mr. Foley as organizers, the latter conference marked the tenth anniversary of legal-linguistic teaching at the University of Lapland and resulted in the publication of the

[12] The website of the Institute for the Languages of Finland can be found at https://www.kotus.fi/en/about_us. On plain language see https://www.kotus.fi/en/on_language/plain_language.

[13] The association is unfortunately no longer active.

conference proceedings in the very first issue of the newly founded *Lapland Law Review* (Issue 1, 2011), edited by the organizing committee (see Salmi-Tolonen, Tukiainen / Foley 2011).[14] Among other relevant events, these conferences have enabled experts and students in legal linguistics to connect, network and exchange thoughts and ideas regarding their research and teaching – activities necessary for creating a common platform and forming a scientific community that can shape legal linguistics on a global scale in the future.

3. Didactics of Legal Linguistics

In recent years, academic programmes in legal linguistics, forensic linguistics, and legal translation and/or interpreting have been established in many countries with varied emphasis (e. g. B.A. and M.A. in European Legal Linguistics (de. *Europäische Rechtslinguistik*) at the University of Cologne[15], cf. Mattila 2013a: 23 – 25). Promoting awareness of language in the field of law, such programmes offer students the possibility to gain an understanding of (multilingual) legal communication, to acquire legal and linguistic knowledge as well as skills in foreign languages and possibly even to familiarize themselves with the theories and methods of (legal) translation and/or interpreting. However, vast differences exist between these programmes as regards the organizing faculty or institution (e. g. Faculty of Law/Faculty of Arts and Humanities), the degree to be obtained (LL.M. or M.A.), the target audience (future lawyers and/or translators and interpreters), and the content. Relevant questions on didactical aspects of legal-linguistic education, which are in need of further research and discussion, have been raised by Goddard (2009, 2010): Where does legal linguistics fit within the education and training of future legal professionals and translators and interpreters? What is the core content that should be taught and through what kind of educational mechanisms?

In Finland, legal linguistics as an academic discipline has been taught first and foremost as part of legal education at the University of Lapland, although courses are also offered at other Finnish universities, such as in the Faculty of Law at the University of Turku[16]. Instead of a separate educational programme, two courses in legal linguistics were integrated into the curriculum at the University of Lapland: an introductory course in legal linguistics (2 ECTS) in the studies towards the Bachelor of Laws (LL.B.) degree and a course in comparative legal linguistics (3 – 5 ECTS) in the studies towards the Master of Laws (LL.M.) degree. Doctoral studies in legal linguistics, leading to the degree of Doctor of Laws (LL.D.), have thus far also been possible at the University of Lapland. Noteworthy is the fact that the faculty led a

[14] To be found online at: https://www.ulapland.fi/InEnglish/Units/Faculty-of-Law/Research/Lapland-Law-Review/Issues/Issue-1,-2011.

[15] See the Website online at http://erl.phil-fak.uni-koeln.de/.

[16] For example an introductory course to Legal Linguistics (3 – 5 ECTS) has been offered in Turku, see the course description in English at https://nettiopsu.utu.fi/opas/opintojakso.htm?rid=20766&idx=11&uiLang=fi&lang=en&lvv=2015.

multidisciplinary doctoral programme *Legal Cultures in Transnational World* (LeCTra) financed by the Finnish Ministry of Education and Culture and the Academy of Finland from 2012 until 2015 with legal linguistics as one of its focal areas.[17]

Taught to students of law with often a limited knowledge of linguistics, the main objective of the introductory course has been to illustrate through practical examples how law and language are intertwined, what the distinctive functions and features of different legal text genres are, and how diverse legal phenomena can be analyzed scientifically with linguistic methods. Based on Mattila's handbook (2002, 2017), the introductory course has aimed at deepening and fostering language awareness and cultural and linguistic sensitivity, promoting critical thinking and reflection on one's own language usage and its neutrality. Building on the solid foundation created in the introductory course, the core idea of the course in comparative legal linguistics has been to encourage students to look beyond national borders and help prepare them for the international career by providing legal-linguistic information on different legal systems and legal cultures. With emphasis on multilingualism in the context of the legal system of the European Union and invited guest lecturers (e. g. Mr. Kari Liiri, Head of the Finnish Language Translation Unit at the European Court of Justice) providing insight to legal translation practices in EU institutions, the course has included a practical exercise in legal translation from English into Finnish, allowing the students to gain an often eye-opening experience of the numerous challenges faced in cross-cultural legal communication. With English as the global *lingua franca*, legal-linguistic courses have been supported by legal language courses organized by the Language Centre, building communicative competence and proficiency in relevant foreign languages (e. g. legal English, legal German, legal French).[18]

As described by Mattila (2013a: 24), the two courses in legal linguistics were compulsory to all students of law at the University of Lapland until they were made optional in the context of the curriculum reform in the Faculty of Law in 2015 and eventually removed completely in 2018. Despite these unfortunate developments in Finland it is held here that legal linguistics should, as stated by Galdia (2017: 107), be an integral part of the studies in law as it provides crucial information on legal-linguistic operations undertaken by legal professionals in their daily work, e. g. legal communication, legislative drafting, legal argumentation, and legal interpretation in the application of law. Needless to say, legal-linguistic education should also be offered to legal translators and legal interpreters, if not as part of their university studies, then later on in the form of professional continuing education courses organized by professional associations and institutions. Due to converging interests, integrated courses in law and language (e. g. European Union law and European legal

[17] In the context of LeCTra, a comparative legal-linguistic doctoral thesis was completed (Lindroos 2015) which subsequently was awarded the annual *Language and Law*-award (de. *Förderpreis Sprache und Recht*) by the University of Regensburg in Germany.

[18] Additionally, with the increased interest in language as evidence and forensic linguistics, the first course in forensic linguistics was offered at the University of Lapland in 2015, taught by Ms. Dana Römling (University of Düsseldorf) and the author of this article.

languages) are a promising possibility in need of testing; such joint modules or courses combining legal substance with linguistic and cultural knowledge (cf. Goddard 2009, 2010) offered to both law and linguistics students simultaneously might be the best way forward if – in part because of diminishing resources at universities – the organization of separate programmes for legal professionals and translators and/or interpreters (Engberg / Burr 2009) is not possible.

III. Legal Linguistics in Sweden, Norway, and Denmark

As regards the Nordic countries as an area of legal-linguistic research, influenced by German legal thinking in the 19th century, characterized by legal pragmatism (Zweigert / Kötz 1996: 270–280) and tied together historically and culturally through extensive legal and linguistic collaboration (see Mattila 2013a: 168–170, 188 and 2017: 253–292), a vast number of publications has emerged on important aspects related to legal communication. For the discipline of legal linguistics, corresponding denominations to the Finnish term *oikeuslingvistiikka* are in use: in Sweden *rättslingvistik* (also *forensisk lingvistik*), in Denmark *retslingvistik*, and in Norway *rettslingvistikk.* However, not all research analyzing legal languages goes specifically by this name and, consequently, also neighbouring fields related to legal linguistics need to be taken into account. In the following, a narrow overview of relevant contemporary research literature and recent developments in Sweden, Norway, and Denmark is provided; a more detailed description of legal linguistic publications in the world, including in Scandinavia, can be found in Galdia (2017: 73–89).

In addition to Finland, the study of language and law as a discipline has been especially prominent in Denmark. In 2011, an international research network *Legal Linguistics Network RELINE*[19] (da. *Retslingvistisk Netværk*) was founded at the University of Copenhagen, consisting of scholars from around the world with an interest in the intersections of language and law and representing a variety of disciplines. Perhaps the most significant legal-linguistic initiative in the Nordic countries thus far, RELINE has aimed at promoting and broadening interdisciplinary dialogue and creating a much needed mutual arena for cooperation, becoming known as the *Scandinavian School of Legal Linguistics* (Kjær 2015a: 9). In Denmark, legal-linguistic research has been conducted by eminent scholars – of which most are RELINE (steering committee) members – with different disciplinary backgrounds, showcasing a multitude of approaches to the language of law: see e. g. Kjær (1990, 1991, 1992, 1994, 2007, 2015b) on legal phraseology, legal translation, and corpus linguistic approaches to legal texts, Engberg (1992, 1997, 2000, 2001, 2003, 2010) on specialized communication in legal genres, legal translation, and the construction of legal knowledge, Gabrielsen (2015) on rhetoric in law, Adrian (2016) on mediation in law, Mortensen / Mortensen (2017) on courtroom interaction, and from a more general point of

[19] See the website at https://jura.ku.dk/reline/.

view, Christensen (2017) on legal linguistics and forensic linguistics in the Danish context. A collaborative effort of RELINE members, a collection of interesting articles on language and law was published in the comprehensive anthology *Retten i sproget: Samspillet mellem ret og sprog i juridisk praksis* (ed. by Gabrielsen et al.) in 2015. Furthermore, signaling the rise of interest in the field in Denmark, the first *Nordic Forensic Linguistics Symposium*[20] was hosted by the University of Copenhagen in 2016, and the first *ILLA Focus Workshop*[21] on Computers, Language, and Law, organized by iCourts, the Danish National Research Foundation's Centre of Excellence for International Courts in cooperation with ILLA, RELINE network, and The Faculty of Law, was held in Copenhagen in September 2018.

As has been pointed out by Mattila (2013a: 8), LSP research originating from the German language area (de. *Fachsprachenforschung*, see e. g. Hoffmann / Kalverkämper / Wiegand 1998) has aroused particular interest in the Nordic countries, mainly in Denmark and in Sweden (see e. g. Bergenholtz / Engberg 1995; Laurén / Nordman 1996; Myking 1999). Examples of such work in Sweden and Denmark include the publications concerning legal terminology and legal style of Landqvist (e. g. 2008, 2010, 2016), the doctoral thesis on legislative language in medieval Scandinavian laws written by Ruthström (2003), and the book on legal lexicography and the compilation of a bilingual LSP dictionary in legal language by Nielsen (1994). Drawing on results of LSP studies on legal languages, also the topic of legal translation and interpreting has been adressed in the Nordic countries by many scholars; for an overview on research traditions in translation studies in Finland, Sweden, Norway, and Denmark, see Baker / Saldanha (2009). With a wide interest ranging from syntactic, semantic, pragmatic and discourse-related features of legal texts to multilingual law-making, institutional translation and translation quality control, particularly noteworthy for the further development of legal linguistics are the publications of prominent Nordic scholars such as Strandvik (e. g. 2015, 2017, 2018) and Simonnæs (e. g. 2012, 2015, 2016). In the forensic context, with regard to the sub-field of forensic linguistics, examples of recent research projects in Sweden which analyse empirical data encompass the doctoral thesis of Byrman (2017) on the documentation practices of investigative interviews and the doctoral thesis of Lindh (2017) on the forensic comparison of voices. Influenced by the developments of the current digital era, also corpus linguistic methods are receiving more scholarly attention in the examination of legal language, see e. g. the corpus-based study of texts produced by the International Criminal Tribunal for the Former Yugoslavia (ICTY) by Potts and Kjær (2015) and *The Helsinki Corpus of English Texts*[22] which includes legal texts, put together by Matti Rissanen and Ossi Ihalainen at the University of Helsinki and released already in 1991. However, the use of computational linguistics and approaches

[20] See the programme of the symposium online at https://humanities.ku.dk/calendar/2016/12/nordic-forensic-linguistics-symposium/.

[21] For more information see https://jura.ku.dk/icourts/calendar/computers-language-law/.

[22] Website: http://clu.uni.no/icame/hc/index.htm.

such as *Computer Assisted Legal Linguistics*[23] introduced in Germany (e. g. Hamann, Vogel / Gauer 2016; Vogel / Hamann / Gauer 2017) has yet to blossom in the Nordic countries, although law as a text-based discipline characterized by its formulaic nature (cf. Lindroos 2015) provides a well-suited object for computerized systematical analysis.

In the Nordic countries there are very few studies on the didactics of legal linguistics. This is understandable in the light of the fact that, although programmes in legal linguistics and forensic linguistics are becoming more widespread on a global scale, this is not (yet) the case in the Nordic countries. Instead of academic programmes leading to a degree, single modules and courses in legal linguistics or forensic linguistics are offered, such as the Master's level online course entitled *Forensic Linguistics: Linguistic Evidence and the Law* (7,5 ECTS, in English) at Umeå University in Sweden.[24] Apart from the few courses labeled specifically legal-linguistic, in legal education, legal language courses are often integrated into the legal curriculum: complementing the studies towards a LL.B. or a LL.M. degree, LSP courses are taught to law students by language teachers working at Language Centres of universities. In the field of translation studies, some specialized courses and programmes in legal translation and legal interpreting exist, e. g. the online course in legal translation *JurDist*[25] designed by *Norges Handelshøyskole* (Norwegian School of Economics) in Norway and offered since 2013, and the training programme for legal interpreters[26] in Finland (fi. *oikeustulkkauksen erikoistumiskoulutus*, 40 ECTS) being launched in 2018, organized by the Diaconia University of Applied Sciences (Diak), Humak University of Applied Sciences (Humak), the University of Helsinki and the University of Tampere. In this article it is not possible to investigate in detail to what extent legal knowledge is being communicated to translation/interpreting students in the programmes mentioned as examples above. Nevertheless, against this backdrop, it would be worthwhile to consider designing integrated legal-linguistic courses to be offered to both law students and students pursuing a career in legal translation and/or interpreting. These kinds of courses would simultaneously provide the opportunity for promoting understanding and discussions across disciplinary and professional boundaries, perhaps even facilitating mutually beneficial collaboration between the students in working life after having finished their studies.

[23] Website: https://cal2.eu/.

[24] See the course desription at https://www.umu.se/en/education/courses/forensic-linguistics-linguistic-evidence-and-the-law/.

[25] See the website of JurDist at https://www.nhh.no/executive/andre-executive-studier/jurdist-juridisk-oversettelse/.

[26] Website in Finnish at https://www.diak.fi/tyoelamapalvelut/koulutuspalvelut/erikoistumiskoulutukset/oikeustulkkauksen-erikoistumiskoulutus/.

IV. Concluding remarks

In this article, an attempt was made to shed light on legal linguistics in the Nordic countries. In the brief overview, it was possible only to summarize selected developments and illuminate some aspects in this emerging field of research, revealing a fragmented picture of legal linguistics. Gaining a comprehensive picture of research in the field is certainly not easy, but already a selective review of existing literature makes it evident that Mattila's book has had a notable impact on subsequent research in the field, profoundly shaping the way legal linguistics as a discipline is understood also beyond the borders of Finland. Influenced and motivated by developments in modern society, law, linguistics, and technology, legal linguistics as an umbrella term in the Nordic countries encompasses multi-faceted research activity. The richness of various angles and diverging approaches underlines the fact that legal language as an evolving and multidimensional object necessitates the use of multidisciplinary methods. Within the fuzzy contours of legal linguistics, research to date has indicated that professionals in many fields have much to gain from studies in this discipline. Perceiving legal linguistics from the Finnish perspective as a sub-discipline of jurisprudence, rooted in law, it can be argued that the two main components – law and language – need to be placed on an equal footing in order to conduct in-depth and robust legal-linguistic research and to enable the research results to be fruitful to both disciplines. Much work is still to be done in promoting this wide understanding of the field.

So what does the future hold for legal linguistics? At this moment the discipline finds itself at a crossroads – at least in Finland. Despite the efforts and progress made especially in the last two decades, legal linguistics is now on shaky ground. This seems contradictory and counterproductive, especially considering the fact that today, national legal systems coexist with international legal systems, and interaction between them is constantly increasing. Without a doubt, legal linguistics as an academic discipline has something to offer to both domains – law and linguistics – from a narrower national and a broader, international and comparative perspective. With new interdisciplinary challenges arising, (comparative) legal linguistic knowledge should be seen as an absolute prerequisite, a necessary component of the skillset of legal professionals and legal communication experts working in the international arena. In the light of the ongoing globalization of law, taking into account in particular the new trends of *legal design*[27] and *legal tech*[28], encompassing *inter alia* the automated generation of legal documents and the development of linguistic software e. g. to assist in recognizing hate speech or radicalization online through language

[27] See e. g. the Website of the *Legal Design Summit,* an event aiming to bring together experts in the fields of law, design, and digital services: http://www.legaldesignsummit.com/home.

[28] See e. g. the Website of the *Legal Tech Lab* at the University of Helsinki: https://www.helsinki.fi/en/networks/legal-tech-lab.

analysis tools, the field of legal linguistics is likely to gain importance and to become even more significant in the future.

To conclude, as law is created and communicated mainly through language (with the exception of legal semiotics), it is to be hoped that the conscious efforts of scholars in the field to elucidate the ambiguous word combination *legal linguistics* and to clarify the possibilities of the discipline bear fruit in the near future. With the potential of legal linguistics made more transparent especially to legal scholars, the field might be able to move from the periphery of jurisprudence towards its core, finding its place in the legal curriculum. Gazing forward, closer interdisciplinary cooperation between legal and linguistic professionals is called for to further develop the discipline, to shape the future education and training of legal professionals, legal translators and legal interpreters, and to secure the discipline's footing in the academia in the Nordic countries and beyond. As the Finnish scholars Salmi-Tolonen, Tukiainen and Foley (2011) have aptly expressed it: "If there ever was a time when research in law and language – legal linguistics – was of vital importance, that time is now".

V. Literature

Aarnio, Aulis (1983): The Development of Legal Theory and Philosophy of Law in Finland. Helsinki: Societas Philosophica Fennica.

Adrian, Lin (2016): The Role of Court-Connected Mediation and Judicial Settlement Efforts in the Preparatory Stage. In: Laura Ervo / Anna Nylund (Eds.): Current Trends in Preparatory Proceedings: A Comparative Study of Nordic and Former Communist Countries. Cham: Springer, pp. 209–231.

Austin, John (1962): How to do Things with Words. Cambridge, Mass.: Harvard University Press.

Baker, Mona / Saldanha, Gabriela (Eds.) (2009): Routledge Encyclopedia of Translation Studies. Abingdon; New York: Routledge.

Bergenholtz, Henning / Engberg, Jan (1995): Tendenser inden for den nyere fagsprogsforskning i Danmark. In: *Hermes – Journal of Language and Communication in Business*, 15/1995, pp. 179–206.

Berger, Peter L. / Luckmann, Thomas (1966): The Social Construction of Reality. A Treatise in the Sociology of Knowledge. Garden City, New York: Anchor Books.

Byrman, Ylva (2017): Så fångas de misstänktas ord. Förhör och dokumentationspraktiker på Skattebrottsenheten. Gothenburg: Gothenburg University.

Christensen, Tanya Karoli (2017): Ordet fanger: Retslingvistik i en dansk kontekst. In: *Nydanske Sprogstudier*, *NyS*, Vol. 52–53, pp. 169–206.

Cornu, Gérard (2005): Linguistique juridique. 3rd ed. Paris: Montchrestien.

Coulthard, Malcolm / Johnson, Alison; Wright, David (2017): An Introduction to Forensic Linguistics: Language in Evidence. London: Routledge.

Engberg, Jan (1992): Wie analysiert man Gerichtsurteile? Ein Plädoyer für eine textsortenspezifische Textanalyse. In: Annette Grindsted / Johannes Wagner (Eds.): Communication for Specific Purposes/Fachsprachliche Kommunikation. Tübingen: Gunter Narr, pp. 93 – 111.

Engberg, Jan (1997): Konventionen von Fachtextsorten. Kontrastive Analysen zu deutschen und dänischen Gerichtsurteilen. Tübingen: Gunter Narr.

Engberg, Jan (2000): Does routine formulation change meaning? The impact of genre on word semantics in the legal domain. In: Lita Lundquist / Robert J. Jarvella (Eds.): Language, Text, and Knowledge: Mental Models of Expert Communication. Berlin, New York: Mouton de Gruyter, pp. 31 – 48.

Engberg, Jan (2001): Kulturpezifische Ausprägung kulturübergreifender Texthandlungsmuster – deutsche und dänische Landgerichtsurteile im Vergleich. In: Ulla Fix / Stephan Habscheid / Josef Klein (Eds.): Kulturspezifik von Textsorten. Tübingen: Stauffenburg Verlag, pp. 69 – 86.

Engberg, Jan (2003): Textsortenkonventionen – Zum Status und zur Bedeutung für die übersetzungsbezogene Beschreibung von Rechtstexten. In: Heidrun Gerzymisch-Arbogast / Eva Hajicová / Petr Sgall / Zuzana Jettmarová / Annely Rothkegel / Dorothee Rothfuß-Bastian (Eds.): Textologie und Translation. Tübingen: Gunter Narr, pp. 61 – 83.

Engberg, Jan (2010): Knowledge construction and legal discourse: The interdependence of perspective and visibility of characteristics. In: *Journal of Pragmatics*, Vol. 42, Issue 1, pp. 48 – 63.

Engberg, Jan (2013): Legal Linguistics as a mutual arena for cooperation: Recent developments in the field of Applied Linguistics and Law. In: *AILA Review* (26), pp. 24 – 41.

Engberg, Jan / Burr, Isolde (2009): Designing Curricula on Legal Language for Legal Linguists and for Translators. In: Lelija Sočanac et al. (Eds.): Curriculum, Multilingualism and the Law. Zagreb: Nakladni zavod Globus, pp. 111 – 128.

Engberg, Jan / Kjær, Anne Lise (2011): Approaches to language and the law. Some introductory notes. In: *Hermes – Journal of Language and Communication in Business*, 46/2011, pp. 7 – 10.

Felder, Ekkehard / Vogel, Friedemann (Eds.) (2016): Handbuch Sprache im Recht. Berlin, Boston: Mouton de Gruyter (Handbücher Sprachwissen, 12).

Foley, Richard / Salmi-Tolonen, Tarja / Tukiainen, Iris / Vehmas, Birgitta (Eds.) (2008): Kielen ja oikeuden kohtaamisia. Heikki E. S. Mattilan juhlakirja. Helsinki: Talentum.

Fonsén, Tuomo (2011): Saksan vaikutuksesta suomen oikeuskieleen. In: *Virittäjä* 115: 2, 2011, pp. 239 – 250.

Fonsén, Tuomo (2014): Popularisierung von Gesetzestexten durch Paraphrasen. Beobachtungen zu den Bedingungen der Paraphrasierung. In: *Zeitschrift für Angewandte Linguistik* (ZfAL) 60: 1, 2014, pp. 93 – 112.

Gabrielsen, Jonas (2015): Jura og retorik – et mangfoldigt møde. In: Jonas Gabrielsen / Anne Lise Kjær / Lin Adrian / Jan Engberg / Morten Rosenmeier / Sten Schaumburg-Müller / Cecilie Brito Cederstrøm (Eds.): Retten i sproget: Samspillet mellem ret og sprog i juridisk praksis. København: Djøf Forlag, pp. 97 – 112.

Gabrielsen, Jonas / Kjær, Anne Lise / Adrian, Lin / Engberg, Jan / Rosenmeier, Morten / Schaumburg-Müller, Sten / Cederstrøm, Cecilie Brito (Eds.) (2015): Retten i sproget: Samspillet mellem ret og sprog i juridisk praksis. København: Djøf Forlag.

Galdia, Marcus (2009): Legal Linguistics. Frankfurt a.M.: Peter Lang.

Galdia, Marcus (2013): Towards Global Language of Law (Combined Review of Comparative Legal Linguistics and Jurilinguistique comparée). In: *Comparative Legilinguistics. Intenrational Journal for Legal Communication*, Vol. 15 (2013), pp. 93 – 99.

Galdia, Marcus (2017): Lectures on Legal Linguistics. Frankfurt a.M.: Peter Lang.

Gibbons, John (2003): Forensic Linguistics. An Introduction to Language in the Justice System. Language in Society 32. Oxford: Blackwell Publishing.

Goddard, Christopher (2009): A Professional Master's Programme in Legal Linguistics: A Model for Translators and Lawyers? In: Lelija Sočanac et al. (Eds.): Curriculum, Multilingualism and the Law. Zagreb: Nakladni zavod Globus, pp. 149 – 174.

Goddard, Christopher (2010): Legal Linguistics as an Academic and Professional Discipline: Identifying Clients, Customers, Stakeholders. In: Carmen Heine / Jan Engberg (Eds.): Reconceptualizing LSP. Online proceedings of the XVII European LSP Symposium 2009. Aarhus 2010, pp. 1 – 16.

Goddard, Christopher (2011): Fishing with new nets in familiar waters: a legal linguistic foray into comparative law, legal culture, and legal ideology. In: Tarja Salmi-Tolonen / Iris Tukiainen / Richard Foley (Eds.): Lapland Law Review, 2011, issue 1. Law and Language in Partnership and Conflict, pp. 122 – 144.

Hamann, Hanjo / Vogel, Friedemann / Gauer, Isabelle (2016): Computer Assisted Legal Linguistics (CAL2). In: Floris Bex (Ed.): Legal Knowledge and Information Systems. JURIX 2016: The Twenty-Ninth Annual Conference. Amsterdam: IOS Press, pp. 195 – 198.

Helin, Markku (1988): Lainoppi ja metafysiikka: tutkimus skandinaavisen oikeusrealismin tieteenkuvasta ja sen vaikutuksesta Suomen siviilioikeuden tutkimuksessa vuosina 1920 – 1960. Helsinki: Suomalaisen lakimiesyhdistyksen julkaisuja.

Helin, Markku (1998): Kieli oikeustodellisuuden rakentajana. In: *Lakimies* 6 – 7/1998, pp. 1027 – 1036.

Henrÿ, Hagen (2004): Kulturfremdes Recht erkennen: Ein Beitrag zur Methodenlehre der Rechtsvergleichung. Helsinki: Forum Iuris.

Hoffmann, Lothar / Kalverkämper, Hartwig / Wiegand, Herbert Ernst (Eds.) (1998): Fachsprachen. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft – Languages for Special Purposes. An International Handbook of Special-Language and Terminology Research. Vol. 1 and 2. Berlin, New York: Walter de Gruyter.

Husa, Jaakko (2007): Kreikan oikeus ja oikeuskieli. Helsinki: Suomalainen Lakimiesyhdistys.

Husa, Jaakko (2008): Kilpailusta kumppanuuteen – oikeusvertailevat lähestymistavat valtiosääntöoikeudessa. In: Markus Aarto / Markku Vartiainen (Eds.): Oikeus kansainvälisessä maailmassa. Ilkka Saraviidan juhlakirja. Helsinki: Edita Prima Oy, pp. 21 – 34.

Husa, Jaakko (2009): Turning the Curriculum Upside Down: Comparative Law as an Educational Tool for Constructing Pluralistic Legal Mind. In: *German Law Journal* No. 7, pp. 913 – 926.

Husa, Jaakko (2011a): The Stories We Tell Ourselves – About Nordic Law in Specific. In: *Isaidat Law Review* 2011, Vol. 1, No. 1, Article 9.

Husa, Jaakko (2011b): Comparative Law, Legal Linguistics, and Methodology of Legal Doctrine. In: Mark van Hoecke (Ed.): Methodologies of Legal Research. Oxford: Hart Publishing, pp. 209 – 228.

Husa, Jaakko (2012): Understanding Legal Languages – Linguistic Concerns of the Comparative Lawyer. In: Cornelis J. W. Baaij (Ed.): The Role of Legal Translation in Legal Harmonization. Alphen aan den Rijn: Kluwer Law International, pp. 161 – 181.

Husa, Jaakko (2015): A New Introduction to Comparative Law. Oxford and Portland, Oregon: Hart Publishing.

Isolahti, Nina (2014): Tulkkauksen tarkkuus rikosoikeudenkäynnissä – saavuttamaton ihanne. Acta Universitatis Tamperensis 1892. Tampere: Tampere University Press.

Jyränki, Antero (Ed.) (1999): Oikeuden kielet: oikeus ja oikeudellinen ajattelu monikielisessä maailmassa. Turku: Turun yliopisto.

Kinnunen, Tuija (2006): Käännös oikeudenkäyntiaineistona – lakitekstien tulkinta oikeuskäsitteiden kääntämisen näkökulmasta. Acta Universitatis Tamperensis 1173. Tampere: Tampere University Press.

Kjær, Anne Lise (1990): Normbetingede ordforbindelser i tysk juridisk sprog. København: Copenhagen Business School Press.

Kjær, Anne Lise (1991): Phraseologische Wortverbindungen in der Rechtssprache? In: Christine Palm (Ed.): EUROPHRAS 90. Akten der internationalen Tagung zur germanistischen Phraseologieforschung. Aske/Schweden 12. – 15. Juni 1990. Uppsala, pp. 115 – 122.

Kjær, Anne Lise (1992): Normbedingte Wortverbindungen in der juristischen Fachsprache (Deutsch als Fremdsprache). In: Gert Henrici / Ekkehard Zöfgen (Eds.): Fremdsprachen Lehren und Lernen, Vol. 21, pp. 46 – 64.

Kjær, Anne Lise (1994): Zur kontrastiven Analyse von Nominationsstereotypen der Rechtssprache deutsch – dänisch. In: Barbara Sandig (Ed.): EUROPHRAS 92. Tendenzen der Phraseologieforschung. Bochum: Universitätsverlag Brockmeyer, pp. 317 – 348.

Kjær, Anne Lise (2007): Phrasemes in legal texts. In: Harald Burger / Dmitri Dobrovol'skij / Peter Kühn / Neal R. Norrick (Eds.): Phraseologie: Ein Internationales Handbuch der Zeitgenössischen Forschung. Berlin, New York: de Gruyter, pp. 506 – 515.

Kjær, Anne Lise (2015a): Forord. In: Jonas Gabrielsen / Anne Lise Kjær / Lin Adrian / Jan Engberg / Morten Rosenmeier / Sten Schaumburg-Müller / Cecilie Brito Cederstrøm (Eds.): Retten i sproget: Samspillet mellem ret og sprog i juridisk praksis. København: Djøf Forlag, pp. 9 – 10.

Kjær, Anne Lise (2015b): Juridisk oversættelse i Europa: en retslingvistisk praksis i spændingsfeltet mellem retlig enhed og flersprogethed. In: Jonas Gabrielsen / Anne Lise Kjær / Lin Adrian / Jan Engberg / Morten Rosenmeier / Sten Schaumburg-Müller / Cecilie Brito Cederstrøm (Eds.): Retten i sproget: Samspillet mellem ret og sprog i juridisk praksis. København: Djøf Forlag, pp. 273 – 292.

Landqvist, Hans (2006): Texter för lagstiftning, rättskipning och rättsinformation. In: Hans Landqvist / Christer Laurén / Liselott Nordman / Marianne Nordman / Maria Kvist

(Eds.): Juridik på svenska i Finland: perspektiv på språk och rätt. Vasa: Förlagsaktiebolaget Scriptum, pp. 111 – 171.

Landqvist, Hans (2007): Book review on Comparative Legal Linguistics by Heikki E. S. Mattila. In: LSP and professional communication, Vol. 7, No. 2 Winter 2007. Copenhagen: Dansk Selskab for Fagsprog og Fagkommunikation, pp. 104 – 112.

Landqvist, Hans (2008): Spår i SAOB: David Ehrenstråle Nehrman och Svenska Akademiens ordbok. In: Richard Foley / Tarja Salmi-Tolonen / Iris Tukiainen / Birgitta Vehmas (Eds.): Kielen ja oikeuden kohtaamisia. Heikki E.S. Mattilan juhlakirja. Helsinki: Talentum Oy, pp. 157 – 171.

Landqvist, Hans (2010): Svenska i juridiska kontexter sedan 1809. In: Heikki E. S. Mattila / Aino Piehl / Sari Pajula (Eds.): Oikeuskieli ja säädöstieto. Suomenkielinen lakikirja 250 vuotta – Rättsspråk och författningsinformation. Den finskspråkiga lagboken 250 år. Helsinki: Suomalainen Lakimiesyhdistys, pp. 41 – 54.

Laurén, Christer; Nordman, Marianne (1996): Wissenschaftliche Technolekte. Frankfurt a.M.: Peter Lang.

Lindh, Jonas (2017): Forensic comparison of voices, speech and speakers – Tools and Methods in Forensic Phonetics. University of Gothenburg.

Lindroos, Emilia (2015): Im Namen des Gesetzes. Eine vergleichende rechtslinguistische Untersuchung zur Formelhaftigkeit in deutschen und finnischen Strafurteilen. Acta electronica Universitatis Lapponiensis 165. Rovaniemi: Lapland University Press.

Lindroos-Hovinheimo, Susanna (2016): Legal theory and philosophy of law in Finland in the 20th century. In: Enrico Pattaro / Corrado Roversi (Eds.): A Treatise of Legal Philosophy and General Jurisprudence. Berlin: Springer, pp. 785 – 794.

Makkonen, Kaarle (1959): Ajatuksia juridisen kielen loogisesta analyysista. In: *Lakimies* 2/1959, pp. 49 – 72.

Mattila, Heikki E. S. (2002): Lakimies-lehti ja oikeuskieli. In: *Lakimies* 7 – 8/2002, pp. 1108 – 1119.

Mattila, Heikki E. S. (2005): Juridisista lyhenteistä. In: *Lakimies* 1/2005, pp. 3 – 22.

Mattila, Heikki E. S. (2008): Oikeuskielen muutokset nykymaailmassa. In: *Lakimies* 7 – 8/2008, pp. 1149 – 1165.

Mattila, Heikki E. S. (2009): Oikeusleksikologisista tutkimustarpeista. In: *Lakimies* 7 – 8/2009, pp. 1175 – 1180.

Mattila, Heikki E. S. (2010): Oikeuslingvistiikka ja oikeusvertailu. In: *Lakimies* 5/2010, pp. 719 – 730.

Mattila, Heikki E. S. (2011): Cross-references in court decisions: a study in comparative legal linguistics. In: Tarja Salmi-Tolonen / Iris Tukiainen / Richard Foley (Eds.): Law and Language in Partnership and Conflict. A Special Issue of the Lapland Law Review. Vol. 1: Issue 1. Rovaniemi: University of Lapland, pp. 96 – 121.

Mattila, Heikki E. S. (2013a): Comparative Legal Linguistics. Language of Law, Latin and Modern Lingua Francas. 2nd edition. Farnham: Ashgate.

Mattila, Heikki. E. S. (2013b): Tuomarinviitasta banianpuun lehviin: oikeuden kuvallisuus historiallisesti ja kansainvälisesti. In: Virpi Harju (Ed.): Oikeuden näyttämöt – Kuvallisuus lainkäytössä. Helsinki: Suomen lakimiesliitto, pp. 20 – 45.

Mattila, Heikki E. S. (2017): Vertaileva oikeuslingvistiikka. Juridinen kielenkäyttö, lakimieslatina, kansainväliset oikeuskielet. Helsinki: Alma Talent.

Mattila, Heikki E. S. / Piehl, Aino / Pajula, Sari (Eds.) (2010): Oikeuskieli ja säädöstieto. Suomenkielinen lakikirja 250 vuotta – Rättsspråk och författningsinformation. Den finskspråkiga lagboken 250 år. Sastamala: Suomalainen Lakimiesyhdistys.

Mattila, Heikki E. S. / Jussila, Anne; Kaltio, Outi (Eds.) (2004): Oikeuselämän lyhennesanakirja. Helsinki: Talentum.

Merikoski, Veli (1939): Huomioita lainopillisen terminologian alalta. In: *Lakimies* 1/1939, pp. 439 – 441.

Meyer, Almut (2011): Legal German Courses. Towards a Culture-oriented Teaching Concept. In: Tarja Salmi-Tolonen / Iris Tukiainen / Richard Foley (Eds.): Law and Language in Partnership and Conflict. A Special Issue of the Lapland Law Review Vol. 1: Issue 1. Rovaniemi: University of Lapland. pp. 165 – 177.

Meyer, Almut (2012): Intercultural Competence in Legal German Teaching: A Didactical Implementation. In: *Hermes – Journal of Language and Communication in Business*, 48/2012, pp. 35 – 53.

Mooney, Annabelle (2008): Book review – Heikki E. S. Mattila, Love of Language and the Law. In: *International Journal for the Semiotics of Law* (2008) Vol. 21, Issue 1, pp. 93 – 95.

Mortensen, Sune Sønderberg / Mortensen, Janus (2017): Epistemic stance in courtroom interaction. In: Francesca Poggi / Alessandro Capone (Eds.): Pragmatics and Law: Practical and Theoretical Perspectives. Perspectives in Pragmatics, Psychology & Philosophy, Bind. 10. Cham: Springer, pp. 401 – 437.

Müller, Friedrich (Ed.) (1989): Untersuchungen zur Rechtslinguistik. Berlin: Duncker & Humblot.

Müller, Friedrich / Wimmer, Rainer (Eds.) (2001): Neue Studien zur Rechtslinguistik. Berlin: Duncker & Humblot.

Myking, Johan (1999): Norsk fagspråkforskning. In: Christer Laurén / Johan Myking (Eds.): Treng små språksamfunn fagspråk? Nordiske fagspråkstudiar. Bergen: Nordica Bergensia, pp. 17 – 62.

Nielsen, Sandro (1994): The bilingual LSP dictionary: principles and practice for legal language. Forum für Fachsprachen-Forschung. Tübingen: Gunter Narr.

Niemi-Kiesiläinen, Johanna / Honkatukia, Päivi / Karma, Helena / Ruuskanen, Minna (Eds.) (2006): Oikeudet tekstit diskursseina. Helsinki: Suomalainen Lakimiesyhdistys.

Potts, Amanda / Kjær, Anne Lise (2015): Constructing Achievement in the International Criminal Tribunal for the Former Yugoslavia (ICTY): A Corpus-Based Critical Discourse Analysis. In: *International Journal for the Semiotics of Law* (2016) 29, pp. 525 – 555. Online available (doi): 10.1007/s11196-015-9440-y.

Ruthström, Bo (2003): Land och Fæ. Strukturellt-rättsfilologiska studier i fornnordiskt lagspråk över beteckningar för egendom i allmänhet med underkategorier. Lund: Rönnells antikvariat AB.

Salmi-Tolonen, Tarja (2004): Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments. In: *Brooklyn Journal of International Law.* Vol. 29, 2004, No. 3. Brooklyn Law School New York, the USA, pp. 1168 – 1191.

Salmi-Tolonen, Tarja (2005): Persuasion in judicial argumentation: The Opinions of the Advocates General at the European Court of Justice. In: Helena Halmari / Tuija Virtanen (Eds.): Persuasion Across Genres: A linguistic approach. Pragmatics and Beyond. New Series 130. Amsterdam: John Benjamins, pp. 59 – 101.

Salmi-Tolonen, Tarja (2008a): Language and the Functions of Law: A Legal Linguistic Study. Turku: Painosalama.

Salmi-Tolonen, Tarja (2008b): Forensista lingvistiikkaa – kielentutkimuksen oikeudellisia sovelluksia. In: Richard Foley / Tarja Salmi-Tolonen / Iris Tukiainen / Birgitta Vehmas (Eds.): Kielen ja oikeuden kohtaamisia. Heikki E. S. Mattilan juhlakirja. Helsinki: Talentum Oy, pp. 375 – 393.

Salmi-Tolonen, Tarja (2011): Introduction. In: Tarja Salmi-Tolonen / Iris Tukiainen / Richard Foley (Eds.): Law and Language in Partnership and Conflict. A Special Issue of the Lapland Law Review Vol. 1: Issue 1. Rovaniemi: University of Lapland. pp. 1 – 13.

Salmi-Tolonen, Tarja (2013): Legal linguistics as a line of study and an academic discipline. In: Christopher Williams / Girolamo Tessuto (Eds.): Language in the Negotiation of Justice. Contexts, Issues and Applications. Farnham: Ashgate, pp. 259 – 278.

Salmi-Tolonen, Tarja (2014): A Respected Neutral Expert: Arbitration Profile in Focus. In: Vijay K. Bhatia / Giuliana Garzone / Rita Salvi / Girolamo Tessuto / Christopher Williams (Eds.): Language and Law in Professional Discourse. Issues and Perspectives. Newcastle upon Tyne: Cambridge Scholars Publishing, pp. 132 – 152.

Salmi-Tolonen, Tarja / Tukiainen, Iris / Foley, Richard (2011): Preface. In: Tarja Salmi-Tolonen / Iris Tukiainen / Richard Foley (Eds.): Law and Language in Partnership and Conflict. A Special Issue of the Lapland Law Review. Vol. 1: Issue 1. Rovaniemi: University of Lapland.

Searle, John (1969): Speech Acts: An Essay in the Philosophy of Language. Cambridge: Cambridge University Press.

Siltala, Raimo (2003): Oikeustieteen tieteenteoria. Helsinki: Suomalainen Lakimiesyhdistys.

Simonnæs, Ingrid (2012): Rechtskommunikation national und international im Spannungsfeld von Hermeneutik, Kognition und Pragmatik. Forum für Fachsprachen-Forschung 103. Berlin: Frank & Timme.

Simonnæs, Ingrid (2015): Basiswissen deutsches Recht für Übersetzer: Mit Übersetzungsübungen und Verständnisfragen. Forum für Fachsprachen-Forschung 122. Berlin: Frank & Timme.

Simonnæs, Ingrid (2016): Legal language – Pragmatic approaches to its interconnectivity with legal interpretation and legal translation. In: *Meta: Journal des traducteurs*, Vol. 61, No. 2, pp. 421 – 438.

Solan, Lawrence M. / Ainsworth, Janet / Shuy, Roger W. (Eds.) (2015): Speaking of Language and Law: Conversations on the work of Peter Tiersma. New York: Oxford University Press.

Strandvik, Ingemar (2015): On Quality in EU Multilingual Lawmaking. In: Susan Šarčević (Ed.): Language and Culture in EU Law: Multidisciplinary Perspectives. Farnham: Ashgate, pp. 141 – 165.

Strandvik, Ingemar (2017): Evolution of outsourced translations. State of play in the European Commission's Directorate-General for Translation. In: Tomáš Svoboda / Łucja Biel / Krzysztof Łoboda (Eds.): Quality Aspects in Institutional Translation. Berlin: Language Science Press, pp. 123 – 137.

Strandvik, Ingemar (2018): Towards a More Structured Approach to Quality Assurance: DGT's Quality Journey. In: Fernando Prieto Ramos (Ed.): Institutional Translation for International Governance: Enhancing Quality in Multilingual Legal Communication. London: Bloomsbury, pp. 51 – 62.

Tallroth, Paulina (2012): Multilingualism in Finland: A Legal Perspective. In: *International Journal of Language & Law* (JLL) 1 (2012), pp. 33 – 49. Online available (doi): 10.14762/jll.2012.033.

Tiersma, Peter M. (1999): Legal Language. Chicago: University of Chicago Press.

Tiersma, Peter M. / Lawrence Solan (Eds.) (2012): The Oxford Handbook of Language and Law. Oxford: Oxford University Press.

Tuori, Kaarlo (2000): Kriittinen oikeuspositivismi. Helsinki: Werner Söderström lakitieto.

Tuori, Kaarlo (2002): Critical Legal Positivism. Aldershot: Ashgate.

Vogel, Friedemann / Hamann, Hanjo / Gauer, Isabelle (2017): Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies. In: *Law & Social Inquiry.* Online available (doi): 10.1111/lsi.12305.

Välikoski, Tuula-Riitta (2004): The Criminal Trial as a Speech Communication Situation. Acta Universitatis Tamperensis 1011. Tampere: Tampere University Press.

Wirilander, Juhani (2000): Encyclopadia Iuridica Fennica valmistui. In: *Lakimies* 2000, pp. 153 – 154.

Zitting, Simo (1951): Omistajanvaihdoksesta. Vammala: Suomalainen Lakimiesyhditys.

Zweigert, Konrad / Kötz, Hein (1996): Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts. Tübingen: Mohr.

Russian Juridical Linguistics

History and Modernity

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Abstract

The report investigates the results of integrating research on various aspects of linguistics and jurisprudence which is under active development in Russian linguistics. The authors focus on different thematic groups and the tasks Russian juridical linguistics faces with. Thus the authors managed to define the main problems (social, scientific, educational), both fundamental and applied, which have been accumulated in the sphere of intersection of laws and conformity of language and law. The main attention is given to the historical development of the legal linguistics formation in Russia within the functional stylistics as the study of the language of legislation. The leading approach used by the authors was the descriptive method for observation and classification of the investigated material as well as collecting, analyzing and synthesizing the data. The paper might be of interest for linguists, lawyers, speech acts specialists, conflictology experts, forensic psychologists and others.

Keywords: legal linguistics, language and law, linguistic examination, judicial discourse, language policy, concept, legal hermeneutics.

I. Introduction

A characteristic feature of the scientific thought development in the XXI century is the process of integration, the synthesis of knowledge of interrelated subjects, as a result of which new interdisciplinary scientific paradigms are formed. The problems arising at the junction of language and law have long been part of interest of philosophy, jurisprudence, logic, philology and translation studies, many of them require preliminary theoretical insight. The importance of studying the legal aspect of a language has both a universal and a historical character. Linguistic communication as one of the forms of social interaction is often of a conflicting nature, which inevitably gives rise to the need to *legalize* the latter. To a significant extent, this kind of research stimulates the society, in which the phenomena, previously of little demand as a subject of legal proceedings – cases of defamation of honor, dignity and business reputation in connection with slander and insult, conflicts with copyright, advertising, electoral technologies and others – have intensified. The accumulation and deepening of conflict situations under a spontaneous regulation stimulated the processes of *language legalization*, interpersonal relations in connection with the use of language, which are very specific and therefore require special treatment. The liberalization of

Russian public life and especially the actualization of the problem of *human rights* gave rise to conflicts, primarily connected with the protection of person's honor and dignity, where the role of language and speech becomes often decisive. Linguistic aspects of law are barely developed and their increasing number, on the one hand, and the desire to avoid going to court on the other, gives the problems of developing the linguistic aspects of law a heightened social character.

One of the main problems of juridical linguistics, raised in the multi-author book "The concept of honor and dignity, insults and irregularities", headed by A. A. Leontiev (1997), is the interpretation of the concepts of honor, dignity, insults, opinions, information, and defamatory information. It was proved that these concepts, although they are used in the law text, are not strict terms, and this circumstance significantly complicates the court proceedings and the expert activities serving it. In addition, according to a fair comment by N. B. Lebedeva, a number of objective and subjective factors impede a qualitative breakthrough of legal science as a scientific paradigm. One of the factors is "the insufficient competence of linguists in legal matters, and lawyers in linguistic issues" (Lebedeva 2000: 61). However, this forced limitation of professional spheres and interests is increasingly recognized not only by linguists, but also by lawyers, recognizing that "[…] the science of criminal justice, limited to the text study and its dogmatic interpretation, should start to study the real phenomena of the criminal process, such as speech, language, text, argumentation, psychology of speech communication in a criminal court" (Alexandrov 2003: 6).

Thus, the linguistic and legal immaturity of the above-mentioned problems, the lack of *rules of the game* for all defendants, including linguistic experts acting in their own way in different territories of the Russian Federation, determines the undoubted relevance of research devoted to the various aspects of legal studies and systematizing the results, contributing much to their active implementation in legal practice.

In recent decades, the interdisciplinary research at the intersection of jurisprudence and linguistics in Russian science has acquired a systematic character, which makes it possible to state with certainty that a separate scientific paradigm, integrating research on various issues of linguistics and jurisprudence, is actively developing in Russian linguistics.

This research area has received the umbrella term *legal linguistics*, which is, in a broad sense, used by analogy with Western European linguistics, where this term came into being in the 1970s. However, in addition to the term *legal linguistics*, linguistic literature also widely uses the following names: *juridical linguistics*, *legal linguistics*, *judicial linguistics*, *linguistic criminalistics*, *legal speech studies*, *grammar of the law*, etc. (Barabash 2014).

The beginning of the legal linguistics formation in Russia was laid in the last century within the functional stylistics as the study of the language of legislation. Within the studies of the legal form of the official and business functional style, a profound background in the sphere of lexicology, morphology, syntax and legal text structure

was formed. It was that fundamental premise which could provide an active development of a new scientific paradigm.

In the framework of a legal variety of the official business functional style, a number of issues in studying procedural and legislative text have already been dealt with: General rules for creating a normative legal text were developed (rules on word order in a normative statement, on the syntactic structure of the sentence, the number of definitions after the word being defined, the syntactic structure of the sentence of the legal norm, etc.), which are now not only advisory, but also form a basis for linguistic examination of normative acts (Bogolyubov 1973; Zubarev, Statkus / Krysin 1976; Pigolkin 1972; Podgolin 1981; Ushakov 2008, etc.). Nowadays, the study of the stylistic characteristics of legal texts remains relevant in Russian linguistics (J. Bagana / L. M. Krivichkova 2013; Glinskaya 2002; Kirkunova 2004, 2007; Tatarnikova 2002; Shepelev 2002, Yakshimbetova 2015, etc.). At the same time, along with the study of various genres of legal texts, other research paradigms are actively developing in Russian legal science.

II. The main scientific paradigms of Russian legal science

Juridical linguistics is designed to solve a wide variety of issues in the linguistic and legal space, such as linguistic examination of legal documents, working out the recommendations for the development of texts of laws and other legal acts, theoretical and practical research in the field of legal translation, forensic research in defining language strategy and many others. N. D. Golev identifies three most significant aspects that have an impact on the development of Russian legal science:

– obvious social, political and communicative linguistic relevance of a theoretical and practical nature, which expresses itself, in particular, in a social application for the development of legal questions in jurisprudence, mass media, and some spheres of politics;
– active development of the analyzed issues in foreign legal science: In Western European and American literature the legal aspect of the language and the linguistic aspect of law are more widely and diversely represented, with the issues of legal hermeneutics and logic (interpretation, argumentation, linguistic expertise, etc.) being especially intensely developed;
– jurisprudence itself, which has long been developing the linguistic aspects of law, and thus, it raises the question of theoretical and practical interaction of two sciences (Golev 1999).

– In accordance with these aspects, we could define the tasks of Russian juridical linguistics:
– study of conflict (invective, manipulative, aggressive, polyinterpretative) functioning of the language;

– principles of legal regulation of language conflicts;
– study and practical development of legal and linguistic aspects of the state language, language policy;
– development of a legal language (language of law), capable of servicing special legal communication and everyday communication (the subjects of the latter are people and state power);
– development of uniform rules for forensic examination of various types;
– terminological, translation and lexicographical support of legal activity;
– linguistic education of specialists in the field of law.

Within the framework of modern Russian legal science, the following research areas

have been formed:

1) The most significant results have been achieved, undoubtedly, by judicial linguistics, with the main prospects of linguistic criminalistics, linguistic examination in court and judicial speech studies. In modern Russian linguistics, various aspects of judicial discourse are studied: linguistic personality of a judicial speaker, communication strategies and tactics, speech influence, and manipulation.

It should be noted that not all researchers equally define the subject of this scientific paradigm. What is meant by judicial linguistics often depends on what aspect of the language is involved in legal proceedings and on what stage of the judicial process or what specific judicial action requires the involvement of linguistic knowledge. Thus, in particular, the objectives of judicial speech are defined as systematization of existing and obtaining new knowledge about the structure, content, results, participants and components of speech communication to ensure a wide application of special linguistic knowledge in judicial practice (Fundamentals of judicial speech 2003: 7). From this perspective, the issues, such as the study of phonetic, morpho-syntactic, lexical, idiolectic, stylistic, and pragmatic characteristics of the speech acts in legal proceedings; legally fixed rules of judicial communication, oral judicial speech as a means of semantic production, judicial rhetoric and argumentation, are of research interest for judicial speech science.

Coming out for the development of an interdisciplinary scientific doctrine on legal proceedings, A. S. Aleksandrov formulates a number of tasks Russian legal science needs to display certain scientific courage for. They include:

– development of a fundamentally new understanding of legal proceedings, its essence and purpose in society;
– updating the evidence theory, based on the theory of argumentation and rhetoric;
– development of the judicial truth concept and determination of its standards;

– apologetics of the ideology of adversarial pleadings, as a pervasive speech practice;
– pragmatic criticism of the sophistic ethic of adversarial judgments;
– development of a theoretical basis for the questions form and classification to be applied to increase the effectiveness of judicial interrogation, first of all, the problem of leading questions, as a way to control the testimony of the interrogated person;
– study and generalization of the techniques for the production of individual judicial actions, primarily cross-interrogation (Aleksandrov 2003).

In addition, speaking of judicial linguistics, the importance of studying the applied aspects of linguistic and legal knowledge in court, such as conducting phonetic and authorship expertise in court; the methodology of linguistic expertise in defamation cases, cases of extremism and inciting ethnic hatred; linguistic examination of the text of the law should be noted. It is well known that natural language can be used in cases, which are negatively evaluated in the linguistic community-lie, concealment of motives, insults, aggression, etc. Language develops specialized subsystems of the means, which make it possible to speak of them as peculiar functional and semantic language categories with many intrinsic properties such as the multi-level means of expression of a given content, a nuclear peripheral device, etc. Linguistic expertise of language phenomena involved in the legal sphere has long been an urgent need of law in many manifestations. This is due to the quality and extent of the interpenetration of both spheres of social being – language and law. N. D. Golev proposes to consider the above-mentioned facts of linguistic violations, namely, verbal abuse (humiliation of honor and dignity), speech hooliganism (foul language), speech theft (plagiarism), etc., as a special unit of juridical linguistics analysis – "lingojuridema" (Golev 2007: 13).

Several papers of methodological importance have been published in the field of linguistic expertology (Gorbanevsky 2002; Belchikov 2005, and others). In his monograph, Baranov (2009) presented and summarized his own experience in conducting linguistic expertise in the cases of language actions such as slander, insult, incitement of national or religious hatred, and calls for extremist activities that constitute illegal actions under the existing law of the Russian Federation. All these types of expertise were in demand in the Russian system of legal proceedings in the 1990s, when it faced a mass of lawsuits against the media to protect honor, dignity and business reputation. In these cases linguistic experts were regularly turned to.

The legalization of speech conflicts, which correlates with various violations regulated by Russian law, has led to the conflict-generating aspects of communication being increasingly involved in the research interest of legal science. In this regard, the study of the manipulative functioning of language, as well as various aspects of conflict discourse, categories, constituting the discursive space of judicial communication and determining the behavior of judicial discourse agents, based on various

languages, is becoming increasingly important in Russian legal studies (Baranov 2009; Bogomazova 2015; Bulygina et al. 2000; Vorobyova 2018; Garayeva 2015; Dankova 2018; Makarenko 2018; Matveyeva 2004; Safronova 2017; Tretyakova 2003; Shevchenko 2018; and others).

2) The study, including a comparative one of legal thesauruses, the compilation of corpus of the law sublanguage, the issues of developing terminology in various areas of law, the relationship between the legal concept and the term, lexicographical developments. Terminology, traditionally a strong area of Russian linguistics (Leychik 2009), has constantly been of interest both to the linguists (Mikhailovskaya 1981; Reformatsky 1986), and to the legislative technique (Kerimov 1962; Savitsky 1987). A number of fundamental papers on legal terminology has been published (Merkel 2001; Pigolkin 1990; Khizhnyak 1997; Miloslavskaya 2000), including the works analyzing the legal terminology of the Russian language and a number of European languages (Anisimova 2018; Bushev 2010; Vlasova 2015; Gamzatov 2007; Gorbunova 2017; Sandalova 2010; Cherekayev 2004; etc.). The intensification of research on the term systems of individual branches of law is primarily due to social changes in society, the emergence of new legal concepts and relations, the specification of Russian law, the urgent need to streamline, unify and clarify legal terms, and publish reference books.

In addition, recent studies devoted to the lexical systems of special sublanguages and sociolects used by agents of legal discourse, including the employees of state law enforcement agencies are undoubtedly of great interest. The latter usually include sublanguages and sociolects of the Ministry of Internal Affairs and the police, as well as related special anti-criminal structures. As an example, we can refer to the work of N. S. Avetyan, who analyzes the substandard lexical nomination in the police sublanguage in Great Britain in the late XVI – early XXI centuries and in the US police sublanguage of the late XVIII – early XXI centuries in sociolinguistic, structural and semantic aspects (Avetyan 2015: 21).

3) Legislative/legal technique and linguistic rules for drafting a legislative document, the embodiment of semantic criteria of uniqueness, clarity and accuracy in the language of the law, problems of comprehensibility and limits of interpretation of the normative text (Legislative Technique of Modern Russia 2001; Problems of Legal technique 2000; etc.). How should the law be written, so that it can be considered clear? This question is important because only with absolute clarity of the language of law, a subject of law can be legally liable under a legal act. It should be noted that in the world practice there are two points of view on this problem. One of them is that the language of legal acts is considered as a special legal language that has little to do with the literary language, and the other is that the language of law can be viewed as a type (style) of the general literary language. In the works of Russian reseachers on the issue, there is a special antinomy of the two purposes of legal texts: for professionals with a special type of thinking (legal) and a special language (legal), and for ordinary law-abiding citizens who can understand legal texts on the basis of the

units and mechanisms of the natural Russian language (folk legal hermeneutics). At the same time, along with the problem of the clarity of the legislative language, Russian legal experts recognize the need to develop a scientifically based methodology for conducting an examination of a legal text on its corruption-based nature. There should be carried a joint analysis of the laws by which lawyers themselves have already identified cases of corruption. This issue is associated with the development of language rules for the formulation of norms (criteria for clarity, accuracy, unambiguity, etc.), which lawyers traditionally refer to the legislative technique (Kerimov 1962; Pigolkin 1990). The importance of a deeper linguistic study of this perspective of law-making is today recognized by an increasing number of lawyers (Chigidin 2002; Kryukova 2003; Tsarev 2002; Lukovskaya 2005).

4) Legal translation and interpretation for legal proceedings, including methods of teaching legal and judicial translation, as well as professional aspects of a sworn translator in different court systems.

The provision that legal translation should be based on a comparison of the legal systems of the country of the first language and the country of the target language is no longer challenged in translation studies. Legal professionals, working in the field of intersection of European legal linguistic cultures, have already published comparative studies on this issue (Engberg 1997; Pommer 2006; etc.). Despite the fact that the study of the genres of a Russian legal text in comparison with other legal linguistic cultures has not yet received due attention in the framework of Russian legal studies, recently there has appeared research on this issue, as well as analysis of the features of translation of legal terminology into various languages (Voropaeva 2011; Ibragimova 2017; Monogarova 2017; Nekrasova 2013; Klyushina / Zdor 2016; Sharipova 2017; etc.).

5) Regulation of social and linguistic intrastate and intergovernmental relations in a federal state (problems of the state language, language of international communication, official status of languages and issues of linguistic policy in multi-ethnic states, the rights of linguistic minorities, etc.).

After the collapse of the Soviet Union, the debate about linguistic rights and linguistic policy in the Russian Federation and its subjects became aggravated (Baychorov 2016; Benedict 2003; Dyachkov 1996). In addition to the legal order issues (on the status of languages in the territory of the Russian Federation, on the legal regulation of their use in various areas of communication), the problem of legal vs. linguistic clarification of the concepts *state language*, *official language*, *title language* became important. (Pigolkin 1992; Trushkova 1994). It is significant that in searching for answers to complex (especially for some regions of Russia) language policy issues, Russian legal linguistics refers to the experience of other multinational states, as well as the European Union that has a specific communicative situation of multilingualism (Gulinov 2015; Kaplunova 2017; Katunin 2008, 2010; Kurakina 2015; Rekosh 2018; Seliverstova 2017; etc.). So, in particular, Gulinov D. Yu., on the basis of the conducted study of the language policy of France, offers a two-dimen-

sional scheme as a model of the language policy of modern society including the vertical axis (extensive interaction of state and public institutions through education, media, entertainment) and the horizontal axis (various types of discourse in their genre concretization, which language policy specifically manifests itself) (Gulinov 2015: 6). The activity of the institutions of language policy is based, in the author's opinion, on prescriptions, which are proposed to be classified according to three main criteria: the nature of the impact, the scope of distribution, and the intended recipient. Depending on the nature of the impact, obligatory and optional prescriptions are contrasted. Depending on the distribution, centralized and local prescriptions are contrasted, and, in accordance with the intended recipient, prescriptions targeted at an institutionalized audience and the general public are contrasted.

S. Kurakina, based on the analysis of the linguistic situation that has developed in the context of legal multilingualism of the European Union, notes that the compromise between the two legal systems – Anglo-Saxon and Romance-Germanic – has led to a particular nature of the European legal terminology, including multi-element neologisms, the main function of which is to fill the lacunae in the language of the EU law (Kurakina 2015: 23).

6) Intensive development of the cognitive-discursive paradigm in Russian linguistic science marked a number of papers on the analysis of the cognitive nature of legal terms, on the structure of legal concepts in the minds of individual ethnic communities, and on socio-and psycholinguistic aspects of inadequate use and interpretation of legal terms which ultimately lead to communicative failures.

T. S. Nizgulov's research is devoted to the analysis of the structure of hybrid concepts, assigned to special legal terms in the minds of Russian and English speakers with different social characteristics and is based on the conducted experiment on the simple interpretation of legal terms. The author concludes that:

> Native speakers using a special legal language, being not specially educated, contribute the components of everyday concepts to the structure of the legal concept: hybrid concepts consisting of special and everyday concepts are formed in theirminds (Nizgulov, 2015: 5).

According to the author, the process of hybridization is caused by a number of reasons- from the history of the society to specific social factors influencing an individual. Work status, gender, age, and education are only small parts of such social factors, but they have the most obvious influence on the understanding and interpretation of special legal language terms in England and Russia.

Linguistic and cultural analysis of the key words in the Russian *legal* picture of the world, such as justice, truth is close to the subject of cognitive-discursive research of legal concept spheres of various ethnic communities. A number of works (Arutyunova 1991; Zaliznyak et al. 2012; Znakov 1999 Ryabtseva 2003; Takhtarova / Shakhovsky 2008; etc.) shows the specific character of these concepts' functioning in the Russian linguistic culture, their relation to universal legal values. Let us dwell on the dichotomy of truth, as an objective absolute, and truth, as a reflection of truth in man,

which has become traditional in Russian linguistic literature, devoted to the study of cultural dominants in Russian linguistic culture, in details. Russian culture makes a distinction between these concepts, denoted in European languages, mainly by a single word *Wahrheit, truth*, and indicates the existence of two words *truth* and *right* in the Russian language. *Truth*, unlike *right*, is variable, subjective, ambivalent and graded. Giving an assessment to any fact relating to the addressee, the speaker has to take into account not only the truth factor of his assessments, but the interlocutor's reaction to the method of verbalization of the latter as well. Telling the truth is ruled by the ethical principles of the speaker, and first of all, by the notions of what form and under what circumstances one can speak to another person. In accordance with this, the speaker chooses a *deal* of truth that would be appropriate in this particular situation of communication (Takhtarova / Shakhovsky 2008).

Dichotomy of legality and justice in Russian culture is of the same character. The juxtaposition of justice and legality, which is impossible to express in many languages, is extremely important for the Russian language. In case of conflict between law and justice, justice becomes more important for Russian culture. One of the important features of Russian culture is that justice belongs to the emotional sphere: there is a *sense of justice* in the Russian language. At the same time, justice is by no means the highest value for the Russian language picture of the world: "Kindness and mercy are much higher than justice" (Zaliznyak et al. 2012).

Thus, summing up the analysis of the main trends in Russian legal science, we can confidently state a wide range of research interests for scholars and practitioners studying various aspects of language and law interaction in modern Russia, which, in turn, led to the formation of a number of scientific schools dealing with legal issues. Here are the most significant of them.

III. Leading Scientific Schools of Russian Juridical Linguistics

1) A significant contribution to the formation and development of the Russian juridical linguistics was made by the *Siberian School of Juridical Linguistics* (Kemerovo-Barnaul-Novosibirsk) under the guidance of Prof. N. D. Golev. The term *juridical linguistics* itself was first introduced into scientific use in 1999 by the research team of the *Laboratory of Legal Research and Speech Development* of the Altai State University and the regional Association of linguists-experts and teachers *Lexis* (http://lexis.webservis.ru, 30.01.2019), which became the Russian center, accumulating juridical linguistic and linguistic legal fundamental research and practical activities. Siberian juridical linguists conduct intensive practical activities in the field of linguistic expertise with a subsequent theoretical understanding of empirical data in different areas of juridical linguistics: linguistic aspects of law considering the most topical issues of legislative technology and legal hermeneutics (interpretation of the law); linguoconflictology (investigation of the invective and manipulative function

of the language); linguoexpertology (theoretical grounds for expert activity and development of methods for investigating various types of disputed texts); issues of the development of state language; linguoecology; legal rhetoric; legal linguodidactics; linguomarketology. The School conducts active publishing and scientific-organizational work: It publishes the interuniversity collection of research papers "Juridical Linguistics" and organizes online conferences on juridical linguistics.

2) The representatives of the Moscow School of Forensic Linguistics (Moscow State University), founded by Prof. L. V. Zlatoustova, is engaged in forensic research and examination of phonograms of oral speech and written texts for the needs of legal proceedings. They laid the foundation for a phonoscopic examination, which is appointed by the court in order to establish the speaker's personality by voice and speech recorded on the phonogram, to identify signs of editing and other changes introduced into the phonogram during or after the end sound recording, determination of conditions, circumstances, means and materials of sound recording, as well as other facts that have the value of judicial evidence. The system of stratified speech stratification, division of a continuous speech stream into discrete units: phrase, utterance, syntagma, phonetic word, and sound type (sound segment), is the basis of a modern approach and methods of identifying a speaker by voice and speech. It is developed by L. V. Zlatoustova. The classification of linguistic identification signs and methods for their identification in sounding speech proposed by her became the foundation for the creation of modern automated speaker identification systems based on oral speech. The Schools' representatives are engaged in forensic research and examination of phonograms of oral speech and written texts for the needs of legal proceedings. With the spread of digital means of fixing verbal information and the practical needs, this dynamically developing direction significantly strengthened the development of new expert methods, expanded research and practical expert activities.

Tasks of developing a scientifically based methodology for the examination of the law texts are of a particular interest for legal specialists. These issues are related to the development of language rules for the formulation of norms (criteria for clarity, accuracy, unambiguity, etc.), which are traditionally referred to the legislative technique. The most systematic studies on legislative technology are conducted in the Nizhny Novgorod Fundamental and Applied Research Center *Legal Engineering* under the guidance of Prof. V. M. Baranova (http://jurtech.org, 30. 01. 2019). The Center publishes the journal of the same name and regularly holds international scientific conferences.

3) The problems of developing a scientifically grounded methodology for examining the legal language generate the special interest of juridical linguists. This problem is associated with the development of language rules for the formulation of norms (criteria for clarity, accuracy, uniqueness, etc.), which the lawyers traditionally attribute to legislative technology. The most systematic studies on legislative technology are conducted in the *Legal Technology Nizhny Novgorod Research and Development Center* under the guidance of Prof. V. M. Baranov (http://jurtech.org,

30.01.2019). The Center publishes the journal of the same name and regularly organizes international scientific and practical conferences.

Public organizations, bringing together scientists, experts and practicing lawyers, have been created in different regions of Russia recently. Their tasks are: examining texts of various topics; introducing uniform science-based criteria and methods of linguistic examination into practice for the workers of judicial and law enforcement agencies; development of speech culture for PR and advertising companies, media and Internet communications. As a rule, the creation of such associations is initiated by scientists and teachers of higher institutions who are engaged in the development of various aspects of juridical linguistics and who are interested in the practical application of their theories. In 2010 the *Association of Linguistic Experts of the South of Russia* was established in the Southern Federal University (http://www.ling-expert.ru, 30.01.2019), the *Voronezh Association of Linguistic Experts* was established upon the initiative of scientists of the Voronezh State University (http://sterninia.ru/index.php/vael). The creation of the *Guild of linguistic experts* in documentary and information disputes in Moscow in 2001 played a special role in the development of the practice of juridical linguistic expertise. The first chairman of the board of the Guild is Doctor of Philology, Prof. M. V. Gorbanevsky (http://sterninia.ru/index.php/vael, 30.01.2019).

The activities of these and other similar public associations of linguists and practicing lawyers are aimed at summarizing the existing experience in solving theoretical and practical issues of linguistic examination, promoting the development of linguistic expert activity, improving the linguistic culture of investigation and legal proceedings, enhancing the quality of research, advisory and expert services in a separate region. The didactic aspect of language and legal studies is an important activity area for public associations of specialists dealing with the problems of language and law. One of the main tasks of these organizations is to develop and introduce innovative educational programs on linguistic examination for future philologists, increasing their professional level and legal literacy. This issue was raised in a separate, fourth edition of the collection of *Juridical Linguistics* called "Legal and linguistic subjects in law, philology and journalist faculties of Russian universities in 2003" (Juridical Linguistics 2003). Its articles convincingly justify the demand for legal educational services in a broad educational field, examples of training courses on language and legal problems, included in the training programs of both lawyers and philologists/linguists in Russian universities. It should be noted that the classical law school lays special emphasis to language training, the basics of rhetoric competence, argumentation, and relevant quoting, which seem impossible without a broad outlook and certain moral values. Future lawyers training programs in Russian universities traditionally include such courses as *Speech culture of lawyers*, *Professional speech of lawyers*, *Legal rhetoric*, *Judicial eloquence*, etc., which supplemented special legal training of future lawyers. According to K. M. Levitan, professional competence of lawyers is necessarily connected with communicative competence, which includes: knowledge of language means and communication situations, command

of speech skills that allow a lawyer to achieve effectiveness in communication and interaction, to build and understand various texts, and to use language and speech means adequately in relation to specific conditions and tasks of communication. Communicative competence means a body of knowledge in the field of communicative subjects (pedagogy, psychology, conflictology, logic, ethics, Russian and foreign languages, rhetoric, speech culture, etc.), communicative and organizational skills, assertiveness, empathy, self-control, and culture of verbal and non-verbal interaction (Levitan 2005: 78).

Training courses in linguistic examination, forensic linguistics and juridical linguistics are more actively incorporated into the curricula of undergraduate and master's programs not only in jurisprudence, but also in philology, journalism and linguistics, special training programs in linguistic examination are offered in an additional education. So, courses in linguistic examination are included in the master's degree programs in the Altai State University (Barnaul), the Southern Federal University (Rostov-on-Don), Kazan (Volga Region) Federal University (Kazan), Voronezh State University, Kemerovo State University and a number of other Russian universities.

IV. Concluding remarks

In conclusion, mention should be made of the fact many advanced topics (social, scientific, educational) require entering the field of research, both basic and applied. Russian juridical linguistics is relatively new, and is currently undergoing a period of active development, but recently most of the studies of the law language have gradually changed their accents. Not just the formal studies of a special language in terms of its terminological composition or syntactic structure enter into the foreground, purely language studies are replaced by interdisciplinary studies that unite philologists and lawyers, representatives of science and higher education, administrative authorities and journalists, practitioners and academics.

Juridical linguistics as an interdisciplinary research area closely interacts with a number of linguistic disciplines: linguoconflictology, communication studies, hermeneutics, terminology, sociolinguistics, linguoecology, linguistics of lies, speech act theory, and non-linguistic disciplines: jurisprudence, general conflictology, knowledge engineering, forensic psychology, expertology and others.

The language of law is explored as a social phenomenon, and the issues that legal science deals with are multifaceted and complex. Some of them require legal and linguistic competence, whereas others need a deep theoretical understanding and practical development. However, it can be concluded that juridical linguistics is at the stage of active research of the language of law around the world.

V. Literature

Alexandrov, Alexandr (2003): Introduction to Forensic Linguistics. In: Criminal Procedure (http://kalinovsky-k.narod.ru/b/aleksandrof_ling.pdf, 08. 10. 2018).

Anisimov, Anton (2001): Civil Law Protection of Honor, Dignity and Business Reputation under the Laws of the Russian Federation. In: *Training manual for students of higher.* ed. inst. Vlados.

Anisimova, Alexandra (2018): Formation of the English System of Criminal Law Terms and Reflection of This Process in Russian Translation. Abstract Cand. Sc. (Philology) Dissertation. Moscow.

Arutyunova, Nina (1991): Truth: Background and Connotation. In: *Logical analysis of language. Cultural concepts.* Moscow: Science, pp. 21 – 30.

Avetyan, Narine (2015): Substandard Lexical Nomination in the English Police Sublanguage (Socio-Lexicological Approach). (Philology) Dissertation. Pyatigorsk.

Baghana, Gerom / Krivchikova, Nelya (2013): Stylistic Characteristics of a Legal Text. Belgorod: Scientific Gazette of Belgorod State University. Series: Humanities. No. 6 (149), Issue 17, pp. 49 – 53.

Barabash, Olga (2014): Juris-linguistics: Origins, Problems, Prospects. Penza: Bulletin of Penza State University, No. 2 (6), pp. 14 – 18.

Baranov, Anatoliy (2009): Linguistic Examination of the Text: Theory and Practice. Training manual. Moscow: Flinta.

Baranov Vladimir (Ed.) (2001): Legislative Technique of Modern Russia. N. Novgorod: Publishing House of the N.Novgoroad Police Academy.

Baychorov, Magomed (2016): The Specifics of Functioning of the Modern Karachai-Balkarian Language in the Context of the Language Situation. (Philology) Dissertation, Nalchik.

Belchikov, Yulij / Galyashina, Elena / Gorbanevsky, Mikhail (2005): Controversial Media Texts and Lawsuits. Moscow: Prestige.

Benedictov, Nikolaj (2003): On the Legal Basis of the State Language Policy. (http://gramota.ru/biblio/magazines/mrs/28_492, 14. 02. 2019).

Bikeikina, Natalya. (2011): Linguistic Conflict Management and Juridical Linguistic Study of a Proper Name. (Philosophy) Dissertation. Novosibirsk.

Bogolyubov, Sergey (1973): Language of Law Enforcement Acts. Moscow: Publishing House Soviet Justice, pp. 20 – 21.

Bogomazova, Victoriya (2015): Communicative Category “Alien” in Judicial Discourse. (Philology) Dissertation. Volgograd.

Brinev, Konstantin (2009): Theoretical Linguistics and Judicial Linguistic Expertise Text. Barnaul: Publishing House of the Altai State Pedagogical Academy.

Bulygina, Elena / Steksova Tatyana (2000): Manifestation of Linguistic Aggression in the Media. Juridical Linguistics-2: Russian Language in its Natural and Legal Being. Barnaul: Publishing House of the Altai State Pedagogical Academy, pp. 169 – 178.

Bushev, Alexandr (2010): Terminology Formation in Legal Discourse and Methods for Translating Terms. Juridical Linguistics-10: Linguistic Conflict Management and Legal Studies. Barnaul: Publishing House of the Altai State Pedagogical Academy, pp. 20–24.

Cherekayev, Alexej (2004): Legal Terminology in Russian Public law: Application and Improvement. (Philology) Dissertation. Moscow.

Chigidin, Boris (2002): Legal Equipment of the Russian Legislation. (Law) Dissertation. Moscow.

Dankova, Natalya (2018): Discursive Strategies for the Representation of the Judiciary in the Genres of Print Media. (Philology) Dissertation. Saratov.

Dyachkov, Mark (1996): Minority Languages in Polyethnic (Multinational) States, Moscow: INPO.

Engberg, Jan (1997): Konventionen von Fachtextsorten. Kontrastive Analysen zu Deutschen und Dänischen Gerichtsurteilen. Tübingen: Gunter Narr Verlag.

Galyashina, Elena (2003): Judicial Speech Principles. Moscow: STENSI.

Galyashina, Elena (2004): Professor L.V. Zlatoustova: Role and Importance of Her Work in the Formation and Development of Linguistic Forensic Science and Judicial Verbal Studies. In: *Language and Speech: Problems and Solutions.* Moscow: MAKS Press, pp. 26–40.

Gamzatov, Magomed (2007): English and Russian Legal Terminology in a Comparative Aspect. In: *Bulletin of St. Petersburg University.* St. Petersburg, pp. 124–130.

Garayeva, Leila (2015): Language Means of Verbal Aggression of Professional Subcultures (case study of Russian and English texts). (Philology) Dissertation. Kazan.

Glinskaya, Nelli (2002): Legal Terminology in Different English Functional Styles. (Philology) Dissertation. Moscow.

Goletiani, Liana (2011): Recent Developments in Legal Linguistics in Russia and Ukraine. In: *Studi Slavistici* (VIII), pp. 241–262.

Golev, Nikolai (1999): Articulation of Issue at the Intersection of Language and Law. In: *Legal studies.* Barnaul, pp. 4–11.

Golev, Nikolai (2004): Specifics of the Law Language in the System of the Common Russian Language and its Legal Functioning. In: *Juridical Linguistics-5:* Legal Perspectives of the Language and Linguistic Perspectives of Law. Barnaul, pp. 39–57.

Golev, Nikolai (2007): Self-Determination of Legal Linguistics. In: *Legal Studies. Barnaul*, pp. 7–14.

Gorbanevsky, Mikhail (Ed.) (1997): The concept of honor and dignity, insults and irregularities, Moscow: Medeya.

Gorbanevsky, Mikhail (2001): Choice of Words, Courts and Expertise. In: *Profession – Journalist*, pp. 48–53.

Gorbanevsky, Mikhail (2002): Word Price: Experience of Linguistic Examinations of Media Texts in Lawsuits on Claims for the Protection of Honor, Dignity and Business Reputation. Moscow: Galeria.

Gorbanevsy, Mikhail (Ed.) (2003): Fundamental of Judicial Speech. Moscow: STENSI.

Gorbunova, Karolina B. (2017): Formation of the Terminological System of the Subject Area "Fight Against Drugs" (Italian texts). (Philology) Dissertation. St. Petersburg.

Gubaeva, Tamara (1989): The Language and Style of the Sentence. In: *Soviet Justice.* Moscow, pp. 31 – 32.

Gulinov, Dmitry (2015): Discursive Characteristics of the Language Policy of Modern France. (Philology) Dissertation. Volgograd.

Ibragimova, Karine (2017): Interlingual Lacunae in Legal Discourse and Linguistic and Cultural Aspects of Their Elimination (case study of English and Russian translations). (Philology) Dissertation. Moscow.

Juridical Linguistics-4 (2003): Legal and Linguistic Disciplines in Law, Philology and Journalism Faculties of Russian Universities. Barnaul: Publishing House of the Altai State Pedagogical Academy.

Kalinina, Natalya (1998): Linguistic Examination of Bills in the State Duma. In: *Preparation and Adoption of Laws in a Legal State.* Moscow.

Kaplunova, Mariya (2017): Language Policy and Functional Development of Languages in the People's Republic of China. (Philology) Dissertation. Moscow.

Katunin, Dmitriy (2008): The Status of Languages in Modern Serbian Legislation as the Implementation of the State Language Policy. In: *Tomsk State University Bulletin.* Tomsk, pp. 140 – 153.

Katunin, Dmitriy (2010): Current Croatian Language Laws: Formation and Trends. In: *Tomsk State University Bulletin.* Tomsk, pp. 18 – 44.

Kerimov, Djangir (1962): Codification and Legislative Engineering. Moscow: Gosyurisdat.

Khizhnyak, Sergey (1997): Anglo-American and Russian Terminology of Law (Sociolinguistic Perspective of Origin and Development). Saratov: SGAP.

Kirkunova, Larissa (2004): Functional-Semantic Types of Speech in the Perspective of Intra-Branch Differentiation of Investigative-Judicial Texts. In: *Stereotyping and Creativity in the Text. Interuniversity collection of scientific papers, VII*, Perm, pp. 146 – 156.

Kirkunova, Larissa (2007): Formal Business Texts as Part of Functional and Semantic Types of Speech. Cand. Sc. (Law) Dissertation. Perm.

Klyushina, Alyona / Zdor, Anna (2016): Problems and Methods of Translating English Terms in Legal Texts. In: *Volga Pedagogical Bulletin*, pp. 54 – 59.

Kryukova, Elena (2003): Language and Style of Legislation. (Law) Dissertation. Moscow.

Kurakina, Svetlana (2015): Formation of the Language of Intermediary Legal Communication of the Institutions of the European Union in the Context of Multilingualism. (Philology) Dissertation. Moscow.

Lebedeva, Natalya (2000): Metalinguistic Consciousness of Lawyers and the Subject of Legal Research. In: *Legal Studies.* Barnaul, pp. 49 – 64.

Levitan, Konstantin (2005): Competent Approach in Legal Education. In: *Burning Questions of Modern Law and Legal Education.* Yekaterinburg, pp. 74 – 82.

Leychik, Vladimir (2009): Terminology: Subject, Methods, Structure. Moscow: Librokom.

Lukovskaya, Djenevra (2005): Legal Techniques: Theory and History Questions. In: *Proceedings of the Interuniversity Research and Theory Conference.* St. Petersburg.

Makarenko, Guldar (2018): Conflict Text as an Object of Linguistic Study: Structural-Semantic and Pragmatic Perspectives, (Philology) Dissertation. Moscow.

Malyukova, Elena (2005): Legal Terminology in System-Centric and Anthropocentric Perspectives. (Philology) Dissertation. Biysk.

Matveyeva, Olga (2004): The Functioning of Conflicting Texts in the Legal Sphere and Features of its Linguistic Study: Case Study of the Texts Involved in Legal Practice. (Philology) Dissertation. Barnaul.

Merkel, Svetlana (2001): Semantic-Distributive Verification of a Terminological Mark. (Philology) Dissertation. Volgograd.

Mikhailovskaya, Nataliya (1981): Terminology and Culture of Speech. Moscow: Science.

Miloslavskaya, Darya (2000): System Description of Legal Terminology in Modern Russian. (Philology) Dissertation. Moscow.

Monogarova, Alina (2017): Modern English-speaking Discourse of Mediation: A Terminological Component and a System of Pragmatic Strategies. (Philology) Dissertation. Pyatigorsk.

Nekrasova, Tamara (2000): Features of the Translation of Legal Terminology from Russian into English. (Philology) Dissertation. Moscow.

Nizgulov, Timur (2015): Hybridization of Legal Concepts in the Minds of Speakers of English and Russian. An Experimental Study. (Philology) Dissertation. Perm.

Osakve, Christopher (2011): Canons of Competent Legal Translation: Reflections of a Comparativist-Civilist on the example of Comparative Civil Law. In: *Law and Administration. 21st Century*, pp. 61–65.

Pigolkin, Albert (1972): The Main Features of the Language of Legislation as a Special Style of Literary Speech. In: *Proceedings of MSRI of Soviet Legislation.*

Pigolkin, Albert (1990): Language of Law. Moscow: Legal Literature Press.

Pigolkin, Albert (1992): Legislation on the Languages of the Russian Federation: Experience, the Problem of Development. In: *The language situation in the Russian Federation.* Moscow, pp. 22–23.

Podgolin, Evgeny (1981): On the Style of Judicial Speech. In: *Soviet Justice*, pp. 16–23.

Pommer, Sieglinde (2006): Rechtsübersetzung und Rechtsvergleichung. Translatologische Fragen zur Interdisziplinarität. Frankfurt am Main: Peter Lang.

Problems of Legal Technology: A Collection of Articles. (2000). Nizhny Novgorod: Publishing House of the N .Novgoroad Police Academy.

Reformatsky, Alexandr (1986): Modern problems of Russian terminology. Moscow: Education.

Rekosh, Karine (2018): French as a Verbalizer of Western European Legal Knowledge (From the Beginnings to the Discourse of European Union Law). (Philology) Dissertation. Moscow.

Ryabtseva, Nadezhda (2003): Truth in the Subjective-Modal Context. In: *Logical Analysis of the Language.* Selected. 1988–1995. Moscow, pp. 669–684.

Safronova, Tatyana (2017): Verbalization of the Mechanisms of Suggestive Influence in Judicial Discourse (case study of English texts). (Philology) Dissertation. Krasnodar.

Sandalova, Nataliya (2010): Variological Perspectives of Legal Terms in Russian and English: Case Study of Terminographic Sources. (Philology) Dissertation. Ekaterinburg.

Savitsky Valery (1987): The language of procedural law. Terminology issues. Moscow: Science.

Seliverstova, Oxana (2017): Language Policy as a Tool for the Implementation of "Soft Power" in the Political Discourse of the 21st Century (case study of Russian, American and Chinese Media). (Philology) Dissertation. Veliky Novgorod.

Sharipova, Rosa (2017): Modern Regulations: Documentary and Speech Parameters. (Philology) Dissertation. Volgograd.

Shepelev, Artur (2002): Legal Language as an Independent Functional Style. (Law) Dissertation. Tambov.

Shevchenko, Marina (2018): Argumental Schemes and Their Linguistic Indicators in the Legal Text / (Philology) Dissertation. Rostov-on-Don.

Takhtarova, Svetlana / Shakhovsky, Viktor (2008): Meiotic Forms of Deviation from the Truth. In: *Logical Analysis of language.* Between a lie and a fantasy. Moscow: Indrik, pp. 334–344.

Tatatrnikova, Natalya (2002): Legal Protocol as secondary speech genre. In: *Juridical Linguistics-3.* Barnaul

Tretyakova, Vera (2003): Speech Conflict and Harmonization of Communication. Habil. (Philology) Dissertation. Ekaterinburg.

Trushkova, Yuliya (1994): Description of Modern Sociolinguistic Terminology ("State Language"). In: *Problems of Language Life of the Russian Federation and World Countries.* Moscow.

Tsarev, Alexej (2002): Rules of Legislative Technique Used in Legal Text Writing. In: *Representative Power*, pp. 29–33.

Ushakov, Alexandr (1961): The Concept of Legal Technology and its Main Problems. In: *Proceedings.* Perm University.

Ushakov, Alexandr (2008): Selected: Essays on Soviet Legislative Stylistics. Right and Language. Moscow: RAP.

Vlasova, Lidia (2015): Ways of Forming a Derived Value in Legal Terminology (case study of the French Penal Code in French and English languages). (Philology) Dissertation. Saint-Petersburg.

Vorobyova, Marina (2018): Language-Related, Conceptual and Functional Characteristics of Oral Arguments in the US Supreme Court as a Type of Judicial Discourse. (Philology) Dissertation. Moscow.

Voropaeva, Victoria (2011): Cognitive and Pragmatic Analysis of the Professional Vocabulary of Audit (on the Material of the Audit Discourse in Russian and Italian). (Philology) Dissertation. Chelyabinsk.

Yakshimbetova, Nina (2015): Linguistic Features of Court Speeches by Famous Russian Lawyers. (Philology) Dissertation. Kazan.

Zaliznyak Anna et al. (2012): Constants and variables of the Russian language Picture of the World. Moscow: Languages of Slavic cultures.

Znakov, Vladimir (1999): Psychology of Understanding the Truth. St. Petersburg.

Zubarev, Valentin / Statkus, Vladimir / Krysin, Leonid (1976): Language and style of the indictment. Moscow: Legal literature.

Language, Law and Justice in a Globalized World

Multilingual and Supranational Law in the EU: 'United in Diversity' or 'Tower of Babel'?

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Abstract

In the world of international organisations, the highly developed multilinguism of the EU is unique. This contribution provides an overview of the rules about language governing the communications between the EU institutions and Member States or citizens on the one hand and the intra- and interinstitutional communications of the EU on the other. It looks at the working of this language regime in practice and at the difficulties inherent in drafting and interpreting multilingual supranational law. The status of English after the Brexit is investigated. The final part discusses a proposal to make the language spoken and understood by the greatest number of EU citizens the unique working language of EU institutions and to abandon the principle of equal authenticity of all 24 language versions of legislative acts of the EU in favour of just one authentic version (weak multilinguism).

Keywords: Multilingualism, EU, ECJ, supranational law, drafting, interpreting, authentic language

I. Introduction

The project of European integration started with a monolingual treaty, the Treaty establishing the European Coal and Steel Community signed at Paris in 1951.[1] Its language was French. The text of this treaty is silent about languages. In practice, the Coal and Steel Community used four languages: German, French, Italian and Dutch.[2]

The Treaty establishing the European Economic Community and the Treaty establishing the Atomic Energy Community signed at Rome in 1957 were already multilingual. Both contained a provision according to which the treaty was drawn up in a single original in the German, French, Italian and Dutch languages, all four texts being equally authentic.[3]

[1] United Nations, Treaty Series, vol. 261, p. 140.

[2] See the language versions of the Official Journal.

[3] Article 248 Treaty Establishing the European Economic Community (United Nations, Treaty Series, vol. 298, p. 11); Article 225 Treaty Establishing the European Atomic Energy Community (United Nations, Treaty Series, vol. 298, p. 167), English translation made by the "Interim Committee for the Common Market and EURATOM".

Nowadays, the corresponding provisions of the Treaty on European Union ('TEU')[4] and the Treaty on the Functioning of the European Union ('TFEU')[5] list no less than 24 languages, namely the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages.

This multilingualism is unique compared to other international organisations. The Council of Europe, for example, is based on a statute drawn up in just two languages: English and French.[6] It comprises 47 member states at present.[7] The United Nations Organisation with its 193 member states[8] has only six official languages: Arabic, Chinese, English, French, Russian and Spanish.[9]

The highly developed multilingualism of the European Union is closely related to the fact that it is not just an international organisation but a supranational organisation with unique characteristics. As the European Court of Justice put it in the landmark judgment *Van Gend en Loos*[10] with reference to the European Economic Community, from which the European Union emerged: "[T]he Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage."[11] In Case *Costa v ENEL*[12], the European Court of Justice proclaimed another fundamental principle of the Community legal order, namely the precedence of Community law: It held that "the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question".[13]

[4] Article 55 TEU (OJ C 202, 7.6.2016, p. 13).

[5] Article 358 TFEU (OJ C 202, 7.6.2016, p. 47), according to which the provisions of Article 55 of the TEU shall apply to the TFEU.

[6] Statute of the Council of Europe (United Nations, Treaty Series, vol. 87, p. 103).

[7] http://www.coe.int/en/web/portal/47-members-states.

[8] http://www.un.org/en/member-states/index.html.

[9] http://www.un.org/en/sections/about-un/official-languages/index.html.

[10] Judgment of 5 February 1964, Van Gend & Loos, 26–62, EU:C:1964:1.

[11] [1963] ECR 12.

[12] Judgment of 15 July 1964, Costa, 6–64, EU:C:1964:66.

[13] [1963] ECR 594.

The citizens of the European Union must be able to know EU law because it affects them directly and prevails over national law.[14] The multilingualism of the European Union has to be seen in this context.

In the following, I shall first provide an overview of the present language regime of the EU, focussing on its key legislative bodies and the Court of Justice of the European Union ('ECJ')[15,16]. Then, I shall look at the difficulties inherent in drafting and interpreting multilingual supranational law. Finally, I shall discuss perspectives of the present system.

II. The present language regime of the EU

1. Fundamental rights

According to Article 22 of the Charter of Fundamental Rights of the European Union[17], the Union shall respect linguistic diversity. Article 21 of this charter prohibits any discrimination based on language. This prohibition does not only bind the EU but also its Member States. However, in the following, the focus will be on the EU as such.

2. The basic regulatory framework of the EU language regime

According to Article 342 TFEU, the rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council acting unanimously by means of regulations.

Article 118 TFEU contains a special provision on languages which allows the Council, acting unanimously, to establish special language requirements for the European intellectual property rights.[18]

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[14] The European Court of Justice has consistently held that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. For the effects directives have in such cases, see judgment of 19 April 2016, *Danks Industri*, C-441/14, EU:C:2016:278, paragraphs 29 – 33 and case-law cited.

[15] The more general abbreviation ECJ is used here instead of CJEU because rulings given prior to the change of the Court's official name from Court of Justice of the European Communities to Court of Justice of the European Union are also dealt with in this contribution.

[16] For the language regimes of other EU bodies see *Athanassiou*, Phoebus: The Application of Multilingualism in the European Union Context, European Central Bank Legal Working Paper Series, No 2 March 2006, https://www.ecb.europa.eu/pub/pdf/scplps/ecblwp2.pdf?b7879eb92186a8b58fc68ac78a05cc95.

[17] OJ C 202, 7. 6. 2016, p. 326.

[18] Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ L 361, 31. 12. 2012, p. 89) was adopted on this legal basis. The

As the ECJ held in Case *Kik v OHIM*[19], there is no general principle of equality of languages in Community law.[20] The case concerned the language regime established for the Community trade mark. According to the Council Regulation on the Community trade mark,[21] adopted in 1993, the languages of the Office for the Harmonisation of the International Market (Trade Marks and Designs)[22] are English, French, German, Italian and Spanish, while the application for a Community trade mark can be filed in one of the official languages of the European Community. The ECJ did not object to this language regime.

At the level of secondary law, the basic legal instrument is a very old one: Regulation No 1 determining the languages to be used by the European Economic Community ('Regulation No 1/58'). It was adopted in 1958 as the very first regulation issued by that community. In the course of European integration, Regulation No 1/58 was adapted many times. It is still in force.[23] Nowadays, its Article 1 lists the 24 languages enumerated in Article 55 TEU and disposes that they are the official languages and the working languages of the institutions of the Union.[24]

As for Irish, special rules apply. Since 1973, when the Republic of Ireland joined the European Economic Community, the texts of primary law were also drawn up in Irish.[25] Thus, these texts were likewise authentic in Irish. However, for a long time, Ireland did not insist on the comprehensive use of Irish because its second official

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method of enhanced cooperation had to be used because of the opposition of Spain and Italy to the envisaged language regime.

[19] Judgment of 9 September 2003, Kik v , C-361/01 P, EU:C:2003:434.

[20] See in particular paragraphs 82 and 87.

[21] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (=J 1994 L 11, p. 1), adopted unanimously on the basis of Article 235 EC.

[22] Now European Union Intellectual Property Office, see Article 2 Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ L 341, 24. 12. 2015, p. 21).

[23] Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952 – 1958, p. 59), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ L 158, 10. 6. 2013, p. 1).

[24] If a Member State has more than one official language, the language to be used shall, at the request of the State concerned, be governed by the general rules of its law (Article 8 of Regulation No 1/58). For the status of regional languages see p. 15 of the press release for the 2667th session (13 June 2005) of the European Council, General Affairs and External Relations, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/gena/85437.pdf#page=14/.

[25] See in particular Article 3 of the Treaty concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community (OJ L 73, 27. 3. 1972 p. 3.).

language is English[26], and English acquired the status of an official language of the institutions of the European Economic Community as a consequence of the accession of the U.K. to that community simultaneously with Ireland. When Malta demanded the inclusion of Maltese in Regulation No 1/58 although it also acknowledges English as a second official language[27], Ireland changed its mind. At its request, Regulation No 1/58 was extended to Irish in 2005 with effect of 1 January 2007. At the same time, temporary derogation measures were adopted[28]. They were extended till 31 December 2016.[29] Then, a new set of temporary derogation measures became effective.[30] A timetable for the gradual reduction of the derogation was adopted with a view to end the derogation as from 1 January 2022.

According to Article 6 of Regulation No 1/58, the institutions of the Union may stipulate in their rules of procedure which of the languages are to be used in specific cases. The rules of procedure of the EU institutions are supplemented with practical guidelines covering in particular the types of documents to be translated, the number of languages, and deadlines.[31]

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[26] In Ireland, 93 % of the respondents covered by a survey conducted in 2012 considered English as their mother tongue. See *European Commission:* Europeans and their Languages. Fieldwork: February – March 2012, Publication: June 2012, Special Eurobarometer 386/Wave EB77.1 Special Eurobarometer, p. 11, http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_en.pdf.

[27] In Malta, 97 % of the respondents covered by the same survey considered Maltese as their mother tongue, see p. 11.

[28] Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations (OJ L 156, 18. 6. 2005, p. 3). There had also been temporary derogation in respect to Maltese. See Council Regulation (EC) No 930/2004 of May 21, 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union (OJ 2004 L 169, p. 1) and Council Regulation (EC) No 1738/2006 of 23 November 2006 amending Regulation (EC) No 930/2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union (OJ L 329, 25. 11. 2006, p. 1).

[29] Council Regulation (EU) No 1257/2010 of 20 December 2010 extending the temporary derogation measures from Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005 (OJ L 343, 29. 12. 2010 p. 5).

[30] Council Regulation (EU, Euratom) 2015/2264 of 3 December 2015 extending and phasing out the temporary derogation measures from Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community introduced by Regulation (EC) No 920/2005 (OJ L 322, 8. 12. 2015, p. 1).

[31] See Court of Auditors. Special Report No 9/2006 concerning translation expenditure incurred by the Commission, the Parliament and the Council together with the Institutions' replies (OJ C 284, 21. 11. 2006, p. 1), paragraph 3 and Annex 1.

The EU language regime concerns two kinds of communications: communications between the EU institutions and Member States or citizens on the one hand, and intra- and interinstitutional communications of the EU on the other hand.

3. Communications between the EU institutions and Member States or citizens

The TFEU grants EU citizens the right to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.[32]

Articles 2 and 3 of Regulation No 1/58 provide: Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Union may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language. Documents which an institution of the Union sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the official languages.

According to Article 4 and 5 of Regulation No 1/58, regulations and other documents of general application shall be drafted in the official languages; the *Official Journal of the European Union* shall be published in the official languages.[33],[34] The versions of secondary legislation in all the official languages are therefore equally authentic (Lenaerts / van Nuffel 2015: 512).

An individual decision need not necessarily be drawn up in all the official languages. Only the language used in the relevant procedure will be authentic.[35]

As notices of open competition for posts in an EU institution have to be published in the *Official Journal* according to the Staff Regulations[36], they have to be published in full in all the official languages.[37]

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[32] Articles 20(2)(d) and 24, subparagraph 4, TFEU.

[33] See judgment of 12 July 2012, *AS Pimix*, C-146/11, EU:C:2012:450, and case-law cited for the lacking effect of provisions not duly published in the Official Journal of the European Union in the language of the Member State in question.

[34] Here the derogation for Ireland comes into play. For practical reasons and on a transitional basis, the institutions of the European Union were not bound by the obligation to draft all acts in Irish and to publish them in that language in the *Official Journal of the European Union*, with the exception of regulations adopted jointly by the European Parliament and the Council. Since 1 January 2017, this obligation is gradually extended to more and more acts.

[35] Judgment of 9 September 2003, *Kik v OHIM*, C-361/01 P, EU:C:2003:434, paragraphs 85 and 87.

[36] Article 1, paragraph 2, of Annex III to the Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1), as amended by Regulation (EU) No 423/2014 of the European Parliament and of the Council of 16 April 2014 (OJ L 129, 30.4.2014, p. 12).

An interesting ECJ ruling dealt with linguistic requirements for admission tests laid down by the European Personnel Selection Office ('EPSO'), an interinstitutional body created for the selection of staff of the EU institutions:[38] In notices of open competition which this body published in 2007, it was stated that candidates were obliged to have a thorough knowledge of one of the official languages of the European Union as the main language and a satisfactory knowledge of English, French or German as the second – different – language. It was stipulated that the admission test would be taken in English, French or German (second language). Italy successfully challenged this restriction.[39] The ECJ held that rules limiting the choice of the second language may be justified in the interest of the service. However, they must provide for clear, objective and foreseeable criteria to enable candidates to know sufficiently in advance the language knowledge required and to be able to prepare for the competition in the best possible circumstances. This requirement was not met. Also, the contested notices did not contain any reasoning substantiating the choice of the three languages used. In this respect, the ECJ pointed out that it is for the institutions to weigh, on the one hand, the legitimate objective justifying the limitation of the number of languages of competitions against, on the other hand, the objective of identifying the most competent candidates and the opportunities for recruited officials of learning, within the institutions, the languages necessary in the interest of the service.[40]

A particular challenge for organizing communications with Member States and citizens are proceedings before the ECJ. According to Article 7 of Regulation No 1/58, the languages used in the proceedings of the Court of Justice shall be laid down in its rules of procedure.[41] At first sight, the linguistic regime of the Court of Justice seems to be rather complex.[42] However, the basic ideas underlying this regime are very simple: Member States and EU citizens should have the possibility to use their own language; the EU institutions are supposed to be able to work in all official EU languages and are thus required to adapt themselves linguistically.

[37] Judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752, paragraph 71.

[38] Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office (OJ L 197, 26. 7. 2002, p. 53).

[39] Judgment of 27 November 2012, *Italy v Commission*, C-566/10 P, EU:C:2012:752.

[40] See paragraphs 88, 90, 94 and 97.

[41] According to Article 64 of the Statute of the Court of Justice of the European Union, the rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously; until those rules have been adopted, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the General Court governing language arrangements shall continue to apply.

[42] Chapter 8 of the Rules of Procedure of the Court of Justice of 25 September 2012 (OJ L 265, 29. 9. 2012, p. 1), as amended on 18 June 2013 (OJ L 173, 26. 6. 2013, p. 65) and on 19 July 2016 (OJ L 217, 12. 8. 2016, p. 69).

A key concept of the linguistic regime of the Court of Justice is the so-called language of the case. It shall in particular be used in the written and oral pleadings of the parties and also in the minutes and decisions of the Court.[43] Any of the 24 official languages of the EU may be used as the language of the case.[44] Yet, there is only one language of case for each case.[45] In direct actions, the language of a case shall be chosen by the applicant. However, where the defendant is a Member State, the language of the case shall be the official language of that State.[46] Thus, where a Member State brings an action for annulment of an act of an EU institution before the Court, that Member State may use its official language. In infringement proceedings launched by the EU Commission against a Member State, again, the official language of the Member State is the language of the case. In preliminary ruling proceedings, the language of the case shall be the language of the referring court or tribunal.[47] Member States are entitled to use their official language when taking part in preliminary ruling proceedings or intervening in a case before the Court.[48]

There is a special linguistic regime for the Judges and Advocates-General: An official language of the EU other than the language of the case may be used for conducting oral proceedings, putting questions and delivering Opinions.[49]

The rules of procedure of the General Court of the European Union follow similar lines.[50]

The number of language combinations which have to be provided for in this linguistic regime has grown from 4 x 3 = 12 in the early years to 24 x 23 = 552 nowadays. The biggest increase of language combinations took place when 10 more Member States joined the EU of 15 in 2004. While there were 11 x 10 = 110 language combinations before the eastward enlargement of the EU[51], in 2004, the number of language combinations jumped to 20 x 19 = 380. Since then, English, French, German, Spanish and Italian are used as relay languages for rare language combinations.

[43] Article 38, paragraph 1, of the Rules of Procedure of the Court of Justice.

[44] See Article 36 of the Rules of Procedure of the Court of Justice.

[45] The provisions governing the determination of the language of the case allow for some flexibility at the request of the parties, see Article 37, paragraph 1, subparagraph b and c, and paragraph 3, second sentence, of the Rules of Procedure of the Court of Justice.

[46] Article 37, paragraph 1, of the Rules of Procedure of the Court of Justice.

[47] Article 37, paragraph 3, of the Rules of Procedure of the Court of Justice.

[48] Article 38, paragraph 4, of the Rules of Procedure of the Court of Justice.

[49] Article 38, paragraph 8, of the Rules of Procedure of the Court of Justice.

[50] Title II of the Rules of Procedure of the General Court of 4 March 2015 (OJ L 105, 23.4.2015, p. 1), as amended on 13 July 2016 (OJ L 217, 12.8.2016, pp. 71–73).

[51] Having regard to the fact that Irish was not used in practice in proceedings.

The judgments and other rulings of the ECJ are not authentic in all languages but in the language of the case.[52] However, publications of the Court shall be issued in the languages referred to in Article 1 of Regulation No 1/58.[53]

Prior to the eastward enlargement of the EU in 2004, the ECJ used to publish all its judgments and orders in all the official languages. Then, selective publication was introduced. Only case-law published in the official European Court Reports is translated into all official languages. Other decisions are made available in another way, e. g. on the website of the Court of Justice, but often only in two languages: French and the language of the case. As a rule, the following are no longer published in the reports: judgments delivered other than in preliminary ruling proceedings by Chambers of three or five Judges ruling without an Advocate General's Opinion; and orders.[54] The General Court adopted selective publication in 2005. Additionally, it introduced a special type of selective publication in 2013: the publication by extract. Under this regime, the full text of a decision is translated into the language of the case; however, only extracts are translated into the other languages (Escobar 2015: 55, 70).

The Rules of Procedure themselves set a very high standard for the qualification of the Court's language service. It has to be staffed by experts with adequate legal training and a thorough knowledge of several official languages of the European Union.[55] The requirement of adequate legal training is not applied to the simultaneous interpreters providing translation during the court hearings.

4. Intra- and interinstitutional communications of the EU

a) Intra-institutional communications

aa) The European Parliament

As regards intra-institutional communications, multilingualism is cherished in the European Parliament. The European Parliament itself proclaimed that "the right of an elected representative to express himself and to work in his own language is an inalienable part of the rule of democracy and of his mandate".[56]

The Rules of Procedure of the European Parliament contain the following core provisions on language[57]: All documents of Parliament shall be drawn up in the of-

[52] Or, where applicable, in another language authorised pursuant to Articles 37 or 38 of the Rules of Procedure of the Court of Justice. See Article 41 of these rules.

[53] Article 40 of the Rules of Procedure of the Court of Justice.

[54] https://curia.europa.eu/jcms/jcms/P_101083/en/.

[55] Article 42.

[56] Resolution of the European Parliament of 19 January 1995 on the use of the official languages in the institutions of the European Union (OJ C 43, 20.2.95, p. 91).

[57] See Rule 158 of the Rules of Procedure of the European Parliament, 8th parliamentary term – January 2017 – http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//

ficial languages. All Members shall have the right to speak in Parliament in the official language of their choice. Speeches delivered in one of the official languages shall be simultaneously interpreted into the other official languages and into any other language the Bureau may consider necessary. Interpretation shall be provided in committee and delegation meetings from and into the official languages used and requested by the members and substitutes of that committee or delegation. At committee and delegation meetings away from the usual places of work, interpretation shall be provided from and into the languages of those members who have confirmed that they will attend the meeting. These arrangements may exceptionally be made more flexible where the members of the committee or delegation so agree.[58]

The fully multilingual regime for plenary sessions is modified as regards amendments: These shall be put to the vote only after they have been made available in all the official languages, unless Parliament decides otherwise. Parliament may not decide otherwise if at least 40 Members object.[59]

Just as the European Court of Justice, the European Parliament uses relay languages in order to cope with the large number of language combinations. The speeches are first translated into the most common languages, namely English, German and French. From there, they are translated into the languages of smaller Member States (Scherb 2012).

In spite of the marked multilingualism of the European Parliament, informal communication among Members of Parliament may be difficult. One Member of Parliament is reported to have said that being able to understand English or French is an essential precondition of being an effective Member of Parliament (Baaij 2012).

bb) The Council of the EU

The Rules of Procedure of the Council of the EU provide that the Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages except as otherwise

NONSGML+RULES-EP+20170116+0+DOC+PDF+V0//EN&language=EN. Rule 159 con-tains a transitional arrangement permitting derogations if and to the extent that, despite adequate precautions having been taken, interpreters or translators for an official language are not avai-lable in sufficient numbers. For details see Code of Conduct on Multilingualism, Bu reau Decision- of 16 June 2014, http://www.europarl.europa.eu/pdf/multilinguisme/coc2014_en.pdf.

[58] The Bureau, composed of the President and the Vice-Presidents of Parliament (Rule 24), shall adopt the necessary provisions (Rule 158, paragraph 4, third sentence).

[59] Rule 169, paragraph 6, first and second sentences. The fourth and fifth sentences further modify this rule: Parliament shall avoid taking decisions which would place Members who use a particular language at an unacceptable disadvantage. Where fewer than 100 Members are present, Parliament may not decide otherwise if at least one tenth of the Members present object.

decided unanimously by the Council on grounds of urgency.[60] The texts serving as a basis for the Council deliberations are drawn up in all the languages.[61] Any member of the Council may oppose discussion if the texts of any proposed amendments are not drawn up in such of these languages as he or she may specify.[62] A Guide for Producing Documents for the Council and its Preparatory Bodies[63] lists the "core documents" to be translated into all languages.[64]

As regards interpretation, there are different arrangements depending on the type of meeting to be covered. A full interpretation regime is provided for Council meetings, European Council meetings and meetings of up to 20 preparatory bodies. Insofar interpretation is entirely funded from the Council's budget. For the other preparatory bodies, interpreting is provided 'on request'.[65] The costs of these requests are only borne by the Council within the limits of annual financial envelopes. Decision 111/07 of its Secretary-General[66] establishes the exact procedures and details for interpreting 'on request'.[67] Its Annex 1 contains a long list of Council preparatory bodies. They are assigned different interpreting arrangements: Full interpreting, interpreting on request, interpreting not requested, zero interpreting or interpreting provided by the Commission. The Special Committee on Agriculture and the High-Level Working Group on Asylum and Migration are examples of "full interpreting", the Military Committee and the Working Party on Human Rights examples of "zero interpreting".

The request for interpretation will normally specify whether active or passive interpretation is required. In the case of active interpreting, the language in question can be listened to as well as spoken by delegates. In the case of passive interpreting, the language in question may be spoken by delegates. The interpreters understand it. However, no interpreting is provided into that language.[68]

The Committee of Permanent Representatives of the Governments of the EU Member States ('COREPER')[69], which prepares the agenda for the ministerial Council meetings, operates on the basis of an informal language regime. It is mostly tri-

[60] Article 14, paragraph 1, of the Rules of Procedure of the Council, Annex to Council Decision 2009/937/EU of 1 December 2009 (OJ L 325, 11.12.2009, p. 35).

[61] Footnote to Annex IV, paragraph 1(h) of the Rules of Procedure of the Council.

[62] Article 14, paragraph 2, of the Rules of Procedure of the Council.

[63] Issued be the General Secretariat of the Council on 28 March 2003, http://www.minbuza.nl/binaries/content/assets/ecer/ecer/import/eu_essentieel/kwaliteit_regelgeving/guide-producing-documents-council.pdf.

[64] See paragraph 49 and Annex.

[65] Handbook of the Presidency of the Council of the European Union, Brussels 2015, p. 27, https://www.eesistumine.ee/sites/el_veeb/files/presidency_handbook_en.pdf.

[66] More precisely: Secretary General of the Council of the European Union/High Representative for the Common Foreign and Security Policy.

[67] Annex V of the Handbook of the Presidency of the Council of the European Union.

[68] See Handbook of the Presidency of the Council of the European Union, footnote 72.

[69] Article 240 TFEU.

lingual, comprising English, French and German. However, occasionally documents submitted to the COREPER are also available in other official languages (Athanassiou 2006: 19, Fn. 75).

cc) The European Commission

The Rules of Procedure of the European Commission do not contain any provisions about working languages.[70] De facto, the Commission uses three working languages: English, French and German. At meetings of the Commission, translation is provided from and into English, French and German (Scherb 2012). Working documents for such meetings are produced in these three languages.[71] At meetings of the services of the European Commission, English is prevailing nowadays. French comes next, while German is used much less frequently[72] (Scherb 2012). Thus, at working level, the language regime of the Commission comes close to bilingualism. However, it seems to be more precise to describe it as consisting of two parallel monolingualisms: "It is the language used by the unit from which a communication originates which is used throughout the communication in question." (Schilling 2015: 103).

dd) The Court of Justice of the European Union

The working language of the Court of Justice is French. As *Theodor Schilling* once put it, "it is the withering charm of the Court that it still works in French". When the predecessor of the ECJ, the Court of Justice of the European Community of Coal and Steel, began its work, French was an official language in three of the then six member states and the dominant language of the diplomatic world. So, the judges decided to use this language as their working language, although, in private, they often communicated in German. The General Court of the European Union likewise uses French as its internal working language. The files are translated into French, and most judges read them exclusively in French.

The Rules of Procedure of the ECJ provide that the Registrar shall, at the request of any Judge or of the Advocate General, arrange for anything said or written in the course of the proceedings before the Court to be translated into one of the official languages.[73] However, in practice, I never witnessed such a request.

[70] Commission Decision 2010/138/EU, Euratom of 24 February amending its Rules of Procedure (OJ L 55, 5.3.2010, p. 60, amended by Commission Decision 2011/737/EU, Euratom of 9 November 2011 amending its Rules of Procedure (OJ L 296, 15.11.2011, p. 58). There are only provisions about language in Article 17, which deals with authentication of instruments adopted by the Commission.

[71] https://m.bundesregierung.de/Content/DE/Lexikon/EUGlossar/S/2005-11-22-sprachenregelung-in-eu-behoerden.html.

[72] https://m.bundesregierung.de/Content/DE/Lexikon/EUGlossar/S/2005-11-22-sprachenregelung-in-eu-behoerden.html.

[73] Article 39 of the Rules of Procedure of the Court of Justice.

The judges of the ECJ deliberate in French without the help of interpreters. So-called lecteurs d'arrets, highly qualified jurists of French mother-tongue, will polish the decisions adopted by the judges and also the drafts for such decisions. Of course, the final say on any modification they propose lies with the judges.

Some judges did not have sufficient knowledge of French when they were appointed. They received crash courses while they were already working as judges at the Court. In the cabinets of the judges, usually one of the legal secretaries (référendaires) is French or Belgian. I found it rather difficult to find staff members in Germany who had good knowledge of EU law and were capable of working in French from the start. With the exception of a former staff member of the Court's language services, those whom I finally engaged would have been considerably more efficient if they could have worked in English.

As the Advocates-General do not participate in the deliberation, they are not bound to express themselves in French. Before the eastward enlargement of the EU, they could simply use their mother-tongue for giving their Opinions. After the eastward enlargement, they were expected to use one of the five major official languages, namely French, English, German, Spanish or Italian.

There were discussions about changing the working language to English in the context of the eastward enlargement of the EU in 2004. However, apart from the fact that French language skills had been a crucial factor for the selection of the personnel of the Court, a major problem was the shortage of translators of English mother-tongue who were legally trained and could translate from several languages into English. People with such abilities have much better income opportunities in international law firms.

b) Interinstitutional communications

The linguistic practices of interinstitutional communications are complex. I shall only give you some examples from the Court of Justice. The Presidency of the Council will be addressed in its language. As the case may be, a French "translation" (which is in fact the original version) will be attached. When texts are transmitted to the Council, e. g. drafts concerning the rules of procedure, the Court translates them into all official languages and conveys them en bloc. The Court can thus control the quality of the translations. Communication with the Commission and with Parliament is mainly carried out in French, sometimes also in English, depending on the person addressed, and when it comes to answering, in the language chosen by the counterpart. The COREPER and the ambassadors are not addressed in their languages because it is assumed they will accept French/English.[74]

[74] Information by Dieter Kraus, former Head of Cabinet of President Skouris at the Court of Justice of the European Union.

III. Drafting multilingual supranational law

The majority of EU legislative procedures involve the Commission, the Council and the European Parliament. The ordinary legislative procedure starts with a proposal drafted by the Commission and then submitted to the European Parliament and the Council.[75]

As translation is always interpretation, the ideal way of drafting multilingual law is joint drafting by a multilingual team. This is the standard for federal legislation in Canada: each draft law is assigned to two drafters, one francophone and one anglophone. They draft each provision simultaneously and consult each other (see McLaren 2015: 134). However, what is feasible in a bilingual system, cannot be transferred to a system with 24 languages. There is no way around starting the drafting process with one language version and then translating the draft into the other languages.

In former times, French was the language used for drafting Community law. Nowadays, 90 % of all EU laws are drafted in English (Schilling 2015: 108).

Translating the draft into all the other official languages of the EU is a difficult task. The legal concepts of the national legal systems are not identic. Sometimes, there is not even a comparable word in the language of one Member State. The problems can already start at a rather trivial level: E. g. in order to translate the term "child" into Italian, one has the choice between the terms "bambino", "fanciullo" and "minore". Each of them has a more specific meaning in Italian than "child" in English (see Pic 2015: 36). Finding an adequate translation was particularly tricky when the Baltic states joined the EU in 2004: Under Soviet rule, the language of the law applicable in these countries had been Russian. The legal terminology available in their own national languages had not kept pace with many modern developments. New legal concepts had to be developed in these languages in order to make EU law available in them.

The Commission, Council and Parliament may only adopt a legislative proposal or their respective formal positions, once the document has been translated and is available in all official languages. However, EU legislation is generally debated and scrutinized in English (Baaij 2015: 47, 52).

The Rules of Procedure of the European Parliament explicitly deal with the situation that, after the result of a vote has been announced, there are requests concerning alleged discrepancies between the different language versions. In such a case, the decision lies with the President of the European Parliament.[76]

At the very end of the legislative procedure, there is a linguistic control by lawyer-revisors. Without exception, the English version of a draft law is the *langue source* for the finishing touches they put to the texts (Schilling 2015: 108).

[75] Article 294 TFEU.

[76] Rule 158, paragraph 5.

IV. Interpreting multilingual supranational law

The basic rules about how to interpret the multilingual supranational EU law were set out in Case *CILFIT*[77]. The ECJ was asked to clarify the circumstances in which a national court or tribunal of last instance was obliged to request a preliminary ruling under the EEC Treaty. Was an acte clair situation conceivable where there was no such duty, although the interpretation of Community law was at stake? The Court held: "[…], the existence of such a possibility must be assessed on the basis of the characteristic features of Community law and the particular difficulties to which its interpretation gives rise. To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied."[78]

The Danish Case *Rockfon*[79] may illustrate this method of interpretation. The Court had to interpret a term of the Collective Redundancies Directive[80]. This directive prescribes consultation and notification procedures in the event of collective redundancies. It contains a legal definition of the term 'collective redundancies'. A key element of this definition is a term which reads 'establishment' in English. There are collective redundancies where the number of redundancies reaches certain minima the size of which depends on the number of workers normally employed in the establishment. *Rockfon* had dismissed a major number of workers without consulting them and informing the competent authority. The company argued that it was not an 'establishment' for the purposes of the directive since it had no management which could independently effect large-scale dismissals.

The ECJ listed the concept in question in all the language versions and stated that the terms used had different connotations signifying, according to the version in question, establishment, undertaking, work centre, local unit or place of work. The Court stated that the term concerned was a term of Community law and recalled the need for uniform interpretation. Therefore, it analysed the purpose and the general scheme of

[77] Judgment of 6 October 1982, *CILFIT*, 293/81, EU:C:1982:335.

[78] Ibid., paragraphs 16 to 20.

[79] Judgment of 7 December 1995, *Rockfon*, C-449/93, EU:C:1995:420.

[80] Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 48, 22. 2. 1975, p. 29).

the rules of which the provision concerned formed part. It concluded that the term 'establishment' must be understood as meaning, depending on the circumstances, the unit to which the workers made redundant are assigned to carry out their duties. It is not essential, in order for there to be an 'establishment', for the unit in question to be endowed with a management which can independently effect collective redundancies.

V. Perspectives

What are the perspectives of this linguistic system?

1. The consequences of the Brexit for the present language regime of the EU

The status of English as an official language and as a working language of the institutions of the EU will not automatically end as a consequence of the Brexit. Regulation No 1/58 can only be modified by the Council acting unanimously. Understandably, there are French politicians who dream of restoring the former dominant position of French after the Brexit (Fernández Vítores 2016). However, it is highly unlikely that Ireland and Malta would vote in favour of excluding English from the list of languages contained in that regulation.

2. English as the only working language?

A question that springs to mind is whether English should not be used as the only working language within the EU institutions. Already in 2011, the Directorate-General for Translation of the European Commission published a study which analysed the use of English as a global lingua franca.[81] The aim was to see whether and how the use of English at a lingua franca at European level can contribute to improve the work of the European institutions, promoting participation and inclusion.

The more languages are present in an administration, the greater the need for just one common vehicular language that is perceived as "neutral" by all the speakers. The Brexit will provide the European Union with a tool that serves this need in an almost perfect way. When the U.K. leaves the EU, the percentage of EU citizens with English as their mother tongue will drop to just 1 % (Fernández Vítores 2016). Thus, English will come close to a "neutral" language in the EU. Moreover, English is by far the most widely-spoken foreign language throughout Europe. In a survey conducted in 2012, 38 % of EU citizens stated that they have sufficient skills in English to

[81] *European Commission:* Lingua France: Chimera or Reality? 2011, http://cordis.europa.eu/fp7/ict/language-technologies/docs/lingua-franca-en.pdf.

have a conversation. French and German came next with just 12 and 11 % respectively.[82]

For the EU, English could become what Latin was for Europe after the collapse of the Roman Empire: a language that is not a mark of ethnic identity but rather an instrument of communication facilitating exchanges among people and the circulation of ideas. If a major effort were made to promote learning English at a very young age, a large number of people could profit from this tool. This would not only be of advantage for the EU institutions but for European integration in general.

The small Member States, whose citizens cannot use their mother tongue anyway as a working language in the services of the European institutions, would certainly welcome such a change (Oppermann 2001: 2665).

English is already the only working language of the European Central Bank (Schiemann 2015: 563). In all the other EU institutions except the European Court of Justice, the drift towards English is well under way. For the Court, changing its working language would be a big step. In the *Liber amicorum* for the former President of the ECJ *Vassilios Skouris*, the former British judge *Konrad Schiemann* made a powerful case for adopting English as the working language of the Court (Schiemann 2015: 567 f.) Yet he added that only the French or the Belgian judge could suggest such a change (ibid: Fn. 5).

Who advocates using a language other than his/her own as the only working language, risks to be reproached for lacking "language loyalty" (Oppermann 2001: 2667). In the Council, there are delegates who have received the permanent instruction to use their own language whenever possible (Legal 2015: 52). Such an attitude is understandable, however not helpful for Europe. Anybody involved in the EU institutions who can do without translation should be encouraged to do so. In spite of the importance of German in the EU as a mother tongue and a foreign language[83], the former German President Gauck pleaded in favour of promoting English as the European lingua franca.[84] I fully agree with him.

3. Weak multilingualism with only one authentic language?

At the legal level, the radical multilingualism of the European Union produces an almost paradoxical situation. As Advocate-General *Francis Jacobs* put it: "[…] in fact the principle that all language versions are equally authentic means that no single version is authentic." (Jacobs 2003)

[82] *European Commission:* Europeans and their Languages, p. 19, http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_en.pdf.

[83] It is the most widely spoken tongue in the EU (16 %) and ranks third (11 %) as foreign language (*European Commission:* Europeans and their Languages, pp. 10 and 19.

[84] Speech of 22 February 2013, English version: http://www.bundespraesident.de/SharedDocs/Reden/EN/JoachimGauck/Reden/2013/130222-Europe.html;jsessionid=A5B9FD6FBF23012C21CC91F38198 A35 A.1_cid362?nn=1891680.

Theodor Schilling pointed out that this situation raises a serious human rights problem. He argues: "Legal certainty as traditionally understood in human rights law requires, in principle, that every citizen can find out in her own language what the law asks of her and what the consequences of her actions will be. This appears to fit well with the concept of equality between official languages. However, equality between official languages in the sense that all of them are equally authentic is self-defeating. In view of the unavoidable differences in the meaning of 24 language versions of every law, the law, if it depends on the meaning of every single version, becomes radically unknowable: […]." (Schilling 2015: 101) *Schilling* postulates to switch to weak multilingualism *de lege ferenda* in order to strike a better balance between the principle of equality of languages and the principle of legal certainty. There should continue to be 24 official languages, and 24 language versions of every law. However, only one of them should be authentic (ibid.: 101 – 102, 108 – 113). Theoretically, any language could provide the authentic version under the concept of weak multilingualism. As English is the language spoken and understood by the greatest number of European citizens, *Schilling* is a proponent of English as the only language of intra- and interinstitutional communications. For this reason, he also suggests to make the English version of an EU law the authentic version. In a factual sense, English is already the most authentic version (ibid.: 113).

Schilling's proposal deserves serious consideration. An empirical analysis by *Frederike Zedler* showed that, since the enlargement of 2004, the ECJ did not conduct linguistic comparisons including all the official languages anymore. According to her findings, a wording that is equally authentic in 24 languages cannot be mastered (Zedler 2015: 350 ff.). I agree.

VI. Conclusions

What does all of this mean for the question which the editor of this volume put to me: "United in Diversity" or "Tower of Babel"?

Let me start with the Tower of Babel. What exactly happened back then? According to the bible[85], the whole of earth had one language and the same words. Then migrant people decided to build themselves a city and a tower with its top in the heavens. God was not amused because he thought that this was only the beginning of what they would do. He went down and confused their language so that they might not understand one another's speech.

However, the EU did not start with one language but with a multitude of them. And the Europeans did not want to reach the heavens but to prevent the hell they had experienced in two World Wars. Building the EU did not prevent them from understand-

[85] 1. Moses, chapter 11.

ing each other. On the contrary, it helped them to do so because, as Umberto Eco put it, the language of Europe is translation.[86]

And what about "United in Diversity" – the unofficial motto of the EU?[87] According to an explanation given on the website of the European Union, it "signifies how Europeans have come together, in the form of the EU, to work for peace and prosperity, while at the same time being enriched by the continent's many different cultures, traditions and languages".

Compared to the beginning of European integration, the EU is very rich, not to say overabundant in official languages. Mark Twain is reported to have said, "They did not know that it was impossible so they did it."[88] This is a good way to describe the present situation of multilingualism in the EU.

We are united in spite of linguistic diversity. However, we could be more united without giving up multilingualism. Linguistic diversity has to be weighed against the principles of good administration and legal certainty. The present solutions are workable because they feature a good deal of pragmatism. However, a better balance between the values at stake could be struck. What is de facto already on the way, should be thought through to the end.

[86] Sentence spoken during the lecture that Umberto Eco gave at the Assises de la Traduction littéraire in Arles, Sunday 14 November 1993, http://www.eutrio.be/language-europe-translation.

[87] The motto "United in Diversity" came into use in 2000 after a contest of schoolchildren to invent a motto for the European Union (http://www.ouest-france.fr/monde/une-devise-pour-leurope-306344). It was included in the failed Treaty establishing a Constitution for Europe (OJ C 310, 16. 12. 2004, p. 1) as part of Article 1 – 8, which dealt with the symbols of the EU. Like the other symbols of the EU listed in the constitutional treaty, it was not resumed in the later Treaty of Lisbon (OJ C 306, 17. 12. 2007, p. 1) for fear that the symbols might upset national sensibilities. However, when this treaty was adopted, 15 of the then 27 Member States declared that these symbols would for them continue as symbols to express the sense of community of the people in the European Union and their allegiance to it. See Declaration (No 52) by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Cyprus, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia and the Slovak Republic on the symbols of the European Union, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 (OJ 2016 C 202, p. 355). On the website of the European Union, there is still the information that "United in Diversity" is the motto of the European Union (https://europa.eu/european-union/about-eu/symbols/motto_de).

[88] http://www.goodreads.com/quotes/727021-they-did-not-know-it-was-impossible-so-they-did.

VII. Literature

Athanassiou, Phoebus (2006): The Application of Multilingualism in the European Union Context (March 2006). *ECB Legal Working Paper Series* 2. Available at SSRN: https://ssrn.com/abstract=886048.

Baaij, Cornelis J. W. (2012): The EU Policy on Institutional Multilingualism. Between Principles and Practicality. In: *International Journal of Language and Law* 1. Available at https://languageandlaw.de/jll/article/view/4/4.

Escobar, Alfredo Calot (2015): Le multilinguisme à la Cour de Justice de l'Union Européenne: d'une exigence à une valeur commune. In: Isabelle Pingel (Ed.): Le multilinguisme dans l'Union européenne. Paris: Pedone, pp. 55 – 74.

Fernández Vítores, David (2016): Does Brexit spell the end for English as the lingua franca of the EU? Available at http://blogs.lse.ac.uk/europpblog/2016/09/15/does-brexit-spell-the-end-for-english-as-the-lingua-franca-of-the-eu/.

Jacobs, Francis (2003): How to interpret legislation which is equally authentic in twenty languages, Lecture, Brussels 20 October 2003, Summary report, http://ec.europa.eu/dgs/legal_service/seminars/agjacobs_summary.pdf.

Legal, Hubert (2015): Le regime linguistique des institutions de l'Union – rôle et pratique du Conceil. In: Isabelle Pingel (Ed.): Le multilinguisme dans l'Union européenne. Paris: Pedone, pp. 47 – 54.

Lenaerts, Koen / Van Nuffel, Piet (2005): Constitutional Law of the European Union. 2nd ed. London: Sweet and Maxwell.

McLaren, Karin (2015): Le bilinguisme législatif et judiciaire au Canada. In: Isabelle Pingel (Ed.): Le multilinguisme dans l'Union européenne. Paris: Pedone, pp. 129 – 140.

Oppermann, Thomas (2001): Reform der EU-Sprachenregelung. In: NJW 2001, pp. 2663 – 2668.

Pic, Elsa (2015): La traduction multilingue des droits fondamentaux. In: Isabelle Pingel (Ed.): Le multilinguisme dans l'Union européenne. Paris: Pedone, pp. 31 – 46.

Scherb, Johannes (2012): Amts- und Arbeitssprachen der EU. In: Jan Bergmann (Ed.): Handlexikon der Europäischen Union. Baden-Baden: Nomos. Available at http://docplayer.org/4916755-Amts-und-arbeitssprachen-der-eu.html.

Schiemann, Konrad (2015): La langue de travail de la Cour. In: Antonio Tizzano et al. (Ed.): La Court de justice de l'Union européenne sous la présidence de Vassilios Skouris (2003 – 2015). Brussels: Bruylant, pp. 563 – 574.

Schilling, Theodor (2015): The role of English language in the European Union – English versus multilingualism. in: Isabelle Pingel (Ed.): Le multilinguisme dans l'Union européenne. Paris: Pedone, pp. 101 – 116.

Zedler, Friederike (2015): Mehrsprachigkeit und Methode – Der Umgang mit dem sprachlichen Egalitätsprinzip im Unionsrecht, Baden-Baden: Nomos.

Triumph of Law over Language

Case Studies on Multilingually Negotiated EU-Law

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Abstract

Increased consciousness of the functioning of language and legal reasoning, together with a tendency followed by legislating bodies to spell out in the utmost detail the normative programme of the adopted provisions, have created an illusion of a stricter binding of administrative authorities and the judiciary by the very "wording" of democratically legitimate normative texts. The authors refute the hypothesis that the functioning of the legal system is effectively limited by the wording of legal provisions and demonstrate its fallacy on the basis of case studies of multilingual EU law. The uniform application of the latter is only possible where the judicial interpretation and reasoning find extra-textual tools to deal with vagueness and ambiguity of the transnationally negotiated law and the divergences in its multilingual, but equally authentic language versions.

Keywords: European Union, multilingual legislation, negotiation, inconsistencies, margins of interpretation, legal practice

I. Introduction

During the major part of the 20th century, academic lawyers hardly spared any thought to grasp the interdependence of language and law. Continental legal theory conceived the concept of law as an objective normativity the contents of which had to be ascertained in the hermeneutical process of interpretation[1]. The particular use of many terms which had developed in the legal discipline was on the one hand considered by lawyers as technical language obeying its own semantic rules. On the other hand, lawyers frequently needed to recur to shared practice of ordinary language when opposing a suggested legal interpretation as too far-fetched. The inconsistencies resulting from such a methodological flaw called for a deepened reflection. The philosophy on language developed by the late Ludwig Wittgenstein and the theory of communicative action proposed by Jürgen Habermas provided useful starting points

[1] For an overview on the state of the discussion in Germany in the 1970s see e. g. Karl Larenz, *Methodenlehre der Rechtswissenschaft*, 3. Aufl., Berlin 1975, pp. 128 – 154. Isolated early attempts of addressing the interdependence of law and language were: Hermann Weck, *Die Sprache im deutschen Recht*, Berlin 1913 and Ernst Forsthoff *Recht und Sprache*, Halle 1940.

for a profound rethinking of the theory of law and the method of legal reasoning[2]. Similar approaches developed in manifold scientific currents and, in an overall assessment, may perhaps be qualified as a *linguistic turn* of continental legal thinking. In any case, linguistically inspired reflection on legal work has since then importantly increased and focussed on a considerable number of aspects such as theory of legal reasoning, legal logic, legal rhetoric and many others, including computer-assisted linguistics and projects to set up a reference corpus for legal language. Increased consciousness of the functioning of language and legal reasoning, together with a tendency followed by legislating bodies to spell out in the utmost detail the normative programme of the adopted provisions, have created the illusion of a stricter binding of the judiciary and administrative authorities by democratically legitimate normative texts as well as of increased transparency and reduced margins of discretion in judicial decision making. Has language, through the increased consciousness of its functioning, thus gained a victory over the autonomous functioning of the legal system in modern western societies?

The authors doubt this and wish to exemplify such doubts by means of some case studies in the field of EU-law. The EU-law seems to be most appropriate for the purpose of exploring in practice the interdependencies between language and law since it is based on the principle of equal authenticity of all its linguistic versions. Pursuant to Article 55 of the Treaty on European Union the text of this treaty is equally authentic in all the EU official languages in which it is drawn up[3]. Having regard to Article 342 TFEU and Article 4 of Regulation No. 1 determining the languages to be used by the European Economic Community[4], that principle is recognised to be extended to all EU founding treaties and the secondary law adopted by EU-institutions on the basis of powers conferred by such Treaties. The generally recognised methodological consequence is that all linguistic versions need to be equally taken into account when EU-law is interpreted. The original language of the text may not, in principle, be prioritised. The EU law shall be interpreted within the possible meaning of its wording in all the languages used, having regard to the will of the legislating authority and the recognisable purpose of the provision in question. The latter principle is foregrounded in particular when divergences between the language versions occur which question the possibility of uniform interpretation. Such instances must, however, be accounted for in legal systems where law texts are formulated in more than one language. The limits of reliance on one specific language wording are very bluntly formulated by the ECJ. In its early case law, it held that: "[t]he different language

[2] A modest contribution to such efforts was offered by the co-author in *Wortbedeutung und Rechtserkenntnis*, Berlin 1979.

[3] Article 314 of the Treaty establishing the European Community was repealed by the Treaty of Lisbon, in substance being replaced by Article 51 of the Treaty on European Union.

[4] OJ L 17 of 6. 10. 1958, p. 385, last amended by Council Regulation (EC) No. 1791/2006 of 20 November 2006, OJ L 363 of 20. 12. 2006, p. 1; an unofficial consolidated version (accessed on 22. 9. 2017) is available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01958R0001-20070101.

versions of a community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part."[5]

In theory, thus, the texts of EU law ideally are to be interpreted as if they were multilingually negotiated and agreed[6]. The practice of the EU legislative procedures, however, does not implement such multilingualism on an equal footing (see Section 2). Selected case studies will show some of the inconsistencies and crevasses to which multilingual interpretation is exposed (see Section 3). This will lead us to the question whether, in the background of the pretended methodological canons, other shared practices of legal thinking are operating and take revenge against the alleged supremacy of language thus safeguarding the rule of the *Law.*

II. The limited multilingual character of EU-legislative provisions

When a draft EU legislative act is approved by the EU Council, in accordance with that institution's Rules of Procedure, versions in all official languages are available for the representatives of the Member States. Previously, the lawyer-linguists of the Council Secretariat have verified that the texts have equivalent meaning in all official languages. Such checks are carried out by linguistically qualified lawyers working in their mother tongues. Similarly, in the European Parliament, all linguistic versions must be available at the final vote on a draft legislative text and lawyers-linguists working in their respective working language verify the equivalence of the meaning of the linguistic versions submitted to the vote. Since under the ordinary EU legislative procedure approval of an identical text by the European Parliament and the Council is required for the adoption of an act, the verification of the texts by the two institutions' groups of lawyer-linguists needs to be coordinated in order to find agreement of both expert groups on the same wording of the proposed draft act. Such joint verification is normally carried out subsequently to the final vote in the European Parliament and prior to the final approval by the Members of the

[5] Judgment of the Court of 27 October 1977, Régina v Pierre Bouchereau, Reference for a preliminary ruling: Marlborough Street Magistrates' Court, London, the UK, Case 30-77, European Court Reports 1977-01999. See also more recent ECJ-case-law, for example, judgment of 16 July 2015, Lanigan (C-237/15 PPU, EU:C:2015:474, paragraph 35); judgment of 13 October 2016, Mikołajczyk (C-294/15, EU:C:2016:772, paragraph 26; for a comprehensive account of the methodological approach in multilingual law systems, see e. g. F. Müller / R. Christensen, Juristische Methodik. Band II – Europarecht, Berlin 2003, Duncker & Humblot.

[6] On the challenges of the multiligualism in the EU law context, see e. g. A. Forrest, "The challenge of languages in Europe", Terminologie et Traduction, No. 3 (1998), pp. 101 – 120; J. F. Morgan,"Multilingual legal drafting in the EEC and the work of Jurists/Linguists", Multilingua, No. 1 – 2, (1982) pp. 109 – 117.

Council[7]. Moreover, it may be presumed that, in each capital of an EU Member State, the version(s) in the State's official language(s) of any draft EU legislative text are carefully scrutinised by the office of the competent minister(s) before the latter will approve it at the EU-Council meeting. The validity of all language versions is therefore flowing from the same source of legitimacy.

Nevertheless, doubts remain as to the full multilingual character of EU-legislation. Such doubts are founded not on theoretical aspects of legitimacy but on the practical arrangements for drafting and negotiating EU legislation. Firstly, there is no practice of genuine multilingual drafting. Within the EU Commission, draft legislative proposals are normally considered in three working languages (English, French and German), being understood that the initial drafts are conceived in one of these languages (mostly English) and subsequently translated into the other working languages. Since the services prior to conceiving any legislative proposals explore or should explore carefully the normative environment the envisaged measure would interact with in each of the Member States, the initial drafts are (or should at least be) multi-cultural in substance but de facto monolingual. The quality of the translations therefore is decisive for the manner how, in the course of the further deliberations, the proposed normative ideas are understood. Evident errors of translation between the Commission's main three working languages may be easily ironed out in the course of the discussions held within that institution prior to the adoption of a formal proposal. When a draft legislative act is formally submitted to the European Parliament and the Council, it needs to be available in all official languages of the EU[8]. Nevertheless, preparatory work in Parliament's committees and in the Council's working groups often begins at an earlier stage, as soon as a draft approved by the college of Commissioners is available, be it in the three Commission working languages or even in English only. One may even say that, in the course of the first two decades of this century, a prevailing practice has emerged both in the Parliament and in the Council to use the English language for scrutiny and bargain of draft legislation. Such practice is due to the fact that for achieving institutionally required qualified majorities sound bargain is needed both within the Parliament and the Council and that, moreover, additional bargain is indispensable between Parliament and the Council in order to achieve the coincidence of the respective positions required for the adoption of the act. The logic of negotiated legislation inherent to the European Union's institutional setup therefore de facto imposes to carry out the bargain in a single language spoken by most of the political actors. Most EU legislation therefore is mono-lingually negotiated by speakers with limited competence of the language in which they draft. Notwithstanding the regrets expressed by the few

[7] This implies the need to proceed to the procedure of a corrigendum (Article 231 of EP Rules of Procedure) whenever the verification of the texts results in detecting the need to correct a significant error. It is a very delicate question to assess to which extent lawyers-linguists may technically adjust the wording of a text already approved by a vote.

[8] Only in very few cases of extreme urgency such as may happen in foreign affairs the institutions have accepted to deliberate on a reduced number of available linguistic versions.

who suffer to read Shakespeare's language mutilated by such drafting and by the other few who never took the effort to learn that language, the monolingual bargain of EU-legislation appears to be a widely accepted fact. Despite all drafting assistance provided by competent English speakers, EU legislative English may be reasonably suspected to evolve towards a language apart.

The following practical examples may show some consequences of the fact that the multilingualism of EU-legislation is not genuinely negotiated but resulting from translation with its specific challenges and shortcomings, implicitly raising the question whether the theory of its multilingual interpretation is sufficient.

III. Selected examples

1. Erreur matérielle, Ordnungspolitik, Moral hazard, Bail out, National ownership

The following four examples raise the question how to deal with multilingual legal texts when they contain national idiomatics which, in the various languages, express substantially different meanings?

a) Erreur matérielle

One of the co-author's first traumatising experiences in legal translation was a text in which the French author used the term "*erreur matérielle*"[9]. Uncertain about what the author really wanted to express, I consulted my French colleagues on how they would understand this term. I was told that in ordinary French language that term would be used for a minor unintentional error and I translated it in this sense. To my great astonishment my translation was corrected by a reviewer into a term expressing quite a substantial error. My remarks challenging this correction were refuted with the argument that the correction was justified by the translations proposed in the relevant dictionaries. I surrendered my protest in the hope that such an inaccurate translation would not jeopardise the reign of the rule of law. But that incident sharpened my awareness for the fragility of legal translations, especially where idiomatic expressions are used in the source or target language. All the greater was my surprise when I tried to retrieve the case in question for the sake of this study. The European Court of Justice search machine indicated case C-101/79[10] as the only one within the indicated period in which the term in question was used. When checking the German version of the judgement I noted that in the final edition the term in question was translated by an adequate equivalent: "Die Kommission entgegnet, Artikel 3 enthalte insoweit *ein Redaktionsversehen* und sei in Wirklichkeit wie folgt zu lesen: …" (em-

[9] The French text reads as follows: "La Commission répond que l'article 3 de la décision comporte sur ce point une erreur matérielle et que le texte doit, en réalité, se lire: …".

[10] Judgement of 21. 10. 1980, ECJ 1979, 3070.

phasis added). The version in Danish is following the same path and evokes a: "redaktionel fejl". The version in English, however, does not take any notice of the difficulty and stubbornly affirms: "The Commission replies that Article 3 contains *an error of substance* in that respect and that the text should actually read: …" (emphasis added). In the same vein, the Dutch version speaks of "een materiële onjuistheid". For the Italian translator, apparently, there was no need to reflect; this version literally reproduces the French wording: "La Commissione ribatte che l'art. 3 contiene, relativamente a questo punto, *un errore materiale* e che il testo deve, in realtà, leggersi: …" (emphasis added). Fortunately, the legal bearing of the case was limited enough so that it has not inspired sophisticated legal distinctions between the consequences of a mistake, on the one hand, when it is substantial and, on the other hand, when it happened by mere inadvertence. The example may therefore simply show the high risk of inaccuracies of translation even in case of the European Court of Justice lawyer-linguist services which generally merit the highest professional esteem.

b) Ordnungspolitik

The second example wishes to pay tribute to the city and university hosting the 2017 ILLA relaunch conference. When the co-author started to professionally deal with European integration matters in Germany, the term of "*Ordnungspolitik*" was amongst the first new things to learn. Everyone used it and seemed convinced to know what it means. Although the concept was framed and lobbied by the renowned Freiburg school of economics, it appeared to me as rather meaningless. It was often used as an argument against measures of economic governance when German interests were opposed to taking action, while used to justify such action when it was considered as desirable. In a nutshell, one might have been tempted to understand "*Ordnungspolitik*" as a shortcut for the manner of economic governance that certain circles in Germany would have preferred to be applied for the entire European Economic Community (cf. Mestmäcker, Möller / Schwarz 1987). No wonder that, forty years later, Commission president Jean-Claude Juncker, rich of more than thirty years of practical experience and political responsibility in this field, considers the term to be still a challenge for translators and invites them to search for a good equivalent which "equally means everything and nothing"[11]. Let us have a look how this challenge has been mastered in the past.

Aware of the ideological connotations of the term, one may be satisfied that it is used very seldom only in texts of mandatory EU legislation. A search over the past 20 years brought only a single positive result: Council Decision of 25 January 1999 adopting a specific programme for research, technological development and demonstration on competitive and sustainable growth (1998 to 2002)[12]. With regard to the "key actions" listed in annex II to this act, and in particular infrastructure measures

[11] Quoted according to POLITICO Morgen Europa, edition 6. 3. 2017 in German language.
[12] OJ L 64/1999, p. 40 ff.

aiming at sustainable mobility and intermodality, the decision states the goal "to enhance interconnectivity and interoperability and to promote intermodality in the transport system, through integration of all its components across the modes at the levels of infrastructure, transfer points, transport means, equipment, operations, services and the *regulatory framework*". In the German version the same passage reads: "Hierbei wird angestrebt, die Vernetzungsfähigkeit und Interoperabilität zu verbessern und die Intermodalität im Verkehrssystem durch verkehrsträgerübergreifende Integration aller Komponenten auf Ebene der Infrastruktur, Übergangspunkte, Verkehrsmittel, Ausrüstungen, Verfahren, Dienstleistungen und der *Ordnungspolitik* zu fördern."[13] The French and Italian versions are following the example of the English version by using the expressions "cadre réglementaire" and "quadro regolamentare", respectively. One may very much doubt whether the responsible administrator in the German Ministry of Transport would have been satisfied to find the noble principle of liberal economics reduced to the regulatory framework, whatever it is at a given moment. Again, one can only appreciate that such an ideologically charged term was not used at a more decisive point of EU legislation.

When it comes to establishing good "*order*" to the rest of the world, it seems to be easier for the Member States to find common grounds. Such views could be founded on the wording of the Regulation (EU) No. 234/2014[14]. Pursuant to its Article 2, this "Regulation primarily supports cooperation measures with countries with which the Union has a strategic interest in promoting links, especially developed and developing countries which play an increasingly prominent role in global affairs… and *global governance*". The corresponding terms in the German version are "… *bei der globalen Ordnungspolitik*". It may very well be that in this context the original concept was developed in English language and the German term used as a stopgap since the pretension of supporting a "*Weltregierung*" might have disturbed the sensitivity of qualified linguists. Be it as it may, the linguistic equivalents for which "*Ordnungspolitik*" is used in the context of EU foreign relations do not provide any help in finding an equivalent for the economic principle expressed by the German term. One may therefore hope that the scepticism expressed by president Juncker will prevail and the Commission[15], who, for the last time in 1995, has formally referred to this principle in an official communication, will continue to make such prudent use of it.

In any case, the solution then proposed by the Commission linguists, considering "*die zukünftige Entwicklung des ordnungspolitischen Rahmens*" as equivalent to "*the future evolution of the regulatory framework*"[16] is definitely not convincing. The question whether, under such circumstances, a concept such as "*Ordnungspolitik*"

[13] OJ L 64/1999, p. 49 (markers in italics by the author).

[14] Regulation (EU) No. 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries, OJ L 77/2014 p. 77 – 84.

[15] Commission Communication COM (95)158: The consultation on the Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks.

[16] Cf. COM (95)158 chapter V.9.2.

may play a useful role in the political debate is open to further research. Statements in the European Parliament plenary debates are simultaneously interpreted but no longer translated into all EU official languages. It will therefore be quite cumbersome to explore the possible impact of the following statement made by Michael Theurer MEP on 24 June 2015, in the plenary debate on the review of the economic governance framework: stocktaking and challenges: "Die aktuelle Situation in der Eurozone vor Ort fordert eine verantwortliche Politik, sie erfordert mehr Verbindlichkeit und mehr Einsatz und Engagement in den Mitgliedstaaten. Sie erfordert die Einhaltung der Regeln in unseren Verträgen. Sie erfordert eine Hinwendung zur sozialen Marktwirtschaft und zu einer marktwirtschaftlichen *Ordnungspolitik*."

c) Moral hazard

In the period following the outbreak of the global financial and economic crisis in 2009, the European Union endeavoured to make significant progress towards achieving within its single market a banking union that was considered to be required for maintaining the freedom of movement of capital in an environment of mutual trust and security. While massive injection of capital raised by public authorities appeared indispensable to prevent major systemically relevant banks (and thus the entire financial system) from collapsing, regulators were acutely aware of the danger that irresponsible risk-taking by bank managers could be encouraged when they could expect that public authorities would not refuse to rescue failing banks in the future, too. In English language such irresponsible attitudes were qualified as "*moral hazard[s]*" and a significant part of legislative deliberations in this field revolved around the question how to avoid it. Whether this aim was achieved or not is a matter for the critical debate of the EU legislation on banking union. The linguistic problem is that no equivalent term was found to reproduce the term in other official languages. The French and Italian translators believed it best to literally translate this term into their own language, using the terms "*aléa moral*" and "*azzardo morale*", respectively[17]. One may, however, seriously doubt whether these terms have a well-defined meaning in these languages. In the awareness of such trouble the German translators decided to use each time a different term: "*Risiko unvorsichtigen Verhaltens*" in Regulation No. 575/2013, "übermäßige Risikobereitschaft" in Directive 2014/59/EU; in Regulation No. 806/2014 they finally surrendered to using the English term untrans-

[17] Cf. Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, Recital 122, OJ L 176/2013, p. 16; Regulation (EU) No. 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010, Recital 58, OJ L 225/2014, p. 12; Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, Recital 45, OJ L 173/2014, p. 197.

lated.[18] The Polish translation in all three legal acts consequently used the same paraphrases: "*(ryzyko) pokusy nadużycia*". One may endlessly discuss which solution was most adequate under such circumstances. There is a strong suspicion that in the debates on the banking union the expression "*moral hazard*" is frequently used by speakers who are not fully aware of the full scope of its meaning. The main conclusion, however, could be that, in legislative drafting, it is preferable to avoid the use of such idiomatic terms which are specific for a national context in the drafting language.[19] Whether or not such terms are helpful in political debates is another question, the answer to which might depend on the value attributed to clarity and transparency vis-à-vis otherwise also desirable language economy.

d) Bail-out

When looking at the preceding examples, one may find consolation in the fact that, so far, the expression in question was used only in recitals of legislative acts and did not give rise to any significant legal controversy. The assessment may be different when looking at Article 125 TFEU which, in popular language, is frequently referred to as a "*no bail-out clause*".

Again, the language of the Treaty is clear: It deals with the liability of the Union and that of the Member States for commitments of public authorities. It states that neither the former nor the latter shall be liable for or assume the commitments of other public authorities. Not less and not more. It is therefore the name used in political and journalistic jargon that was at the origin of confusion about the contents of this provision when its appropriate interpretation became of high relevance in the midst of the sovereign debt crisis. Since Article 125 TFEU in political discourse was constantly referred to as the "*no bail-out clause*"[20], it is quite understandable that political actors and their advisors began to believe that the clause legally prohibits any Member State to bail-out another one, even more so where the actor was politically opposed to any act of financial solidarity. Fortunately, we now owe to the Pringle case[21] the clarification that Article 125 TFEU, while excluding any commitment to bail-out another Member State, by no means prohibits one or more Member States from providing, on a voluntary basis, financial assistance to another Member

[18] This practice is doubtful with regard to the requirement of formal and substantive consistency of terminology applied in legal acts, which is explicitly formulated in Guideline 6 of the Join Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation, 2015, available at http://eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf (accessed on 19.08.2017).

[19] See to this effect Guideline 5 of the Joint Practical Guide cited supra note 17. This idea is developed more in detail under section 4.1.

[20] In the Pringle-case, the referring Supreme Court of Ireland seems to have qualified the Treaty-provision with these terms (see ECJ judgment of 27 November 2012 in case C-370 paragraph 129: "The referring court asks whether an agreement such as the ESM Treaty is in breach of the 'no bail-out clause' in Article 125 TFEU."

[21] ECJ judgment of 27 November 2012 in case C-370, para. 123 ff., notably 136–137.

State and make available to it the liquidity needed for facing its own commitments, "when indispensable for the safeguarding of the financial stability" and "provided that that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy".[22] While idiomatic formulas may be appropriate if used in rhetoric speech, in the language of the law they are only sewing confusion[23].

e) National ownership

It is not desirable that linguistic flaws in legislative texts lead to confusion, but it is even worse if such flaws may be suspected to be wilfully misleading. This may, however, be the case where the motivation to legislate is governed by ideologies varying from Member State to Member State. The controversies about the future of the European Monetary Union, which followed the outbreak of the financial and economic crisis in 2009, have shown substantial differences between the monetary policy philosophies prevailing in the various Member States. It may not be hazardous to presume that such differences reflect national economic interests. And it may be useful to recollect that the agreement on the creation of an Economic and Monetary Union in the Treaty of Maastricht was the result of an overall compromise which neither fully met the ambitions of the European currency's architects nor fully satisfied the watchdogs of the holy grail of monetary orthodoxy (cf. Cafaro 2017: 1 ff.). In such a context, the suspicion may come up that linguistic inaccuracies are, if not intentional, at least readily tolerated. A significant example can be found in the wording of the Regulation (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances[24]. Its second recital affirms a need "for improved economic governance in the Union built on stronger *national ownership*". Prior to the year 2000 that expression was not used in the language of the EU institutions with a similar meaning. Article 7 of the statutes of the Joint Undertaking SENA, approved by Council decision 87/297/Euratom of 18 May 1987[25] restricts share "ownership" to nationals of certain states only and hence deals with an issue of property ownership in the sense of Article 345 TFEU. The "primacy of *national ownership* of development strategies and processes" was mentioned as a principle of the EU strategy in a Commission communication

[22] Ibid.

[23] A similar example was given by the President of the French Republic, Emmanuel Macron, on 26. 9. 2017 in a speech at Sorbonne University: "… l'Europe doit être faite de ces langues et elle sera toujours faite d'intraduisible. … Le débat politique et journalistique est nourri de ces intraduisibles. … quand on prononce le mot 'dette', il n'a pas tout à fait le même sens et les mêmes implications en France et en Allemagne."

[24] OJ L 306/2011 p. 25 ff. The example was first reported by Izabela Jędrzejowska, Demokratisch heißt auch zugleich verständlich? – Martin Schulz über "Wortungetüme" auf der Euro-Krisenmanagement Agenda, Lingua Legis No. 22, Warszawa 2014, p. 72 ff., notably 78 f.

[25] OJ L 148/1987, p. 1 ff.

of 2003.[26] The German version prudently paraphrases this concept with the words: "Primat der Aneignung der Entwicklungsstrategien und -prozesse durch die Begünstigten (ownership)". Similarly, the French version reads: "primauté accordée à l'appropriation par les pays des stratégies et processus de développement". The Italian version joins the chorus with: "primato del principio di appropriazione (ownership) da parte di ogni singolo paese delle strategie e dei processi in materia di sviluppo". At this stage, no linguistic issue can be detected.

Language is never standing still and, in the course of interminable discussions, the concepts used evolve further. Thus, in 2006, the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission reached agreement on a "European Consensus" on Development Policy[27]. In the meantime, "*ownership*" was recognised as one of the common principles of EU development policy. The EU declared itself "committed to the principle of ownership of development strategies and programmes by partner countries". Under that principle assistance adapted to the specific needs of the beneficiaries requires developing countries to assume the primary responsibility for creating an enabling domestic environment for mobilising their own resources, including conducting coherent and effective policies. When placed in that specific context the German version of this principle: "Die EU ist dem Grundsatz der Eigenverantwortung der Partnerländer für Entwicklungsstrategien und -programme verpflichtet" was not evidently misleading since the context brought the responsibilities of the partner countries and the EU commitment to provide assistance into balance. The versions in French[28], Italian[29] and Polish[30] language benefit from the same contextual balance. But one might suspect that the German interpretation of the expression already implied a hidden reservation with a view to a future stepping back from solidarity with the countries depending on development assistance.

The said suspicion became acute when subsequently to the outbreak of the global financial and economic crisis the concept of "*ownership*" was moved from the area of development policy where it was embedded in a context of declared solidarity to the area of the EU Economic and Monetary Union which is governed by entrenched rules aimed at monetary stability and budgetary discipline, but from the outset disposes of merely crippled instruments of solidarity[31]. One may argue about the question to

[26] COM (2003)85, Climate Change in the Context of Development Cooperation, p. 13.

[27] Joint statement on "The European Consensus on Development", 2006/C 46/01, OJ C 46/2006, p. 1 ff.

[28] "L'UE est attachée au principe d'appropriation par les pays partenaires des stratégies et programmes de développement."

[29] "L'UE rispetta il principio della titolarità dei programmi e delle strategie di sviluppo da parte dei paesi partner."

[30] "UE popiera zasadę odpowiedzialności krajów partnerskich za strategie i programy rozwoju".

[31] Notably Article 122(2) TFEU on which the EU-Council based its decision of 10. 5. 2010 to set up the EFSF (Press Release 9596/10).

which extent this initial shortcoming is now overcome by the creation of the European Stability Mechanism and the monetary policy of the ECB, notably its programmes for the acquisition of securities on the secondary markets. Undoubtedly, however, within the Economic and Monetary Union there is no general clearing mechanism between those of its economies that are strongly benefitting from the single currency and the others which, for structural reasons, find it difficult to take the full advantage of it. The principle of solidarity between EU Member States has found a limited repercussion in the clause of Article 222 TFEU. But acrimonious discussions are breaking out when a need of financial solidarity is raised. No wonder that the concept of national ownership risked distortion when transferred into the said environment.

It was still fairly understood when used in the prospective debate on reforms desirable for the future stable development of the Economic and Monetary Union. In its "blueprint for a deep and genuine economic and monetary union" the European Commission[32] recognised that "national ownership of the reforms in this setup would be key". Again, the central thrust of this idea was appropriately grasped in the other linguistic versions[33]. But when the said expression was transplanted into EU legislative acts with the aim to increase budgetary discipline, generally known under the terms "six-pack[34]" and "two-pack"[35], its meaning suffered tangible distortions reflecting the variety of national perceptions of the issue. In particular the six-pack offers an impressive fire-work in "*national ownership*". The expression appears in the recitals of Regulations No. 1173, 1174, 1176, 1177 and Directive No. 85 of the year 2011. Moreover, in Regulation 1175/2011 it is referred to in three recitals and one operational provision. In the latter, interestingly, the word "*national*" is omitted and it deals with the involvement of the European Parliament in the European Semester. In the German version, the expression is generally reproduced by "*nationale Eigenverantwortung*", evidently dropping the adjective in Article 1 point 4 of Regulation 1175/2011. The shortcomings of the translation into German of the expression familiar in development policy become more evident when compared with the interpretation that the French translators gave to this expression in the new context. In their drafting of recital 8 of Regulation 1175/2011 "la gouvernance économique dans l'Union (…) devrait reposer sur une adhésion nationale plus forte aux règles et aux politiques décidées en commun" while the German version simply reads: "dass die wirtschaftspolitische Steuerung in der Union auf einer größeren nationalen Eigenverantwortung

[32] Communication (2012) 777 final of 28.11.2012, cf. notably annex 1.

[33] The German version reads: "Bei einem solchen Vorgehen ist sehr wichtig, dass die Länder die Verantwortung für ihre Reformen tragen"; the French version: "L'appropriation nationale des réformes dans un tel cadre constituerait un élément essentiel"; the Italian version: "A tale scopo sarebbe fondamentale che le riforme venissero fatte proprie a livello nazionale" and the Polish version: "Kluczowe znaczenie miałaby identyfikacja poszczególnych krajów z reformami w proponowanym kształcie".

[34] OJ L 306, 23 November 2011.

[35] OJ L 140, 27 May 2013.

für die gemeinsam beschlossenen Regeln und Strategien (…) beruhen sollte." Similarly, the Polish translation of the same recital stresses the need of identification with the commonly decided decisions: "które powinno się opierać na silniejszym utożsamianiu się państwa ze wspólnie uzgodnionymi zasadami i strategiami politycznymi". Finally, the connotations change completely in recital 2 of Regulation 1176/2011. While the English version still allows a communitarian reading when stating: "There is a need for improved economic governance in the Union built on stronger national ownership", the German wording unequivocally points to unilateral responsibility: "Es besteht die Notwendigkeit, (…) die wirtschaftspolitische Steuerung (…) stärker auf nationaler Eigenverantwortung aufzubauen." In substantial contradiction to this affirmation, the French and Polish versions also in this recital stick to their interpretation that more "adhesion to" or "identification with" the commonly decided rules is needed. Very nobly, the Italian version keeps out of such ideological dilemma: "c'è bisogno di una governance economica rafforzata nell'Unione sulla base di una più forte titolarità nazionale", leaving completely open what such "titolarità" concretely would mean.

It would however be unfair to blame translators when looking at such linguistic flaws. The reference to "national ownership" does not stem from the Commission proposals but was introduced into the proceedings in form of later amendments. In the political climate prevailing at the time of the adoption of the six-pack, the concept of "nationale Eigenverantwortung" was an icon in the political discourse of the country which feared and explicitly refused to bail-out other countries' debts. No wonder that there was political pressure to flag this concept up several times in a package of EU legislation on budgetary discipline. But how to translate such specifically German idiomaticity? The authors guess that smart translators found out that such a concept was already used in a slightly different sense in development policy and proposed to adapt it to the context of budgetary discipline with a meaning reflecting (in French and Polish) the generally welcome commitment to the values of the Union while leaving to the English and German public all liberty to interpret the expressions used as they wish.

2. Reimbursement of expenses

The following example has really happened but it will be presented in a modified version that hides the exact context and references. The reason is that the co-author was personally involved in the negotiation process and wishes to maintain the reservation he owes as a former official of the European Union. The example revolves around the question whether a multilingual provision may be interpreted in a sense expressed merely by one single of its numerous language versions when the following is established: the singular version reflects the agreement reached in the discussions within the drafting authority but rather conceals the full scope of the provision which was consequently overlooked in translation and not perceived by the co-deciding authority.

The (modified) example concerns an entitlement to receive reimbursement of expenses. The adopted legislative text would read in its (modified) English version: "the beneficiaries are entitled to the reimbursement of their travel expenses incurred when exercising their duties" and in French: "les bénéficiaires ont droit au remboursement des leurs frais de voyage encourus dans l'exercice de leurs responsabilités". When it came to the implementation of that provision, nobody in the relevant administration doubted that the beneficiaries could claim reimbursement of expenses incurred for his/her own journeys only. Strong protest was raised against this position, since some of the beneficiaries perfectly remembered that, during the discussions in the run up to the adoption of the text, they were given firm assurances that expenses incurred for necessary journeys of the beneficiaries' staff would also be covered by reimbursement. However, nobody succeeded in finding a trace of such an extension of the reimbursement claim in the text of the act in question – until someone remembered that the extension was agreed upon a German initiative, probably upon a draft provided by German speakers. And in fact, a check of all language versions of the act resulted in the awareness that in the German version only there was a trace of the said extension. It read: "Die Begünstigten erhalten Erstattung der Kosten, die ihnen durch zur Erfüllung ihrer Aufgaben notwendige Reisen entstehen." Since another provision of the act stated that the beneficiaries for the accomplishment of their duties may rely on the services of their employees, for the reader of the German version it was sufficiently indicated that the reimbursement would also cover the travel costs of employees, to the extent that the beneficiary is liable for his employee's travel expenses. This argument proved to be convincing for those responsible for implementing the act. At the stage of drafting when translators did their best to smoothen the somewhat clumsy German wording, the issue of employees' travel expenses was simply overlooked. And consequently, it was very likely overlooked in the instances of the other branches of the legislative authority, working as usually mainly with the English and French versions. On the other hand, when the provision was finally implemented in accordance with the German version, no objection was voiced. Possibly the particular terms of the German version were at the time drafted in a hope to avoid the extension of the reimbursement claim being too much noted by the interested public. But once the act was adopted, common grounds were reached that the coverage of necessary expenses for employee's travels corresponds to the act's inherent logic and is therefore justified, albeit compatible with a single of its language versions only.

3. Tofu-cheese

In June 2017, press articles[36] alarmed the European public that, following a judgement of the European Court of Justice, vegan drinks such as almond and soy milk will have to be rebranded. As they do not contain milk from an animal, their name should

[36] E. g. Mail online New (Daily Mail) of 23. 6. 2017, http://dailymail.co.uk accessed on 15. 6. 2017.

be correspondingly changed. On what grounds? Customers were allegedly being misled by labelling non-dairy drinks as "milk". Would the Germans now need to re-name their beloved "Leberkäse", the Thai-cuisine their famous "Kokosmilch"? What has really happened?

On 14 June 2017 the ECJ indeed handed down a judgement in case 422/16 following a request for a preliminary ruling by a German Court. The ECJ ruled that Regulation (EU) No. 1308/2013 is in principle precluding producers from using the term 'milk' (and the designations reserved by that regulation exclusively for milk products) to designate a purely plant based product in marketing or advertising, even if those terms are expanded upon by clarifying or descriptive terms indicating the plant origin of the product at issue. What the press, however, overlooked when divulgating the judgement: The Court also referred to a long list of exceptions, which is agreed by the EU Commission upon proposals transmitted by the national authorities of the EU Member States[37]. This list contains numerous non-dairy products that in the Member States traditionally are named 'milk' or carry a designation protected by the said regulation. Such products may continue to carry their traditional designations. So, the English may continue to use "coconut milk", "cocoa butter", "butter beans" or "lemon cheese", the Germans also "Liebfraumilch", "Erdnussbutter" and, of course, "Leberkäse". The problem of the Court's case was that the vegan product of "Tofu-cheese" is not listed in the Commission's decision, apparently because no national authority ever thought of notifying the designation of "Tofu-cheese" as a newly established "tradition" to the European Commission. Or, perhaps, no producer of "Tofu-cheese" ever thought to lobby the competent national ministry with the aim to include this product amongst the traditionally protected designations, until a German consumer association raised the case to the German court. And who knows by whom such action was sponsored?

We may continue to live with the doubt whether or not it is a significant loss that vegetarians may no longer call their preferred tofu-product a cheese. May be one day they obtain their favourite to be included into the aforementioned ominous list. Irrespective of that, as lawyers worried about the fate of the rule of law in the light of present legislative and legal practices, the authors dare to raise two forgotten questions concerning the case-law and the regulation at stake: Does the fundamental right of equality before the law permit the legislator to treat substantially equal situations differently in the absence of justifying reasons? Does the democratic legislator really dispose of a legitimate power to regulate the language by law? The first question might have induced the ECJ to reflect on the EU charter of fundamental rights before asserting its interpretation of regulation 1308/2013. The second question addresses the possible limits of democratically legitimate legislative power. While at the national level the hermeneutics of constitutional interpretation developed by the constitutional courts may be expected to provide reasonable safeguards, the ECJ's sen-

[37] Decision 2010/791/EU, OJ L 336/2010, p. 55 – 59.

sitivity for issues of fundamental rights and the rule of law may merit to be encouraged by further critical case-studies.

IV. Lessons to be drawn – theoretical considerations

Can we draw any lessons from the examples we have looked at?

1. The use of idiomatic expressions

At a first glance, the examples grouped under section 3.1. seem to clearly demonstrate the inappropriateness of using idiomatic expressions when drafting multilingual legislation. This is no new wisdom. The use of idiomatic terms, which are on a par with concepts specific to any one national legal system as regards their limited translatability, may result in obscuring contents of legal provisions or even lead to discrepancies in their multilingual renditions, and, thus, also to their divergent interpretation and application in national legal systems of Member States. Such unwelcome effect (at least from the EU level perspective, but not exclusively) should be avoided at all costs, which raises a question whether the respect of multilingual nature of EU legislation would not require somewhat more disciplined and revised policy of multilingual drafting. On the other hand, it should be stressed here that the official policy line does not exclude the use of concepts or terminology specific to any one national legal system, but limits itself to the stipulation that they "are to be used with care"[38]. Moreover, it may be affirmed that even when drafting monolingual texts of law, the use of idiomatic expressions is a source of doubts since frequently the ideas of native speakers differ when asked to spell out concretely what a commonly used idiomatic expression means. There are instead good reasons to think that such expressions are helpful in politics for reaching agreement on measures on the details of which a consensus has not really been reached or even may be out of reach. When looking at the great codifications of civil or penal law one may easily realise that idiomatic or otherwise vague expressions were carefully avoided or, whenever such expressions were used, their specific meaning in the context of the statutory law in question was carefully defined in general terms[39]. It may be worthwhile exploring whether the contamination of the great codifications by specific provisions adopted by the legislator, notably when transposing EU directives e. g. on consumer protection into national law, has brought about an increased incorporation of idiomatic terms into codifications which were the fruit of many centuries of systematic work carried out in the faculties of Law. The fact that idiomatic expressions cannot

[38] See Guideline 5 of the Joint Practical Guide, cited supra note 17.

[39] Cf. the terms "Mörder" or "Diebstahl" in the German Strafgesetzbuch; the exceptional use of an expression like "Treu und Glauben" in Article 242 of the German Bürgerliches Gesetzbuch may be considered as confirming the rule. In more recent codifications, for which Article 93 of the Polish Civil Code may serve as an example, such exceptions may be more frequent, e. g. "zasady współżycia społecznego".

be completely banned from the practice of EU lawyer-linguists may be attributed to the constraints of political reality. The heterogeneity of the area to which EU legislation applies is such that it may often be considered as a wonder when the qualified majority or even unanimity required for the adoption of an EU legislative act is reached. As long as multilingual legislation is adopted according to the present system of "translated" drafts, legal practice will very likely continue to face the problems of interpreting idiomatic expressions the exact meaning of which differs in various linguistic versions.

2. Is genuinely multilaterally negotiated legislation imaginable?

Is there a principally feasible way out of the described dilemma? Could a system be imagined according to which any text of multilingual legislation would be genuinely negotiated in all languages before adoption? In the authors' view, the answer, in theory, is positive, but negative in practice. Any multilingual legislation is based on the assumption that it is possible to translate deontic sentences from one language into another. If this is so, it must be possible to identify with regard to any intended provision the reasons why it should be adopted, the scope to which it should apply, and the results which should be reached by its adoption. In theory, it would therefore appear possible to attribute to the political authority the prerogative to elaborate and find the constitutionally required support for such basic concepts and to leave to a multilingual team of expert lawyer-linguists the task to jointly elaborate the wording of a multilingual provision for adoption by the political authority. That hypothesis is not completely absurd since amongst the legislative practices followed in European nation States one can find procedures according to which the result of the political bargain, once it is stabilised in a draft text backed by the constitutionally required support, is deferred on a committee of expert legal drafters who are in charge to work out a final draft presenting the substance of the reached political understanding in technically sound legal language[40]. Evidently that final draft would then be submitted to the political authority, without the possibility of amendment, for final adoption or rejection. Legal historians will also remember that the texts of the great codifications, prior to their approval, were thoroughly and repeatedly checked by expert bodies. Why should similar procedures not work in the case of multilingual EU legislation?

The answer is threefold.

Firstly, cumulating a phase of genuine multilingual negotiation to a phase of political bargain achieved monolingually would make EU legislation extremely time

[40] Procedures of this kind existing in the Swiss Confederation were mentioned in a 2017 ILLA-conference contribution by Stefan Höfler on "Coherence in legislative texts". While demonstrating the usefulness of the review of legislative drafting at the administrative level, the contribution, however, admitted the scarce practical relevance of the review of negotiated texts exercised by the parliamentary review committee.

consuming whereas the adoption of such legislation is often urgently needed in order to cope with identified problems.

Secondly, in practically all cases, EU legislation is not dealing with the principles of Law for the elaboration of which the legal science has disposed of centuries. Normally legislation of the EU is about making a specific political action or programmes that benefit from sufficient support, mandatory for the vast area of its single market. One may reasonably suspect that, for such issues, the elaboration of sufficiently abstract and generally applicable language is extremely difficult if not impossible.

Thirdly, given the latter difficulty, there are serious doubts whether a body of lawyer-linguists would be sufficiently free from the inclination of interpreting the bargain achieved by the political body through the perspective of convictions prevailing among its own members. Thus, by proposing a draft with the pretension of legal objectivity, such a body of lawyer-linguists would be likely to replace by the technical subjectivity of its members the democratically legitimised subjectivity of the political body.

In conclusion, there seems to be no way out of the dilemma. When legislation consists of more than one authentic language version the margins of defendable interpretation are inevitably wider than in case of monolingual normative texts. But, in practice, legal interpretation does not tend to become less acceptable or legitimate where such broader margins exist. Legislative texts are binding on the community of lawyers not simply by their wording but through the common practice in which the meaning of such wording is elaborated. As long as the standards of such common practice of interpretation are respected, the width of the margins of interpretation does not really matter. Attempts aiming at a reduction of the number of authentic languages in the law of the European Union by establishing a single authentic text in a *lingua franca* are therefore not really promising[41]. Any reduction of this kind would necessarily impose on most citizens and the largest part of the legal profession the burden of using a language other than their own when consulting the authentic texts of EU law. The citizens' access in their own language to legal provisions defining their rights and obligations is a basic right and part of fundamental human rights. Instead of dreaming that the problems of multilingualism may be solved by a *lingua franca*, the architects of the European project should safeguard and cultivate the continent's cultural richness of which multilingualism is an integral part. Unity should be construed without uniformity that would alienate citizens from their cultural identities[42].

[41] Attempts of this kind are referred to in the contribution by Ninon Colneric on "Multilingual and Supranational Law in the EU: 'United in Diversity' or 'Tower of Babel' to the 2017 ILLA conference (cf. also in this book).

[42] Cf. the speech held on 26 September 2017 by Emmanuel Macron, President of the French Republic, at Sorbonne University, Paris: "Assurer l'unité sans chercher l'uniformité, voilà notre défi" … "au lieu de déplorer le foisonnement de nos langues, nous devons en faire un atout!" … "L'Europe du multilinguisme est une chance inédite." … "Il est un Européen parce qu'il a déjà en lui cette part d'universel que recèlent l'Europe et son multilinguisme."

3. The triumph of historically stabilised legal practice and "sedimented" law over the ties of language

If there is no satisfactory answer to the inconsistencies and crevasses of multilingual interpretation, why after all do they hardly cause any serious problem in legal practice?

The answer to this question would merit a deepened study of its own. It would involve the full spectrum of the theory of legal reasoning and of the functioning of Law in general. In the present context, only a few thoughts can be advanced about how the authors believe the issue may be tackled.

There is no evidence that linguistic flaws in legislative texts do systematically lead to unbearable decisions by the administrative and judicial authorities. If this is so, the reason must be that the individuals who interpret and apply statutory law dispose of a sufficient degree of liberty in relation to the wording of binding legislative texts.

Such liberty is not unlimited, though. The community of lawyers would seriously condemn one of its members who would attempt to deliberately breach the law. Nor can the limits of such liberty be established in abstract terms and in advance. While lawyers would in many cases agree on qualifying a suggested interpretation of a given legal provision as "incompatible with its wording", from the point of view of linguistic theory (Busse 2017: 36) the "wording" is not apt for construing a border-line setting the limits of interpretation. Such limits are only recognisable in concrete cases of legal practice in the light of the legal discourse that has evolved around it and elaborating on the legal provisions in question.

What then is the measure? The authors defend that in the practises of legal reasoning and decision making which in Europe is retraceable for around 25 centuries certain normative appreciations have become stabilised, one may say that they have become a "*sediment*" as the basis of the general principles of law, elaborated and recognised by the community of lawyers[43]. Such "*sediments*" are linked to a societal and historical context and they may erode as a result of profound changes within a given society. But they may also be extremely long-lasting such as the conviction that unavoidable disputes amongst subjects need to be settled by an independent and impartial authority with reference to commonly recognised criteria. When it comes to the question how to fill the gap between the objectivity of such criteria and the subjec-

[43] Interestingly, it is rather the linguist side that – liberated from the illusion of definite binding by the mere wording of legal norms – presently focuses on a need to identify substantial criteria that ensure reliability and coherence of the interpretation of legal texts and explain the factual convergence existing in the community of lawyers. Referring to M. Minsky's theory on a framework for representing knowledge, Dietrich Busse (loc. cit. fn. 40, p. 37) suggests a common frame of knowledge as point of reference enabling the community of lawyers to produce and reproduce again and again the convergence of its decisional practice. What could such a frame of knowledge common to a community of lawyers be else than basic values and the wisdom of decision making that have crystallised as a sediment from multi-secular traditions?

tivity of the decision makers, the authors' tentative answer proposes to refer to a particular experience of "*measure*", of "*kairos*" that in the multi-centennial experience of occidental judicial practice has become a stable sediment and of which principles such as "*Verhältnismäßigkeit*" or "*Gerechtigkeit*" (e. g. in Polish "proporcjonalność" and "sprawiedliwość", respectively) are only facets. Research in order to identify sediments of this kind may find a path not on the blind alley of tempting to identify the concept of Law by affirming "*what the Law is*", but in view of better describing how we "*find the Law*" i. e. how we conceive the practice of Law in our societies, how we are bound by and concomitantly materialise our freedom and self-determination through it.

V. Literature

Busse, Dietrich (2017): Semantik des Rechts: Bedeutungstheorien und deren Relevanz für Rechtstheorie und Rechtspraxis. In: Ekkehard Felder / Friedemann Friedemann Vogel (Eds.): Handbuch Sprache im Recht. Berlin: De Gruyter.

Cafaro, Susanna (2017): L'Unione Economica e Monetaria dopo la crisi – Cosa abbiamo imparato. Napoli.

Forrest, Allan (1998): The challenge of languages in Europe. In: *Terminologie et Traduction* 3, pp. 101 – 120.

Forsthoff, Ernst (1940): Recht und Sprache. Halle: Niemeyer.

Jędrzejowska, Izabela (2014): Demokratisch heißt auch zugleich verständlich? – Martin Schulz über "Wortungetüme" auf der Euro-Krisemanagement Agenda. In: *Lingua Legis* 22, pp. 72 – 81.

Larenz, Karl (1975): Methodenlehre der Rechtswissenschaft. 3rd ed. Berlin: Springer

Mestmäcker, Ernst-Joachim / Möller, Hans / Schwarz, Hans-Peter (Eds.) (1987): Eine Ordnungspolitik für Europa. Festschrift von der Groeben. Baden-Baden.

Morgan, J. F. (1982): Multilingual legal drafting in the EEC and the work of Jurists/ Linguists. *Multilingua* 1 – 2, pp. 109 – 117.

Müller, Friedrich / Christensen, Ralph (2003): Juristische Methodik. Band II: Europarecht. Berlin: Duncker & Humblot.

Schiffauer, Peter (1979): Wortbedeutung und Rechtserkenntnis. Berlin: Duncker & Humblot.

Weck, Hermann (1913): Die Sprache im deutschen Recht. Berlin: Heymann.

EU Legal Culture and Translation in the Era of Globalisation

The Hybridisation of EU Terminology on the Example of Competition Law

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Abstract

The present chapter has a twofold aim: first, it reports on the panel *EU Legal Culture and Translation* at the ILLA (International Law and Language Association) relaunch conference, focusing on the main topics which emerged from the contributions – most notably, the hybridity of translator-mediated EU legal culture; second, it explores EU hybridity by focusing on the terminology of EU competition law which clearly demonstrates how concepts and ideas have travelled from outside the EU, colonising and/or merging with existing concepts, and how they have travelled within the EU primarily through translation. The main argument set forward is that EU terminology is the result of the Europeanisation of law which is achieved through the convergence of national laws and law harmonisation, but is also strongly affected by global trends which are in turn influenced by socio-political and historical factors. The final section discusses the 'side effects' of hybridity, including instability of meaning, graphic/surface similarity and semantic opacity, asymmetries of terms between official languages and the complex relation between supranational and national levels of meaning.

Keywords: EU law, EU legal culture, legal translation, globalisation, competition law, hybridity, legal terminology

I. Introduction

The objective of this chapter is, first, to report on the panel *EU Legal Culture and Translation*, held at the ILLA (International Law and Language Association) relaunch conference in 2017, focusing on main topics and ideas that emerged from the contributions and discussions – most notably, the hybridity of translator-mediated EU legal culture. The second part of the chapter will explore the topic of EU hybridity at more depth by studying the hybrid terminology of EU competition law. EU competition law, which is strongly linked to economics, economy and large-scale businesses in a globalised world, is more susceptible to global influences and universalising tendencies than other branches of (EU) law. Thus, it is a good case in point to study the hybridity of EU legal culture by demonstrating how concepts and ideas have travelled from the outside of the EU, colonised and/or merged with the existing concepts and travelled within the EU and abroad. We will argue that EU terminology

is the result of the Europeanisation of law which is achieved through the convergence of national laws and law harmonisation but is also strongly affected by global trends which are in turn influenced by socio-political and historical factors. The overall, general objective is to contribute field-specific knowledge on the nature of EU terminology.

II. The EU Legal Culture and Translation Panel at the ILLA relaunch conference

The much-awaited relaunch of the International Law and Language Association in Freiburg in Germany during the conference *Language and Law in a World of Media, Globalisation and Social Conflicts* (7–9 September 2017) hosted a number of papers dealing with the intersection of law and language in the European Union (EU). The majority of EU-related papers were subsumed under the panel "EU Legal Culture and Translation", co-organised by the authors of this chapter: Łucja Biel from the University of Warsaw (Poland) and Vilelmini Sosoni from the Ionian University (Greece). The panel was convened to explore how the concept of EU legal culture is shaped by multilingual contacts, in particular multilingual translation, in this supranational organisation of currently 28 Member States and 24 official languages.

The panel offered an interdisciplinary overview of the topic of EU legal culture through the lens of translation. We invited six contributors to the panel, including lawyers, linguists and translation scholars to address the topic from diverse perspectives. The panel opened with the paper "Legal theory and logic as prerequisites for (quality in) legal translation" read by Anna Jopek-Bosiacka, a translation scholar and a lawyer from the University of Warsaw (Poland), who set the scene by demonstrating the link between legal cultures and translation. Jopek-Bosiacka focused on two important cognitive structures behind legal cultures – legal logic and a theory of law, which form an authoritative system of norms and an institutionalised context for legal translation (cf. Jopek-Bosiacka 2018). The next paper "The migration of constitutional concepts: four 'translation curios'" by Sophie Boyron, a comparative lawyer from the University of Birmingham (UK), attempted to find the missing connection between comparative law and legal translation by exploring the migration of constitutional law concepts. Boyron discussed four case studies of conceptual transplants: *accountability, constitutionalisme/gouvernance, Ombudsman, the principle of gouvernement du peuple, pour le peuple et par le peuple*, pinpointing such issues as untranslatability, spontaneous translation and forgotten translation. In conclusions, Boyron called for a special analytical framework to integrate translation issues in the study of legal migrations. This sets the ground for the discussion of the migration of concepts within the EU we will refer to in the further discussion of EU competition terminology. The next paper entitled "Interaction of law and language in the EU: challenges of translating in multilingual environment" was read by *Aleksandra* Čavoški, a legal scholar from the University of Birmingham (UK), drawing on her pro-

fessional experience as a translator of the EU *acquis* for the Serbian government. Čavoški discussed the translation of *acquis* in four former Yugoslavian countries: Croatia, Serbia, Bosnia and Herzegovina, and Montenegro, which, as she argues, has had a unifying effect on the languages and legal cultures in the region. Čavoški raised a pertinent point of affinities between related languages and legal cultures in the context of EU translation and the need to rethink the EU multilingualism policy.

The second part of the panel comprised papers by three translation scholars. In her paper entitled "Translating in the EU: Investigating the effect of translation manuals and drafting style guides on legal language and translation practice", Vilelmini Sosoni from the Ionian University (Greece) addressed an effect of institutional standardisation through style guides on creating a constrained hybrid legal culture and legal language within the EU. Her study demonstrates how standardisation necessarily implies contravening national legal writing conventions and has implications for legal language (and thought) as well as for translation practice. The institutional aspect was further developed by Łucja Biel from the University of Warsaw (Poland) in her paper "Impact of institutionalisation on translation quality: a corpus-based research of translation of EU law", who analysed shifts in the pre-accession and post-accession Polish Eurolect as a result of the growing institutionalisation of translations. Her study demonstrated an improved quality of language and terminological variants as well as an emergence of a hybrid legal style. The final paper, entitled "EU Legal Language and Translation: Dehumanizing the Refugee Crisis", by a discourse analyst Elpida Loupaki from the Aristotle University of Thessaloniki (Greece), investigated EU translation through the lens of ideology by analysing dehumanising techniques in EU legislative discourses and their reflection in Greek translations (cf. Loupaki 2018). Loupaki touched on an important aspect of EU terms – their detachment and neutralisation, an idea we will refer to later on.

Selected papers presented during the panel were included in the special issue of the International Journal of Language and Law (JLL) entitled "EU Legal Culture and Translation" (volume 7), guest-edited by the present authors and published in June 2018. The special issue includes papers by Jopek-Bosiacka, Čavoški and Loupaki, who were joined by two invited contributors – Martina Bajčić, a terminologist from the University of Rijeka (Croatia) and Sofiya Kartalova, a legal scholar from Eberhard Karls Universität Tübingen (Germany). Bajčić's paper ("The Role of EU Legal English in Shaping EU Legal Culture") discusses the dominance of English as a vehicular language in the EU and points to the role of the Court of Justice of the European Union in developing the autonomy of EU legal concepts (cf. Bajčić 2018). The intricacies of legal interpretation at the CJEU are further addressed by Kartalova's paper ("The Scales of Justice in Equilibrium: The ECJ's Strategic Resolution of Ambiguity in *Stefano Melloni* v *Ministerio Fiscal* 2013"), who demonstrates its approach of resolving ambiguity targeted at system-building through concepts to ensure the unity of EU law (cf. Kartalova 2018). The system-building role of EU courts in respect of hybrid EU terminology will be commented on by us in the final section of this chapter.

One of the defining features of EU legal culture is its (declared[1]) multilingualism, that exists in 24 linguistic parallel worlds of official languages, with the dominant impact of English and a decreasing, albeit once strong, impact of French (Sosoni / Biel 2018: 2). What was our point of departure for the panel and the special issue was the role of multilingual translation, both as an enabler and a constrainer, in shaping the hybrid EU legal culture due to "an extreme degree of mediation and filtering of law through the EU's official languages, as well as national legal cultures linked to them" (Sosoni / Biel 2018: 2). The panel demonstrated different approaches that can be used to address EU translation: comparative law, legal theory, corpus methodology, discourse analysis and qualitatively-oriented translation studies, all of which highlight a different facet of the intersection between law and language and point to the omnipresent hybridity of EU legal culture.

The adjective 'hybrid' and the nouns 'hybridity' and 'hybridisation' are very often used in reference to the European Union, in particular when discussing EU legal translation, EU legal language and EU law and its legal culture (e. g. Trosborg 1997; Garzone 2000; Schäffner / Adab 2001a; Mattila 2006; McAulife 2011; Felici 2010; Biel 2014). Used figuratively, a hybrid implies a new construct derived from heterogenous elements[2]. In the EU context, this hybrid is a 'compromise' between all the constituent legal cultures (Trosborg 1997: 147) and convergence of linguistic and cultural conventions (Schäffner / Adab 2001a: 173) in a space "where there is no linguistically neutral ground" (Trosborg 1997: 145 – 146). Hybridity is, *inter alia*, typically induced by translation as a result of concessions made during intercultural exchange (Schäffner / Adab 2001b: 300), as well as by a complex multi-stage and multilingual drafting and negotiating process (cf. Felici 2010: 102). At the linguistic level, the concept of hybridity foregrounds the in-betweenness and imperfection of translations: as argued by Simon, "hybrid texts are those that display 'translation effects': dissonances, interferences, disparate vocabulary, a lack of cohesion, unconventional syntax, a certain 'weakness' or 'deterritorialization'" (2011: 50). Thus, viewed from a broader perspective, hybridity and hybridisation may be perceived as an inherent feature of translations and other mediated texts, not only in the EU context.

Drawing on the papers and the discussions during the panel, we will elaborate the concept of hybridity and translation further by focusing on terminology as a representation of the hybrid conceptual structuring of EU law and by illustrating our claims in the context of EU competition law, one of the key areas of EU-level regulation.

[1] See Biel (2017) for a discussion of declared multingualism versus actual practices and the so-called pragmatic approach to multilingualism.

[2] "hybrid, n. and adj.". OED Online. June 2018. Oxford University Press. http://www.oed.com.0000a13w013a.han.buw.uw.edu.pl/view/Entry/89809 (accessed July 02, 2018).

III. EU Competition Law: globalisation, Europeanisation and localisation

This section takes a narrow focus on EU competition law in the context of globalisation to explore its contradicting but not mutually exclusive universalising and particularising tendencies and the ways these may affect the EU's legal terminology. Competition law is an interesting interdisciplinary field at the intersection of law, economics and politics. It is concerned with the protection of competition and consumers. This field is strongly affected by economic globalisation; in this context, globalisation can be understood as "a 'fusion' of national economies converting them into a global one" (Dabbah 2010: 93).

While law and legal terminology are generally acknowledged to be system-bound, that is strongly embedded in their legal systems (cf. Šarčević 1997: 232), competition law is a branch of law which transcends national (systemic) boundaries more easily and has more universal (but by no means universal) terminology compared to other branches of law. This is partly due to the growing international nature of competition and markets in the globalised world (Dabbah 2010: 96). The objective of competition law is to protect competition and consumers by dealing with market failures (Rodger / MacCulloch 2015: 2) and market imperfections (Jones / Townley 2017: 510, 512) in a free market economy. A considerable number of such threats to competition cross national borders, e. g. international cartels or mergers. Gerber also points to the 'extraterritorial' effect of competition laws, which contributes to their increased proximity and mutual encounters:

> Because the process of economic competition often stretches beyond the borders of a single jurisdiction, the effects of anticompetitive conduct on a single market may involve many states. Since competition laws may be applied on the basis of the effects of conduct as well as on the basis of its physical location, numerous national laws may be applicable to the same conduct. (2006: 1197)

To address the transnational nature of competition, the variegated and not always successful efforts at internationalisation of competition law were made since the 1940s and the 1950s through the International Trade Organisation and the United Nations (Dabbah 2010: 78). Competition law grew in the developed economies of the USA and the EU and has been transplanted into developing and young economies; in fact, as Dabbah observes, it was 'forced down the throat' of developing countries, often in the 'copy and paste' and 'blind copying' mode (2010: 4 – 5). In consequence, competition law has spread globally and has been adopted in over 120 jurisdictions over the world (Dabbah 2010: 4). As a result of the internationalisation and despite unavoidable differences[3] due to the national nature of some anticompetitive behaviours, competition law regimes share key characteristics related to substance and

[3] As Dabbah warns, there are also differences between competition law regimes, which are attributable to a particular legal sytem and its socio-economic, political, ideological and cultural circumstances (2010: 15).

scope, such as prohibitions of certain behaviours or transactions, e. g. collusion, cartels, price-fixing, abuse of dominant position, monopolies, as well as merger controls and procedural aspects (Dabbah 2010: 13 – 14).

As far as the EU competition law is concerned, it is subject to the above-mentioned internationalisation trends and, at the same time, is a result of internationalisation at a more modest EU scale (known as the Europeanisation) as a regional competition law regime[4]. EU competition law lies at the heart of EU law and European integration, having contributed significantly to the opening of national markets and the establishment of the EU Common Market (Patel / Schweitzer 2013: 1). What is also of importance is that competition law is regarded as "a mature area of EU law" (Woods et al. 2017: 680); hence, it may be expected to have a well-developed network of concepts.

Europe's national competition policies date back to the end of the 19th century, with the law of Germany, France and the United Kingdom being most influential and best developed in this region (Kuenzler / Warlouzet 2013: 89). In addition to the input from national regimes, EU competition law was initially shaped by US antitrust law[5], one of the world's earliest modern competition laws, with the Sherman Act prohibiting anticompetitive agreements being enacted as early as in 1890. The impact of US law was mainly effected through Germany after the Second Word War (Maher 2000: 155). Since the heavy market concentration and cartelisation of the pre-war Germany were perceived as one of the factors contributing to the Nazi role in the War, one of the conditions for Germany to regain full sovereignty was to adopt adequate competition law (Kuenzler / Warlouzet 2013: 97), which was significantly affected by the US solutions. European efforts at creating a competition policy intensified in the 1950s, with the European Coal and Steel Community's competition law provisions derived from a draft prepared by the Harvard competition lawyer Robert Bowie at the request of Jean Monnet (Jones and Sufrin 2016: 36, Fn. 1). The provisions served as a model for the future European Economic Community's law. These efforts culminated in the Treaty of Rome which laid down provisions protecting competition in 1957 (Gerber 2006: 1210). The shape of the Treaty of Rome was strongly affected by the German and French delegations, and in particular French competition law (current Articles 101 and 102) while the German influence was especially strong in the Competition Directorate General due to influential German officials and German input into Regulation 17 (Jones / Sufrin 2016: 36 – 37). Overall, it can be argued that some concepts were transplanted from US antitrust law and recontextualised and diffused within the European Communities with the mediation of German and French. An example is the term *concentration* which is

[4] Dabbah (2010: 101, Fn. 38) observes that it is the only "effective and fully operational regional" regime in the world.

[5] The EU prefers the term *competition law* instead of US *antitrust law* as a generic name. The European Commission however uses *antitrust* for areas other than merger control and state aid (Jones / Sufrin 2016: 3). It is also a good example of how shared concepts may be renamed in the EU context.

widely used in US antitrust law to refer essentially to mergers and acquisitions, i. e. the concentration of economic power in the hands of fewer than before. The concept behind it inspired the enactment of Articles 65 and 66 of the ECSC Treaty and the term was borrowed from American English in French. Interestingly, though, in EU competition law, a *concentration* is more concretely defined, i. e. it arises "where two or more previously independent undertakings merge (merger), where an undertaking acquires control of another undertaking (acquisition of control), or where a joint venture is created, performing on a lasting basis all the functions of an autonomous economic entity (full-function joint venture)"[6]. Yet it should be noted that some scholars argue that due to the inadequacy of US antitrust law in European contexts, there was initially "relatively little direct borrowing of major elements of US antitrust law or of its procedural, methodological, or institutional elements", the situation which changed in the late 1990s when more US elements were transfered to EU law, e. g. leniency programmes (Gerber 2006: 1211), which reduce fines on cartel participants who cooperate with competition authorities, mostly known in the US under the name of *amnesty* (Kobayashi 2001).

The convergence of national competition laws within the EU is due to harmonisation as well as common origins of competition law. The EU Member States' competition law regimes are to a large degree derived from Articles 101 and 102 (Whish / Bailey 2015: 77). The strengthening of the European Economic Community (EEC) competition policy from the 1980s onward led to the increased harmonisation and adjustment of national regimes to supranational law and resulted in their growing convergence, although some idiosyncratic elements in national competition laws were preserved (cf. Kuenzler / Warlouzet 2013: 124), partly due to their "own historical and social context which shapes them" (Rodger / MacCulloch 2015: 2). Harmonisation is a fundamental process of EU law "by which the Union sets down a standard in a particular field that all the domestic legal systems must meet"; it may involve introducing a common standard in Member States (positive harmonisation) or repealing inconsistent national laws (negative harmonisation) (Woods et al. 2017: 335, 351). Harmonisation is not equivalent to unification and is technically effected in a number of ways (see Woods et al. 2017: 335 – 352 for an overview), which differ as to the degree of legislative discretion given to the Member States to adopt a standard. For example, with total harmonisation the Member States have to ensure full compliance and have no further competence in that area, while with minimum harmonisation the Member States comply with a minimum standard and have freedom to set their own standard beyond the minimum (Woods et al. 2017: 338, 340). This leaves some margin for differences between national solutions but also implies the existence of a common shared minimum.

The mutual impact and cross-fertilisation of EU competition law and national laws can be explained, as argued by Kuenzler and Warlouzet, through Europeanisa-

[6] Articles 3(1) and (2) of Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29. 1. 2004, pp. 1 – 22).

tion, first through the transplantation of national concepts into EU competition law and next, through the Europeanisation of national laws:

> [I]t is often emphasized that a *top-down* dynamic prevails, according to which European competition law influenced national competition policies through both informal (intellectual influence) and formal (harmonization and/or the establishment of supranational laws) means. However, it is also important to bear in mind that 'Europeanization' can on the other hand be associated with a *bottom-up* movement. As a matter of legal history, what is most notable about this aspect of the formation of European competition law is how national approaches of competition policy shaped and influenced European competition law, and how national concepts in terms of laws, institutions, and economic policies were transposed into European (EEC) legislation. (2013: 89–90)

The Europeanisation of competition law is achieved through the harmonisation of the Member States' regimes and the imposition of EU competition regime on candidate countries at the pre-accession stage. The latter can be illustrated with Greece and Poland. Greece is an interesting case, because despite the fact that its business and policy culture had long been characterised by extensive state regulation, direct control of prices and substantial state-owned enterprises (OECD 2001: 8), it had a law in place regulating unfair competition long before its accession to the EU (Livas 2018). In particular, Law 146/1914 was enacted in 1914, before the First World War, and was intended to protect individual traders from unfair practices by their competitors contravening *bonos mores*, a concept which in the Greek legal order refers to "the moral and social principles prevailing at a certain time in society as these are felt by the fair and honest average citizen" (Economou / Bourtzalas n.d.: 1). The Law was drafted in Katharevousa – an H-variety, meaning 'the purified language' (Pavlidou 1991). Ahead of its membership in the then European Community in 1981, Greece adopted Law 703/1977[7] on the Control of Monopolies and Oligopolies and the Protection of Free Competition. Articles 1 and 2 of the Law – which was drafted in Demotic Greek, an L-variety, meaning 'the language of the people' (Pavlidou 1991) – are the national equivalents of Articles 81 and 82 of the EC Treaty. Except for the general goal of conforming to EU expectations, Law 703/1977 did not respond to any domestic policy issue or impetus, and it was not based on pre-existing Greek laws or institutions. Instead, European models were transposed directly, both in substance and procedure (OECD 2001: 8). Thus, despite the existence of the concept of competition and Law 146/1914, the Greek competition terminology is based almost entirely on the English, French and German terminology used in the EU sources regulating competition and was developed during the pre-accession transposition stage. Unlike Greece, Poland, as a former communist country, had a centrally planned economy and state monopoly which were shaped for over 40 years[8] and were transformed into a market economy after the fall of Communism in 1989. One of the fundamental economic reforms Poland had to introduce was to establish a competition law regime

[7] Law 703/1977 was most recently amended by Law 3105/2003.

[8] First antitrust laws were enacted in Poland before the Second World War in the 1920s and 1930s (Kolasiński 2012: 38).

which was basically non-existent in the centrally planned economy[9]. It obviously also involved a strong ideological shift and a change of the mindset. This was done incrementally, as the process was not easy (a 'bumpy road' Gwiazda 2007: 124). It started with the antitrust law drafted with the help of US experts and passed already in 1990[10] (2007: 114, 121), it continued with the harmonisation of existing regulations with the Community *acquis* in the 1990s as part of the EU accession conditionality (since the 1990 law was incompatible with it) and finally, with the problematic – due to internal pressures – adoption of state aid law 10 years later urged by the Commission (Gwiazda 2007). This obviously means that the Polish competition terminology was to be developed quickly, nearly from scratch and based on the US and EU sources of knowledge. Similar processes are likely to have taken place in the other Eastern European countries and Malta[11] which acceded the EU in 2004 and 2007.

The foregoing discussion shows that it would be simplistic and misleading to regard the EU legal culture and its hybridity as a mere sum or synthesis of constituent domestic cultures. It shows a complex interplay and dynamics of influences, with the dominant role of some legal cultures (especially those of founding members – France, Germany and later on the UK) and the passive, accepting role of late comers with the troubled past. This is combined with globalisation and internationalisation trends, in particular the strong external US impact.

Having described the background and the intermingling of legal cultures and influences in the context of competition law, we will now move on to discuss how it affects its language, and in particular terminology, through translation.

IV. EU competition terminology and translation: The side effects of multilingualism and hybridisation

Inevitably, the complex interplay of legal cultures with the globalisation and Europeanisation tendencies affect the creation and use of terms. Terminology represents the conceptual layer of EU law and the semantic layer of EU language(s). Since legal terms are linguistic representations of legal concepts which in turn frame legal knowledge (Bajčić 2017: 39), EU competition terminology frames and shapes the knowledge structure of EU competition law. In general, two inherent features of EU legal terminology are as follows: (1) its supranational multilingual nature and its co-existence/co-habitation through translation in 24 official languages (referred to by EU institutions as 'multilingual concordance') and (2) the continuity requirement, which states that its terminology has to be consistent with the existing body of

[9] "[…] under central planning there was no market and companies usually had to meet quantitative objectives with set allocation of resources" (Gwiazda 2007: 14).

[10] Ustawa o przeciwdziałaniu praktykom monopolistycznym (Dz. U. Nr. 14, poz. 88).

[11] This was not the case with Cyprus which also acceded in 2004 but whose official language, i.e. Greek, was the official langage of Greece which had acceded the EU in 1981.

EU law, especially in the same field (Principle 6 of the *Joint Practical Guide*, European Union 2015: 20; Stefaniak 2017).

In respect of the conceptual level, the key problem areas and paradoxes of EU terminology which are linked to hybridity, may be synthesised as follows:

(1) The presumed supranational and autonomous nature of EU terminology: EU concepts are declared to be autonomous and EU terminology is regarded as 'peculiar' to EU law: "legal concepts do not necessarily have the same meaning in Community law and in the law of the various member states" (Case 282/81 *Srl CILFIT and Lanificio di Gavardo SpA* v *Ministry of Health*[12]). We use the term 'presumption' intentionally as the relationship between the supranational and national elements is in reality very complex[13].

(2) Cultural neutralisation with the recommended avoidance of system specific terms of national law confronted with the implicit reliance on terms of national law: drafters are explicitly advised to avoid system-specific terms of national law that do not have direct equivalents in other languages and to replace them with more generic or culturally neutralised terms and neologisms (*Manual of Precedents* 2002: 98; see also Principle 5 of the *Joint Practical Guide*, European Union 2015: 16). The avoidance of national terms is to facilitate translation and help achieve multilingual concordance. Yet the supranational system of concepts is not fully developed yet (Šarčević 2010: 27); in fact, very few concepts are new and they are inspired by and rooted in the Member States' legal systems (Giannoni 2003: 223). EU law, thus, relies to some extent on basic legal terms of national law (Šarčević 2010: 27; Kjær 2007: 79) which have fixed connotations (Heutger 2005: 209) and "pre-loaded meaning" (Twigg-Flesner 2012: 1374).

(3) The double legal environment of EU terms: EU legal terms are created at the supranational level but are applied in national legal systems (Whittaker 2006: 60; Kjær 2007: 79): EU terms "'move' between the national context and the EU context in both directions" (Robertson 2010: 154). The double environment inevitably causes a tension between the supranational and the national dimensions of terms and lies at the root of their hybridity.

(4) Unstable and vague meaning of EU terms: the EU supranational terminology is still in the making and its meaning tends to lack stability and "the deep level structure of meaning" due to the not fully developed case law (Kjær 2007: 81). This is also a consequence of neutralisation which reduces rich implicit interpretative clues typical of national terms.

The above listed paradoxes partly stem from the fact that supranational law cannot and does not rely solely on shared autonomous concepts but also necessarily borrows

[12] Case 283/81 *Srl CILFIT* [1982] ECR 3415, ECLI:EU:C:1982:335.

[13] See e. g. Grosswald Curran: "symbols of new legal convergence throughout Europe by means of an apparently common vocabulary also can be deceptive and illusory, and perpetuate legal differences that remain unrecognized" (2006: 702).

terms already used in some jurisdictions which may be modified to acquire a shared supranational meaning (Gombos 2004; Prieto Ramos 2014: 128–129; Bajčić 2017: 83).

These problems are to some degree controllable at the initial drafting stage where most of texts are negotiated and drafted in English mainly by non-native English speakers[14] and undergo a legal revision by lawyer linguists in the Commission, who have a chance to neutralise terms of national law. The problems are however exacerbated in translation into other official languages for a number of reasons: the inherent asymmetry of languages, polysemy of meaning, cognitive constraints during the translation process and the fact that translators do not have a legal background. Additionally, the drafting process is multistage and multilingual and involves numerous switching of languages plus consultations, negotiations and amendments, all of which are mediated through translators and interpreters.

One of the causes for the instability of meaning is a lack of legislative definitions. On the one hand, it ensures the flexibility of meaning to account for various national solutions; on the other hand, it may lead to the uncertainty of law, limiting its uniform applicability throughout the EU. For example, in respect of EU competition law, some of its fundamental concepts are not defined in the primary or secondary legislation and their meaning has been expected to be clarified by the EU Courts, a process which takes time. This applies for example to such terms as *undertaking, concerted practices* or *de minimis.* The term *undertaking*, which is "a critically important term" of EU competition law (Whisch / Bailey 2015: 85) and is one of the most frequently used terms in the EU Competition Corpus[15] (cf. Biel et al. 2018: 261), has been interpreted by EU institutions very broadly "to include any legal or natural person, regardless of the legal status of that entity, engaged in economic activity" (Woods et al. 2017: 639). Its meaning was further fine-tuned in a range of other judgments, e. g. FENIN v Commission (case C-205/03P[16]), where the meaning of 'economic activity' was contemplated (Woods et al. 2017: 639). For a further discussion of how its meaning was developed over time in case law see Bajčić and Martinović (2018). What is worth stressing is that the Court's attempts at defining this term (triggered by an obvious need to make it more precise through a lack of legislative definition) reflect its efforts to create a sufficiently broad and generic concept which would cover diverse local solutions existing in various Member States.

The EU competition law terminology shows an impact of the once dominant languages – French and German as well as a tendency to resort to literal equivalents and

[14] EU English as a neutral meta-language see (Biel et al. 2018: 250–254; Bajčić 2018).

[15] The corpus was compiled in the framework of the action grant *Training action for legal practitioners: Linguistic skills and translation in EU Competition Law* by the Università degli Studi dell'Insubria, University of Warsaw, Ionian University, University of Rijeka-Jean Monnet Inter-University Centre of Excellence Opatija and Universidad de Burgos.

[16] Case C-205/03P Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities [2006] ECR 2006 I-06295, ECLI:EU:C:2006:453.

extensions of meaning. At the purely linguistic level, the English term *undertaking* is a product of translation – derived from the German *Unternehmen*[17]. Since the United Kingdom joined the EEC in 1973, when the fundamental terms of competition law were already formed, the UK had to translate the *acquis* and thus create its own competition terminology for supranational concepts which would coexist with its domestic terminology. In respect of *undertaking*, the top authority on British English, Oxford English Dictionary, which lists *undertaking* as being used since the 14th century mainly in the sense of action or a pledge or promise (e. g. a contractual obligation), does not record the sense of a business or a company in its *undertaking* entry and the closest related sense is much more specialised, which is a business or occupation of a funeral undertaker[18] (sic!) only. So in this case the EU generic term coincides with a local narrow term. This is illustrative of the translators' tendency to resort to literal equivalents, calquing solutions from other languages, and at the same time resorting to the existing words which have an established (different) meaning in a given language (cf. Sosoni 2018). A similar extension of meaning of an existing national term may be observed for the Polish equivalent of EU *undertaking – przedsiębiorstwo*, the term which is used in Polish law in more specialised contexts to denote specific types of a company, e. g. *przedsiębiorstwo państwowe* [state-owned enterprise], *przedsiębiorstwo energetyczne* [energy company] and *upadłe przedsiębiorstwo* [bankrupt company] or *przedsiębiorstwo* as a Civil Code term meaning a group of material and non-material components used in running a business. The Polish-language versions of EU competition law use the supranational term *przedsiębiorstwo* as an equivalent of *undertaking*, which was transposed into Polish competition law as *przedsiębiorca*, a term which has been commonly used in Polish law since early 1990s to denote a business entity. Thus, the term *przedsiębiorstwo* has a supranational meaning and a broad range of national legal meanings while at the same time interacts with the corresponding term of national law *przedsiębiorca.*

Interestingly, the French equivalent of English *undertaking*/German *Unternehmen* – that is *entreprise* – triggered another term in EU English, i. e. *enterprise* in the French meaning of businesses, companies and partnerships[19], which is now also used in the UK competition terminology, e. g. the Enterprise Act 2002. It should be noted though that *enterprise* has an established (that is well-recognised) and narrower meaning in general UK English of "a commercial or industrial undertaking,

[17] It is worth noting that Wikipedia refers to an *undertaking* as "[T]his uncomfortable English word" (https://en.wikipedia.org/wiki/European_Union_competition_law, emphasis added).

[18] "undertaking, n. " OED Online. June 2018. Oxford University Press. http://www.oed.com.0000a18h03ba.han.buw.uw.edu.pl/view/Entry/212145?rskey=YfEBxn&result=2&isAdvanced=false (accessed July 01, 2018).

[19] Court of Auditors (2016: 30).

esp. one involving risk"[20] and the EU usage may be misleading due to this overlap. What however is more interesting from a theoretical point of view is the very asymmetry between English which has two distinct terms, *undertaking* and *enterprise*, which implies that it makes a distinction between two concepts, and French, which has one term and hence conceptualises the same semantic content as a single concept. According to the General Theory of Terminology (Wüster 1974; 1979; Felber 1979), for unambiguous and efficient specialised communication, univocity is required, i. e. a concept should always refer to one term only (cf. Temmerman 1997). Therefore, the asymmetry observed contravenes the terminological ideal and may cause misunderstandings during the implementation and interpretation of EU law. This asymmetry is reflected in other EU official languages, most of which follow French and convey *undertaking* and *enterprise* through an identical term, e. g. *virksomhed* in Danish, *întreprindere* in Romanian, *onderneming* in Dutch[21], *empresa* in Spanish and Portuguese, *επιχείρηση* in Greek and *przedsiębiorstwo* in Polish. Three unrelated, in fact, genetically quite remote languages, German, Maltese and Estonian[22], behave differently and mirror English by having two distinct terms, e. g. German *Unternehmen* for *undertaking* and *Wirtschaft* for *enterprise*. Table 1 shows asymmetries between official languages as reflected in IATE, the EU's inter-institutional terminology database.

Table 1: A comparison of two IATE entries: *undertaking* and *enterprise* in the domain of competition law (IATE IDs 1899612 and 1099754, italics for distinct terms added by the authors)

EN	*undertaking*	EN	*enterprise*
BG		BG	предприятие
CS	podnik	CS	-
DA	virksomhed	DA	virksomhed
DE	*Unternehmen*	DE	*Wirtschaft*
EL	επιχείρηση	EL	επιχείρηση
ES	empresa	ES	empresa
ET	*ettevõtja*	ET	*ettevõte*
FI	yritys	FI	-
FR	entreprise	FR	entreprise
GA	*gnóthas*	GA	*fiontar*
HR	poduzetnik	HR	-
HU	vállalkozás	HU	-

[20] "enterprise, n.". OED Online. June 2018. Oxford University Press. http://www.oed.com.0000a1530085.han.buw.uw.edu.pl/view/Entry/62843?rskey=Q318zK&result=1 (accessed July 16, 2018).

[21] Although the Dutch term seems to be graphically very close to German *Unternehmen*, it follows the French pattern and, unlike German and English, has a single term.

[22] German from the Indo-European family, Estonian from the Finno-Ugric family and Maltese from the Afroasiatic family.

IT	impresa	IT	impresa
LT	įmonė	LT	įmonė
MT	*impriża*	MT	*intrapriża*
NL	onderneming	NL	onderneming
PL	przedsiębiorstwo	PL	przedsiębiorstwo
PT	empresa	PT	empresa
RO	întreprindere	RO	întreprindere
SK	podnik	SK	podnik
SL	podjetje	SL	podjetje
SV	företag	SV	

Literal equivalents and neutralisation which are used in an attempt to create autonomous terms may in fact produce terms which are semantically opaque, that is not to connote any specific meaning to native speakers or evoke meanings other than those intended, especially for the general public (cf. Biel et al. 2018: 257). One such term is another key term of competition law – *state aid* which is a calque from the French *aide d'état.* As an EU concept, it is quite broad and denotes (unfair) government support of any type ("an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities"[23]). However, in the UK context *aid* typically has a narrow meaning of financial help as part of development and disaster relief, which may be misleading for English native speakers[24], in addition to its use in criminal law as a type of material assistance during the performance of an offence, e. g. *to aid and abet*[25]. In Polish the EU equivalent of *state aid* – *pomoc państwa* – is mainly used in national law in the context of welfare support, e. g. *pomoc państwa w spłacie kredytów* [assistance of the state in the repayment of bank loans], *pomoc państwa w dożywianiu* [assistance of the state in providing extra meals] or *pomoc państwa w wychowywaniu dzieci* [assistance of the state in the upbringing of children; a type of child benefit]. The local (national) equivalent of *state aid* in Polish law is *pomoc publiczna* [public aid]; thus, *pomoc państwa* may trigger inappropriate connotations. In Greek, the EU equivalent of *state aid* is *κρατική ενίσχυση* [state support], which is used in national law to refer mainly to the positive concept of subsidy. The EU concept, as pointed out, includes not only positive benefits but also interventions which may reduce burdens on businesses, such as any type of tax and insurance relief, bank interest rates, state guarantees for loans or credits, the sale of public land or privatisations on favourable terms (Blauberger 2009: 721).

[23] As defined by the European Commission at http://ec.europa.eu/competition/state_aid/overview/index_en.html.

[24] Cf. European Commission (nd). EU jargon in English and some possible alternatives. http://ec.europa.eu/ipg/content/tips/words-style/jargon-alternatives_en.html.

[25] Cf. Oxford Dictionary of Law, 7th ed., ed. by Jonathan Law and Elizabeth A. Martin (2009: 27).

As in the case of the Polish EU equivalent of *state aid*, the Greek EU equivalent may similarly trigger inappropriate connotations to readers' minds.

Another interesting case is *cartel*, which was borrowed in English already in the 16th century through French (*cartel*) from Italian *cartello*, as a diminutive of *carta* (paper, letter, bill), first in the meaning of (1) a written challenge, a letter of defiance and (2) (now obsolete) a libel, and later on (3) a paper, card, tablet; and (4) a written agreement relating to the exchange or ransom of prisoners. It was not until the early 20th century when it became to be used, this time after German *kartell*, as "an agreement or association between two or more business houses for regulating output, fixing prices, etc.; also, the businesses thus combined; a trust or syndicate"[26]. This definition is close to that in IATE: "group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them" (IATE ID: 189961). This term has a surprising graphic (surface) similarity across EU languages (see Figure 1), even in such genetically distant languages as Estonian (*kartell*), Finnish (*kartelli*) or Hungarian (*kartell*) (see Figure 1).

The graphic similarity of terminology across EU languages is also visible for the term *competition*, which however shows an interesting tension between French and English and the growing impact of English. As shown in Figure 2, the majority of languages are convergent with French *concurrence* (e. g. Italian *concorrenza*, Lithuanian *konkurencija*, Bulgarian *конкуренция*), a few converge with English *competition* (ES *competencia*, MT *kompetizzjoni*. EL *ανταγωνισμός*) while some languages opt for a higher degree of localisation (Slovak, Czech, Croatian).

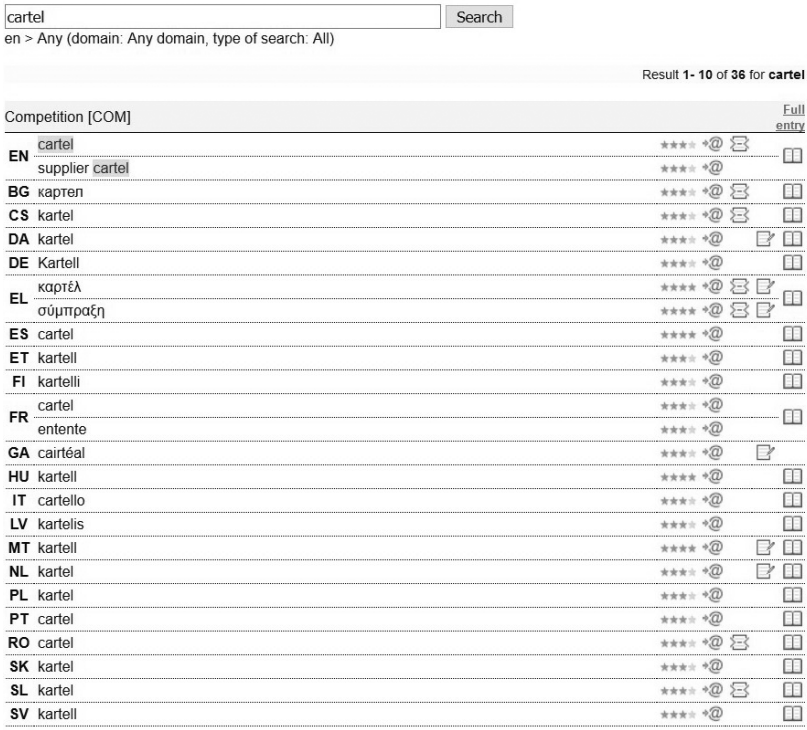
This tension has been well reflected on IATE's *competition* entry, where the note on the language usage of French *concurrence* and *competition* comments on the growing usage of *competition* at the expense of *concurrence* in some contexts:

> Le terme le plus courant est "concurrence". Toutefois, sans doute sous l'influence de l'anglais, le terme "compétition" est de plus en plus souvent utilisé comme synonyme de concurrence. Le Grand Robert de la langue française 2001 l'atteste dans le sens de "lutte, rivalité entre des entreprises". Attention: dans certaines expressions consacrées ("libre concurrence", "concurrence déloyale",…), "concurrence" ne peut être remplacé par "compétition". (IATE ID 1899580)

Owing to the current status of English as the EU's main drafting and negotiating language[27], the impact of English on terminology may be expected to be even higher in the years to come, despite the concerns that have been voiced about the future of English in the post-Brexit EU. In fact, as Modiano (2017: 317) observes with respect to the consequences of the British withdrawal from the EU, "When the dust settles, there is every reason to believe that English, because of its utility, will have the same

[26] "cartel, n.". OED Online. June 2018. Oxford University Press. http://www.oed.com.0000a18h03ba.han.buw.uw.edu.pl/view/Entry/28279?rskey=ET3fPC&result=1 (accessed July 01, 2018).

[27] English was solidified as a lingua franca after the EU's unprecedented enlargement in 2004, with the accession of eight Central and Eastern European countries, Malta and Cyprus.


cartel Search
en > Any (domain: Any domain, type of search: All)

Result 1- 10 of 36 for cartel

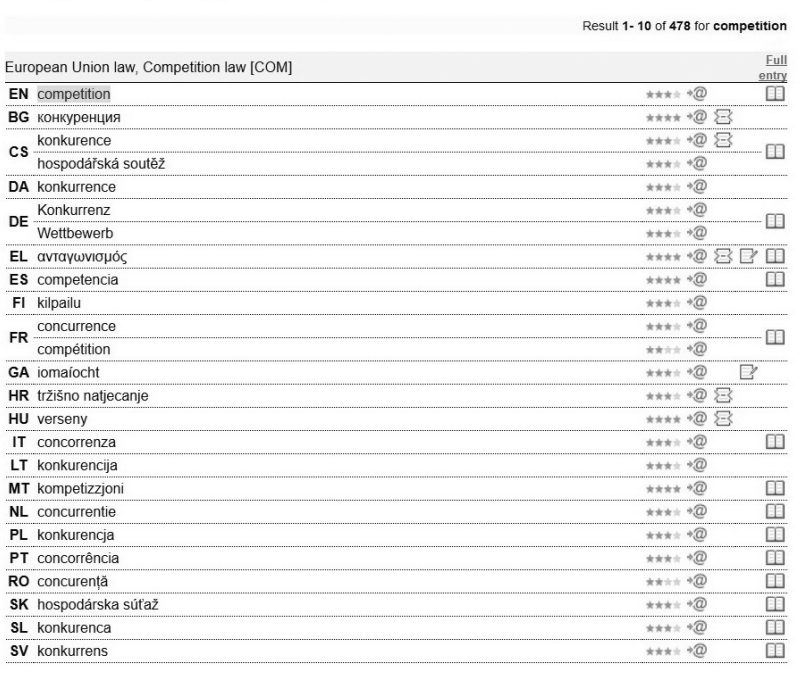
Competition [COM]		Full entry
EN	cartel	
	supplier cartel	
BG	картел	
CS	kartel	
DA	kartel	
DE	Kartell	
EL	καρτέλ	
	σύμπραξη	
ES	cartel	
ET	kartell	
FI	kartelli	
FR	cartel	
	entente	
GA	cairtéal	
HU	kartell	
IT	cartello	
LV	kartelis	
MT	kartell	
NL	kartel	
PL	kartel	
PT	cartel	
RO	cartel	
SK	kartel	
SL	kartel	
SV	kartell	

Figure 1: Equivalents of *cartel* in EU official languages in the IATE termbase (IATE ID: 1899611).

role within the EU as it maintains today, with the exception that there will be a noticeable lack of L1 users". It may further increase the 'side effects' of multilingualism and hybridity on terminology as discussed in this section.

V. Conclusion

The foregoing discussion has highlighted the nature of terminological hybridisation, both at the concept and term level in the case of EU competition law. It has also demonstrated how EU terminology is being shaped by the Europeanisation of law through the dynamic interaction and intricate interplay between the convergence of national laws and law harmonisation, but also by global trends in legislation and legal thought. More research in branch-specific areas will shed better light into terminological hybridisation and its side effects and will help determine to what extent this observation is generalisable to other areas. Still, the observation is particularly significant for the future of research in the field of EU translation, be-



Result 1- 10 of 478 for competition

European Union law, Competition law [COM]		Full entry
EN	competition	
BG	конкуренция	
CS	konkurence	
	hospodářská soutěž	
DA	konkurrence	
DE	Konkurrenz	
	Wettbewerb	
EL	ανταγωνισμός	
ES	competencia	
FI	kilpailu	
FR	concurrence	
	compétition	
GA	iomaíocht	
HR	tržišno natjecanje	
HU	verseny	
IT	concorrenza	
LT	konkurencija	
MT	kompetizzjoni	
NL	concurrentie	
PL	konkurencja	
PT	concorrência	
RO	concurență	
SK	hospodárska súťaž	
SL	konkurenca	
SV	konkurrens	

Figure 2: *Competition* and its equivalents in EU official languages in IATE (ID 1899580).

cause it brings the need for interdisciplinary approaches and an integration of legal-linguistic thinking when exploring EU language and translation to the foreground. In addition, it opens up interesting avenues for the investigation of the nature of EU law as 'law in action' (Versluis 2007), its interpretation by the Court of Justice of the European Union (CJEU) (see Paunio 2013; Jopek-Bosiacka 2018; Kartalova 2018; Colneric this volume), the investigation of the tolerance of divergence in law harmonisation (see Whittaker 2006; Taylor 2011; Schiffauer / Jędrzejowska-Schiffauer this volume) and also the combination of qualitative methods and quantitative methods – especially corpus studies (see Biel 2014; Vogel et al. 2015: 72–92), in particular multilingual parallel corpus studies to explore phenomena in a larger sample of official languages, as well as experimental methods, including eye-tracking, to study both text (translation) production processes and reception.

VI. Literature

Bajčić, Martina (2017): New Insights into the Semantics of Legal Concepts and the Legal Dictionary. Amsterdam, Philadelphia: John Benjamins. Online available (doi): 10.1075/tlrp.17.

Bajčić, Martina (2018): The Role of EU Legal English in Shaping EU Legal Culture. In: *International Journal of Language & Law (JLL)* (7), pp. 8–24. Online available (doi): 10.14762/jll.2018.008.

Bajčić, Martina / Martinović, Adrijana (2018): A Mutual Learning Exercise in Terminology and Multilingual Law. In: Silvia Marino / Łucja Biel / Martina Bajčić / Vilelmini Sosoni (Eds.): Language and Law. The Role of Language and Translation in EU Competition Law. Cham: Springer, pp. 207–223.

Biel, Łucja (2014): Lost in the Eurofog. The Textual Fit of Translated Law. Frankfurt am Main: Peter Lang.

Biel, Łucja (2017): Quality in institutional EU translation: Parameters, policies and practices. In: Tomaš Svoboda / Łucja Biel / Krzysztof Łoboda (Eds.): Quality aspects in institutional translation. Language Science Press, Berlin, pp. 31–57. Online available (doi): 10.5281/zenodo.1048183.

Biel, Łucja / Biernacka, Agnieszka / Jopek-Bosiacka, Anna (2018): Collocations of Terms in EU Competition Law: a Corpus Analysis of EU English Collocations. In: Silvia Marino / Łucja Biel / Martina Bajčić / Vilelmini Sosoni (Eds.): Language and Law. The Role of Language and Translation in EU Competition Law. Cham: Springer, pp. 249–274.

Blauberger, Michael (2009): Of 'Good' and 'Bad' Subsidies: European State Aid Control Through Soft and Hard Law. In: *West European Politics* 32(4): pp. 719–737. Online available (doi): 10.1080/01402380902945300.

Čavoški, Aleksandra (2018): Legal Language and EU Integration. The Case of the Western Balkans. In: *International Journal of Language & Law (JLL)* (7), pp. 70–96. Online available (doi): 10.14762/jll.2018.070.

Colneric, Ninon (2019): Multilingual and Supranational Law in the EU: 'United in Diversity' or 'Tower of Babel'? In: Friedemann Vogel (Ed.): Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts. Relaunching the International Language and Law Association Language and Media of Law Series. Berlin: Duncker and Humblot.

Dabbah, Maher M. (2010): International and Comparative Competition Law. Cambridge: Cambridge University Press.

Economou Aida / Bourtzalas, Efthymios (n.d.): National Report – Greece. Brussels: European Commission. http://ec.europa.eu/competition/antitrust/actionsdamages/national_reports/greece_en.pdf, accessed 1 Aug. 2018.

European Union (2015): *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation.* Luxemboug: Publications Office of the European Union.

Felber, Helmut (Ed.) (1979): Theory of Terminology and Terminological Lexicography. Vienna: Springer.

Felici, Annarita (2010): Translating EU law: legal issues and multiple dynamics. In: *Perspectives: Studies in Translatology* 18(2), pp. 95 – 108.

Fischer, Márta (2010): Language (policy), translation and terminology in the European Union. In: Marcel Thelen / Frieda Steurs (Eds.): Terminology in Everyday Life. Amsterdam: John Benjamins, pp. 21 – 33.

Garzone, Giuliana (2000): Legal Translation and Functionalist Approaches: a Contradiction in Terms? Geneve: Actes, www.tradulex.org, accessed 1 Sept. 2009.

General Secretariat of the Council of the EU (2002): Manual of Precedents for Acts established within the Council of the European Union, 4th ed., https://publications.europa.eu/en/publication-detail/-/publication/431ccffd-00c2-491a-b423-ce709af0d6c3/language-en, accessed 1 Aug. 2018.

Gerber, David J. (2006): Comparative antitrust law. In: Mathias Reimann / Reinhard Zimmermann (Eds.): The Oxford Handbook of Comparative Law. Oxford: Oxford University Press, pp. 1193 – 1224.

Giannoni Davide Simone (2003): The UNCITRAL model and Italian statute law: A linguistic and topical description. In: Vijay K. Bhatia / Christopher N. Candlin / Maurizio Gotti (Eds.): Legal Discourse in Multilingual and Multicultural Contexts: Arbitration Texts in Europe. Bern: Peter Lang, pp. 221 – 246.

Gombos, Katalin (2014): EU law viewed through the eyes of a national judge. http://ec.europa.eu/dgs/legal_service/seminars/20140703_gombos_speech_en.pdf, accessed 23 July 2018

Grosswald Curran, Vivian (2006): Comparative law and language. In: Mathias Reimann / Reinhard Zimmermann (Eds.): The Oxford Handbook of Comparative Law. Oxford: Oxford University Press, pp. 675 – 707.

Gwiazda, Anna (2007): Europeanization of Polish Competition Policy. In: *European Integration* 29(1), pp. 109 – 131.

Heutger, Viola (2005): Towards a Common European Legal Understanding. In: *London Law Review* (1), pp. 205 – 213.

Jones, Alison / Sufrin, Brenda (2016): EU Competition Law. Text, Cases, and Materials, 6th ed. Oxford: Oxford University Press.

Jones, Alison / Townley, Christopher (2017): Competition law. In: Catherine Barnard / Steve Peers (Eds.): European Union Law, 2nd ed. Oxford: Oxford University Press, pp. 509 – 542.

Jopek-Bosiacka, Anna (2018): Theoretical and Logical Prerequisites for Legal Translation. In: *International Journal of Language & Law (JLL)* (7), pp. 47 – 69. Online available (doi): 10.14762/jll.2018.047.

Kartalova, Sofiya (2018): The Scales of Justice in Equilibrium. The ECJ's Strategic Resolution of Ambiguity in Stefano Melloni v Ministerio Fiscal 2013 (Case C-399/11). In: *International Journal of Language & Law (JLL)* (7), pp. 25 – 46. Online available (doi): 10.14762/jll.2018.025.

Kjær, Anne Lise (2007): Legal translation in the European Union: A research field in need of a new approach. In: Krzysztof Kredens / Stanisław Goźdź-Roszkowski (Eds.): Language and the Law: International Outlooks. Frankfurt am Main: Peter Lang, pp. 69 – 95.

Kobayashi, Bruce (2001): Antitrust, agency, and amnesty: An economic analysis of the criminal enforcement of the antitrust laws against corporations. In: *The George Washington Law Review* 69(5–6), pp. 715–744.

Kuenzler, Adrian / Warlouzet, Laurent (2013): National Traditions of Competition Law. A Belated Europeanization through Convergence? In: Kiran Klaus Patel / Heike Schweitzer (Eds.): The Historical Foundations of EU Competition Law. Oxford: Oxford University Press, pp. 89–124.

Leucht, Brigitte / Marquis, Mel (2013): American Influences on EEC Competition Law: Two Paths, How Much Dependence? In: Kiran Klaus Patel / Heike Schweitzer (Eds.): The Historical Foundations of EU Competition Law. Oxford: Oxford University Press, pp. 125–161.

Livas, Sotirios (2018): Contemporary trends in International Law in relation to the protection of individuals from multinationals' malpractice – Greek Competition Law after the implementation of EU Directive 2014/104. In: Silvia Marino / Łucja Biel / Martina Bajčić / Vilelmini Sosoni (Eds.): Language and Law. The Role of Language and Translation in EU Competition Law. Cham: Springer, pp. 103–114.

Loupaki, Elpida (2018): EU Legal Language and Translation. Dehumanizing the Refugee Crisis. In: *International Journal of Language & Law (JLL)* (7), pp. 97–116. Online available (doi): 10.14762/jll.2018.097.

Maher, Imelda (2000): Re-imaging the story of European competition law. In: *Oxford Journal of Legal Studies* 20(1), pp. 155–166. (doi): 10.1093/ojls/20.1.155.

Marco Colino, Sandra (2011): Competition Law of the EU and UK. 7th ed. Oxford: Oxford University Press.

Mattila, Heikki E. S. (2006): Comparative Legal Linguistics. Aldershot: Ashgate.

McAuliffe, Karen (2011): Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union. In: *International Journal for the Semiotics of Law* (24), pp. 97–115.

Modiano, Marko (2017): English in a post-Brexit European Union. In: *World Englishes* 2017: pp. 313–327. Online availabe (doi): 10.1111/weng.12264.

OECD (2001): Greece – The Role of Competition Policy in Regulatory Reform. Paris: OECD. http://www.oecd.org/greece/27067423.pdf, accessed 1 Aug. 2018.

Pavlidou, Theodosia (1991): Linguistic nationalism and European unity: The case of Greece. In: Florian Coulmas (Ed.): A language policy for the European community. Prospects and quandaries. Berlin: Mouton de Gruyter, pp. 279–289.

Robertson, Colin (2010): EU law and semiotics. In: *International Journal for the Semiotics of Law* (23), pp. 145–164.

Rodger, Barry J. / MacCulloch, Angus (2015): Competition law and policy in the EU and UK. 5th ed. London, New York: Routledge.

Patel, Kiran Klaus / Schweitzer, Heike (2013): Introduction. In: Kiran Klaus Patel / Heike Schweitzer (Eds.): The Historical Foundations of EU Competition Law. Oxford: Oxford University Press, pp. 1–18.

Paunio, Elin (2013): Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice. Farnham: Ashgate.

Prieto Ramos, Fernando (2014): Parameters for Problem-Solving in Legal Translation: Implications for Legal Lexicography and Institutional Terminology Management. In: Anne Wagner / Lee Cheng / King Kui Sin (Eds.): The Ashgate Handbook of Legal Translation. Farnham: Ashgate, pp. 121 – 134.

Šarčević, Susan (1997): New Approach to Legal Translation. The Hague: Kluwer Law International.

Šarčević, Susan (2010): Creating a pan-European legal language. In: Maurizio Gotti / Christopher Williams (Eds.): Legal Discourse across Languages and Cultures. Frankfurt am Main: Peter Lang, pp. 23 – 50.

Schäffner, Christina / Adab, Beverly (2001a): The idea of the hybrid text in translation: Contact as conflict. In: *Across Languages and Cultures* 2(2), pp. 167 – 180.

Schäffner, Christina / Adab, Beverly (2001b): The idea of the hybrid text in translation revisited. In: *Across Languages and Cultures* 2(2), pp. 277 – 302.

Schiffauer, Peter / Jędrzejowska-Schiffauer, Izabela (2019): Triumph of Law over Language. Case studies on multilingually negotiated EU-law. In: Friedemann Vogel (Ed.): Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts. Relaunching the International Language and Law Association Language and Media of Law Series. Berlin: Duncker & Humblot.

Simon, Sherry (2011): Hybridity and translation. In: Yves Gambier / Luc van Doorslaer (Eds.): Handbook of Translation Studies, vol. 2, Amsterdam, Philadelphia: John Benjamins, pp. 49 – 53.

Sosoni, Vilelmini (2018): Language and Translation in EU Competition Law: Insights from English, Greek, Italian and Spanish Versions of Legislative Texts. In: Silvia Marino / Łucja Biel / Martina Bajčić / Vilelmini Sosoni (Eds.): Language and Law. The Role of Language and Translation in EU Competition Law. Cham: Springer, pp. 179 – 206.

Sosoni, Vilelmini / Biel, Łucja (2018): EU Legal Culture and Translation. In: *International Journal of Language & Law (JLL)* (7), pp. 1 – 7. Online available (doi): 10.14762/jll.2018.001.

Stefaniak, Karolina (2017): Terminology work in the European Commission: Ensuring high-quality translation in a multilingual environment. In: Tomáš Svoboda / Łucja Biel / Krzysztof Łoboda (Eds.): Quality aspects in institutional translation (Translation and Multilingual Natural Language Processing 8). Berlin: Language Science Press, pp. 109 – 121. Online available (doi): 10.5281/zenodo.1048192.

Taylor, Simon (2011): The European Union and National Legal Languages: an Awkward Partnership? In: *Revue française de linguistique appliquée* 1(XVI), pp. 105 – 118.

Temmerman, Rita (1997): Questioning the Univocity Ideal. The difference between socio-cognitive Terminology and traditional Terminology. In: *Hermes, Journal of Linguistics* (18), pp. 51 – 90.

Trosborg, Anna (1997): Translating Hybrid Political Texts. In: Anna Trosborg (Ed.): Text Typology and Translation. Amsterdam: John Benjamins, pp. 145 – 158.

Twigg-Flesner, Christian (2012): The (Non-)impact of Harmonizing Measures on English Legal Terminology. In: *European Review of Private Law* (5/6), pp. 1369 – 1378.

Versluis, Esther (2007): Even Rules, Uneven Practices: Opening the 'Black Box' of EU Law in Action. In: *West European Politics* 30(1), pp. 50–67.

Vogel, Friedemann / Pötters, Stephan / Christensen, Ralph (2015): Richterrecht der Arbeit – empirisch untersucht: Möglichkeiten und Grenzen computergestützter Textanalyse am Beispiel des Arbeitnehmerbegriffs. Berlin: Duncker & Humblot.

Whish, Richard / Bailey, David (2015): Competition Law. 8th ed. Oxford: Oxford University Press.

Whittaker, Simon (2006): The terminologies of civil protection: rights, remedies and procedures. In: Barbara Pozzo / Valentina Jacometti (Eds.): Multilingualism and the Harmonisation of European law. Alphen aan den Rijn: Kluwer Law International, pp. 45–60.

Woods, Lorna / Watson, Philippa / Costa, Marios (2017): Steiner & Woods EU Law. 13th ed. Oxford: Oxford University Press.

Wüster, Eugen (1974): Die allgemeine Terminologielehre – Ein Grenzgebiet zwischen Sprachwissenschaft, Logik, Ontologie, Informatik und den Sachwissenschaften. In: *Linguistics* (119), pp. 61–106.

Wüster, Eugen (1979): Einführung in die allgemeine Terminologielehre und terminologische Lexikographie. Vienna: Springer

Making the Law More Transparent

Text Linguistics for Legislative Drafting

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Abstract

An increasingly globalised and digitalised legal environment creates additional pressure for legislative texts to be drafted in a clear and transparent way. In this chapter, I argue that text linguistics can make a valuable contribution to how this goal can be achieved. To substantiate this argument, I provide specific examples from legislative drafting in Switzerland. I show how the concepts and methods of text linguistics can help drafters identify and remedy impediments to the transparency of statutes and regulations at a functional, thematic and propositional level of textual structure. I conclude the chapter with a summary of the challenges that lie ahead and the solutions I believe we need to devise to maintain the transparency of the law in a globalised world.

Keywords: legislative drafting, plain language, text linguistics, transparency

I. Introduction

Calls for the law to be more transparent are certainly not new, but they are still as relevant today as before. If anything, they have recently gained traction due to an increasingly digitalised and globalised world. There are at least two aspects to the problem: a substantive one and a formal one. From a substantive point of view, transparency means that the law should provide measures that allow for effective public oversight of all but the most confidential state activities. From a formal perspective, it implies that statutes and ordinances should be drafted in such a way that readers can easily recognise the legal rules established in these texts and how they may be affected by these rules. The formal aspect of transparency thus concerns the question whether, and to what extent, the content of legislative texts is reflected in their linguistic form, i. e. it concerns the strive for clarity. In the present chapter, I will focus on this second, formal aspect of transparency.

Calls for legislative texts to be drafted in a clear and transparent manner have been motivated, by and large, by a desire to improve the democratic legitimacy and public acceptance of the law, to ensure legal certainty and equality before the law, and/or to maximise the efficacy of the law and minimise the costs associated with administering it; these motivations have arguably been further accentuated in an increasingly digitalised and globalised world. For one thing, legislative texts have become more

readily available to ordinary citizens due to electronic publication. Nowadays it only takes a couple of clicks or a simple online search to gain access to statutes and regulations. This development is likely to cause a shift in the composition of the de-facto audience of legislative texts. Assessing the situation of legislative drafting in the Commonwealth, Xanthaki (2015: i) concludes that "with enhanced accessibility via electronic publication of legislation in many Commonwealth jurisdictions, drafters 'speak' not only to lawyers and judges, but also to untrained users." Indeed, a recent study has shown that a majority of those who access United Kingdom legislation via its official website are either laypeople or non-legal professionals (Bertlin 2014). For another thing, globalisation has resulted in an internationalisation of the law. Nowadays, the context in which a legislative text needs to be interpreted often transcends the legal system of the nation state. As a result, legislative drafters frequently face the challenge of having to coordinate the texts they are about to compose with legislative texts that use different legal concepts, different legal terminology, different drafting techniques and that are possibly also written in a different language. In addition, national legal systems are under increased pressure to incorporate legal rules developed in a supranational context. Arguably, both of these endeavours, coordination and incorporation, are more likely to succeed if the texts involved make it as transparent as possible what legal rules they establish.

In the present chapter, I will ask whether linguistics, and text linguistics in particular, can contribute to making legislative texts more transparent. To this aim, I will first discuss how the issue of transparency has traditionally been approached in the theory and practice of legislative drafting. In the main part of the chapter, I will then demonstrate how the concepts and methods of text linguistics can be employed to improve the transparency of legislative texts. Finally, I will ask what changes we need to see and what efforts are required to tackle the challenges that legislative drafting faces in an increasingly digitalised and globalised world.

II. Transparent drafting: Theory and practice

In the past, there has been considerable controversy over the question of whether legislative texts can and should be drafted in a clear and transparent language at all. In what follows, I briefly summarise the respective debate in German-speaking legal linguistics (see e. g. Lerch 2004; Eichhoff-Cyrus / Antos 2008); other jurisdictions have had similar discussions (see e. g. Wagner / Cacciaguidi 2008, Xanthaki 2014: 125–131). Among those participating in the debate, three major views can be identified. Following Nussbaumer (2004), I will refer to them as the idealistic, the sceptic and the pragmatic view, respectively. At one end of the spectrum, idealists call for laws that can be understood by everyone. According to this view, legislative texts can only obtain democratic legitimacy and guarantee legal certainty if those who are subject to the law can understand them, and if they can all understand them in the same way (cf. Klein 2004; Wesel 2004). At the other end of the spectrum, sceptics

question the very idea that legislative texts can and should be made more transparent. They point out that readers without legal training will never be able to grasp the legal consequences associated with the provisions stated in legislative texts. According to this view, therefore, it does not make sense to strive for transparency in legislative drafting, as this goal could not be achieved anyway (cf. Lerch 2008). On the contrary, trying to improve the transparency of legislative texts would then only mislead non-expert readers as it would suggest that they can understand what ultimately remains unintelligible to them (Ogorek 2004: 299 f.).

The idealist and the sceptic position are contrasted with a third, more pragmatic approach. This third view is based on the every-day observation that while there is, of course, no such thing as absolute transparency and texts will never be equally intelligible to everyone, a text can still present its content in a gradually more or less transparent manner (cf. Lötscher 2016). Experience furthermore shows that it is not only laypeople but also (and in many ways even primarily) legal experts who struggle with and complain about legislative texts that are difficult to understand because they have not been drafted in a sufficiently clear and transparent manner (cf. Griffel 2014). A lack of transparency in legislative texts often has practical consequences for the efficacy of the legal system as a whole: such texts result in legal decisions being less predictable, they give rise to more legal disputes and they generate unnecessary costs as it takes more time and effort to interpret them, which in turn means that the law will be administered less efficiently (cf. Schröder / Würdemann 2008: 326 f.; Müller 2014: 81 f.).

Based on such pragmatic views, many jurisdictions around the globe have recently taken measures to facilitate the production of legislative texts that are easier to understand and more transparent. Some countries have gone as far as to enact legal provisions stating that official documents such as statutes and regulations must be drafted in clear and transparent language. Examples of such provisions can be found, for instance, in the United States Plain Writing Act of 2010 (Publ.L. 111 – 274) and in Article 7 of the Swiss Languages Act of 5 October 2007 (SR 441.1). In common-law jurisdictions, the goal of plain-language drafting has often become a constituent part of the eduction of professional legislative drafters (cf. Xanthaki 2015; Uhlmann / Höfler 2016). In contrast, many civil-law countries, who do not usually employ professional drafters, have established specific institutions in their legislative process tasked with ensuring that new statutes and regulations are drafted in clear and transparent language. One example of such an institution is the Internal Drafting Committee of the Swiss Federal Administration (cf. Nussbaumer 2008; Höfler 2018). This committee, composed of lawyers as well as language experts, examines the wording of all drafts of statutes and regulations and makes suggestions as to how they could be formulated in a clearer and more transparent way. All administrative units in charge of a legislative project are obliged to formally consult the committee early on and repeatedly during the drafting process and to consider and discuss the suggestions the committee makes. Similar institutions can be found, for instance, in Germany (cf. Thieme / Raff 2017) or Sweden (cf. Ehrenberg-Sundin 2008).

Nonetheless, transparency continues to pose practical problems for those who are tasked with the composition of statutes and regulations. One of the reasons for this state of affairs is that suggestions as to how the clarity of legislative texts can be improved often content themselves with addressing issues of terminology and sentence complexity. In doing so, they neglect some crucial findings of linguistic research on text comprehension. Such research has shown that while the use of familiar words and straight-forward sentences certainly facilitates the comprehensibility of a text, it is even more important that the text enables its readers to construct a coherent model of its content: textual *coherence* (i. e. the semantic and pragmatic relations that hold between the segments of a text) and textual *cohesion* (i. e. the use of lexical items and syntactic constructions to express these relations) play a vital role in what makes a text understandable (cf. van Dijk / Kintsch 1983; Schnotz 2000; Christmann 2008).

An explanation of why legislative drafting guidelines frequently neglect this aspect of text composition can be found in the manner in which lawyers typically approach and apply legislative texts: statutes and ordinances are rarely read from beginning to end, lawyers rather pick out the paragraphs and sentences relevant to the case at hand (cf. Nussbaumer 1995: 96). As a consequence, legislative drafting guidelines tend to advocate a certain degree of de-contextualisation, stating that the individual provisions of a legislative text should, wherever possible, stand on their own, i. e. that they should be understandable and citable with as little recourse to context as possible. In many respects, one can thus identify two different perspectives on what legislative texts are: (a) relatively loose collections of individual provisions that can be understood without recourse to context, or (b) coherent texts made up of normative statements that exhibit rich pragmatic and semantic interconnections (Werlen 1994: 76). If the practice of legislative drafting is to take into account the findings of linguistic research on text comprehension, it will have to unify these two perspectives. In the remainder of this chapter, I will illustrate how text linguistics can contribute to achieving this goal.

III. Text linguistics at work

Text linguistics is a comparatively new linguistic sub-discipline concerned with investigating the linguistic properties of texts as a means of communication: it asks what texts are (i. e. how the notion of "textuality" can be defined), what genres of texts there are, what functions they serve and what structures they exhibit (cf. de Beaugrande / Dressler 1981; Brinker et al. 2000; Adamzik 2016; Hausendorf et al. 2017). On the one hand, text linguistics studies the genre-specific features of texts and the way in which these features interact with the specific communicative and institutional environments in which the respective texts are used. On the other hand, text linguistics is interested in the general cognitive mechanisms underlying textual communication at large (cf. de Beaugrande / Dressler 1981: 210).

One of the core findings of text linguistics is that text comprehension, i. e. the construction of a coherent mental model of the meanings conveyed by a text, comprises the processing of multiple layers of textual structure (cf. Brown / Yule 1983; Motsch 1996; Stede 2007). In order to understand what a text says, readers will have to grasp, among other things, the functional, thematic and propositional structures present in that text. For a text to be transparent, readers must thus be enabled to recover these three layers of text structure as easily as possible. In what follows, I will discuss what this finding means for legislative drafting. I will illustrate my considerations with examples from Swiss federal law and from the work of the aforementioned Internal Drafting Committee of the Swiss Federal Administration.[1]

1. Functional structure

Modern-day text linguistics takes an avowedly pragmatic perspective on texts: texts are considered instruments of communication employed to achieve a certain effect in the world, i. e. they serve a specific function. This function is determined by the genre to which a text belongs and the institutional context in which it is used. This also applies to statutes and regulations. As a genre, legislative texts are used to direct people's behaviour, to organise communal life, to control the directions in which society develops and to serve as a means of pacification and integration (cf. Müller / Uhlmann 2013: 17–25). Certain sub-genres of legislative texts may also serve functions defined by the intertextual setting in which legislative texts exist. Certain statutes, for instance, serve the specific purpose of incorporating legal rules set up in an international context into the national corpus of law. Most regulations, on the other hand, serve the function of further specifying the legal rules set up in a statute (primary vs. secondary legislation).

Within such genre-specific institutional settings, individual legislative texts can then be described as being aimed at regulating specific aspects of life and at bringing about specific changes to society and its physical environment (e. g. protecting forests from human exploitation or providing better care for the elderly). The individual segments of a legislative text can in turn be interpreted as making specific contributions to the global function of the text, thus serving local functions of their own, such as prohibiting certain actions, granting certain rights, delegating a certain matter to be dealt with by a subordinate legislative body or generally informing readers on the contents of the text and on the date of its commencement. In text linguistics, this recursive functionality of texts has sometimes been referred to as their "illocutionary structure" (cf. Motsch 1996).

[1] Swiss federal laws are drafted in equally authentic versions in German, French and Italian. Particularly important statutes and regulations are also translated into Romansh and English. All examples in this chapter are presented in the German original and translated into English. If available, I have used the official translation provided by the Swiss Federal Chancellery; in all other cases, the translation is my own.

Legislative drafters face the task of making the functions fulfilled by the text as a whole as well as by its individual segments transparent. Several genre-specific means are available to them to achieve this goal. However, these means need to be employed carefully and with respect to the general principles of text comprehension in order to properly serve their purpose. In what follows, I will briefly discuss three elements that can foster or obstruct the transparency of the functional structure of legislative texts depending on how they are realised: (a) statements of purpose, (b) modality and (c) definitions of terms.

a) Statements of purpose

The global functions of legislative texts generally become apparent from their title and from specific provisions inserted at the beginning of a text which state the aim the legislator pursues with the text. The titles of legislative texts usually do not just name the topic of the text but also indicate the genre and sub-genre to which the respective text belongs. They thus provide some first information on the general function of the text, as can be seen in the following title typical for Swiss federal legislation, which includes both the sub-genre ("Federal Act") and the subject matter regulated in the text ("Film Production and Film Culture"):[2]

Bundesgesetz über Filmproduktion und Filmkultur	**Federal Act on Film Production and Film Culture**

Sometimes, the title also indicates the aim that the legislator pursues with the respective piece of legislation. If, as in the above example, the aim pursued by the legislator does not become evident from the title of the text, it may be made transparent by an explicit statement of purpose. Depending on the drafting tradition to which the text belongs, such a statement may be realised as a preamble to the text or as a part of the text itself. The aforementioned Federal Act on Film Production and Film Culture, for instance, includes as its first article the following statement of purpose:

Art. 1 Zweck	**Art. 1** Aim
Dieses Gesetz soll die Vielfalt und Qualität des Filmangebots sowie das Filmschaffen fördern und die Filmkultur stärken.	This Act is intended to promote the diversity and quality of the films on offer and the creation of films and to strengthen film culture.

However, a statement of purpose can only fulfil its role if it really does name the aim of the respective piece of legislation and not merely state the subject matter of the text. The latter is the case, for instance, in the following provision from the Ordinance of the Minimal Requirements for the Premises of Gun Shops:[3]

[2] Bundesgesetz vom 14. Dezember 2001 über Filmproduktion und Filmkultur (SR 443.1).

[3] Verordnung vom 21. September 1989 über die Mindestanforderungen für Geschäftsräume von Waffenhandlungen (SR 514.544.2).

Art. 1 Zweck
Diese Verordnung legt die Mindestanforderungen an die Geschäftsräume fest, über die ein Inhaber oder eine Inhaberin einer Waffenhandelsbewilligung verfügen muss.

Art. 1 Aim
This Ordinance determines the minimal requirements for the business premises that the holder of an arms trade licence must possess.

This provision does not contribute to the transparency of the text as, given the title of the ordinance, it merely states the obvious. The aim pursued by the legislator only becomes clear to readers once they inspect the remainder of the text: the ordinance is obviously intended to prevent weapons from falling into the wrong hands. The example illustrates that drafting instruments must be employed carefully and according to their true purpose if they are to have any effect on the clarity of a text.

b) Modality

The function of legislative texts materialises most immediately in the individual provisions they contain. Traditionally, the normative function of these provisions has been made transparent by the use of modal verbs such as the English *shall* (cf. Williams 2006). In contrast, many modern drafting guidelines suggest that this function can be safely inferred from the text genre and thus needs not be made explicit: "Legislation is compulsory, it introduces commands that must be complied with anyway. The use of 'shall' […] is therefore superfluous. […] Where there is no discretion, a duty is introduced by the present tense or 'must'" (Xantaki 2014: 124, 151). It remains to be asked under what circumstances the present tense is to be used and when the modal verb *must*.

For one, the use of *must* can make it transparent that the state places a duty to act on a third person rather than committing himself to such action. This drafting technique has been applied, for instance, in Article 6 of the Swiss Ordinance on Viticulture and the Import of Wine[4] (emphasis added):

Art. 6 Widerrechtlich gepflanzte Reben
[1] Der Kanton verfügt die Beseitigung widerrechtlich angepflanzter Reben.
[2] Die Bewirtschafterin bzw. der Bewirtschafter oder die Grundeigentümerin bzw. der Grundeigentümer *muss* die Reben innerhalb von zwölf Monaten nach Erhalt der kantonalen Verfügung beseitigen. Nach unbenutztem Ablauf dieser Frist beseitigt der Kanton die Reben auf Kosten des Fehlbaren.

Art. 6 Illegally planted vines
[1] The Canton orders the removal of illegally planted vines.
[2] The manager or owner of the land *must* remove the vines within twelve months after having received the cantonal order. After the deadline has elapsed unused, the Canton removes the vines at the expense of the culpable person.

[4] Verordnung vom 14. November 2007 über den Rebbau und die Einfuhr von Wein (SR 916.140).

In this example, the use of *must* marks a shift of perspective. In paragraph 1, the state commits itself to ordering the removal of illegally planted vines: the Canton is given the right and duty to do so. In contrast, the first sentence of paragraph 2 obliges a private individual (the manager or owner of the land) to remove the vines within a certain amount of time. As the state can neither foresee nor guarantee that said person will do as ordered, the use of *must* rather than plain indicative seems appropriate for this provision. The second sentence of paragraph 2 then shifts the perspective back to the state, committing it to removing the vines if the manager or owner of the land has not done so in time. The alternation between the indicative and *must* thus makes it transparent what types of speech act the individual provisions represent: paragraph 1 and the second sentence of paragraph 2 constitute commissives and the first sentence of paragraph 2 a directive speech act (cf. Searle 1979).

The use of the modal verb *must* may also serve to disambiguate between obligations on the one hand and legal definitions, legal assumptions and legal fictions on the other hand. This phenomenon can be observed, for instance, in Article 5 paragraph 2 of the Swiss Federal Constitution[5] (emphasis added):

Staatliches Handeln *muss* im öffentlichen Interesse liegen und verhältnismässig sein.	State activities *must* be conducted in the public interest and be proportionate to the ends sought.

Even though this provision represents a commitment of the state to adhere to certain principles and would thus normally be formulated in the indicative, it is phrased with the modal verb *must.* The motivation for this deviation from custom can be surmised once the modal verb is omitted from the sentence:

Staatliches Handeln liegt im öffentlichen Interesse und ist verhältnismässig.	State activities are conducted in the public interest and are proportionate to the ends sought.

This version of the provision does not make it sufficiently clear whether state activities must be conducted in the public interest etc. (obligation) or whether state activities are to be considered, by definition, as conducted in the public interest etc. (legal fiction). In this example, the modal verb *must* has thus apparently been used to make it transparent which of the two possible speech acts the provision represents. Both examples therefore demonstrate that, while it may not always be necessary to make the modality of provisions explicit, the use of the modal verb *must* may, at times, improve the transparency of a legislative text: it can disambiguate between speech acts and thus increase the chances that a certain provision will be interpreted as intended.

[5] Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999 (SR 101).

c) Definitions of terms

The illocutionary structure of a legislative text may also be obscured if material provisions are hidden in definitions of terms. This was the case, e. g., in the following provision from an early draft of the Ordinance of the Swiss Federal Department of the Interior on the Promotion of Films[6] (emphasis added):

Art. 2 Begriffe In dieser Verordnung bedeutet: a. "Projektbeitrag": eine Finanzhilfe an die Kosten für ein einmaliges, zeitlich und örtlich begrenztes Vorhaben; b. "Strukturbeitrag": eine Finanzhilfe an die laufenden Betriebskosten eines Unternehmens, *das regelmässig öffentliche Aufgaben erfüllt.*	**Art. 2** Terms In this Ordinance: a. "project contribution" means a financial aid towards the costs of a single, localised and temporary undertaking; b. "structural contribution" means a financial aid towards the on-going operating costs of a company *that regularly exercises public functions.*

While this provision serves two purposes, only one of them is transparent from outset: to delineate the meanings of the terms "project contribution" and "structural contribution". However, the provision does more than that: by specifying, under letter *b*, that a structural contribution is not just a financial aid towards the on-going operating costs of any company but specifically to a company "that regularly exercises public functions", it also stipulates who is eligible for this type of contributions in the first place. In a later draft, this hidden material provision was made transparent in a statement of its own:

Art. 2 Begriffe In dieser Verordnung bedeutet: a. "Projektbeitrag": eine Finanzhilfe an die Kosten für ein einmaliges, zeitlich und örtlich begrenztes Vorhaben; b. "Strukturbeitrag": eine Finanzhilfe an die laufenden Betriebskosten eines Unternehmens.	**Art. 2** Terms In this Ordinance: a. "project contribution" means a financial aid towards the costs of a single, localized and temporary undertaking; b. "structural contribution" means a financial aid towards the on-going operating costs of a company.
Art. 17 Förderbare Unternehmen Strukturbeiträge können nur von Unternehmen beantragt werden, die regelmässig Aufgaben im öffentlichen Interesse erfüllen.	**Art. 17** Eligible companies Structural contributions may only be applied for by companies that regularly exercise public functions.

Textual transparency can thus also be facilitated by not conflating multiple speech acts into a single provision, especially if these speech acts represent different types of norms (e. g. legal definitions vs. material requirements). Readers are then more likely to find the information they are looking for. In the example discussed above, readers will find it easier to recover information on who is eligible to apply for a certain type

[6] Verordnung des EDI vom 21. April 2016 über die Filmförderung (SR 443.113).

of financial aid if those requirements are stated explicitly rather than hidden in a definition of terms.

2. Thematic structure

A second layer of textual structure derives from the fact that texts are usually meant to provide their readers with information on some topic (cf. Lötscher 1987). However, the problem that anyone composing a text faces is that, while topics are multidimensional semantic entities, texts are mostly two-dimensional. The overall topic of a text will thus have to be further developed (or rather "unfolded"): it will have to be broken down into sub-topics and sub-sub-topics (segmentation), and these sub-topics and sub-sub-topics will have to be brought into a sequential order (linearisation). The result of this process is what text linguistics refers to as the thematic structure of a text (cf. Brinker 2010: 40–56). It covers both the large-scale ordering of contents at the level of chapters and sections as well as the local ordering of contents at the level of individual paragraphs and sentences.

Studies have shown that the comprehensibility of a text can be fostered (a) by arranging its contents in a sequential order that supports readers in building a coherent mental model of these contents and (b) by making the order by which the contents have been arranged transparent at the surface level of the text (cf. Christmann 2008: 198 f.; Lorch 1989). In what follows, I will give some examples of how this dual insight can be applied in legislative drafting.

a) Linearisation

The order in which the contents of a text are linearised can have an impact on how easy it is for readers to find relevant information and to construct a coherent mental model of what the text says. To find an optimal sequential order, drafters need to consider both the potential expectations of the primary addressees as well as the general cognitive principles of human information processing. With regard to the latter, one approach to arranging the contents of a text has proven particularly beneficial: thematic continuity (cf. Schnotz 1994: 254 ff.; Christmann 2008: 1099). Contents that naturally belong together should, whenever possible, not be broken up and distributed over different parts of a text but rather be presented in one piece. What this may mean for legislative drafting can be illustrated by the Statutes of the Swiss Competition Commission.[7] A first draft of these statutes was organised into the following chapters (in italics) and sections:

Zusammensetzung	*Composition*
Kommission	Commission
Kammern	Chambers
Präsidium	Presidium

[7] Geschäftsreglement der Wettbewerbskommission vom 15. Juni 2015 (SR 251.1).

Aufgaben	*Functions*
Kommission	Commission
Kammern	Chambers
Präsidium	Presidium
Sitzungen	*Meetings*
Kommission	Commission
Kammern	Chambers
Präsidium	Presidium

The draft exhibited a clear structure and the ordering principle it followed was easy to recognise: it first defined how each of the three bodies of the Competition Commission was to be composed, then described the functions that each body fulfils and finally determined how the meetings of each body were to be organised. Nevertheless, the text proved difficult to read. From a cognitive perspective, this was hardly surprising as the order in which the contents had been arranged tore apart what naturally belonged together: instead of dealing with the individual bodies of the commission one at a time, the contents were grouped according to abstract categories that did not form natural units. Readers were forced to go back and forth between the individual bodies when consulting the text. In a later draft, this problem was resolved by imposing thematic continuity and applying an organisational principle that reflected the nature of the objects described more directly (principle of iconicity):

Kommission	*Commission*
Zusammensetzung	Composition
Aufgaben	Functions
Sitzungen	Meetings
Kammern	*Chambers*
Zusammensetzung	Composition
Aufgaben	Functions
Sitzungen	Meetings
Präsidium	*Presidium*
Zusammensetzung	Composition
Aufgaben	Functions
Sitzungen	Meetings

Empirical studies have further shown that texts are easier to understand if they first provide readers with a more general picture and only then move to the details (cf. Christmann 1989). Such an incremental ordering of contents helps readers contextualise the individual information they are given. The following article from an

early draft of the Swiss Ordinance on Swiss Persons and Institutions Abroad[8] may serve to illustrate this point:

Art. 49 Subsidiarität	**Art. 49** Subsidiarity
[1] Natürliche und juristische Personen haben Massnahmen zu treffen, um Notlagen vorzubeugen, insbesondere indem sie die nationale Gesetzgebung des Empfangsstaates und die Empfehlungen des Bundes beachten und für einen ausreichenden Versicherungsschutz sorgen.	[1] Individuals and legal entities must take steps to avoid running into difficulty, in particular by complying with the national legislation of the receiving state and following the Confederation's recommendations as well as ensuring adequate insurance cover.
[2] Die natürliche oder juristische Person muss alle Handlungen vornehmen, die von ihr im Sinne der Eigenverantwortung zu erwarten sind, um eine Notlage selber organisatorisch und finanziell zu überwinden. Die im Empfangsstaat zur Verfügung stehenden Hilfeleistungen sind soweit zumutbar in Anspruch zu nehmen.	[2] Before requesting assistance, individuals and legal entities must do everything that may be expected of them in terms of personal responsibility to overcome their difficulties from an organisational and financial point of view on their own. Where reasonable, use should be made of any assistance available in the receiving state.
[3] Schweizer Staatsangehörige können ihre Auslandaufenthalte registrieren. Das EDA stellt die elektronische Datenbank zur Verfügung.	[3] Swiss nationals may register their stays abroad. The FDFA provides an electronic database for this purpose.
[4] Die Schutztätigkeit des Bundes kommt erst dann zum Tragen, wenn eine natürliche oder eine juristische Person aus eigener Kraft oder mithilfe von Dritten die Mittel zur Selbsthilfe ausgeschöpft hat.	[4] The Confederation shall only provide protection after individuals or legal entities have exhausted every means of helping themselves, either on their own or with the help of third parties.

In this article, specific duties and general principles follow each other in seemingly random order. The general principle that the article deals with, i. e. the subsidiary nature of the protection that the Swiss Confederation provides to its citizens abroad, is only stated in the last paragraph of the article. However, since all other provisions in the article constitute instantiations of this general principle and will thus have to be interpreted in light of this principle, the article was later re-arranged as follows:

Art. 49 Subsidiarität	**Art. 49** Subsidiarity
[1] Die Schutztätigkeit des Bundes kommt erst dann zum Tragen, wenn eine natürliche oder eine juristische Person aus eigener Kraft oder mithilfe von Dritten die Mittel zur Selbsthilfe ausgeschöpft hat.	[1] The Confederation shall only provide protection after individuals or legal entities have exhausted every means of helping themselves, either on their own or with the help of third parties.
[2] Die natürliche oder juristische Person muss zuvor alle Handlungen vornehmen, die von ihr im Sinne der Eigenverantwortung zu erwarten	[2] Before requesting assistance, individuals and legal entities must do everything that may be expected of them in terms of personal re-

[8] Verordnung vom 7. Oktober 2015 über Schweizer Personen und Institutionen im Ausland (SR 195.11).

sind, um eine Notlage selber organisatorisch und finanziell zu überwinden. Die im Empfangsstaat zur Verfügung stehenden Hilfeleistungen sind soweit zumutbar in Anspruch zu nehmen.
[3] Natürliche und juristische Personen haben Massnahmen zu treffen, um Notlagen vorzubeugen, insbesondere indem sie die nationale Gesetzgebung des Empfangsstaates und die Empfehlungen des Bundes beachten und für einen ausreichenden Versicherungsschutz sorgen.
[4] Schweizer Staatsangehörige können ihre Auslandaufenthalte registrieren. Das EDA stellt die elektronische Datenbank zur Verfügung.

sponsibility to overcome their difficulties from an organisational and financial point of view on their own. Where reasonable, use should be made of any assistance available in the receiving state.
[3] Individuals and legal entities must take steps to avoid running into difficulty, in particular by complying with the national legislation of the receiving state and following the Confederation's recommendations as well as ensuring adequate insurance cover.

[4] Swiss nationals may register their stays abroad. The FDFA provides an electronic database for this purpose.

In its re-arranged version, the article moves from the general principle to ever more specific requirements. This makes it easier for readers to recognise the rationale underlying the individual provisions and to contextualise the information provided. The overall topic of the article thus becomes more transparent.

b) Signposting

Even the best organisational principle can be in vain if the readers of the text are not able to recognise it. It is thus crucial that drafters indicate the thematic organisation of statutes and regulations on the surface level of the text. The textual conventions of legislative drafting equips them with several instruments to provide signposts for the readers (cf. Hamann 2015).

One option is to provide a content statement and thus give readers a first overview of the main topics covered by a legislative text. Depending on drafting conventions, content statements may precede the actual text (e. g. the so-called "long title" in UK acts; cf. Xanthaki 2014: 139 f.) or constitute the first "provision" of a statute or regulation. A content statement of the latter kind can be found, for instance, at the beginning of the Swiss Federal Act on Foreign Nationals:[9]

Art. 1 Gegenstand
Dieses Gesetz regelt die Ein- und Ausreise, den Aufenthalt sowie den Familiennachzug von Ausländerinnen und Ausländern in der Schweiz. Zudem regelt es die Förderung von deren Integration.

Art. 1 Subject matter
This Act regulates the entry and exit, residence and family reunification of foreign nationals in Switzerland. In addition, it regulates encouraging their integration.

[9] Bundesgesetz vom 16. Dezember 2005 über die Ausländerinnen und Ausländer (SR 142.20).

While content statements may not constitute proper legal norms, they can still be useful as so-called "advance organisers": readers are introduced to the main contents and the overall structure of the text. Thus, they are later better able to conceptualise the information they encounter as they already know what to expect (cf. Ausubel 1960; Schnotz 1994: 280–282; Christmann 2000: 120).

However, the most conspicuous type of signposts legislative drafters can employ are chapter and section headings. Headings best serve their function if they make transparent what the respective text segment is about and how it relates to the other segments of the text. This was not the case, for instance, for the following headings in an early draft of the Swiss Ordinance on the Import, Transit and Export of Animals and Animal Products from and to Third Countries:[10]

2. Abschnitt: Kontrollen bei der Ein- und Durchfuhr	**Section 2: Controls in the cases of import and transit**
Art. 36 Umfang der grenztierärztlichen Kontrollen bei der Einfuhr Die grenztierärztliche Kontrolle umfasst für jede Sendung: …	**Art. 36** Extent of border veterinary controls in the case of import Border veterinary controls comprise for each shipment: …
Art. 37 Durchfuhrsendungen Die grenztierärztliche Kontrolle umfasst für jede Sendung: …	**Art. 37** Transit shipments Border veterinary controls comprise for each shipment: …

The wording of these headings obscured the thematic structure of the text in several ways. First, the section heading provided redundant information. According to the communicative principle of relevance as described, in various forms, by linguistic pragmatics (cf. Grice 1975; Sperber / Wilson 1996), the fact that the restrictive attribute *in the cases of import and transit* was added to the section heading suggested that there were controls other than those covered by the current section; however, this was not the case. The attribute was therefore not only superfluous but potentially misleading. On the other hand, the section heading omitted information that was crucial to understanding the subject matter of the section: The section did not define border veterinary controls in general but only the *extent* of these controls – as indicated by the heading of Article 36 (*extent of …*) and the use the verb *comprise* in the two provisions. Third, the variation found in the wording of the two article headings obscured the fact that they contained parallel provisions, with Article 36 applying to import and Article 37 to transit. Finally, the provisions themselves were phrased in a way that made it impossible for readers to know what they applied to without taking the article heading into account. As a general rule, though, readers should be able to derive the content of a provision from the actual text; headings should

[10] Verordnung vom 18. November 2015 über die Ein-, Durch- und Ausfuhr von Tieren und Tierprodukten im Verkehr mit Drittstaaten (SR 916.443.10); the example has been slightly simplified.

merely serve as signposts and not constitute a part of the provision itself. For these reasons, headings and text were later re-cast as follows:

2. Abschnitt: Umfang der Kontrollen	**Section 2: Extent of the controls**
Art. 36 Einfuhr Bei der Einfuhr umfasst die grenztierärztliche Kontrolle für jede Sendung: …	**Art. 36** Import In the case of import, border veterinary controls comprise for each shipment: …
Art. 37 Durchfuhr Bei der Durchfuhr umfasst die grenztierärztliche Kontrolle für jede Sendung: …	**Art. 37** Transit In the case of transit, border veterinary controls comprise for each shipment: …

In this form, the headings now indicate much more succinctly the topics of the respective text segments and the way these topics are related to each other. The thematic structure of the text thus becomes more transparent.

3. Propositional structure

A third layer of structure emerges from the propositional content of a text, i. e. from the individual statements the text makes and the way these statements are logically connected to each other. In order to comprehend the propositional structure of a text, readers must be able to recognise what real-world entities it refers to and what logical relations it establishes between them (cf. Brinker 2010: 22–40). Many legal provisions express a conditional relation of some kind, i. e. they link some conditions (e. g. certain situations, objects or people) to some legal consequences (e. g. certain rights or duties). Moreover, most legal provisions are related to other provisions in the text (e. g. they constitute exceptions or concretisations to a more general provision or pose additional constraints on a process already introduced at an earlier point). Thus, for readers to understand the propositional content of a legislative text, it is essential that they recognise not only the internal structure of the individual provisions listed in that text but also the way that these provisions are connected to each other. In sum, legislative drafters face the dual challenge of making it transparent (a) what logical relations hold both within and between the individual provisions of a statute or regulation and (b) what entities these provisions refer to.

a) Relations

Experience shows that in order to make the relations holding within and between legal provisions transparent, it is advisable to aim for iconicity, i. e. the surface structure of the text is to reflect the structure of its content as directly as possible (cf. Lötscher 2008). First and foremost, this means that the wording of individual provisions should clearly distinguish between condition and consequence and accurately describe the logical relation holding between them. This was not the case, for exam-

ple, in the following provision from a draft of the Swiss Federal Act on Explosive Materials:[11]

Vorgesetzte von Betrieben oder Unternehmen, in denen sich beim Umgang mit Sprengmitteln oder pyrotechnischen Gegenständen eine Explosion mit Personen oder erheblichem Sachschaden ereignet, haben unverzüglich die Polizei zu informieren.	Supervisors of companies or enterprises in which the handling of explosives or pyrotechnical articles leads to an explosion that causes personal or severe material damage must immediately notify the police.

The wording of this provision does not accurately represent the conditional structure of the legal norm that it is meant to convey, namely that if in a company or enterprise the handling of explosives or pyrotechnical articles leads to an explosion that causes personal or severe material damage, the supervisors must immediately notify the police. The use of a noun phrase modified by a relative clause rather suggests that the provision applies to a certain class of supervisors ("supervisors of companies or enterprises in which the handling of explosives or pyrotechnical articles leads to an explosion that causes personal or severe material damage") and that these supervisors have a specific duty ("must immediately notify the police"). However, in the conditional relation that the provision is meant to describe, the supervisors do not form part of the condition but only appear in the legal consequence. In a later version of the text, the provision was re-phrased in a more iconic manner, thus making the logical structure of the underlying norm transparent:

Ereignet sich in Betrieben oder in Unternehmen beim Umgang mit Sprengmitteln oder pyrotechnischen Gegenständen eine Explosion mit Personen- oder erheblichem Sachschaden, so haben die Vorgesetzten unverzüglich die Polizei zu informieren.	If in a company or enterprise the handling of explosives or pyrotechnical articles leads to an explosion that causes personal or severe material damage, the supervisors must immediately notify the police.

The principle of iconicity can also be applied to the structuring of paragraphs and articles. This can be illustrated with the following article from the Federal Supreme Court Act:[12]

Art. 10 Unvereinbarkeit [1] Die Richter und Richterinnen dürfen weder der Bundesversammlung noch dem Bundesrat angehören und in keinem anderen Arbeitsverhältnis mit dem Bund stehen. [2] Sie dürfen weder eine Tätigkeit ausüben, welche die Erfüllung der Amtspflichten, die Unabhängigkeit oder das Ansehen des Ger-	**Art. 10** Incompatibility [1] The judges of the Court may not be members of the Federal Assembly, the Federal Council or otherwise be employed by the Confederation. [2] They may not engage in any activity that impairs their ability to fulfil the duties of their office or is injurious to the independence or the

[11] Bundesgesetz vom 25. März 1977 über explosionsgefährliche Stoffe (SR 941.41).

[12] Bundesgesetz vom 17. Juni 2005 über das Bundesgericht (SR 173.110).

ichts beeinträchtigt, noch berufsmässig Dritte vor dem Bundesgericht vertreten.
[3] Sie dürfen keine amtliche Funktion für einen ausländischen Staat ausüben und keine Titel oder Orden ausländischer Behörden annehmen.
[4] Die ordentlichen Richter und Richterinnen dürfen kein Amt eines Kantons bekleiden und keine andere Erwerbstätigkeit ausüben. Sie dürfen auch nicht als Mitglied der Geschäftsleitung, der Verwaltung, der Aufsichtsstelle oder der Revisionsstelle eines wirtschaftlichen Unternehmens tätig sein.

reputation of the Court nor professionally represent third parties at the Court.
[3] They may not serve in any official capacity on behalf of a foreign state and not accept any titles or orders from foreign authorities.
[4] The permanent judges may not hold office in a canton or engage in any other gainful activity. They may not be members of the management board, board of directors, advisory board or serve as auditors of a commercial enterprise.

The surface structure of this article does not reflect the semantic structure of the provisions it contains. While the surface structure falls into four paragraphs, the underlying propositional structure consists of only two elements: a general rule detailing the activities that are incompatible with the office of any kind of judge and a special rule detailing the activities that are additionally incompatible with the office of a permanent judge. The general rule is spread out over the first three paragraphs of the article, the special rule is contained in the fourth paragraph. A more iconic representation of the two rules could have looked as follows:

Art. 10 Unvereinbarkeit
[1] Die Richter und Richterinnen dürfen nicht:
a. der Bundesversammlung noch dem Bundesrat angehören oder in keinem anderen Arbeitsverhältnis mit dem Bund stehen;
b. eine Tätigkeit ausüben, welche die Erfüllung der Amtspflichten, die Unabhängigkeit oder das Ansehen des Gerichts beeinträchtigt, oder berufsmässig Dritte vor dem Bundesgericht vertreten;
c. eine amtliche Funktion für einen ausländischen Staat ausüben oder Titel oder Orden ausländischer Behörden annehmen.
[2] Die ordentlichen Richter und Richterinnen dürfen zudem nicht:
a. ein Amt eines Kantons bekleiden oder eine andere Erwerbstätigkeit ausüben;
b. als Mitglied der Geschäftsleitung, der Verwaltung, der Aufsichtsstelle oder der Revisionsstelle eines wirtschaftlichen Unternehmens tätig sein.

Art. 10 Incompatibility
[1] The judges of the Court may not:
a. be members of the Federal Assembly, the Federal Council or otherwise be employed by the Confederation;
b. engage in any activity that impairs their ability to fulfil the duties of the office or is injurious to the independence or the reputation of the Court or professionally represent third parties at the Court;
c. serve in any official capacity on behalf of a foreign state or accept any titles or orders from foreign authorities.
[2] The permanent judges may also not:
a. hold office in a canton or engage in any other gainful activity;
b. be members of the management board, board of directors, advisory board or serve as auditors of a commercial enterprise.

In this version of the article, the propositional structure is more transparent: the two paragraphs at the surface level reflect the two-part nature of the underlying norm, and the adverb *also* in the second paragraph makes it clear that the second provision applies in addition rather than instead of the first.

b) Reference

The propositional structure of a text may also be difficult to grasp if it is not clear what entities the individual propositions refer to. One linguistic phenomenon that frequently obstructs the process of reference resolution are bridging references. A bridging reference is an anaphoric expression that does not refer to its antecedent explicitly (e. g. *a house … the house/it*) but rather alludes to it implicitly (e. g. *a house … the chimney*). In order to resolve a bridging reference, readers need to have specific world knowledge at their disposal (e. g. that houses have chimneys). If the resolution of a bridging reference requires too much knowledge or too much cognitive effort on the part of the readers, it can hinder the process of text understanding. The following excerpt from the draft of a partial revision of the Swiss Federal Electricity Act[13] contained such a counter-productive bridging reference (emphasis added):

Art. 18 Das Bundesamt für Energie kann Projektierungszonen festlegen, um Grundstücke für künftige Starkstromanlagen freizuhalten.	**Art. 18** The Federal Office of Energy may define development zones in order to keep properties clear for future power installations.
Art. 20 Kommen *Eigentumsbeschränkungen nach Artikel 18* einer Enteignung gleich, so sind sie voll zu entschädigen.	**Art. 20** If *ownership restrictions according to Article 18* are equivalent to expropriation, full compensation has to be made.

The provision in Article 20 refers to some "ownership restrictions" supposedly introduced in Article 18. However, Article 18 does not explicitly mention any "ownership restrictions". Readers will only be able to resolve this reference if they realise that the definition of development zones described in Article 18 can result in an ownership restriction, as land owners would, for instance, not be able to use their land to build a house anymore. The resolution of the reference thus requires considerable knowledge and cognitive effort. The situation was remedied in a later draft by replacing the bridging reference in Article 20 with an explicit reference to the notion of defining development zones and to the fact that it can result in an ownership restriction (emphasis added):

[13] Elektrizitätsgesetz vom 24. Juni 1902 (SR 734.0).

Art. 18 Das Bundesamt für Energie kann Projektierungszonen festlegen, um Grundstücke für künftige Starkstromanlagen freizuhalten.	**Art. 18** The Federal Office of Energy may define development zones in order to keep properties clear for future power installations.
Art. 20 *Führt die Festlegung einer Projektierungszone zu einer Eigentumsbeschränkung*, die einer Enteignung gleichkommt, so ist diese voll zu entschädigen.	**Art. 20** If *the definition of a development zone results in an ownership restriction* equivalent to expropriation, full compensation has to be made.

The propositional structure of a legislative text is also obscured if the wording of a provision wrongly creates the impression that it refers to an entity that has been introduced into the discourse elsewhere, while it actually merely presupposes that entity's existence. An example of such a presupposition could be found in the draft of a bill to change the Swiss Railway Act[14] (emphasis added):

Die Weiterentwicklung der Bahninfrastruktur erfolgt im Rahmen *des Entwicklungsprogrammes des Bundes* und gemäss den folgenden Zielen: …	The railway infrastructure is further developed within the framework of *the development programme of the Confederation* and according to the following goals: …

The use of the definite article *the* with the noun phrase *federal development programme* implies that said programmes are already known to the reader, either because they have already been mentioned or because they constitute common knowledge. In reality, neither was the case. Effectively, the use of a definite noun phrase thus introduced an implicit norm, providing that the Confederation is obliged to have a federal development programme. In a later version of the draft, this obligation was made transparent by inserting an explicit provision for the content that was merely presupposed in the previous draft (emphasis added):

[1] Die Weiterentwicklung der Bahninfrastruktur hat folgende Ziele: … [2] *Der Bundesrat unterbreitet der Bundesversammlung in regelmässigen Abständen Programme zur Weiterentwicklung der Bahninfrastruktur (Entwicklungsprogramme).* [3] In den Entwicklungsprogrammen zeigt er auf, wie er die Ziele erreichen will.	[1] The railway infrastructure is further developed according to the following goals: … [2] *The Federal Council periodically submits programmes for the further development of the railway infrastructure (development programmes) to the Federal Assembly.* [3] In the development programmes, the Federal Council outlines how it intends to accomplish the goals.

Presuppositions do not only constitute an impediment to text understanding but may also infringe on the constitutional principle of legality. This principle states, among other things, that the law must be specific enough for those who are subject

[14] Eisenbahngesetz vom 20. Dezember 1957 (SR 742.101).

to it to be able to recognise what they may or may not do. Presuppositions will thus not always provide sufficient legal grounds for a norm to be enforced (cf. Höfler 2014, 2017).

IV. Transparent drafting in a globalised world

An increasingly globalised world poses both a threat and a challenge for the goal of transparency in legislative drafting. Intertextual connections between different pieces of legislation more and more transcend the borders of national law. But if national law will increasingly have to be interpreted in the context of international treaties, then national legislators lose significant influence over how transparent their law will be. In this context, it would be all too easy to give up on the goal of transparency altogether. Indeed, an argument one occasionally hears is that if the nation state has to incorporate a piece of supranational legislation that has been drafted in non-transparent language, then it is easier to simply copy this piece of legislation rather than to come up with one's own alternative wording. The resulting national law might not be transparent but at least it would presumably also not deviate from the (obscured) intentions of the supranational legislator.[15] This argument is, of course, doubly flawed. First, any transplanting of a piece of text from one context into another will automatically effect its meaning: legislative statements can never be interpreted in isolation but must always be read with regard to the context in which they appear. Second, even if this workaround did guarantee textual equivalence, it would lead to the proliferation of non-transparent language and thus jeopardise the quality of legislation at large. To prevent such dynamics, it is thus important that legislators make plain-language drafting a priority.

However, this goal can only be achieved if we know what it takes for a legislative text to be transparent in the first place: it is vital that both the legal and the language sciences work together and develop concepts and methods to help drafters fulfil their task. Scientific studies of legislative drafting are still comparatively sparse. Law scholars as well as linguists still mostly focus on questions related to the interpretation of the law and thereby neglect the perspective of composition. Above, I have shown how the insights of text linguistics can be applied to improve the clarity of legislative texts. Text linguistics has the advantage that it combines insights into general cognitive mechanisms of language understanding with a realisation that, as means of communication, texts are heavily influenced by the conventions of their genre and the institutional setting in which they are used. Its concepts and methods are thus apt, maybe more so than those of other approaches to language, to be applied in an interdisciplinary environment like the one at hand. In a globalised world, how-

[15] For a discussion of the pros and cons of this practice see e. g. the Swiss Federal Administration's rules of thumbs for the implementation of EU law in national law (available online at: www.bk.admin.ch > Dokumentation > Rechtsetzungsbegleitung > Übernahme von EU-Recht: Formale Aspekte > Hilfsmittel > Faustregeln für die Umsetzung von EU-Recht in Schweizerisches Recht).

ever, such efforts will have to transcend the boundaries of national conventions and languages. What is ultimately needed is a general theory of legislative drafting that includes legal as well as linguistic aspects and that is capable of capturing the legal and cognitive properties underlying all legislation, independent of the legal system and language in which it has been drafted.

V. Literature

Adamzik, Kirsten (2016): Textlinguistik: Grundlagen, Kontroversen, Perspektiven. 2nd edition. Berlin, New York: de Gruyter.

Ausubel, David Paul (1960): The use of advance organizers in the learning and retention of meaningful verbal material. In: *Journal of Educational Psychology* 51(5), pp. 267–272.

Beaugrande, Robert de / Dressler, Wolfgang (1981): Introduction to Text Linguistics. London, New York: Routledge.

Bertlin, Alison (2014): What works best for the reader? A study on drafting and presenting legislation. In: *The Loophole* 29(2), pp. 25–49.

Brinker, Klaus (2010): Linguistische Textanalyse: Eine Einführung in Grundbegriffe und Methoden. 7th edition. Berlin: Erich Schmidt.

Brinker, Klaus / Antos, Gerd / Heinemann, Wolfgang / Sager, Sven F. (Eds.) (2000): Text- und Gesprächslinguistik / Linguistics of Text and Conversation. Vol. 1. Berlin, New York: de Gruyter (= Handbücher der Sprach- und Kommunikationswissenschaft 16/1).

Brown, Gillian / Yule, George (1983): Discourse analysis. Cambridge, Cambridge University Press.

Christmann, Ursula (1989): Modelle der Textverarbeitung: Textbeschreibung als Textverstehen. Münster: Aschendorff.

Christmann, Ursula (2000): Aspekte der Textverarbeitungsforschung. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven Sager F. (Eds.): Text- und Gesprächslinguistik / Linguistics of Text and Conversation. Vol. 1. Berlin, New York: de Gruyter (= Handbücher der Sprach- und Kommunikationswissenschaft 16/1), pp. 113–122.

Christmann, Ursula (2008): Rhetorisch-stilistische Aspekte moderner Verstehens- und Verständlichkeitsforschung. In: Ulla Fix / Andreas Gardt / Joachim Knape (Eds.): Rhetorik und Stilistik / Rhetorics and Stilistics. Berlin, New York: de Gruyter, pp. 1092–1106.

Dijk, Teun A. Van / Kintsch, Walter (1983): Strategies of Discourse Comprehension. New York: Academic Press.

Ehrenberg-Sundin, Barbro (2008): The Swedish Approach to Clear Legislation and Clear Official Texts. In: Anne Wagner / Sophie Ciacciaguidi-Fahy (Eds.): Obscurity and Clarity in the Law: Prospects and Challenges. London, New York: Routledge, pp. 165–180.

Eichhoff-Cyrus, Karin M. / Antos, Gerd (Eds.) (2008): Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion. Mannheim: Duden.

Griffel, Alain (Ed.) (2014): Vom Wert einer guten Gesetzgebung. Bern: Stämpfli.

Grice, Herbert Paul (1975): Logic and Conversation. In: Peter Cole / Jerry L. Morgan (Eds.): Speech Acts. New York: Academic Press (= Syntax and Semantics 3), pp. 41–58.

Hamann, Hanjo (2015): Das Buch der Bücher, im Original mit Untertiteln: Rechtstatsachen und Reflexionen zur Gliederung deutscher Gesetze. In: *Zeitschrift für Gesetzgebung* 30(4), pp. 381–395.

Hausendorf, Heiko / Kesselheim, Wolfgang / Kato, Hiloko / Breitholz, Martina (2017): Textkommunikation: Ein textlinguistischer Neuansatz zur Theorie und Empirie der Kommunikation mit und durch Schrift. Berlin, Boston: de Gruyter (= Reihe Germanistische Linguistik 308).

Höfler, Stefan (2014): Between Conciseness and Transparency: Presuppositions in Legislative Texts. In: *International Journal for the Semiotics of Law* 27(4), pp. 627–644.

Höfler, Stefan (2017): Das Legalitätsprinzip in der Gesetzessprache. In: Felix Uhlmann (Ed.): Das Legalitätsprinzip in Verwaltungsrecht und Rechtsetzungslehre. Zürich, St. Gallen: Dike, pp. 143–171.

Höfler, Stefan (2018): Gute Gesetzessprache aus dem Blickwinkel der Verwaltung: Die Redaktionskommission der schweizerischen Bundesverwaltung. In: Felix Uhlmann / Stefan Höfler (Eds.): Gute Gesetzessprache als Herausforderung für die Rechtsetzung. Zürich, St. Gallen: Dike, pp. 65–100.

Höfler, Stefan / Nussbaumer, Markus / Xanthaki, Helen (2017): Legislative Drafting. In: Ulrich Karpen / Helen Xanthaki (Eds.): Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners. Oxford: Hart, pp. 145–163.

Klein, Wolfgang (2004): Ein Gemeinwesen, in dem das Volk herrscht, darf nicht von Gesetzen beherrscht werden, die das Volk nicht versteht. In: Kent D. Lerch (Ed.): Recht verstehen: Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: de Gruyter, pp. 197–203.

Lerch, Kent D. (Ed.) (2004): Recht verstehen: Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: de Gruyter.

Lerch, Kent D. (2008): Ultra posse nemo obligatur: Von der Verständlichkeit und ihren Grenzen. In: Karin M. Eichhoff-Cyrus / Gerd Antos (Eds.): Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion. Mannheim: Duden, pp. 54–80.

Lorch, Robert (1989): Text-Signaling Devices and Their Effects on Reading and Memory Processes. In: *Educational Psychology Review* 1, pp. 209–234.

Lötscher, Andreas (1987): Text und Thema: Studien zur thematischen Konstituenz von Texten. Tübingen: Niemeyer.

Lötscher, Andreas (1995): Der Stellenwert der Verständlichkeit in einer Hierarchie der kommunikativen Werte von Gesetzen. In: *Bulletin suisse de linguistique appliquée* 62, pp. 109–127.

Lötscher, Andreas (2008): Conceptual and Textual Structure in Legislative Texts. In: Anne Wagner / Sophie Ciacciaguidi-Fahy (Eds.): Obscurity and Clarity in the Law: Prospects and Challenges. London, New York: Routledge, pp. 129–150.

Lötscher, Andreas (2016): Die (Un-)Verständlichkeit von Gesetzen – eine Herausforderung für die Gesetzesredaktion. In: *Zeitschrift für Europäische Rechtslinguistik (ZERL).* URN: urn:nbn:de:hbz:38-68207.

Motsch, Wolfgang (1996): Ebenen der Textstruktur. In: Wolfgang Motsch (Ed.): Ebenen der Textstruktur: Sprachliche und kommunikative Prinzipien. Tübingen: Niemeyer (= Reihe Germanistische Linguistik 164), pp. 3–34.

Müller, Jörg Paul (2014): Gute Gesetzgebung in der Demokratie – Chancen und Klippen. In: Alain Griffel (Ed.): Vom Wert einer guten Gesetzgebung. Bern: Stämpfli, pp. 75–96.

Müller, Georg / Uhlmann, Felix (2013): Elemente einer Rechtssetzungslehre. 3rd edition. Zurich, Basel, Geneva: Schulthess.

Nussbaumer, Markus (1995): Über Sinn und Unsinn eines Begriffs "verständlicher Gesetzestext". In: *LeGes – Gesetzgebung & Evaluation* 6(1), pp. 88–99.

Nussbaumer, Markus (2004): Von Schwärmern und Skeptikern und ein Versuch, Realist zu sein: Bilanz und Entwurf des Sprachspiels vom unverständlichen Gesetz. In: Kent D. Lerch (Ed.): Recht verstehen: Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: de Gruyter, pp. 285–296.

Nussbaumer, Markus (2008): Der Verständlichkeit eine Anwältin! Die Redaktionskommission der schweizerischen Bundesverwaltung und ihre Arbeit an der Gesetzessprache. In: Karin M. Eichhoff-Cyrus / Gerd Antos (Eds.): Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion. Mannheim: Duden, pp. 301–323.

Nussbaumer, Markus (2017): Gesetze verständlich machen – Gesetze verständlich "verkaufen". In: Bettina M. Bock / Ulla Fix / Daisy Lange (Eds.): "Leichte Sprache" im Spiegel theoretischer und angewandter Forschung. Berlin: Frank & Timme, pp. 351–372.

Ogorek, Regina (2004): "Ich kenne das Reglement nicht, habe es aber immer befolgt!" Metatheoretische Anmerkungen zur Verständlichkeitsdebatte. In: Lerch, Kent D. (Ed.): Recht verstehen: Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: de Gruyter, pp. 297–306.

Searle, John (1979): Expression and Meaning. Studies in the Theory of Speech Acts, Cambridge: Cambridge University Press.

Schnotz, Wolfgang (1994): Aufbau von Wissensstrukturen: Untersuchungen zur Kohärenzbildung bei Wissenserwerb mit Texten. Weinheim: Beltz.

Schnotz, Wolfgang (2000): Das Verstehen schriftlicher Texte als Prozess. In: Klaus Brinker / Gerd Antos / Wolfgang Heinemann / Sven F. Sager (Eds.): Text- und Gesprächslinguistik / Linguistics of Text and Conversation. New York: de Gruyter, pp. 497–506.

Schröder, Ole / Würdemann, Christian (2008): Rechtstexte verständlich formulieren: Implementierung einer Sprachanalyse im Gesetzgebungsverfahren. In: Karin M.Eichhoff-Cyrus / Gerd Antos (Eds.): Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion. Mannheim: Duden, pp. 324–335.

Sperber, Dan / Wilson, Deirdre (1996): Relevance: Communication and Cognition. 2nd edition. Oxford: Blackwell.

Stede, Manfred (2007): Korpusgestützte Textanalyse: Grundzüge der Ebenen-orientierten Textlinguistik. Tübingen: Narr.

Thieme, Stephanie / Raff, Gudrun (2017): Verständlichkeit von Gesetzestexten und ihre Optimierung in der Praxis: Der Redaktionsstab Rechtssprache beim Bundesministerium der Justiz und für Verbraucherschutz. In: Ekkehard Felder / Friedemann Vogel (Eds.): Handbuch Sprache im Recht. Berlin: de Gruyter, pp. 391–422.

Uhlmann, Felix / Höfler, Stefan (Eds.) (2016): Professional Legislative Drafters: Status, Roles, Education. Zurich, St. Gallen: Dike.

Vogel, Friedemann (2017): Sprache im Gesetzgebungsverfahren und der Normgenese. In: Ekkehard Felder / Friedemann Vogel (Eds.): Handbuch Sprache im Recht. Berlin, Boston: de Gruyter.

Wagner, Anne / Ciacciaguidi-Fahy, Sophie (Eds.) (2008): Obscurity and Clarity in the Law: Prospects and Challenges. London, New York: Routledge.

Werlen, Ivar (1994): Verweisen und Verstehen: Zum Problem des inneren Beziehungsgeflechtes in Gesetzestexten. In: *LeGes – Gesetzgebung & Evaluation* 5(2), pp. 49–78.

Wesel, Uwe (2004): Selbstverständlich. In: Kent D. Lerch (Ed.): Recht verstehen: Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht. Berlin: de Gruyter, pp. 455–457.

Williams, Christopher (2006): Fuzziness in Legal English: What shall we do with shall? In: Anne Wagner / Sophie Ciacciaguidi-Fahy (Eds.): Legal language and the Search for Clarity: Practice and Tools. Bern: Lang (= Linguistic Insights 37), pp. 237–263.

Wydick, Richard C. (2005): Plain English for Lawyers. 5th edition. Durham, North Carolina: Carolina Academic Press.

Xanthaki, Helen (2014): Drafting Legislation: Art and Technology of Rules for Regulation. Oxford, Portland: Hart.

Xanthaki, Helen (Ed.) (2015): Enhancing Legislative Drafting in the Commonwealth: A Wealth of Information. London, New York: Routledge.

Law, Language and Justice

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Abstract

Using contributions from James B. White, Thucydides, and Harold Pinter, this essay examines the interplay between language, political action, self-respect, and both public and private morality. It confronts the dilemma that even in the face of horrific injustice – some committed on a monstrous scale – the idealism expressed through language in principled political protest, however heartfelt or eloquent, has little or no practical effect. Asking what then we are to do with our fine words, it argues that the preservation of a vocabulary that expresses such idealism is necessary to maintain both self-integrity and a set of communal ideals essential to recreating a better world if circumstances ever change to permit it.

Keywords: Justice, language, torture, imperialism, social change, hypocracy, neoconservatives

I. Introduction

In a commencement address at Berkeley, California, in the spring of 1987, the great Socrates scholar Gregory Vlastos encouraged students embarking upon scholarly careers to balance their individual search for truth with the equally important "corporate struggle for justice." He characterized the claims of scholarship and the struggle for justice as both valid and "morally inescapable." Vlastos described the tremendous time pressures that would be put upon them as fledgling scholars, but advised that to "shirk our part, great or small, against injustice … would be to forfeit self-respect"[1] (Vlastos 1994: 131 f).

[1] (Epilogue: Socrates and Vietnam). In 1948 when Vlastos moved to the United States the State Department had a file of his political activity in Canada and the F.B.I. impressed upon him that as a noncitizen, he risked immediate deportation. For the first decade of his career Vlastos' time-consuming participation in Canadian movements struggling for economic justice had caused "havoc" to his scholarship; thus the political repression of the McCarthy era benefited him by "put[ting] a damper on political engagements I might have contemplated while an alien" in the United States: "So all such designs were laid to rest and energies previously siphoned off in non-scholarly speaking and writing could now be kept for research in classical philosophy. My scholarship prospered." Id. At 133. The Vietnam War ended what Vlastos referred to as this "cop-out from dissent." Seeing his students and his own son "required by law to become uniformed killers in a cause which they despised put an end to my qualms. Though still a guest, precariously domiciled in this country, I saw my scruples melt away." Thus, in 1966 when members of the Eastern Division of the American Philosophical Society suggested that he, as the retiring president of the Division, would be the most fitting

Vlastos criticized Socrates for remaining aloof from politics at a time when Athens was engaged in imperialist conquest and committing numerous acts of folly and barbaric injustice. "Socrates has been and always will be my philosophical hero. But great and good as he certainly was, he would have been a greater and better man, wiser and *more just*" if his moral vision had been more inclusive. Vlastos hypothesized that Socrates "kept his [self-respect] by an ethic which cannot be ours – a simplistic one, recognizing only wrongs by persons to persons, ignoring that social dimension of morality in which wrongs he abhors may be done by the city he loves." (Id.: 133)

At his trial Socrates had asserted that he devoted his life and all his time to his philosophical mission of saving the souls of his fellow Athenians and defended his refusal to engage in politics – something expected of all male citizens of Athens – with the assertion, "You know that if I had tried to do politics long ago I would have perished long ago and done no good to you or to myself" (Id.: 129, citing Socrates, Apology 31c). Vlastos reminded the graduates of some of the terrible decisions Athens made during the Peloponnesian War, ranging from strategic blunders caused by imperial greed and pride, to vile crimes against their fellow Greeks, including the massacre of the entire populations of a number of Greek cities. Vlastos argued that Socrates might have saved Athens from blundering into a reckless foreign war that resulted in the death of some 40,000 of their soldiers and left another 7,000 captives of war held under terrible conditions: "why discount the effect of cool sardonic comment from Athens' gadfly to bring down a degree or two the overheated atmosphere of the debate?" Similarly, he noted that since Athens' first vote to destroy the entire population of Mytilene in retaliation for a treacherous decision of the city's elite ruling minority was made by a tiny margin and reversed the next day by another small margin, Socrates' voice could have prevented the later massacres against other cities:

> It may seem incomprehensible that a man like Socrates, who would rather lose his life than connive in an injustice to a single person should nevertheless have kept silent when his own participation might have saved Athens from the vilest crime yet perpetrated in war between Greek states, and should have kept silent again and again when Athens was to commit just such a crime against Torone, Scione, and Melos.

Vlastos went further, suggesting that whether or not he was likely to have any effect on the outcome, Socrates should have spoken up: "In any case, considering how desperate was his city's need for sober advice, would it not have been his duty to do whatever he could, little or much, to make the voice of reason heard, regardless of consequences to himself?"

The challenge Gregory Vlastos posed in 1987 is even more salient today. What is our obligation to the collective struggle for justice, and how is that obligation affected by the realities of 21st Century politics? Would knowingly making a truly futile effort

person to introduce a resolution opposing the War in Vietnam, he did so "without the slightest hesitation."

against injustice preserve one's self-respect or rather make a mockery of it? Is it possible to maintain one's integrity and human dignity in the present world, where a corrupt, predatory, and criminal ruling class has consolidated its power and insulated itself from any effective challenge? Even if one cannot realistically expect to achieve the policy changes necessary to end present injustices, might there be other ways to participate in a collective struggle, neither futile nor based on denial, self-delusion, or unrealistic fantasies? Drawing on the work of James B. White, Thucydides, and Harold Pinter, this essay examines the hypothesis that language has a greater importance to social and political conflict than often recognized and considers what opportunity legal linguistics offers for productive collective struggle. Language itself cannot create justice, but even to maintain conditions under which one can ever hope to pursue justice, it may be necessary to preserve a vocabulary and develop a meaningful basis for debate and judgment.

Language is not stable but is a locus of conflict and change. Decades of U.S.-led wars in the Middle-East have affected the U.S. (and other countries) in many of the ways described by Thucydides in his *History of the Peloponnesian War.* The playwright Harold Pinter, in his Nobel Prize acceptance speech, illustrates how, as James B. White puts it, "character is formed – and maintained or lost – by a person, a culture, or a community." Legal linguistics can trace how words lose their meaning; and it deals, among other things, with the relationship between speech and conduct and between language and facts.

I want to present a realistic analysis – not pie-in-the-sky Pollyannaism. Promoting social justice has been my goal for as long as I can remember, and I have always assumed that I would succeed to one extent or another. Yet the anticipated horrors of President George W. Bush, the hidden horrors of stealth President Cheney, the smashing of hopes by Nobel Peace Laureate Obama and now the divisiveness of Trump have made it difficult for anyone with a conscience to be both realistic and optimistic.

Donald Trump is merely the latest manifestation of a much deeper problem. Power in the United States is tightly held by an amoral and predatory political elite who bully, threaten, and exploit the rest of the world and make war against those who oppose its commands. They no longer much require the mantle of legitimacy because organized means of coercion and destruction disguised by a propagandizing media win general support or obedience, while those of us who see through the lies and oppose the crimes are not organized and lack the tools, resources, and skills necessary to dislodge them. Nor is this solely an American problem. Countries that are usually referred to as U.S. allies have been reduced to vassal states, a term openly employed by the establishment policy advisor Zbigniew Brzezinski in his 1997 book *The Grand Chessboard.*[2] (Brzezinski: 10, 23, 40 and passim) As implied

[2] Zbigniew Brzezinski was President Jimmy Carter's National Security Advisor and active in influential establishment groups such as the Council on Foreign Relations, the Trilateral Commission and the Bilderberg Group. See Zbigniew Brzezinski obituary, The Guardian,

by the book's subtitle "American Primacy and its Geostrategic Imperatives" Brzezinski's concern was ensuring that other countries remain in that status, while my concern is that their residents will be as helpless as U.S. residents are to stop the erosion of democracy or to make U.S. leaders follow international law.

Most of us – especially academics – are still in denial and go on acting as though the normal channels of democratic change still function; legal academics keep writing articles that either present generally boring technocratic improvements in administration or else criticize some small aspect of the whole to propose reforms that become daily more obviously and tragically irrelevant. For me, the pressing question is what work makes sense when it seems clear most of us do not have any chance of significantly increasing social justice or world peace in the short run or anytime in the near future.

II. James B. White: When Words Lose Their Meaning

In 1984 James B. White, a major pioneer in the field and Literature and Law, published the book *When Words Lose Their Meaning*, consisting of a series of essays, each dealing with an important literary text. He acknowledged that the book "may not appear to be about law" but asserted that "despite appearances, [it] is really about law from beginning to end" (White 1984: xi). White supported this claim by offering his interpretation of the law as "an art essentially literary and rhetorical in nature, a way of establishing meaning and constituting community in language" (Ibid.).

Language is constantly changed and remade by the speakers and writers who use it – or as James B. White put it, language "is perpetually remade by its speakers, who are themselves remade, both as individuals and as communities, in what they say" (White 1984: x). This is true in everyday life, but especially important for us in our professional lives as lawyers or linguists.

White emphasizes law as a language art – "a way of establishing meaning and constituting community in language" the proper goal or object of which is justice (Id.: xi). Rhetoric is a "study of the ways in which character and community – and motive, value, reason, social structure, everything in short, that makes culture – are defined and made real in performances of language" (Ibid.). According to White, "As the object of art is beauty and of philosophy truth, the object of rhetoric is justice: the constitution of a social world" (Ibid.). Further, "Whenever you speak, you define a character for yourself and for at least one other – your audience – and make a community at least between the two of you; and you do this in a language that is of necessity provided to you by others and modified in your use of it" (Ibid.).

May 28. 2017, available at https://www.theguardian.com/us-news/2017/may/28/zbigniew-brzezinski-obituary.

White examined Thucydides' description of the Peloponnesian War and of the internal chaos it brought to the cities of Greece as they fought a series of wars, which has striking significance today. White characterizes Thucydides as saying that during the course of war "words themselves lost their meaning"[3] (Id.: 3). In order to support and facilitate Greece's imperial war machine, its terms for bravery and cowardice, trust, loyalty, manliness, weakness, moderation, "the key terms of value in that world, changed their accepted significance and their role in thought and life" (Ibid.) Thucydides describes a debased world that horrified White, who wrote:

> One way to see what is so terrible about [it] is to ask what place you would have within it. For the reader Thucydides addresses, who uses these Greek words of value to organize his experience and to claim meaning for it, the answer is none at all: in this world no one would see what he sees, respond as he responds, speak as he speaks. Even worse than this imagined isolation for such a reader would be the threat, in some senses the certainty, that to live in this world would lead to central changes within the self. One cannot maintain forever one's language and judgment and feelings against the pressure of a world that works in different ways, for one is in some measure the product of that world (Id.: 4).

White describes an alteration in language which "is not merely a lexical event" and cannot be reversed by simply insisting upon a set of "proper" definitions. Rather, "[i]t is a change in the world and the self, in manners and conduct and sentiment." White describes these changes as "complex and reciprocal in nature." (Ibid.)

> The change in language that Thucydides records, for example, is in part caused by events of another kind, which are only partly verbal – those of the civil war; but the changes in language in turn contribute to the course and nature of that war and do much to define its meaning. (Ibid.)

Another sense in which White sees the change as reciprocal is that at every stage it is individual people who consciously or unconsciously bring about the change in meaning through their actions, and "who at once form and are formed by their language and the events of their world. When language changes meaning, the world changes meaning, and we are part of the world" (Ibid.).

Arguments and debates serve to "define a set of possibilities for asserting and maintaining meaning, for carrying on a collective life."

> The resources that establish the possibilities of expression in a particular world thus constitute a discrete intellectual and social entity, and this can be analyzed and criticized. What world of shared meanings do these resources create, and what limits do they impose? What can be done by one who speaks this language, and what cannot? What stage of civilization does this discourse establish? When we ask such questions, the study of language becomes the study of an aspect of culture, and we become its critics. (Id.: 7)
>
> Of course it is not the words themselves, … it is the expectations that govern the way words may be used, the understandings that define some of the usages as appropriate, others as

[3] For a different interpretation of Thucydides, see John Wilson, "'The Customary Meanings of Words Were Changed' – or Were They? A Note on Thucydides 3.82.4," 32 Classical Quarterly 32 (i) 18–20 (1982).

> shocking or impossible. And these expectations necessarily involve substantive questions. For example, what is an intolerable insult or degradation to an Achaean warrior? What delicacy toward the feelings of others is required of an English gentleman? (Id.: 20).

A speaker's relationship with his language "may range from the comfortable to the impossible." Sometimes language seems to be a perfect vehicle that the speaker can use almost automatically to say or do whatever he wishes. "But at other times a speaker may find that he no longer has a language adequate to his needs and purposes, to his sense of himself and his world; his words lose their meaning" (Id.: 7 f.). When a speaker finds that his language "loses its meaning," he may be able to "make a new language, remake an old one, or find a way to use old terms and understandings to serve new purposes" or somehow "reconstitute his resources to make them adequate to his needs" (Ibid.).

White recognizes this as an oversimplification, "for each speaker is in an important sense the product of the language that he speaks, and who then can he be to remake it? Where can he stand when he tries?" Moreover, sometimes there will be an additional complication, for "the central defect [may not be in] language at all" but in the speakers themselves. Thus the question becomes "not only how one can reconstitute one's language but how one can learn from it and, in the process, reconstitute one's character and one's life" (Id.: 8).

White asserts that a text may "ask its reader to become someone" and "by doing so, it establishes a relationship with him," meant literally, not metaphorically, and illustrates with an example that works better today for me if we substitute sex for race:

> Think … of what happens when a person opposed to [sex]ism is told a successful [sex]ist joke: he laughs and hates himself for laughing; he feels degraded, and properly so, because the object of the joke is to degrade. He need not feel ashamed of having aggressive feelings or of the fact that they can be stimulated by [sex]ist humor, for something like that is true of anyone. Nor should he be ashamed that these possibilities are realized in him against his will, for a great work of literature might evoke such possibilities against the will of the reader in order to help him understand and correct them, and this would be an act of the deepest friendship. But the one who responds to the joke is ashamed of having this happen at the instigation of one who wishes to use those possibilities as the basis for ridicule or contempt; he is ashamed at who he has become in this relationship with this speaker. (Id.: 15).

Lawyers play a particular role in White's concept of language and culture. White asserts that "on matters that really divide a community agreement cannot be compelled by the force of logic or by the demonstration of facts; it can only be reached, by discussion and argument" (Id.: 22) and of course discussion and argument are much of what lawyers do in their professional lives.

III. Thucydides' History of the Peloponnesian War and the Degradation of Language, Culture and Values

Thucydides discusses in chronological order four incidents that illustrate some of the issues raised regarding language and its importance; these include the two that Vlastos chose as instances in which Socrates should have become politically engaged. They convey a rough taxonomy in the successive degradation of morality, thought, language and human dignity as the concerns of empire expand to consume the very values that once brought worth to the society.

1. The Corcyrean Debate

The Corcyrean debate arose from a wonderfully complex situation and is considered one of the precipitating causes of the war between Athens and Sparta. Sparta dominated interior mainland Greece with the largest land army and a system of alliances with city states governed by local oligarchies and run in the interests of Sparta. Athens was the head of the League of Cities, formed by the Greek islands and coastal cities. It maintained a strong navy, originally made up of ships from each city but later primarily of Athenian ships, paid for by tributes from the other cities. As Athens gained control and power, the League of Cities gradually became the Athenian League and functioned much like an Athenian Empire.

In 445 B.C. Athens and Sparta ended a brief war with a treaty that listed the cities allied with Athens and those allied with Sparta and provided that neither party would seek to form an alliance with a city already allied with the other party although both cities would be free to form an alliance with the "neutral" or nonaligned city states. At this early stage Thucydides describes a rich complex structure of justification and debate in which each side anticipates and meets the arguments of the other.

Bear with me while I provide enough background regarding the complex social conflicts that led to the Corcyrean debate to make comprehensible White's two-paragraph description of the debate that follows my explanation. Epidamnus, a coastal city on mainland Greece, was a colony of Corcrya, a quite wealthy island which was itself a colony of Corinth, a powerful city state allied with Sparta. In 435 B.C. a popular uprising in Epidamnus overthrew and expelled the city's oligarchs, who responded by joining forces with barbarians to lay siege their own city. The popular party ruling Epidamnus appealed for help to its mother city, Corcyra, and when she turned them down, to Corcyra's mother city Corinth. The Corinthians agreed to help and sent a garrison to protect the besieged people of Epidamnus. Corcyra responded to what it considered Corinthian interference by taking the side of the overthrown oligarchs and making war against the popular party of Epidamnus and Corinth. Battles raged and peace efforts failed, so Corcyra – technically neutral between Athens and Sparta in 445 B.C. – sent a representative to Athens seeking to form an alliance with it, and a representative from Corinth went to Athens to urge Athens to refuse the proffered alliance with Corcyra.

James B. White's description is worth quoting at length:

> On the merits of the proposed alliance, the speeches of the two sides [Corcyra and Corinth] are built primarily on three topics – justice, expediency and gratitude – and they are characterized by an extraordinary symmetry: for each point made by one side is squarely met by a point of seemingly equal force the other way. For example, when Corcyra argues that the alliance would not violate the treaty between Athens and the Peloponnesians, which expressly permits alliances with neutrals, Corinth responds with an appeal to the purpose rather than the letter of the treaty, saying that its language cannot possibly be intended to authorize alliances with neutrals who are already engaged in a conflict with the other side, for this would directly lead to hostilities between the signatories. Similarly, when Corcyra says that Corinth is at fault for having refused arbitration, Corinth replies that Corcyra's offer of arbitration was specious, since it was not made until the Corcyreans were engaged in a siege which they refused to lift. The proper occasion for invoking the practice of arbitration is before, not after, a resort to arms. In addition, both sides make stock and evidently flimsy arguments from probability to show that the other is at fault: Corinth points to her good relations with her other colonies to demonstrate that she must have behaved well toward Corcyra; Corcyra points to the natural disposition of the colony to honor its mother city as a way of showing that the breach must have been the fault of Corinth. As for the Corcyrean claim that they will be grateful to the Athenians for rescuing them, the Corinthians implicitly claim that such protestations are inherently unbelievable and that, in any event, the Athenians owe them, the Corinthians, a debt of gratitude for supporting them during the Samian revolt and war with Aegina.
>
> Both sides, in addition, make appeals to pure self-interest as a ground on which action can be based, apparently without regard to its justice or injustice. Corcyra, for example, speaks this way when she tells Athens that she can be counted on because she has the same enemies as Athens; that the best security is to do as little as possible to aid one's enemies; and that, if Athens is afraid of breaking the treaty with Sparta, she should remind herself that, if she remains strong by breaking it, that will be better for her than if she becomes weak by keeping it. Corinth responds in kind when she appeals to Athens as another dominant power, saying that each of them should be free to punish its own allies and that Athens should not establish it as a precedent that those who revolt from one sphere of influence should be received by the other. The plain implication is that these principles are valid whatever the rights and wrongs of the particular case may be. Corinth concludes in this vein by saying that to refrain from doing an injustice to an equal power is a greater source of strength than to choose the risky course based on present appearances of advantage (White 1984: 63 f).

2. The Mytilene Debates

The situation in Mytilene occurs a few years later and is less complicated. In 431 B.C., several cities on the Island of Lesbos, led by Mytilene, a relatively privileged city that built and maintained its own ships instead of paying tribute to Athens, revolted against the Athenian alliance. Athens responded with a long, costly siege of Mytilene, which caused famine. The ruling oligarchs armed the people for what they expected would be a mass assault upon the Athenians; but when the common people turned on their leaders instead demanding food and threatening to negotiate their own

settlement with Athens, the oligarchs gave up their revolt against Athens and surrendered, leaving the terms to be decided by the city of Athens.

The Athenian Assembly expressed its outrage against Mytilene, a long-standing ally which despite its privileged status had deliberately revolted and potentially set an example for other cities to do the same, by imposing what Vlastos referred to as a "sentence of unprecedented ferocity": execute all adult male citizens of Mytilene and sell the women and children into slavery (Vlastos 1994: 129 f). Fortunately, before the "vilest crime yet perpetrated in war between Greek states" (Id.: 130) could be carried out, the Athenian people reopened the question: "On the next day came some change of heart and second thoughts; it seemed savage and monstrous to destroy a whole city instead of those who had been responsible."[4]

The Assembly convened and the same parties reargued the cases they had presented the previous day. Creon, the "most violent and most persuasive of the citizens at the time,"[5] criticized the reopening of the question as a terrible mistake that showed the deplorable lack of firmness that he considered characteristic of a democracy. He urged the Athenians to stick to the judgment they had made, which he called both expedient and just:

> If you are persuaded by me you will do what is just to the Mytileneans and at the same time what is of advantage to yourselves; but if you decide otherwise, you will win no gratitude from them but will rather convict yourself of wrong; for if it was right for them to revolt, it would be wrong for you to rule. If, nevertheless, you are resolved to maintain your empire … you must punish them according to your interest in disregard of the equity of it, or you should resign your rule and play the honest man in a place of safety. [6]

Creon reminded the Athenians of the rage they had justly felt at Mytilene's defection and warned them against softening their hearts. Athens' other allies would be less inclined to revolt if they knew that upon their defeat they would likewise be put to death.

On the opposing side, Diodotus, "an otherwise unknown Athenian," (Vlastos 1994: 130) based almost the entirety of his argument on expediency and imperial interests. Creon's harsh punishment will do little to deter revolt, he argued, since rebels always expect to succeed, but it will harden people to continue even a losing revolt to the bitter end. Punishing only those responsible and showing the rest leniency will encourage the common people to break from the oligarchs – as happened in Mytilene – and to do otherwise will "'jeopardize Athens' best asset in the war, the sympathy of the democrats in each of the allied and subject cities" (Ibid.). A close vote came out against Creon, and the planned massacre was averted.

White characterizes Diodotus' argument as a "*tour de force*" and "brilliant" but worries that "the profound revolution in the discourse [Diodotus] proposes," has no

[4] Thucydides, History, 3.36.4.

[5] Id. at 3.36.6.

[6] Id. at 3.36.4.

limits, standards, or permanent values. (White 1984: 75 f)[7]. "[I]n the rhetoric of Diodotus anything can be said, and it invites one to think anything can be done. To speak that way is to lose the capacity to form a community with others or to claim a consistent character for oneself; indeed it is to lose the power of practical reason" (Ibid.). White is saying that although Diodotus' argument in the Mytilene debates was successful, it succeed by abandoning all considerations of justice and fair play and replacing them with purely amoral self-interested tactical and strategic considerations in the service of Athenian imperialism. "Right" and "wrong" in this discourse had been reduced to purely instrumental values in the context of imperialism, setting the stage for the disastrous Melian Dialogue.

3. The Melian Dialogue

In 416 B.C. Athens sent a military expedition to the island of Melos, a Spartan colony close to the Peloponnesus, demanding that Melos pay tribute to Athens and submit to Athenian rule. In "negotiations" with Melos, Athens gave them the stark choice to capitulate or face destruction. Thucydides presents a version of these discussions. Athens gets immediately to the point: don't bother to talk about justice, we're here to negotiate the terms of your surrender.[8]

> Athenians: [W]e shall not trouble you with specious pretenses either of how we have a right to our empire … or are now attacking you because of wrong that you have done us … .[I]n return we hope that you, instead of thinking to influence us by saying that you did not join the Spartans, although their colonists, or that you have done us no wrong, will aim at what is feasible, holding in view the real sentiments of us both; since you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.
>
> Melians: As we think, at any rate, it is expedient – we speak as we are obliged, since you enjoin us to let right alone and talk only of interest – *that you should not destroy what is our common protection, namely, the privilege of being allowed in danger to invoke what is fair and right*, and … you are as much interested in this as any, as your fall would be a signal for the heaviest vengeance and an example for the world to meditate upon. (*Emphasis added*).
>
> Athenians: … [W]e have come here in the interests of our empire, and … for the preservation of your country; as we would desire to exercise that empire over you without trouble, and see you preserved for the good of us both.[9]
>
> Melians: It may be your interest to be our masters, but how can it be ours to be your slaves?
>
> Athenians: To you the gain will be that by submission you will avert the worst; and we shall be all the richer for your preservation.
>
> Melians: But must we be your enemies? Will you not receive us as friends if we are neutral and remain at peace with you?

[7] Vlastos was less impressed than White by Diodotus' performance. (Vlastos 1994: 130).

[8] Thucydides, translation available at https://public.wsu.edu/~hughesc/melian_dialogue.htm.

[9] Id.

> Athenians: No, your enmity is not half so mischievous to us as your friendship; for the one is in the eyes of our subjects an argument of our power, the other of our weakness … So that your subjection will give us an increase of security, as well as an extension of empire…
>
> Melians: … how base and cowardly would it be in us, who retain our freedom, not to do and suffer anything rather than be your slaves.
>
> Athenians: Not so, if you calmly reflect: for you are not fighting against equals to whom you cannot yield without disgrace, but you are taking counsel whether or not you shall resist an overwhelming force. The question is not one of honor but of prudence. … Do not … be … deluded; avoid the error of [imagining you can avoid defeat or listening] to prophecies and oracles and the like, which ruin men by the hopes which they inspire in them.
>
> Melians: We know only too well how hard the struggle must be … . Nevertheless we do not despair … because we are righteous, and you against whom we contend are unrighteous; and we are satisfied that our deficiency in power will be compensated by the aid of our allies ….
>
> Athenians: … Of the gods we believe, and of men we know, that by a law of their nature wherever they can rule they will. This law was not made by us, and we are not the first who have acted upon it; … and we know that you and all mankind, if you were as strong as we are, would do as we do… [Y]ou ought to see that there can be no disgrace in yielding to a great city which invites you to become her ally on reasonable terms, keeping your own land, and merely paying tribute; and that you will certainly gain no honor if, having to choose between two alternatives, safety and war, you obstinately prefer the worse. To maintain our rights against equals, to be politic with superiors, and to be moderate towards inferiors is the path of safety. Reflect once more when we have withdrawn, and say to yourselves over and over again that you are deliberating about your one and only country, which may be saved or may be destroyed by a single decision.[10]

The Melians refused to surrender their liberty and fought bravely, but the Athenians easily conquered them, and carried out the harsh penalty that Creon had advocated against the Mytileneans, killing every adult male and selling the women and children into slavery. Then Athens sent some 500 settlers of her own to colonize the island.

James B. White condemns "what the Athenians say and do here" as "not only brutal but irrational." (White 1984: 77). The problem is not that Athens is so self-interested; premises of self-interest operated in the language in earlier debates also.

> What is wrong is that the culture through which self-interest could intelligibly be expressed has been destroyed. Athens is left with self-interest alone, the desire for power without a culture to give it bounds and meaning. Not only is ambition of this sort unlimited, it is incoherent and irrational; for without a comprehensible world there can be no way of reasoning about it or acting within it. One cannot be self-interested without a language of the self; one cannot have power without community. In this sense, then as now, the language of pure self-interest proves to be parasitic upon the culture it destroys (Id.: 79).

[10] Thucydides, translation from http://web.mit.edu/dimitrib/www/Milos_Photos/Milian_Dialogue.html. For some unexplained reason this MIT transcript refers to the Melians as Milians. I have replaced it with the generally accepted term Melians.

White suggests that Thucydides "does not so much show a new stage in [Athens'] moral decay as demonstrate the consequences of her situation" (Ibid.).

> The Melian dialogue … enacts a kind of tragedy, for Athens is caught in circumstances, partly of her own devising, from which she cannot extricate herself. She now learns in a new way what it means for her to build an empire, which "anyone would do," and to talk about it as she has done[11] (Id.: 80).

4. The Syracuse Expedition

In March of 415 B.C. The Athenian assembly debated whether to give aid to the people of Segesta – a minor ally in Sicily at the western edge of the Greek world – who were threatened by Selinus, another city in Sicily. Doing so would open a new front in the war and draw in Syracuse, a larger and more formidable opponent. The brilliant but unscrupulous Alcibiades recognized in the Segestans' request a sufficient pretext for Athens to invade Sicily and led the argument in favor of imperialist expansion. The older, more conservative Nicias strenuously opposed the scheme as too expensive and too risky. He argued that even if Athens conquered Sicily, she could not hold it in subjection and still have resources to restore and maintain her closer-in empire. Moreover, Sparta, Corinth and other opponents were on Athens' doorstep and would be ready to pounce. As Vlastos put it, "[g]ood sense" was on the side of Nicias, but "imperial greed and pride" prevailed and Athens went "headlong into the adventure" (Vlastos 1994: 128 f). Athens provided the massive financing that Nicias had argued would be necessary for such an undertaking, and soon the "greatest expeditionary force ever assembled in Greece"(Id.: 129) set sail for Sicily.

[11] A contemporary extraction of tribute and submission is described by John Perkins in his books, Confession of an Economic Hitman (2003), and The Secret History of the American Empire: The Truth About Economic Hit Men, Jackals, and How to Change the World (2008), and again in the documentary video, "Speaking Freely Volume 1: John Perkins (2007)." Working for a consultancy firm that fronted for shared interests of international corporations and the IMF/World Bank, Perkins' job was to peddle odious loans the proceeds of which were funneled back to American multi-national corporations while the burden of which was imposed on the victim country whose assets would be confiscated for imperial ends, the lands seized for export crops, the infrastructure privatized for profit, and a significant chunk put in the pockets of the cooperative soon-to-be comprador. When faced with a president loyal to his country's national interest, Perkins would persuade him by conveying – usually without having to say in full – a message that may be paraphrased thusly, "Mr. President, you may think that refusing this offer is in your country's and your family's best interests, but I urge you to consider that it may be otherwise. If you decline this generous offer, the jackals (CIA assassins-coup organizers) will visit you, and in the unlikely event that their visit is unsuccessful because of the strength and loyalty of your security and military, a pretext will be generated for direct military intervention. Your military will be broken, your infrastructure destroyed, your people slaughtered and dispersed as sadly happened in Iran, Guatemala, Indonesia, Iran, Iraq, Chilé, Panama and so many other unfortunate countries; your family may miss its father and husband with its future no longer secured, and your successor, I assure you, will be far more compliant with our demands than you wish to be. So, please, I urge you as a true patriot to consider carefully just what is in the best interests of your country."

Thucydides declared that no armament so magnificent or costly had ever been lent out by any single Hellenic power. The boldness of the scheme and the magnificence of the spectacle attracted great attention, admiration, and awe. "Never had a greater expedition been sent to a foreign land; never was there an enterprise in which the hope of future success seemed to be better justified by actual power."[12] Yet, it ended in total disaster for Athens.[13] Most of their soldiers and sailors were killed; the 7,000 survivors were captured and set to work in Sicilian rock quarries under horrendous conditions. Nicias, who had opposed the war, was executed by the Syracusans.

This last and final step in the degradation of Athens is marked when even utterly cold and ruthless self-interest, no longer informed or constrained by values or decency, can no longer function rationally on even an instrumental basis, so drowned is it in its own imperial hubris.

White characterized the speeches from these events as marking "successive stages in the deterioration of a culture of argument." The process is natural, "each stage creating the seeds of the next." The Athenians' talk at Melos White sees as "an advanced version of the way Diodotus talked, which was in turn a development of the Athenian speech at Sparta, which itself built on materials in the original Corcyrean debates."

> But this is not the story of words alone, for as language deteriorates, so does everything else. At Melos the Athenians do not merely talk in an objectionable way; they also slaughter the people. The interaction between speech and conduct is one of Thucydides' deep themes, perhaps nowhere more explicit than in the famous excursus on the effects of the wave of civil wars that swept through Greece as a consequence of the Peloponnesian War, beginning with the civil war successfully fomented by Corinth at Corcyra. (White 1984: 81)

IV. Parallels to the U.S. Today

Thucydides described how changes in values and language went hand in hand. Irrational boldness was considered manly loyalty to one's partisans; prudent delay was deemed specious cowardice, moderation a disguise for unmanliness and perhaps hinting at disloyalty, and a well-rounded intelligence a disqualification for action. While a similar list might be provided for America today, some of the examples that first come to mind are of a somewhat different nature. But before addressing them we should take note of the nature of the general process by which the blindness of "American exceptionalism" and its kin is generated. In his classic 1902 work *Imperialism*, the great political economist J.A. Hobson asks and sketches a partial answer to a central question:

[12] The Aftermath (MIT on Melian Dialogue) supra note 11.

[13] Shortly after the expedition set out, Alcibiades fell out of favor in Athens and fled to Sparta, where he provided counsel to Athens' enemy.

> It remains to answer the question, "Why does Imperialism escape general recognition for the narrow, sordid thing it is?" Each nation, as it watches from outside the Imperialism of its neighbors, is not deceived; the selfish interests of political and commercial classes are seen plainly paramount in the direction of the policy. So every other European nation recognizes the true outlines of British Imperialism and charges us with hypocrisy in feigning blindness. This charge is false; no nation sees its own shortcomings; the charge of hypocrisy is seldom justly brought against an individual, against a nation never. …It is difficult to set any limit upon the capacity of men to deceive themselves as to the relative strength and worth of the motives which affect them: politicians, in particular, acquire so strong a habit of setting their projects in the most favourable lights that they soon convince themselves that the finest result which they think may conceivably accrue from any policy is the actual motive of that policy. As for the public, it is only natural that it should be deceived. All the purer and more elevated adjuncts of Imperialism are kept to the fore by religious and philanthropic agencies; patriotism appeals to the general lust of power within a people by suggestions of nobler uses, adopting the forms of self-sacrifice to cover domination and the love of adventure (Hobson 1902: 197 f).[14]

1. Euphemisms and their Opposite

Many of the most notorious examples of the manipulation of language involve euphemisms reflecting a corruption of language and thought: "regime change" for overthrowing the often democratically elected government of a sovereign state in defiance of international law; creating a "no-fly zone" for destroying a sovereign country's air force, sometimes followed by a bombing campaign by the foreign war planes against a vast array of targets, including civilians supporting their legitimate government, to facilitate "regime change." Speaking openly of itself as the world hegemon, the Department of Defense National Defense Strategy of the United States 2005 declared itself above international law, and while addressing the vulnerabilities that its imperial posture produces, it condemned the use of such by those who would seek its protection as a "strategy of the weak."[15]

> Our predominant position in world affairs will continue to breed unease, a degree of resentment, and resistance.
>
> Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism. (p. 5)

If I may take the liberty of translating this back into something akin to a topic-neutral language: Those who cannot match our sheer power for killing, destruction and coercion must resort to what we hold in open contempt, "a strategy of the weak" that first appeals to considerations of humanity or international law, then a judicial proc-

[14] Hobson focuses on varieties of satisfying illusions and self-deception, but scants analysis of consciously cynical and deceitful Machiavellianism, so much of which is found among neoconservatives.

[15] Department of Defense National Defense Strategy of the United States 2005, at 5, available at https://history.defense.gov/Portals/70/Documents/nds/2005_NDS.pdf?ver=2014-06-25-124535-143 (last visited August 11, 2018).

ess to uphold them, and if that fails, martial resistance with whatever means are available to it, which we shall deem to be "terrorism," perhaps in not-so-subtle fashion equating those who seek protection from international fora with terrorists. Our government certainly seems determined to deny international fora to those it and its allies force into armed resistance which can then be branded "terrorism." In *Holder v. Humanitarian Law Project* the Supreme Court ruled that teaching Hamas peaceful means of airing and expressing its grievances, including how to use the United Nations as a forum, was barred by anti-terrorism statutes as constituting the provision of "material support or resources." (561 U.S. 1 (2010))

The United States does not engage in torture (Bush, repeated on many occasions), but uses "enhanced interrogation." In these cases, the coining of new words and phrases suggests that the words that are being avoided have not lost or changed their meaning but have retained it – and most importantly their negative connotation. Thus, these new phrases serve to alter and even blot out the shameful reality that moral intuitions still prohibit. In the U.S. today euphemisms have been deployed to facilitate a deadening of conscience. The mutilated civilian victims of bombing raids, so poignantly represented in Pablo Picasso's painting *Guernica*, are now dismissed as "collateral damage" – unintended and regrettable but unavoidable and "justified" by Jesuitical soul-cleansing found in such rationalizations as the Doctrine of Double Effect.

When Mussolini's army invaded Ethiopia, Emperor Haile Selassie stirred the world with his speech before the League of Nations: the injustice of a highly developed and mechanized army with modern weapons killing men who had only spears to defend themselves seemed obvious to all.[16] Today, the U.S. military uses the term "asymmetrical warfare" to imply a moral equivalence if not an outright moral superiority of the use of expensive, sophisticated modern weaponry against the resistance by fighters possessing vastly inferior resources who must often rely on improvised weapons. In Gillo Pontecorvo's famous film, Battle of Algiers (1966), Algerian women put on make-up and dressed as Frenchwomen to sneak bombs into the Euro-

[16] It should be noted, however, that there were exceptions, such as William J. ("Bill") Donovan, the head of the Office of Strategic Services (OSS), generally referred to as the precursor of and model for the CIA, who congratulated Mussolini on his great victory. David Wise, Douglas Waller's "Wild Bill Donovan," on the OSS spymaster (February 27, 2011) http://www.washingtonpost.com/wp-dyn/content/article/2011/02/25/AR2011022506282.html?noredirect=on (last accessed June 8, 2018). Strong USA pro-fascist sentiments are also reflected in the reaction to a speech given by General Smedley Butler to a private club in Philadelphia January 19, 1931, arguing that America must stay armed. A friend of his driving with Mussolini through the countryside "ran over a child and my friend screamed. Mussolini said he shouldn't do that, that it was only one life and the affairs of state could not be stopped by one life." Butler commented scornfully, "How can you talk disarmament with a man like *that*?" Butler was arrested and held for court martial on charges of "conduct to the prejudice of good order and discipline" and "conduct unbecoming an officer and a gentleman," but eventually garnered enough political support for charges to be dropped. Jules Archer, *The Plot to Seize the White House: The Shocking TRUE Story of the Conspiracy to Overthrow FDR*, Skyhorse Publishing, 1973, 2007, 110–116.

pean quarter in innocent-looking baskets. The Pentagon wants Americans now to identify with the reporter who asked a captured official of the National Liberation Front (FLN), "Isn't it a dirty thing to use women's baskets to carry bombs to kill innocent people?" and to feel no sympathy for the official's answer:

> And you? Doesn't it seem even dirtier to you to drop napalm bombs on defenseless villages with thousands of innocent victims? It would be a lot easier for us if we had planes. Give us your bombers, and we'll give you our baskets.

The lethal targeting and murder by IDF snipers of unarmed Palestinian civilians protesting their imprisonment on the 70th anniversary of the Nakbah, on their own side of a barricaded open-air concentration camp, becomes a "bloody clash" between implied equals in the mainstream consciousness, justifying even more bloodletting. Even more miraculously, the deliberate targeting of children is represented as a wholly justified means of what Israel terms "self-defense" necessary "to preserve the safety and quality of life of the residents of the State of Israel."[17] Commenting on this tragedy, Gideon Levy, the conscience of Israel's most respected newspaper, "Haaretz," warns that genocide is only a whisper away.

> If 60 stray dogs were shot to death in one day by IDF soldiers, the whole country would raise an outcry. The dog slaughterers would be put on trial, the nation of Israel would have devoted prayers to the victims, a Yizkor service would be said for the dogs slaughtered by Israel.
>
> But on the night of the Palestinians' slaughter, Zion rejoiced and was jubilant: We have an embassy and a Eurovision. It's difficult to think of a more atrocious moral eclipse. … We're already there. That moment is here. Rwanda is coming to Gaza and Israel is celebrating. Two million human beings we've imprisoned already, and their fate matters to no one. (Levy 2018).

The "responsibility to protect" has become a justification for major powers to invade a sovereign country or send missiles and bombs to destroy pharmaceutical plants, cancer research institutes, and government facilities of all kinds. When the U.S. finances any anti-government groups in a country, it is spreading "democracy" whether the groups engage in peaceful political protest or engage in armed rebellion against their government, and whether or not a brutal totalitarian regime takes power, so long as it is USA-compliant. As Harold Pinter put it in his 2005 Nobel Laureate address, speaking of U.S. policy in Central America during the 1980s:

> Direct invasion of a sovereign state has never in fact been America's favoured method. In the main, it has preferred what it has described as "low intensity conflict." Low intensity conflict

[17] Brigadier-General (Res.) Zvika Fogel interviewed on the Yoman Hashevua program of Israel's Kan radio, 21 April 2018, quoted by Craig Murray, "Condemned By Their Own Words," Information Clearing House, April 23, 2018, at http://www.informationclearinghouse.info/49286.htm. Although Fogel does not use the term "self-defense" he implies it at every turn and it is routinely used explicitly by Israel, e. g., "Despite growing condemnation for the deaths of 60 Palestinians on the Gaza border yesterday, Israel defended its military's actions as an act of self-defense in the face of a mass attack." Ben Sales, New York Jewish Week, May 16, 2018, "Israel Defends Gaza Crackdown As Self-Defense" (https://jewishweek.timesofisrael.com/israel-defends-gaza-crackdown-as-self-defense/).

> means that thousands of people die but slower than if you dropped a bomb on them in one fell swoop. It means that you infect the heart of the country, that you establish a malignant growth and watch the gangrene bloom. When the populace has been subdued – or beaten to death – the same thing – and your own friends, the military and the great corporations, sit comfortably in power, you go before the camera and say that democracy has prevailed (Pinter 2005).

Thus, instead of invading and occupying countries, the U.S engages in "humanitarian intervention" to bring about "regime change" and may then build military bases and leave troops in the country to protect the people against the former government and its supporters.[18] "Red lines" become benchmarks that "rebel" groups can seek to achieve to win support from the large powers. The U.S. complains about Russia and Iran "interfering" by responding to requests for defense assistance from the duly elected Syrian government to help defend itself against U.S. and other foreign-sponsored jihadists. It charges "interference" even when these powers supply humanitarian aid, and does so even though the U.S. itself had supplied and continues to supply the weapons and training to the groups engaged in armed resistance against the legal government of Syria, including aid directly and indirectly to terrorist jihadists. It does not count as "interference" any of its actions above, nor its uninvited illegal dispatch of troops, special forces, and reporters to portions of the country that it has seized in the name of peace and protection from the jihadists it has funded and trained. With what then can Russia and Iran be "interfering" if not the plan for unfettered global domination set forth in such offerings as the Wolfowitz Doctrine and its avatars?[19] The Wolfowitz Doctrine, which seeks to maintain "full spectrum dominance" over all other nations so that the United State may impose its will upon them,

[18] Imagine how odd it would seem to claim during WWII that the German troops in France were protecting the French people against the French anti-Vichy Resistance or those in Norway protecting the Norwegian people against Communists and other anti-Quisling extremists.

[19] "Our first objective is to prevent the re-emergence of a new rival, either on the territory of the former Soviet Union or elsewhere, that poses a threat on the order of that posed formerly by the Soviet Union. This is a dominant consideration underlying the new regional defense strategy and requires that we endeavor to prevent any hostile power from dominating a region whose resources would, under consolidated control, be sufficient to generate global power. These regions include Western Europe, East Asia, the territory of the former Soviet Union, and Southwest Asia. There are three additional aspects to this objective: First, the U.S. must show the leadership necessary to establish and protect a new order that holds the promise of convincing potential competitors that they need not aspire to a greater role or pursue a more aggressive posture to protect their legitimate interests. Second, in the non-defense areas, we must account sufficiently for the interests of the advanced industrial nations to discourage them from challenging our leadership or seeking to overturn the established political and economic order. Finally, we must maintain the mechanisms for deterring potential competitors from even aspiring to a larger regional or global role. An effective reconstitution capability is important here, since it implies that a potential rival could not hope to quickly or easily gain a predominant military position in the world." "Excerpts From Pentagon's Plan: 'Prevent the Re-Emergence of a New Rival'" (https://www.nytimes.com/1992/03/08/world/excerpts-from-pentagon-s-plan-prevent-the-re-emergence-of-a-new-rival.html).

now threatens us with the very same incapacity that brought Athens such grief at Syracuse.

Thus "malphemisms" or dysphemisms may be as important as euphemisms. Not only does any government the U.S. doesn't like risk being designated a mere "regime" and its President or Prime Minister a "dictator," but even the U.S.'s own President dare not deviate from canon. Thus we have Donald Trump, not as an ideologue but as a pragmatic peacemaker, a businessman, who understands that good relations with Russia, a better understanding between two countries, each of which could annihilate the world, is something to be desired even though it is incompatible with Neoconservative scripture. But so powerful a biblical force does it represent that even though Trump ran on a platform to normalize relations between the U.S. and Russia and won with it; and even though his foreign policy gained support from such unlikely but very well informed progressive political analysts as William Greider, Glen Ford, John Pilger, Jean Bricmont, Stephen F. Cohen and William Blum,[20] his efforts can now be labelled "nothing short of treasonous" by no less a figure than former CIA director John Brennan, with accusations from other intelligence chiefs not far behind.[21]

I suggest that what galls and infuriates these men beyond reason is Trump respecting Putin, a man hewing as best he can to principles that they have long since abandoned, and doing so from a position of strength, not weakness. Putin's March 1, 2018, speech revealed Russia's advanced weaponry and laid bare both their own moral bankruptcy, and their gross incompetence at leading the United States on a path of rational self-interest. I remind readers of President Putin's "A Plea for Caution from Russia" published in the New York Times on the twelfth anniversary of 9/11. In it, Putin pleads for the United States to follow international law with respect to Syria so the United Nations will not collapse as did the League of Nations. He argues that the destabilizing military attacks by the U.S. and its proxies undermine any peaceful solution to Middle East issues, including both the Israeli-Palestinian conflicts and "the Iranian nuclear problem," and that the flagrant violation of international law makes nuclear proliferation inevitable because "if you have the bomb, no one will touch you." Finally, he urges:

[20] John V. Walsh "Leading Antiwar Progressives Speak Favorably of Aspects of Trump's Foreign Policy" (June 23, 2016, http://www.informationclearinghouse.info/article44953.htm).

[21] "Former intel chiefs condemn Trump's news conference with Putin" Megan Vasquez, July 16, 2018 CNN news (https://www.cnn.com/2018/07/16/politics/john-brennan-donald-trump-treasonous-vladimir-putin/index.html) I am not ignoring that these charges are ostensibly protests against Trump respecting Putin's word that Russia did not interfere in the 2016 presidential elections over his intelligence chiefs. Rather, that charge is part of the holy war against Russia and though I will not detail reasons here, I consider it wholly unsupported by evidence, preposterous on its face, with many of its particular incarnations damningly refuted by such intelligence notables, whistleblowers, and political analysts as former UK Ambassador to Uzbekistan Craig Murray, former DIA Director of Technical Services William Binney, former CIA officer Ray McGovern, Emeritus Princeton Professor of Russian Studies Stephen Cohen, and many, many others.

> We must stop using the language of force and return to the path of civilized diplomatic and political settlement. …
>
> If we can avoid force against Syria, this will improve the atmosphere in international affairs and strengthen mutual trust. It will be our shared success and open the door to cooperation on other critical issues.
>
> My working and personal relationship with President Obama is marked by growing trust. I appreciate this. I carefully studied his address to the nation on Tuesday. And I would rather disagree with a case he made on American exceptionalism, stating that the United States' policy is "what makes America different. It's what makes us exceptional." It is extremely dangerous to encourage people to see themselves as exceptional, whatever the motivation. There are big countries and small countries, rich and poor, those with long democratic traditions and those still finding their way to democracy. Their policies differ, too. We are all different, but when we ask for the Lord's blessings, we must not forget that God created us equal.

One can almost hear echoes of John F. Kennedy's commencement speech at American University, "A Strategy for Peace," just months before his assassination, which was equally hateful to his enemies:

> So, let us not be blind to our differences – but let us also direct attention to our common interests and to the means by which those differences can be resolved. And if we cannot end now our differences, at least we can help make the world safe for diversity. For, in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's future. And we are all mortal.[22]

The profound animus against Putin is ancient, but the specific charge of "treason" against Donald Trump devolves from Putin's March 1st speech that has been almost universally misrepresented in mainstream media. Putin recounted how he had urged in vain with the Bush administration not to withdraw unilaterally from the 1972 Anti-Ballistic Missile Treaty that was designed to ensure mutual safety by preventing either side from protecting itself against nuclear assault. Facing what it took to be a broken and defeated Russia that must suffer what it would impose, the U.S. mocked Russia's weakness and ignored Putin's continuing efforts to use negotiations instead of missiles, and did so even as he warned that the world would become destabilized and that Russia would respond asymmetrically to prevent this. At the 2007 Munich Security Conference Putin openly challenged U.S. unilateralism. He stated that Russia would not be drawn into a pointless arms race, that it would not waste precious funds building its own ABM defense system, but would respond on-the-cheap, "asymmetrically," and he detailed the fruits of such labor during the second part of his March 1, 2018, address to the Russian Federal Assembly. Putin revealed an array of next-generation nuclear weaponry – intended only to preserve the balance of power, and peace – that were invincible to any conceivable ABMs that the United

[22] Commencement Address at American University in Washington, June 10, 1963; http://www.presidency.ucsb.edu/ws/?pid=9266.

State had or could ever produce.[23] Putin reminded the U.S. that he had been trying to avoid wasting such resources, and with his usual tact he obliquely pointed out that the imperial hubris of its leaders had destroyed their capacity for rational self-interest and cost the nation dearly, not spelling out that the U.S. had wasted hundreds of billions of dollars:

> I hope that everything that was said today would make any potential aggressor think twice, since unfriendly steps against Russia such as deploying missile defences and bringing NATO infrastructure closer to the Russian border become ineffective in military terms and entail unjustified costs, making them useless for those promoting these initiatives. …
>
> Now we have to be aware of this reality and be sure that everything I have said today is not a bluff – and it is not a bluff, believe me – and to give it a thought and dismiss those who live in the past and are unable to look into the future, to stop rocking the boat we are all in and which is called the Earth.[24]

We all live on the same earth, all breath the same air, and are all mortal and if we collectively are to continue doing so, as Putin emphasized, the time to talk is always now. But this is heresy against the Empire from Putin, and "treason" from Trump.[25]

2. The Particular Case of Torture and "Enhanced Interrogation"

The euphemism "enhanced interrogation," was initially used to deny publicly that the United States policy actually condoned the use of torture. President George W. Bush said repeatedly that the United States does "not engage in torture" (Sandholz 2009: 593). The possible truthfulness of that statement depended upon drawing some

[23] See Keir A. Lieber and Daryl G. Press, Foreign Affairs, March/April 2006 "The Rise of U.S. Nuclear Primacy" for the overarching plan to which pre-emptive nuclear attack is central. U.S. nuclear policy is designed for pre-emptive nuclear strike, or threat thereof, combined with an anti-ballistic missile system that would prevent effective retaliation and compel compliance. Russia's solution is conceptually simple. Anti-ballistic missiles (ABMs) require that their target have a fixed trajectory so that an interception point may be calculated. Russia's new weapons not only fly at hypersonic speeds faster than any U.S. missiles, but also vary their course so that no calculable intercept point exists. Russia's new weapons prevent that from being even conceivably possible.

[24] http://en.kremlin.ru/events/president/news/56957. Of course, I am not offering an exhaustive account of the animus from the U.S. political establishment towards Trump.

[25] The nature of the heresy is revealed by Republican political consultant Karl Rove, then Senior Advisor to President George W. Bush, in his 2002 meeting with reporter Ron Suskind:

> [Rove] said that guys like me were "in what we call the reality-based community," which he defined as people who "believe that solutions emerge from your judicious study of discernible reality." I nodded and murmured something about enlightenment principles and empiricism. He cut me off. "That's not the way the world really works anymore," he continued. "We're an empire now, and when we act, we create our own reality. And while you're studying that reality – judiciously, as you will – we'll act again, creating other new realities, which you can study too, and that's how things will sort out. We're history's actors … and you, all of you, will be left to just study what we do." Putin denied these imperialists the fruits of their delusions (https://www.nytimes.com/2004/10/17/magazine/faith-certainty-and-the-presidency-of-george-w-bush.html).

kind of distinction between the behavior that constitutes torture and what was done by the American troops, CIA operatives, and mercenary contractors. Yet the initially secret memos upon which President Bush claimed to rely used the word torture freely and frequently and sought to justify the practice. Bush's first use of "enhanced interrogation" as euphemism acknowledged the categorical unacceptability of torture, and in so doing, illustrated White's thesis about how words lose their meaning. As imperial practices require cruelty and savagery incompatible with the values that form the sinews of its society, that savagery may no longer be recognized, described, or thought of as such, at least initially. Such is the purpose of the infamous Bybee memoranda, casuistry of the highest order designed to deny that most U.S. torture was torture, and thus to legitimate torture under another name. Bybee required torture to involve a pain like that accompanying death or organ failure, a nonsensical standard since many deaths and organic failures (e. g., glaucoma induced blindness) are painless, but thereby suggesting that if no death or organic failure occurred, then no torture could have occurred. Next, he dismissed as irrelevant as evidence of torture any psychological damage, no matter how severe, unless it were "lasting psychological harm" like "post-traumatic stress disorder" so that "there is [a] significant range of acts that though they might constitute cruel, inhuman, or degrading treatment or punishment fail to rise to the level of torture." Finally, resonant with the purity of spirit underlying the Doctrine of Double Effect, Bybee claimed that in order for his deeds to be torture, the interrogator must have "specifically intended" to produce just such a pain. Hence, according to Bybee, if the interrogator were acting for some other end and not specifically intending to produce such pain – that is knowing that such pain would occur but specifically intending only some other end such as inducing a false confession to justify a geopolitical intrusion – his acts were by definition not torture. As stronger imperial souls became fully and openly corrupted, this process was reflected in the discourse about torture coming to focus most pointedly upon whether or not it was effective.[26]

Like Diodotus in the Mytilene Debate, these domestic U.S. opponents of torture relied a good deal on the ineffectiveness of torture and placed less emphasis on ethical considerations and constraints. They focused increasingly on concerns that people under torture cannot be relied upon; torture does not bring out the truth but rather induces the victim of torture to tell his or her interrogators anything they want to hear. The loss of a moral compass led them to ignore and largely abandon the kind of language that enabled most countries of the world to sign a treaty denouncing torture and renouncing its use under any circumstances. They thus unthinkingly conceded the irrelevance of the arguments against torture as such an intrinsic evil as to never be institutionally sanctioned. Increasingly the crucial question in the United States boiled down to whether or not torture "works," whether it could deliver the goods supposedly needed to "protect" the U.S. against its villainous enemies. And

[26] https://nsarchive2.gwu.edu//NSAEBB/NSAEBB127/02.08.01.pdf. Alfred McCoy offers a similar analysis for the final component in *A Question of Torture: CIA Interrogation, From the Cold War to the War on Terror*, 121.

if it did, then we enjoyed the unfettered freedom of Creon urging the slaughter of the Mytilenians. Vice-President Dick Cheney, arguably much if not most of the time the de facto U.S. President, publicly supported torture even if it required torturing entirely innocent persons, saying "I have no problem as long as we achieve our objective."[27] The knowing abuse of innocents became official U.S. policy as part of what Colin Powell's former Chief of Staff, Colonel Lawrence Wilkerson, termed the "mosaic philosophy":

> Simply stated, this philosophy held that it did not matter if a detainee were innocent. Indeed, because he lived in Afghanistan and was captured on or near the battle area, he must know something of importance…. All that was necessary was to extract everything possible from him and others like him, assemble it all in a computer program, and then look for cross-connections and serendipitous incidentals – in short, to have sufficient information about a village, a region, or a group of individuals, that dots could be connected and terrorists or their plots could be identified.
>
> Thus, as many people as possible had to be kept in detention for as long as possible to allow this philosophy of intelligence gathering to work. The detainees' innocence was inconsequential. (Danner 2009).

As Wayne Sandholtz (Ibid.) shows, torture was privately supported by President Bush and never truly rejected by President Obama. This enabled candidate Donald Trump to actively promote torture during the 2016 Presidential campaign and to continue as President to brag about his willingness to embrace it. Just as James B. White suggested with respect to the Mytilene debate, the focus on efficacy comes at the cost of sacrificing any meaningful values, let alone the ability to think about the facts. We lose the ability to recognize that truthful answers may not be the goal if or when the interrogators are primarily trying to build a "case" for invading another country,[28] and that this dark fact may best explain why then Deputy Director of Operations Jose Rodriguez ordered an eager "Bloody" Gina Haspel to destroy videotapes of the torture at a Thailand CIA black site, and that she did so even after a White House counsel had ordered them preserved. Rodriguez called her a "patriot," a term best understood in terms of imperial ventures, not for upholding constitutional principles and restraints.

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[27] John Nichols persuasively described Cheney's actual power in *Dick: The Man Who is President*, 2004. He publicly embraced his position during an interview with Chuck Todd recounted by Conor Friedersdorf in "Dick Cheney Defends the Torture of Innocents" in The Atlantic https://www.theatlantic.com/politics/archive/2014/12/dick-cheney-defends-the-torture-innocents/383741/.

[28] Senior administration officials pressured interrogators to induce detainees to claim a link between Saddam Hussein's Iraq and Al Qaeda. Inquiry Into The Treatment of Detainees in U.S. Custody: Report of the Committee on Armed Services, United States Senate at 41, November 20, 2008 (110th Congress, 2nd Session) https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf.

Propagandists also misdirect attention by hypotheticals focused on the possibility of imminent attack – the ticking time bomb argument[29] – when that seemed never to be the practical situation. In reality the goal of some interrogators had little to do with truth or national security but everything to do with establishing some justification for invading Iraq, a country that in fact had nothing to do with 9/11.[30] Finally, the upshot is that instead of enforcing the Torture Treaty, duly signed and ratified by the United States, in 2018 the U.S. Senate confirmed President Trump's nomination of a CIA operative who, under the Treaty, should be prosecuted for the crime of torture; instead she has been promoted to head the Agency. Headlines in the U.S. reported that the nominee to head the CIA "promises not to torture," but that she refused to condemn "waterboarding" – long established as a form of torture.

3. Replacing Hypocrisy with Realism or Shifting from Mytilene to Melos?

George Bush and Tony Blair made a serious, however knowingly false and deceitful, effort to justify to the public the U.S.-led invasion of Iraq, claiming that Iraq had weapons of mass destruction and that Saddam Hussain had been complicit in the 9/11 attacks on the World Trade Center and Pentagon in 2001.[31] As the invasion of Iraq became a fait accompli and more or less accepted by the American population, Bush and then Obama could be seen as wavering between trying to claim/create/imagine moral justification for America's neo-imperialist wars of conquest – usually some form of Responsibility to Protect – and simply doing so because the U.S. could get away with it. It seems to many that President Trump has then surely declined from hypocritical justification to simple short-term expediency, as Athens declined from the Corcyrean and Mytilenean debates to the Melian ultimatum. During the 2016 Presidential campaign, Trump criticized the imperialist wars of his predecessors but then also said having made the mistake of unjustifiably invading Iraq, the U.S. should at least have stolen all its oil. His threats against North Korea are essentially demands that the country that lost some two million or more souls – roughly twice what the U.S. has lost in all its wars combined – from the last U.S. attack surrender its

[29] Back in 1987, the Israeli Landau Commission introduced the "ticking time bomb" scenario: if security officials had reason to believe a suspect had information that could prevent a terrorist attack, interrogators in Israel could justifiably use "moderate physical pressure" to protect Israeli lives. Of course, as human rights group pointed out, torture was used as a matter of routine rather than emergency (https://www.theguardian.com/world/1999/sep/07/israel). In 1999 the Israeli Supreme Court ruled 9 – 1 against routine torture, but it exempted cases in which security officials could show "evidence of an impending threat to civilian lives" (Ibid.).

[30] See supra note 26.

[31] See Charles Lewis and Mark Reading-Smith, "False Pretenses: Following 9/11, President Bush and Seven Top Officials in His Administration Waged a Carefully Orchestrated Campaign of Misinformation about Saddam Hussein's Iraq," January 23, 2008, https://www.publicintegrity.org/2008/01/23/5641/false-pretenses (accessed 8/25/2018) (report and data base of 935 false charges against Saddam Hussein's Iraq by top administrative officials, including 10 by President Bush linking Saddam to Al Qaeda, blamed for the 9/11 attacks).

means of defending against yet another U.S. attack, or he will blow it up. He does so because he can, even if it leads to nuclear war.[32]

At the time of the Mytilene debate, Athens assumed some degree of reciprocity and a moral entitlement to the support of its allies; hence Creon was able to claim that Mytilene was morally wrong to breach the agreement and lead a resistance against Athens. Increasingly however, as the war went on, Athens relied upon force and fear to hold its allies in line, and by the time of the Melian dialogue relied upon nothing but its power and ruthlessness to maintain its empire. Allowing Melos to remain neutral would be seen as a sign of weakness and threaten Athens' apparent superiority and therefore its hold over other city states. It was but a short step for Athens to fear and expect from its "allied" states a natural animosity, kept in check by Athens' continued demonstration of its power. That Melos was innocent of any injury or even ill-will toward Athens was irrelevant.

So too has there been a gradual shift in the notion of U.S. allies as voluntarily following the lead of the U.S. as theoretical equals to a relationship epitomized by Bush's assertion that states are either "with us or against us." The fiction of putative equality has given way to an expectation of voluntary submission of U.S. allies as vassal states as Brzezinski openly called them (Brzezinski: 10, 23, 40 and passim) and as the President of Russia could hardly fail to notice that they were. Vladimir Putin remarked to Oliver Stone in the PBS series, *The Putin Interviews*, "And as of now, NATO is a mere instrument of foreign policy of the United States. It has no allies within – it has only vassals." Boiling as it does just beneath a polite facade, and often brimming over, a potent combination of threats and bribes keeps the U.S. "allies" in check. Under Trump the threats especially are becoming less subtle and more openly acknowledged. Just as Athens in the Melian dialogue recognized or came to view its allies as subordinates who, if they sensed any weakness in Athens, would seize the opportunity for greater independence, Trump extended Bush's "with us or against us" to require a greater subordination even from staunch allies.

[32] I.F. Stone describes the deliberate cruel savagery with which that war was waged and also makes a strong case that the casus belli for the U.S. attack was a manufactured event, an invented pretext, as with the Gulf of Tonkin pretext that permitted escalating the Vietnam War. See "The Hidden History of the Korean War," Monthly Review Press, 1952; second edition 1969. The U.S. refused the DPRK a peace treaty, installed nuclear weapons in South Korea that it later reportedly removed, but then deliberately and systematically broke its end of the 1994 Agreed Framework established with the Clinton Administration in order to force the DPRK into resuming its nuclear weapons program in order to justify an Anti-Ballistic missile "defense" program that was in fact an aggressive tactic to force Russia into submission. See Keir A. Lieber and Daryl G. Press, op. cit. for the overarching plan to which pre-emptive nuclear attack is central. For part of its implementation by the U.S. breaking its agreements to the DPRK, see *inter alia*, Gareth Porter, "How Cheney and His Allies Created the North Korea Nuclear Missile Crisis" December 28, 2017; https://truthout.org/articles/how-cheney-and-his-allies-created-the-north-korea-nuclear-missile-crisis/ and "Lawrence Wilkerson On North Korea Crisis: U.S. Should Stop the Threats & Own Up to its Role" (http://www.informationclearinghouse.info/46900.htm).

Now, fewer attempts are made to justify hostile economic or military actions, and claims are simply asserted without evidence, let alone convincing proof, and sometimes flying in the face of the evidence. Trump joins Theresa May in blaming Russia for the Skripal poisoning of a Russian-born British spy, released from Russian jail years earlier in a spy exchange, and his Russian daughter, with no proof that there even was a "novichok" poisoning much less that Russia had anything to do with it if there was. In April of 2018, France joined the UK and U.S. in bombing Syria for an alleged nerve-gas attack against its own civilians in Douma on the 7th of that month, even while the U.S. government itself was openly debating whether or not the gas attack on civilians – that could not have justified the bombing under international law – had even happened. Mainstream media was virtually silent about what motives Syria could have for such an attack, and discussion of the motivation of their jihadist opposition to produce such an attack – i.e., the core of a false-flag narrative – was almost entirely absent. Assertions of suspicion have become a sufficient basis for economic sanctions and even acts of war, and few Americans complain or protest. The vast majority even fail to recognize that these are acts of war, seeing them instead as some form of condign punishment because the weaker state is in no position to retaliate. Worse still, the "punitive" missile attack on Syria was accelerated in the face of potent evidence that the alleged April 2018 Douma nerve-gas attack never happened in order to prevent the Organization for the Prevention of Chemical Weapons (OPCW) from investigating the issue; when it could access the area after the missile attack the OPCW found that no nerve gas attack had occurred, and that there was no evidence of a chemical weapons attack.[33] Literally dozens of other investigative videos lay responsibility for this Gulf-of-Tonkin like hoax at the feet of the White Helmets.[34] To my knowledge, the only mainstream media figure to consistently challenge and expose this Douma nerve-gas hoax was Tucker Carlson

[33] "Interim Report of the OPCW fact-finding mission in Syria regarding the incident of alleged use of toxic chemicals as a weapon in Douma, Syrain Arab Republic, on 7 April 2018" (https://www.opcw.org/fileadmin/OPCW/S_series/2018/en/s-1645-2018_e_.pdf). None of the evidence prevented the overwhelming majority of mainstream media from declaring falsely that the OPCW had confirmed a chlorine gas attack when it had only reported the presence of common chlorine residues not indicative of chemical weapons.

[34] Here is a small sampling: "Intel Veterans Urge Trump to Seek Evidence Before Attakking Syria" (http://www.ronpaulinstitute.org/archives/featured-articles/2018/april/13/intel-veterans-urge-trump-to-seek-evidence-before-attacking-syria/). "The search for truth in the rubble of Douma – and one doctor's doubts over the chemical attack" (https://www.independent.co.uk/voices/syria-chemical-attack-gas-douma-robert-fisk-ghouta-damascus-a8307726.html). See also 'They gave dates & cookies to kids at Douma hospital' – father of 'chem attack' victim (https://www.youtube.com/watch?v=JPFaEG9vJT4); 'We didn't see any patients with symptoms of chemical attack' – hospital staff in Russian MoD video (https://www.youtube.com/watch?v=sBmWe5FnSCc); "Destroyed Syrian Scientific Institution Denies Possession of Chemical Weapons" (https://www.youtube.com/watch?v=MUHBfX6PIv4); "OAN Investigation Finds No. Evidence of Chemical Weapon Attack in Syria" (https://www.youtube.com/watch?v=lSXwG-901yU); "No. attack, no victims, no chem weapons: Douma witnesses speak at OPCW briefing at The Hague"; https://www.youtube.com/watch?v=LIJ7i HYKTJo&t=578s.

of Fox News, from April 10 to April 18, 2018. Carlson then went mysteriously absent from Fox and upon his return had essentially dropped the subject.[35]

4. Reckless Imperial Greed and Pride Sideline Democracy

The planned Neoconservative ("Neo-Con") project of following-up on 9/11 by creating regime change in seven Middle-Eastern countries has some of the same arrogant foolhardiness as the Syracuse expedition of Athens.[36] The impossibly insulting spring 2003 ultimatum to Saddam Hussain to leave his country, followed by the U.S. invasion of Iraq, the first of the seven countries on the Neo-Con list, saw a campaign of "shock and awe" carried out with magnificent and costly armaments sold to the public by Bush's public pronouncements of quick success and a welcoming Iraqi population. Nonetheless, behind the public cheerleading "the facts were fixed around the policy" which in turn was "justified by actual power," as Thucydides had said of Athens' expedition to Sicily. While not as quickly and obviously proven as disastrous as Athens' campaign against Sicily, the Iraq war produced a massive insurgency that continued long after Bush's May 1, 2003, triumphant declaration "Mission Accomplished!" Virtually every asserted justification for the invasion gradually crumpled, but the war dragged on and on. And in the middle of it, Bush displayed imperial hubris of the highest order at the National Press Club, doing a comedy skit at which the assembled media howled in appreciation as the President fumbled around in the search for the missing WMDs like an absent-minded professor looking for his spectacles, declaring "Those weapons of mass destruction have got to be here somewhere."[37] So much for the value of the 1,000,000+ Iraqi lives lost in the slaughter.[38]

The "humanitarian" destruction of Libya, including the sodomization and murder of Muammar Gaddafi was more obviously disastrous, but with fewer negative con-

[35] Tucker Carlson MIA for 2 Days After Exposing Syria Gas Hoax – Deep State Revenge? (https://russia-insider.com/en/tucker-carlson-mia-2-days-after-exposing-syria-gas-hoax-deep-state-revenge/ri23238). Tucker Carlson Misses 3rd Day Without Explanation After Dropping Syria / Russia Truth Bombs (https://russia-insider.com/en/tucker-carlson-misses-3rd-day-without-explanation-after-dropping-syria-russia-truth-bombs/ri23243). An acquaintance spoke with a Fox staffer who confirmed that Tucker had been pulled off air because he had "gone off the reservation" on the Douma gas attack.

[36] "(Full Version) General Wesley Clark Wars were planned seven countries" (https://www.youtube.com/watch?v=B3B5xzApMZg); see also Seymour Hersh, Reporter: A Memoir, excerpts quoted in Zero Hedge, "Ten Bombshell Revelations From Seymour Hersh's New Autobiography," available at https://www.globalresearch.ca/ten-bombshell-revelations-from-seymour-hershs-new-autobiography/5650041.

[37] "Bush laughs at no WMD in Iraq" (https://www.youtube.com/watch?v=GvliUuXjbL4).

[38] Susan Susman, Los Angles Times, September 4, 2007 "Poll: Civilian toll in Iraq may top 1M" (http://www.latimes.com/world/la-fg-iraq14sep14-story.html). A 2008 review by Harvard epidemiologists concluded that "despite varying estimates, the mortality burden of the war and its sequelae on Iraq is large." Tapp, Christine, Frederick M. Burkle, Kumanan Wilson, Tim Takaro, Gordon H. Guyatt, Hani Amad, and Edward J. Mills. 2008. "Iraq War mortality estimates: A systematic review." Conflict and Health 2:1.

sequences recognizable to most Americans. (Sawani 2014). It was celebrated by the hideous cackle of Secretary of State Hillary Clinton: "We came, we saw, he died!"[39] To Libyans whose lives have been upended and in many cases ended, and whose country has been essentially destroyed, the disaster is considerably more apparent. Similar observations apply to Somalia and Yemen.

In Syria and Ukraine, the extent of U.S. intervention has been exposed and documented outside of mainstream media, yet few Americans are aware of it and fewer still have reflected deeply on the causes or consequences. Unless misery, disruption and regional instability are the actual policy goal, the U.S. Neo-Con policies appear to have resulted in complete failure, at least for the United States.[40]

5. American Exceptionalism

Some language struggles seem distinctly American, such as the overt struggle over the use of the term "fake news." But for the aggressive labeling of mainstream corporate media as "fake news" by candidate-, and later President Trump, the term might well have become a simple *ipse dixit* broadside attack upon any independent

[39] See Youssef M. Sawani, The United States and Libya: Turbulent History and Uncertain Future (Dec 27 2014; https://www.e-ir.info/2014/12/27/the-united-states-and-libya-turbulent-history-and-uncertain-future/). For the gleeful celebration see Hillary Clinton "We Came, We Saw, He Died" (Gaddafi) (https://www.youtube.com/watch?v=FmIRYvJQeHM).

[40] Philip Zelikow, a Washington insider and avid supporter of Israel, asserted in September, 2002, that "the real threat" Iraq posed was to Israel, not the U.S., but since it would not be "a popular sell" for the invasion of Iraq, "this is the threat that dare not speak its name." See Emad Mekay, "IRAQ: War Launched to Protect Israel – Bush Adviser," available at http://www.ipsnews.net/2004/03/iraq-war-launched-to-protect-israel-bush-adviser/ (last assessed September 29, 2020). The planned wars against seven nations – none of which was connected to 9/11 – confided to General Wesley Clark just after 9/11 corresponded closely to two Zionist or Neoconservative documents that articulated a plan of war to benefit Israel by destroying its Middle Eastern neighbors by exacerbating existing ethnic conflict and reducing each surrounding nation to its component tribes or ethnicities insofar as possible, the chief targets being Iraq, Syria and Iran and Libya. These are the Oded Yinon Plan and "A Clean Break: A New Strategy for Securing the Realm" by a 1996 study group headed by Richard Perle for Benjamin Netanyahu that speaks in such coded language as abandoning "peace for land" and replacing it with "peace through strength," i.e., gaining its peace on its own terms through sheer power. For example, "Israel can shape its strategic environment, in cooperation with Turkey and Jordan, by weakening, containing, and even rolling back Syria. This effort can focus on removing Saddam Hussein from power in Iraq – an important Israeli strategic objective in its own right – as a means of foiling Syria's regional ambitions." Presumably these Syrian regional ambitions include taking back the Golan Heights illegally seized by Israel during its 1967 war of aggression that included invading Syria among its goals. (http://www.informationclearinghouse.info/pdf/The%20Zionist%20Plan%20for%20the%20Middle%20East.pdf; https://web.archive.org/web/20140125123844/; http://www.iasps.org/strat1.htm). Furthermore, a coterie of former CIA officers and ex-military, Michael Scheuer foremost among them, have repeatedly warned that U.S. foreign policy in the Middle East and elsewhere is serving primarily Israeli, not US, interests. Among the others are Philip Giraldi, Ray McGovern, and Lawrence Wilkerson.

journalism that challenges the government/establishment narrative. Instead the term is part of an ongoing struggle with both supporters and opponents of the status quo hurling the term at one another, and both with great justification. Unfortunately, the struggle itself does little to encourage a critical examination of the truth value of pro- or various anti-establishment reportage; rather discussion takes a form as crude as "Our news is real; their news is fake" – with little or no effort to determine the truth of either.

The concept of "American exceptionalism" seems on the other hand to meet only minimal local criticism and to be widely accepted in the U.S. as a normative claim or even a purely descriptive one of some objective reality, rather than a particular subjective sentiment and the preference many people feel for their home country. While the concept of "common sense" has long been abused and has much to answer for, U.S. courts have taken it further and may now legally rely on "common sense," in lieu of examining the evidence that should confirm or disconfirm common sense. The courts have taken and sanctified the liberty of ignoring objective facts and evidence and used uninformed "common sense" as a basis for dismissing lawsuits before pretrial discovery might produce evidence that would challenge an established "truth."[41]

Alienated from the political process by a tragic inability to bring about change, Americans are losing their sense of outrage, and have trimmed their thinking and feeling to fit their impotence. In addition, a post-modern sense of there being only a relative, malleable, and ever-shifting truth has short-circuited many in the U.S. from moral judgment and enabled others to silence their internal voice of conscience. These two developments explain the particular power of the eloquent speech Harold Pinter delivered as he approached the end of his life.

V. Harold Pinter – Nobel Acceptance Speech

Harold Pinter was awarded the Nobel Prize for literature and presented his acceptance speech "Art, Truth & Politics" by video on December 7, 2005.[42] He began with a quote he had written almost 50 years earlier: "There are no hard distinctions between what is real and what is unreal, between what is true and what is false. A thing is not necessarily either true or false; it can be both true and false." His Nobel speech emphasized the importance of distinguishing between truth in art and the truths one must embrace and confront as a citizen. Defending his assertions as still making sense a half century later as applied to the "exploration of reality through art," Pinter explained that "[t]ruth in drama is forever elusive": "[T]he real truth is that there

[41] Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) (court must "draw on its judicial experience and common sense" to determine whether plaintiff's claim is plausible and grant motion to dismiss if it is not).

[42] Pinter was too ill to travel to Sweden and died December 24, 2008, after fighting off a series of illnesses for the last 8 years of his life (https://www.theguardian.com/culture/2008/dec/27/harold-pinter-obituary-playwright-politics).

never is any such thing as one truth to be found in dramatic art. There are many." As a writer, he said, "I stand by" these assertions, "but as a citizen I cannot. As a citizen I must ask: What is true? What is false?"

Pinter invites us to become more critical; to see that facts are facts, and can't be changed by, or into, mere opinions. His impassioned speech, taking the facts as he finds them, demonstrated and legitimized a sense of outrage, thereby encouraging his audience to reclaim their own diminished or lost sense of outrage. He asserted that "on the evidence available to us" the majority of politicians are interested in power and maintaining power, not in truth. "To maintain that power it is essential that people remain in ignorance, that they live in ignorance of the truth … . What surrounds us therefore is a vast tapestry of lies."

> As every single person here knows, the justification for the invasion of Iraq was that Saddam Hussein possessed a highly dangerous body of weapons of mass destruction, some of which could be fired in 45 minutes, bringing about appalling devastation. We were assured that was true. It was not true. We were told that Iraq had a relationship with Al Quaeda and shared responsibility for the atrocity in New York of September 11th 2001. We were assured that this was true. It was not true. We were told that Iraq threatened the security of the world. We were assured it was true. It was not true.

Pinter proceeded to survey the Reagan administration's policies in Latin America, whereby democratic governments were subverted and overthrown, replaced by military dictatorships that stayed in power by empowering death squads and killing thousands of their citizens as "communists" or simply subversives. "Why were they killed? They were killed because they believed a better life was possible and should be achieved… They died because they dared to question the status quo, the endless plateau of poverty, disease, degradation and oppression, which had been their birthright."

> The United States supported and in many cases engendered every right wing military dictatorship in the world after the end of the Second World War. I refer to Indonesia, Greece, Uruguay, Brazil, Paraguay, Haiti, Turkey, the Philippines, Guatemala, El Salvador, and, of course, Chile. The horror the United States inflicted upon Chile in 1973 can never be purged and can never be forgiven.
>
> Hundreds of thousands of deaths took place throughout these countries. Did they take place? And are they in all cases attributable to US foreign policy? The answer is yes they did take place and they are attributable to American foreign policy. But you wouldn't know it.
>
> It never happened. Nothing ever happened. Even while it was happening it wasn't happening. It didn't matter. It was of no interest. The crimes of the United States have been systematic, constant, vicious, remorseless, but very few people have actually talked about them. You have to hand it to America. It has exercised a quite clinical manipulation of power worldwide while masquerading as a force for universal good. It's a brilliant, even witty, highly successful act of hypnosis.[43]

[43] The gory details of the monstrous acts that Pinter adumbrates are spelled out in many sources, but the single best compendium is William Blum, *Killing Hope: U.S. Military and CIA Interventions since WWII*, 1995, Common Courage Press.

Pinter described the U.S. as "very clever" insofar as it has been "[b]rutal, indifferent, scornful and ruthless" and yet sold much of the population on self-love – as a public relations strategy, clearly "a winner."

> Listen to all American presidents on television say the words, "the American people," as in the sentence, "I say to the American people it is time to pray and to defend the rights of the American people and I ask the American people to trust their president in the action he is about to take on behalf of the American people."

Thus, "[l]anguage," according to Pinter,

> is actually employed to keep thought at bay. The words "the American people" provide a truly voluptuous cushion of reassurance. You don't need to think. Just lie back on the cushion. The cushion may be suffocating your intelligence and your critical faculties but it's very comfortable.[44]

Pinter asserted that the United States no longer tried to be "reticent or even devious," but "puts its cards on the table without fear or favour. It quite simply doesn't give a damn about the United Nations, international law or critical dissent, which it regards as impotent and irrelevant."

> What has happened to our moral sensibility? Did we ever have any? What do these words mean? Do they refer to a term very rarely employed these days – conscience? A conscience to do not only with our own acts but to do with our shared responsibility in the acts of others? Is all this dead?

He presented a series of examples including the treatment of prisoners at Guantanamo, the Pentagon's "official declared policy" to achieve "full spectrum dominance" – their own term, meaning "control of land, sea, air and space and all attendant resources," and American occupation of "702 military installations throughout the world in 132 countries."

He did not resist inserting a probably unrealistic note of hope:

> Many thousands, if not millions, of people in the United States itself are demonstrably sickened, shamed and angered by their government's actions, but as things stand they are not a coherent political force – yet. But the anxiety, uncertainty and fear which we can see growing daily in the United States is unlikely to diminish.

Pinter can also be sardonic effectively:

> I know that President Bush has many extremely competent speech writers but I would like to volunteer for the job myself. I propose the following short address which he can make on television to the nation. I see him grave, hair carefully combed, serious, winning, sincere, often beguiling, sometimes employing a wry smile, curiously attractive, a man's man.
>
> "God is good. God is great. God is good. My God is good. Bin Laden's God is bad. His is a bad God. Saddam's God was bad, except he didn't have one. He was a barbarian. We are not

[44] Pinter added, "This does not apply of course to the 40 million people living below the poverty line and the 2 million men and women imprisoned in the vast gulag of prisons, which extends across the US."

> barbarians. We don't chop people's heads off. We believe in freedom. So does God. I am not a barbarian. I am the democratically elected leader of a freedom-loving democracy. We are a compassionate society. We give compassionate electrocution and compassionate lethal injection. We are a great nation. I am not a dictator. He is. I am not a barbarian. He is. And he is. They all are. I possess moral authority. You see this fist? This is my moral authority. And don't you forget it."

Pinter's talk illustrates how character is formed and maintained, by a person, a culture, and a community. Pinter defined a character for himself and invited his audience to join him. He concludes:

> I believe that despite the enormous odds which exist, unflinching, unswerving, fierce intellectual determination, as citizens, to define the *real* truth of our lives and our societies is a crucial obligation which devolves upon us all. It is in fact mandatory.
>
> If such a determination is not embodied in our political vision we have no hope of restoring what is so nearly lost to us – the dignity of man.

VI. A Dissenting View and Conclusion

A friend surprised me by dismissing my praise for the recent work of Philip Alston, who as United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions from 2004–2010, had launched a compelling critique of the U.S. drone assassination program, and later, as the United Nations Special Rapporteur on extreme poverty and human rights, examined how, despite its overall wealth, the growing economic inequality in the United States created instances of extreme poverty that rose to the level of human rights violations.[45] The friend's argument was that Alston's report might primarily "contribute to the illusion" that reporting on poverty in the United States makes a difference, when it actually makes virtually no difference, but the illusion itself if not actively counterproductive serves to stabilize an existing oppressive system by both allowing relatively harmless venting of discontent, and creating the impression that such protests matter.

I countered that such double effect was common and reminded my friend of discussions from the 1970s and 1980s about the danger of social justice litigation actually harming the cause of justice by working within and seeming to legitimate a basically unjust system. When public interest lawyers lost a case, their clients would too often accept the loss as an indication that their case was less just than they had previously thought. Even when public interest lawyers won a case for a cli-

[45] When Philip Alston became the United Nations Special Rapporteur on extreme poverty and human rights, his first report, issued in 2015, focused on the relationship between extreme poverty and extreme inequality. He showed how widening economic and social inequalities around the world stifled equal opportunity, led to laws and institutions favoring the powerful, and undermined a range of civil, political, economic, social and cultural rights. He recommended giving economic, social and cultural rights the same prominence and priority as civil and political rights; implementing fiscal policies specifically aimed at reducing inequality; and putting issues of resource redistribution at the center of human rights debates.

ent, they ran the risk of legitimating a basically unjust status quo at the same time the success created some improvement in the lives of some people. The best "solution" to the dilemma caused by this reality was presented by a member of the Critical Legal Studies movement in the United States. She suggested that what she tried to do was to win the victories she could but always remind her clients that what they had won by her victory was only a small portion of what they and others deserved.[46]

My friend, unpersuaded, continued, "How many even know who Denis Halliday is? And more importantly, what his most important act of protest was, and what it accomplished?" Halliday was the United Nations Humanitarian Coordinator in Iraq from September 1, 1997, until he resigned in 1998 because he considered the sanctions against Iraq to be "genocide" as he explained in his acceptance speech for the 2003 Gandhi Peace Prize:

> I often have to explain why I resigned from the United Nations after a 30 year career, why I took on the all powerful states of the UN Security Council; and why after five years I continue to serve the well being of the people of Iraq. In reality there was no choice, and there remains no choice. You all would have done the same had you been occupying my seat as head of the UN Humanitarian Program in Iraq.
>
> I was driven to resignation because I refused to continue to take Security Council orders, the same Security Council that had imposed and sustained genocidal sanctions on the innocent of Iraq. I did not want to be complicit. I wanted to be free to speak out publicly about this crime.
>
> And above all, my innate sense of justice was and still is outraged by the violence that UN sanctions have brought upon, and continues to bring upon, the lives of children, families – the extended families, the loved ones of Iraq. There is no justification for killing the young people of Iraq, not the aged, not the sick, not the rich, not the poor.Some will tell you that the leadership is punishing the Iraqi people. That is not my perception, or experience from living in Baghdad. And were that to be the case – how can that possibly justify further punishment, in fact collective punishment, by the United Nations? I don't think so. And international law has no provision for the disproportionate and murderous consequences of the ongoing UN embargo – for well over 12 long years.[47]

On May 12, 1996, "60 Minutes" aired an interview of then-U.N. Ambassador Madeleine Albright whom Leslie Stahl asked regarding the U.S. sanctions and the reported death toll of 500,000 Iraqi children, whether it was worth it. Albright replied, "I think this is a very hard choice, but the price, we think the price, is worth it."[48] Later during the interview Albright went on by way of explanation, "my first responsibility is making sure that United States forces do not have to go and re-fight the Gulf War"

[46] The author remembers hearing this at a Critical Legal Studies meeting, probably from either Nancy Gertner or Jeanne Charn, sometime between 1975 and 1984.

[47] "2003 Peace Award: Denis Halliday" (https://gandhifoundation.org/2003/01/30/2003-peace-award-denis-halliday-2/).

[48] Albright: Iraq Sanctions "Worth It" (Full Context) (https://www.youtube.com/watch?v=UYagQuqK31s). At no point does Stahl even attempt to make Albright explain, let alone defend, her answer or its alleged justification.

as though there were some comprehensible way that the sanctions could prevent such a war. Leslie Stahl never thinks to ask Albright to explain, let alone defend, her claim or its justification. This war that the sanctions were supposedly to prevent is the very war against Iraq that Wesley Clark told us was being planned just after 9/11, and of course, well before that. Ron Suskind's book, *The Price of Loyalty*, cites fired Treasury Secretary Paul O'Neill saying that the coming war against Iraq was discussed during his first National Security Council meeting, and that the only question being asked was "How do we go about attacking Iraq?"[49] Indeed, after being informed the morning of the 9/11 attack that Al-Qaeda was responsible, Secretary of Defense Donald Rumsfeld attended a meeting at the National Military Command Center that afternoon where according to notes taken by his aide Stephen Cambone, Rumsfeld wanted "best info fast. Judge whether good enough hit S.H. [Saddam Hussein] at same time. Not only UBL [Osama bin Laden]…. Need to move swiftly…. Go massive. Sweep it all up. *Things related and not.*" [50] (*emphasis added*) Rumsfeld was marching in step with the infamous January 26, 1998 open letter to President Clinton from the Project for a New American Century, to which he was a signatory, urging military action against Iraq as a global threat because it might have the *capacity* to develop chemical weapons.[51]

Put aside for now your wonder that the Secretary of Defense seemed not at all interested in how Al-Qaeda had managed to breach the greatest security defenses in the world, but found most pressing at such a moment a need to find a reason to put Iraq in the cross-hairs. The evidence indicates that the wish of Rumsfeld (and his Neo-Con allies like James Woolsey, Clinton's CIA Director) was understood much as the wish of Henry II of England toward Thomas Becket – "Will no-one rid me of this turbulent priest?" – but with some self-help involved. Woolsey (falsely) linked Saddam Hussein to the 9/11 attacks the very day of their occurrence and followed it up by generating a fictitious claim of Mohammed Atta meeting with Iraqi intelligence officers in Prague in April of 2001. When Senate leader Tom Daschle and Senator Patrick Leahy received letters poisoned with extremely sophisticated weaponized anthrax that originated from the U.S. military in Ft. Detrick, Maryland,

[49] https://en.wikipedia.org/wiki/Paul_H._O%27Neill, (last accessed July 31, 2018).

[50] http://www.historycommons.org/timeline.jsp?timeline=complete_911_timeline&day_of_9/11=donaldRumsfeld#a240blameiraq. The Neo-Con response to the anthrax letter attacks, occurring shortly after and seemingly related to the attacks of 9/11, provides further evidence of their commitment to attacking Iraq. Letters laced with anthrax and crudely implicating Muslim extremists ("Death to America, Death to Israel, Allah is great") were sent to Democratic Senators Thomas Daschle and Patrick Leahy, who had dragged their feet in passing the PATRIOT act, and various others, including news organizations. Even before the attacks became publicly known, articles and a book by Judith Miller warned that Iraq might supply bioweapons to terrorist groups to attack the United States. As evidence mounted that the anthrax spores used were too sophisticated to have come from al-Qaeda, "accusations against Iraq grew and became more specific."

[51] http://www.informationclearinghouse.info/article5527.htm (last accessed September 1, 2018).

the Neo-Cons, with Woolsey in the lead, still wanted to blame Iraq for the attack and generated false intelligence leaked to Brian Ross of ABC News from three, and then four "well-placed and separate sources" that the anthrax was "laced with bentonite," a claylike substance supposedly unique to Iraq's anthrax; the fact that the deadly anthrax did not contain bentonite was no barrier to their trying to make it (seem) so.[52] Neither Rumsfeld nor Woolsey et. al. is likely to have meditated very deeply upon the moral lessons meant to be conveyed by a Denis Halliday or a Philip Alston. In light of such potent chains of political causation, implementing destruction of Neo-Con targets specified decades previously by the Oded Yinon Plan and "A Clean Break,"[53] oblivious or indifferent and contemptuous of the protests of an Alston or a Halliday and their strategies of the weak, what are we to make of such efforts at resistance? In light of the Downing Street memorandum revealing that "Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy,"[54] and the fact that the only head that rolled was David Kelly's, what is to be done?[55] Is

[52] See Graeme MacQueen, The 2001 Anthrax Deception: The Case for a Domestic Conspiracy, (Clarity Press, Inc. 2014). Prague meeting, at 74; bentonite at 80; see generally 72–85 and passim. The October 27 Washington Post reported that as the Bush administration was retreating from efforts to source the anthrax to Iraq, and James Woolsey and other Neo-cons persisted in efforts to blame Iraq. "This effort to frame Iraq failed when Ross admitted on November 1 that the bentonite did not exist. According to MacQueen, "Ross's sources … remained determined to frame Iraq even after the White House had been persuaded to give it up and was moving on to the lone wolf theory." Id at 81.

[53] See supra note 83. The article introducing the Oded Yinon Plan was published in 1982 (see e. g. https://en.wikipedia.org/wiki/Yinon_Plan) and "A Clean Break" was produced in 1996. See e. g. https://www.zerohedge.com/news/2015-07-01/short-history-neocon-clean-break-grand-design-regime-change-disasters-it-has-fostere.

[54] "C reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record." (https://nsarchive2.gwu.edu/NSAEBB/NSAEBB328/II-Doc14.pdf).

[55] Kelly, a former weapons inspector with the United Nations Special Commission in Iraq, and an employee of the British Ministry of Defence, was the source for a BBC Today program that the government had "sexed up" the intelligence conveyed to the public in order to justify attacking Iraq. (https://www.theguardian.com/politics/2013/jul/16/david-kelly-death-10-years-on) The evidence that he was murdered is compelling; see, e. g. The Strange Death of David Kelly, 2007, by Norman Baker, Minister of Parliament from 1997–2015. Baker includes a reported warning from a retired MI6 officer that this was a "wet works" disposal operation and that the investigator involved should drop his researches, pp.208–210, also accessible in his abbreviated October 20, 2007 account, "Weapons Expert Dr David Kelly was Murdered" https://www.globalresearch.ca/weapons-expert-dr-david-kelly-was-murdered/7134. The chorus of "rebuttal" to the idea that Kelley was murdered by the state should be understood in terms of the need to maintain the false narrative that Kelly sought to expose. See also James Corbett, "Requiem for the Suicided: Dr. David Kelly" (https://www.youtube.com/watch?v=0CPEd j11OoU) which suggests that a book Dr. Kelly was writing would reveal another state crime of equal or greater depravity.

such a posture towards Alston's efforts cynical and defeatist, or does it have a valid basis? Can the same critique justifiably be applied to Harold Pinter's speech, and if not, why not?

Perhaps Halliday's speech answers part of the question. He resigned because "there was no choice, and there remains no choice," if he were to preserve any integrity or self-respect, quite irrespective of whether his resignation produced a further good; it certainly did not diminish harm to Iraq or subsequent wars against it. We are free to speak against public policy without having to share Socrates' concern of being put to death, but we in turn have little or no hopes of influencing it.

But James B. White would not dismiss Halliday's resignation as accomplishing nothing more than preserving his own integrity and self-respect. Through his words and action Halliday asserted and contributed to a "world of shared meanings" without which the "corporate struggle for justice" Vlastos referred to could not take place. Halliday, Pinter, and Alston cannot loosen the ruling elites' grip on power or lessen their increasingly brutal, dangerous and illegal abuse of it; yet by managing to maintain their own "language and judgment and feelings" despite "the pressure of a world that works in different ways" they have prevented the complete collapse of the "values that bring worth to a society." Faced with the "tapestry of lies" that goes unchallenged, the trivialization and manipulation of political discourse, and the lack of realistic channels for change, people of conscience find themselves in an abyss of moral decay with little or no place to stand. Yet if one realizes there are others who still "see what he sees, respond as he responds, speaks as he speaks" his sense of isolation recedes and he too can find "possibilities for asserting and maintaining meaning, for carrying on a collective life."

Pinter's speech in my view avoids legitimating or normalizing the injustices he identifies so well by his effective communication of his outrage and his invitation to his listener or reader to share in this outrage. The ultimate value of Alston's work may depend upon whether it does or can do the same. Even if Alston's particular medium – a United Nations report – limits his ability to express outrage in the report, that would not condemn it as useless or as doing as much harm as good. The report at least establishes and summarizes valuable facts; the responsibility of preventing the report from creating an illusion can fall to others. Although mere whining over the injustices documented by Alston would almost surely be ineffective, an expression of anger and outrage could help to maintain a language and culture to avoid normalizing economic injustice. Also, of course, even if Alston's report included moving expressions of outrage and brilliant invitations to his audience to share in his outrage, as long as most Americans do not read the full reports and rely upon the summary and descriptions provided by the Unites States press, they would never hear Alston's expressions or receive his invitation.

We need to move beyond nostalgic longing for the days of liberal democracy and to keep alive the possibilities of justice in the future. It seems quite possible that law-

yers and linguists could play a useful role in developing and preserving a language that allows us to talk about justice realistically and without nostalgia.

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VII. Literature

Brzezinski, Zbigniew (1997): The Grand Chessboard: American Primacy and its Geostrategic Imperatives. New York: Basic Books.

Danner, Mark (2009): The Red Cross Torture Report: What it Means, New York Review of Books, April 30, 2009.

Hobson, John A. (1902): Imperialism: A Study. New York: James Pott & Company.

Levy, Gideon (2018): 60 dead in Gaza and the end of Israeli conscience, May 17, 2018, Haaretz, https://www.haaretz.com/misc/article-print-page//.premium-60-dead-in-gaza-and-the-end-of-israeli-conscience-1.6095178.

Pinter, Harold (2005): Art, Truth and Politics, December 7, 2005, available at https://www.nobelprize.org/nobel_prizes/literature/laureates/2005/pinter-lecture-e.pdf.

Sandholtz, Wayne (2009): Closing Off the Torture Option. In: *Southern California Interdisciplinary Law Journal* (18). pp. 589–602 (2009) at p. 593.

Sawani, Youssef M. (2014): The United States and Libya: Turbulent History and Uncertain Future. In: *E-International Relations.* https://www.e-ir.info/2014/12/27/the-united-states-and-libya-turbulent-history-and-uncertain-future/ (03.08.2018).

Vlastos, Gregory (1994): Socratic Studies. Cambridge, New York, NY, USA: Cambridge University Press.

White, James B. (1984): When Words Lose Their Meaning. Chicago: University of Chicago Press.

Cases

Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)

Holder v. Humanitarian Law Project, 561 U.S. 1 (2010).

Movies

Battle of Algiers. Gillo Pontecorvo (1966).

The Mediatization of the Law

The Practice of the Law Across Modes and Media

Exploring the Challenges and Opportunities for Legal Linguists

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Abstract

The impact of the digital revolution on legal practice has been a constant theme in recent years, although discussion tends to centre on practical applications (Internet searches, online legal education, productivity devices, international outsourcing) and issues with complex legal repercussions (confidentiality, privacy, plagiarism, security against cyberattacks) (Marcus 2008). Aside from their obvious interest in digital resources as a way of obtaining authentic texts, particularly for building corpora. Legal linguists have generally been slower to respond to these ongoing changes (Breeze et al. 2014). This paper presents an approach to studying the practice of the law across modes and media, drawing on van Leeuwen's (2005, 2013) understanding of social semiotics as a multimodal, multimedia phenomenon which can be studied by analysing language/discourse in combination with other analytical affordances.

Keywords: Multimedia, digital communication, legal practice, alternative dispute resolution, blogs.

I. Introduction

The impact of the digital revolution on legal practice has sparked considerable discussion in recent years. Areas of interest affecting law firms' everyday working practices include improved information storage and the shift towards internet-based searches. These two changes have been described as leading to greater efficiency in the long term, despite being time-consuming to implement (Marcus 2008). Other advantages are found in practical facilities such as electronic time sheets and e-billing (O'Connor 2017). On the negative side, digitalisation opens up the possibility of cyberattacks or system breakdown (El Confidencial 2017), leads to headaches concerning data protection and confidentiality (Marcus 2008), may mean longer working days as a result of electronic filing, and can have wider social implications, for example in terms of increased public access to material filed in court (Gomez-Velez 2005; Mania 2015). On a broader level, possibilities such as outsourcing or relocation to "cheaper" countries have loomed on the horizon (Gibson 2008),

as well as colourful predictions concerning fully online courts or free open-access law schools.

This paper focuses on the way digital communications are influencing professional communication practices in one area, namely alternative dispute resolution (ADR). The main reason for this choice was that ADR relies on consensus between parties and arbitrators or mediators, and is not constrained by national legal systems as far as procedure and practice are concerned. ADR may therefore be more likely to show evidence of greater change and creativity in making use of digital affordances. Moreover, as ADR is relatively common in transnational contexts, and appears to be gaining greater currency as globalisation processes advance, it is useful to explore the changes in practice stemming from technological innovations in the countries where ADR is more firmly rooted, since these may have implications for European firms or organisations in the medium term.

II. Theoretical framework

In order to study changes in professional practice resulting from the increasing exploitation of digital resources, it is necessary to find a theoretical framework that allows us to address changes in mediated practices in a systematic way. This would seem to be particularly important in the case of law, which is often conceptualised as consisting principally of concepts materialised in language, without further consideration of the way that these concepts are mediated and mediatised. However, building on Halliday's (1978: 2) idea that language is only "one of the semiotic systems that constitute a culture", we can observe that law is a form of communication that is fundamentally multimodal and has always been communicated through a variety of media (for example, any one court case involves a range of written genres, as well as a panoply of multimodal performances). In this analysis, I start from van Leeuwen's approach (2005) to studying semiotic resources, practices and changes, which involves considering how people use semiotic resources and technologies in specific socio-historical contexts, and how they talk about and justify these practices. In this, van Leeuwen's definition of 'semiotic resource' is influenced by Gibson's (1979) notion of 'affordances', that is, concrete qualities of objects which, in consonance with the users' needs and interests, shape their meaning-making potential:

> "Semiotic resources are the actions, materials and artefacts we use for communicative purposes, whether produced physiologically – for example, with our vocal apparatus, the muscles we use to make facial expressions and gestures – or technologically – for example, with pen and ink, or computer hardware and software – together with the ways in which these resources can be organized. Semiotic resources have a meaning potential, based on their past uses, and a set of affordances based on their possible uses, and these will be actualized in concrete social contexts where their use is subject to some form of semiotic regime." (van Leeuwen 2005: 285)

Meaning is thus conveyed and negotiated in multimodal contexts not only through words, but also through other affordances (e. g. aspects of visual semiotics) which interact in complex ways (Kress / van Leeuwen 2006). As linguists, we are uniquely qualified to examine both the semiotic practices themselves, and the discourses about them (van Leeuwen 2005), and to explore the norms by which people use and make sense of these practices.

In this, our analysis should consider the presence of four main strata in multimodal communication, bearing in mind that "user interfaces privilege certain options for making meaning" (van Leeuwen / Djonow 2013), and that the design or production and distribution of the multimodal artefact is likely to condition the way it is received and interpreted. These strata are:

– Discourses, that is, the socially constructed knowledge of some aspects of reality (Kress / van Leeuwen 2001: 1). This involves aspects of linguistic code (particularly register) and is potentially likely to show signs of innovation in online communication.
– Design, that is, the stratum which deals with the realisation of discourses in a visual, symbolic, multimodal and interactive way.
– Production, which is "the material articulation of a semiotic event or artifact" (Kress / van Leeuwen 2001), which in this case covers the materiality of blogs, platforms and webpages, and the ethnographies of production.
– Distribution, meaning "the technical 're-coding' of semiotic products and events, for purposes of recording […] and/or distribution" (Kress / van Leeuwen 2001: 21), which can be observed through ethnographies of distribution and reception.

III. Method and sample

This paper uses these strata as an approach to understanding legal practices as semiotic systems in a process of transformation. With a view to achieving a more unified focus, I concentrate on the area of alternative dispute resolution (ADR), looking at three fields in which recent transformations offer an opportunity to legal linguists.

The first is the legal blog, considered as a multimodal and multimedia phenomenon, which is approached from the familiar concept of genre (Bhatia 2004). I look at four ADR blogs (Kluwer Arbitration Blog, Herbert Smith Arbitration Notes, Australian Dispute Resolution Research Network Blog and Young ICCA Blog), examining to what extent these exploit the affordances of online media to transform the genres of professional news and updates. Although all three blogs adopt a rather conservative approach, there are some signs that the potential of online media for multimodality and interactivity is gradually being explored.

My second example centres on interaction, focusing on how the roles and types of interaction experienced in face-to-face interaction subtly change when video-based internet platforms are used for ADR. The analysis is based on a study of one video ADR platform developed in the United States, and the analytical tools to measure turns and turn-taking are from the Interactional Discourse Lab (IDL) (Choi 2016).

The third concept is interactivity, taking ODR systems as an example of how computer mediated communication can be designed to simulate human intervention. In this, I take the example of one platform for online dispute resolution, again available in the United States, and analyse the patterns of interaction facilitated by the affordances of the platform. This section shows how human interaction is conditioned and constrained by the affordances of the platform.

IV. Case studies

1. ADR blogs

Few would deny the importance of the blog on the media landscape. According to Salmon (2011), for example, the advent of the blog has made major differences to the way journalists and others write for their audience. Some of the changes he identifies are: "more human voice"; "no space limit – you can geek out"; "lower quality information" because blog posts are understood as "work in progress"; "gives readers a greater range of sources to consult"; and importantly, two-way communication, since readers can write back in an "interactive, conversational or polemical exchange".

In the legal area, Marcus (2008) and Craddock (2008) both recommend the blog as an important new legal genre that makes it easier for professionals to collaborate, build communities, and interact with each other, with clients, and with other stakeholders. Their multimodal format means that they offer particularly exciting opportunities in this respect, both for law firms, and for academics and professionals.

In the area of law firms, the blog has received some rather negative attention. According to Bliwas (2017), even though most law firms run blogs, these are not widely read – in a survey of US and Canadian law firms, only 7.3 % of the clients were actually reading blog posts, which is barely an improvement on the sort of newsletters mailed to clients in the past. More successful law blogs appear to be those run by academics, professional associations and interest groups, which exist to be read by practising lawyers and academics – the UK Constitutional Law Blog, for example, proved to be influential in the professional debate surrounding the Brexit cases in the High Court and Supreme Court. In the USA, a long-standing example is the Becker-Posner Blog, regarded as "serious academic blogging at its best" (Craddock 2008: 1360), which provides in-depth analysis of up-to-date issues by both a judge and a Nobel-prize-winning economist. However, academics are also very aware of the risk attached to airing one's views in a public forum: the *Washington University Law Review* 84/5, 2006, special issue on how blogs are transforming legal scholar-

ship offers a nuanced view of this activity, under the title: "Blogging while untenured and other extreme sports" (Hurt / Yin 2006).

In the area of ADR, blogs of both kinds are available. Examples from professional and academic associations include the Australian Dispute Resolution Research (ADRR) Network Blog (see Appendix 1, Figure 4), which acts as a forum for practising arbitration lawyers and researchers, while the International Council for Commercial Arbitration's Young ICCA Blog (see Appendix 1, Figure 5) also promises a more interactive environment, defining itself as "a virtual space for young practitioners and students to publish articles, comment on each other's articles, share knowledge and experiences and interact with their peers." On the other hand, two blogs run by companies, the Kluwer Arbitration Blog (Appendix 1, Figure 6) and Herbert Smith Arbitration Notes (Appendix 1, Figure 7), seem to envisage their role as that of a traditional online professional news service in a new guise: they provide updates on the latest arbitration cases, and on changes affecting arbitrators. The Kluwer Arbitration Blog states its approach as follows: "Our focus is traditional – the significant awards, the latest developments, the upcoming events – but our format is new. The result is a serious, high-quality, professional blog about international arbitration presented in a timely, fresh way."

Regarding the four strata defined by Kress / Van Leeuwen (2001), the evidence suggests that there is variation on each level depending on whether the arbitration blogs are conceived of as part of the "public image" communications operation of a law firm (Herbert Smith Arbitration Notes) or publisher (Kluwer Arbitration Blog), which we could label "corporate blogs", or as a more informal vehicle of communication between professionals and/or academics, as in the ADRR blog or the Young ICCA blog, which could be described as "peer blogs". In corporate blogs, the strata of design and production are conditioned by their provenance: their modern, attractive but sober presentation is in line with that found in other areas of the corporate website. They are slightly more visually appealing than law journals, say, but very sober in comparison to blogs in other areas, though attractive within rather sober limits (they are mainly black and white, incorporating one of the corporate colours for headlines or captions). In terms of production and distribution, of course, the blogs differ from other corporate webpages and from academic journals, because the genre of the blog requires at least the possibility of interaction with users. By their very nature blogs are intended as a two-way platform for communication, and some posts attract responses showing evidence of peer-to-peer interaction, or at least, two-way peer-to-blog interaction. This suggests a rather different ethnography of reception from more formal professional journals, because the possibilities of responding and interacting are easier, faster and considerably broader. However, it is of interest that much of the interaction that takes place on the more interactive of these blogs is far from having the "more human voice" and "work in progress" quality, mentioned by Salmon (2011, see above). For example, in response to a blog post on the Kluwer Arbitration Blog, "Yves P. Hu" writes:

1) Furthermore, it is my personal speculation that such "successor" rule shall only apply to those arbitration clauses concluded before the CIETAC Feud became public, where it is easy to determine the parties' intents. For those arbitration clauses concluded after the CIETAC Feud, it remains unclear how the courts will interpret.

Similarly, in response to a different post, "A layman" writes:

2) Contrary to common belief, private arbitration does not – cannot – decide a question of regulatory sovereignty. It can only find that, by taking advantage of its power, a state has failed to comply with its own voluntary bargain.

We may surmise that lawyers here feel that they are "on display" and need to interact with peers in this manner, using technical language and formal discourse features. So even though the production and reception diverge from what would be found in more traditional professional journals, the type of interaction is extremely formal, suggesting that interactant communication is conditioned by their presence in a public, professional forum.

The peer blogs, on the other hand, appear to be somewhat more informal in their presentation, and more innovative in their content. The patterns of textual self-presentation and interaction here approximate to those documented by Garzone (2014). The Young ICCA blog, for example, provides some textual evidence that this is intended with a new, specific readership in mind (example 3):

3) Young ICCA members should be particularly interested because the provisions favouring accessibility and clarity may facilitate growth in investment arbitration work from medium-sized clients. Such smaller disputes may well be handled by young international arbitration practitioners rather than seasoned partners! (van Eyken 2014)

Both of these peer arbitration blogs (ICCA and ADRR) show evidence of more informal discourses and modes of communication than the corporate ones. However, the ADRR blog is more creative in combining different registers and modes, including attractive images, photographs, and use of different colours in the text, quotations from poetry, and eye-catching headlines.

The ADRR blog also has more published responses from readers, who adopt a much more informal style (example 4) than those in the corporate blogs (examples 1 and 2):

4) Thanks very much for posting this Lisa – fascinating. Is it common for the PCA and similar bodies to make such conciliations/processes public? Are norms around making such processes public changing? Thanks again! (Comment to Toohey 2017)

In terms of design and delivery, the peer blogs appear to rely on open software formats (in these two cases, Wordpress) and tend to be visually more idiosyncratic: ICCA is very straightforward, consisting only of black-and-white text presented serially, while ADRR adopts a creative mix of colours and allusive images. In their design, these peer blogs contrast sharply with the corporate blogs, which are professionally designed, maintain visual unity with the corporate website, and cultivate a serious, rather old-fashioned image reminiscent of American law journals. Finally, the

ethnographies of distribution and above all, reception, can be surmised from the discourse found in the blogs themselves. The more informal tone both in the content and in the responses to it in the peer blogs, is suggestive of freely-flowing conversation among colleagues, compared to the more formalised presentation of new information found in the corporate blogs.

2. Face-to-face ODR

The emergence of online communication tools that permit interaction between multiple participants in real time, such as Skype and Webex, opened up the possibility of conducting face-to-face legal proceedings of all kinds at a distance. Since ADR practices are intrinsically more flexible and open to innovation than national court systems, it is hardly surprising that the initial examples of online dispute resolution (ORD) are from the area of voluntary dispute resolution. At first, some members of the ADR communities regarded this with some scepticism, pointing to problems such as a potential lack of trust where no direct contact is established, issues related to confidentiality, and the difficulty of handling complex cases in an online medium (Mania 2015). However, ODR is now a feature of the landscape: online platforms of various kinds for resolving small claims, consumer, employment or family disputes have been in operation for some time now in the USA.

Early research in this area focused on the quantity and quality of activity that takes place in Online Dispute Resolution environments, and the participants' own evaluation of this experience (Hillis 1999; Katsch / Rifkin 2001). However, to gain deeper knowledge of interactions within ODR, researchers need to go into more detail and explore how people interact in and with online environments, and how they construct meaning interpersonally within these constraints (Poblet / Casanovas 2007). In this, there is obviously a major difference between the two main types of ODR currently available, namely face-to-face ODR, which essentially transfers traditional dispute resolution practices to an online environment, and fully automated ODR, in which the digital tool facilitates arbitration between two parties who cannot see or hear each other. Case 2 concerns the first of these, while Case 3 (see below) deals with the second.

Let us look first, then, at face-to-face ODR. Traditional forms of ADR involve three parties: two disputants (or their representatives) and a neutral third party who assumes various different roles in order to facilitate mutual comprehension and help the parties to reach a solution (Gotti 2014). These parties conventionally meet at a chosen venue in order to engage in face-to-face discussion. However, the advent of face-to-face ODR means that it is no longer necessary to travel long distances or make space in packed calendars in order to resolve disputes. One example of a functioning ODR platform of this kind is the Virtual Mediation Lab (VML) (see Appendix 2, Figure 8), which essentially offers face-to-face mediation through a Webex-type platform that enables the mediator to control proceedings by allowing or suspending the parties' access to the discussion. The platform also makes it possible

to visualise documents and draft agreements, and to observe dispute resolution proceedings for training or assessment purposes. Figure 1 represents the way that interaction between the mediator (M) and the parties is channelled through the ODR platform.

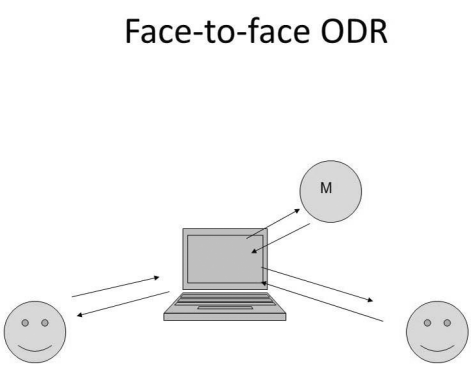

Figure 1: Interaction in face-to-face ODR platform

One way to approach the discourses that occur in this context is by comparing them to Gotti's classic analysis of mediation discourse (2014), which shows that mediators have to establish themselves as neutral, balanced, open, positive and non-positional, and that their discourses are shaped by the following requirements:

– Educating and informing participants by providing their own description of the mediation process and establishing rules of operation. This both strengthens their authority and helps to direct the proceedings.
– Establishing their own role as receptive and empathetic.
– Encouraging each party to reflect on their own and the other party's position and feelings.
– Balancing turn-taking to ensure equal opportunities to speak.
– Nudging the parties towards a solution, providing encouragement, and bringing discussions back on track after diversion/crisis.
– Dealing with outbursts, and where necessary, dividing the two parties when the conflict becomes too bitter.
– Facilitating consensus by making suggestions, and ultimately drafting a balanced agreement.

The way using different multimedia affordances changes discursive practices has been widely studied in other areas. Use of online communication platforms has been found to change the social experience of a particular event, and perhaps amplify negative emotions (Madianou 2012). Some researchers have identified problems centring on the tension between the technical and the affective, and in the long term, it has even been suggested that media use may erode face-to-face skills (Wajcman 2002). However, it is important not to adopt an overly deterministic view. As new affordances become available, people evolve new ecologies of media use (Ito et al. 2010), and just as the media transform communication practices, communication practices also transform the media (Silverstone 2005).

To examine whether the same dynamics are present in face-to-face ODR as in Gotti's analysis, I conducted a detailed qualitative analysis of the turns in a mediation session on one widely available platform (Virtual Mediation Lab), using a coding system based on Gotti (2014) and the analytical tool available in the Interactional Discourse Lab (IDL). The observable mediator discourses were coded, and graphic representations were generated showing the number of turns and the turn-taking patterns throughout the ODR procedure.

Although all the functions observed by Gotti were found to be present during the ODR session, it was evident that some seemed to have particular prominence. Mediator discourses associated with educating participants and managing the session were salient at the beginning of the interaction as a whole, and at the start of the "caususes" (one-to-one sessions between each party and the mediator), as in example 5:

5) So thank you both for meeting me individually I won't be sharing things that you shared *with me privately it's perfectly fine if you want to share anything but I won't be sharing* any of the interaction.

Reflecting back ideas that parties had mentioned appeared to be particularly important in the early stages of the one-to-one caucus (example 6).

6) So er the two words that jumped out to me were kind of like position and advancement.

Other important functions that emerged were: inviting the second party to comment on something that the first party had said; reminding parties about what one party had said previously; and nudging parties towards a consensual understanding. In these, the mediator can be seen to have an organising role geared towards ensuring balance and clarity and achieving an outcome satisfactory to both parties.

All of these discourse functions seem very similar to those identified by Gotti (2014). However, on the level of design, some minor differences were noted, which seem to stem directly from the affordance offered by the platform for passing seamlessly from group interaction to one-to-one interaction in order to deal with outbursts or handle delicate issues, as we can see in example 7.

7) Ok sorry to interrupt it seems that things are getting pretty heated so I'm wondering if *at this point you would like to caucus I'd like to meet with each of you individually so that* I can dig a little deeper and see if there aren't any other solutions that we can come up with.

This option also exists when parties are present in the same room, but is harder to manage, and we can speculate that the relative ease with which the mediator can orchestrate changes in interaction patterns online may lead to greater variations, and may strengthen the mediator's authority, particularly where multiple parties are involved.

In general, as we can see from the interaction diagram generated (using the tools provided by the IDL) in Figure 2, the possibility of alternating between three-way and two-way discussion led overall to greater communication between the disputing parties: Figure 2 shows how the mediator (Michiko) dominates the initial three-way session, while the concluding three-way session is characterised by fluid interaction between the two parties (Vanda / Linda).

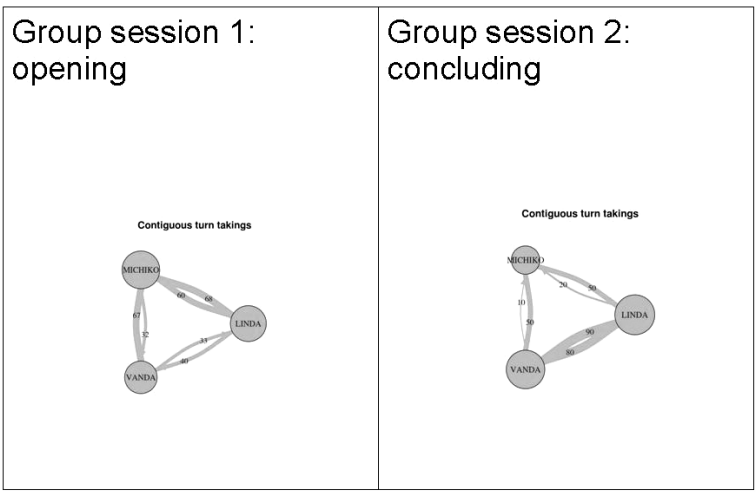

Figure 2: Analysis of turn-taking in face-to-face ODR, generated using IDL: opening and concluding group sessions

One further point concerned not the discourses and design, but the actual material effects or constraints of using the online platform. In Kress and van Leeuwen's scheme (2001), these effects occur on the level of "production", that is, the material articulation of events. First, for purely practical reasons, the mediators in ODR report the need to give an extensive explanation at the beginning of each new session concerning how the platform is going to function and how the proceedings are to be managed. When participants are in the same room, such explanations are often provided

in a more spontaneous ongoing manner, as the interaction develops in a more organic manner. Second, and perhaps more importantly, mediators describing the experience of ODR using the VML platform report a certain loss of spontaneity, resulting from the slight lag-effect in the relaying of video, as well as a slower speed of delivery and interaction. Moreover, since the online interaction is governed by the principle that only one person can speak at a time, the discussions are more heavily controlled and constrained. As a direct result of this, the participants report that they pay more attention to each other's words, react more slowly, and think more about what they are going to say. Interestingly, this constraining effect is generally perceived by mediators as enhancing the overall quality of the interaction: the slower pace allows more time for reflection, and is conducive to good outcomes. The platform thus exerts its own special effect on the proceedings, a phenomenon which even has led some specialists to talk of the presence of a "fourth party" in ODR (Gaitenby 2006: 371):

> The fourth party is more than software, in the same way that the first, second, and third parties in alternative dispute resolution ("ADR") are more than simply human beings. The fourth party is a shared perception, a product of individual and collective consciousness empowered by a multitude of social, cultural, and technical tools. To know the fourth party, researchers need to explore how users make online environments and practices meaningful.

On the level of distribution, the possibility of conducting ADR from one's own home or office is also positively evaluated: in fact, ODR is reported to feel more personal, rather than more distant. It should be noted, however, that participants acknowledge that this system relies heavily on trust (concerning issues such as whether other people should be present in the room or not, or whether sessions are to be recorded). Ethnographic studies would doubtless provide further insights into the changes in practices that come about as ODR becomes more widespread.

To conclude this section, the interactions that take place in face-to-face ODR bear a strong family resemblance to those found in more traditional ADR settings, but are evidently also influenced by the affordances of the platform, which bring both loss and gain. There is doubtless a loss of spontaneity, but mediators reportedly find the type of control at their disposal useful to address emotional outbursts and conduct one-to-one sessions with parties. The parties themselves mention increased comfort, and regard the lag-effect as beneficial in providing thinking time.

3. Automated ODR platforms

The third online manifestation in the world of arbitration to be considered here is the truly automated online dispute resolution platform. This exists in some countries, notably the United States, as a way of resolving relatively straightforward cases without human intervention (Thiessen et al. 2012). The following description, from the webpage of the US-based site Smartsettle (see Appendix 2, Figure 9), serves as an indication of the way these platforms are conceptualised:

> 8) Smartsettle is the multiparty Negotiation System that reduces time, cost, and stress for decision-makers in all types of cases. It clarifies tradeoffs and understands how negotiators become satisfied on both quantitative and qualitative issues. Smartsettle's Internet network connects parties located anywhere in the world (…) Using powerful optimization algorithms, Smartsettle can quickly transform conflicting objectives into fair and efficient solutions.

In 2013, the European Union approved a resolution to make an online dispute resolution (ODR) platform for consumer disputes available throughout Europe (EU 2013), but the current facilities (EU 2018) consist simply of an online form that complainants can fill in and send to a registered dispute resolution body, who handle the dispute in the traditional way. Nonetheless, despite the evident delay affecting this project in Europe, moves towards ODR are likely to affect the legal environment here in the longer term.

Unlike the VDR, discussed above in case 2, platforms such as Smartsettle are specifically designed to function without the intervention of a human mediator: in fact, the option of the "real" mediator does exist, but the idea is that the parties should not need to have recourse to this measure in the majority of cases. This website is carefully designed to provide disputing parties with options for settling their differences online: they log into a secure site where they themselves set out the issues to be decided and make each other offers on each point. One particularly interesting feature of this site is that the parties not only make "visible" offers to each other, but also indicate their "secret" limit – that is, they indicate to the platform how far they might be prepared to go if the other party does not accede to their first offer. Since the other party is also encouraged to set a secret limit, there is a fair chance that these limits will overlap, in which case the platform will inform them and a deal can be struck without further ado. In this sense, the platform goes some way towards fulfilling the functions of the human mediator, in that it facilitates agreement without either party having to reveal their limits to the other one. Moreover, within the more complex platforms, sophisticated modelling is applied to take account of user preferences and find out exactly how each user has become satisfied on each type of issue (Thiessen et al. 2012). It is within the realms of possibility that the platform could use such patterns to propose solutions that are acceptable to both parties: the software could thus fulfil the role of an intelligent mediator, at least as far as rational solutions are concerned.

It is evident, however, that even the best systems of this kind have fairly grave limitations (Thiessen et al. 2012). Although the automated option could be attractive for small claims of a relatively simple nature, such as unpaid bills, it is unlikely that this system would be useful to resolve disputes if the parties have major differences of opinion on a number of issues, if the different strands are tangled, or if parties are unwilling to cooperate with each other. The interpersonal functions of the mediator listed above (explaining, educating, encouraging, redirecting, etc.) are mostly absent from the current generation of ODR systems, although we can speculate that it is only a matter of time before more and more of these functions are incorporated into such

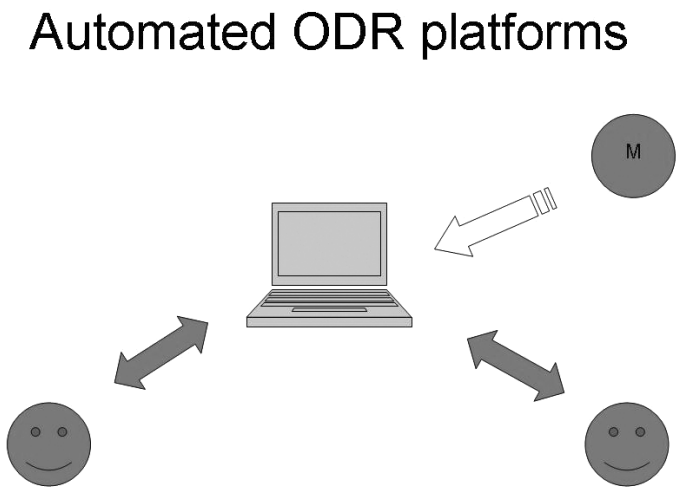

Figure 3: Interaction in automated ODR platform

platforms. According to Thiessen et al. (2012: 16), systems could be produced that "explain themselves through an interactive, iterative process, leading to better user understanding and increased comfort with the process". In fact, it would be feasible to detect typical behaviours among the parties and develop responses that the platform could produce automatically. For example, if one party repeatedly makes very low offers, the platform could ask him/her to reflect on the other party's position and interests, while if there are long delays between sessions, the platform could send messages encouraging the parties to get back on track.

Regarding the four strata identified by Kress and van Leeuwen (2001), namely discourse, design, production and distribution, this ODR model offers radical differences from face-to-face interaction. At the discourse level, what the platform provides is highly constrained, and it is left to the parties to decide on their parameters and make the first offers. On the level of design, the inbuilt option allowing each party to define its 'real' or 'secret' limits is an attractive feature. However, one suspects that some difficulties lurk on the production level, because if an agreement is not struck swiftly (which would generally involve major concessions on both sides), the only solution envisaged by the platform is to repeat the cycle of offers until a compromise is achieved. Regarding distribution, of course, this type of platform presents many advantages, since it can be used anywhere and requires little effort. The problems may occur later, if, for example, a party reneges on its promise to pay compensation.

However, this problem is inherent to all ADR systems, and one would presume that the same degree of seriousness would pertain here as in other ways of reaching out-of-court settlements.

V. Concluding thoughts

The practice of law is intrinsically multimodal, and changes in mode and channel have influenced that practice over the course of the centuries. When law codes were first reproduced on bronze tablets (as in Figure 10), rather than being engraved on stone (Figure 11), this change may have seemed subtly to alter the status of the codes and perhaps even threaten the solidity of the law itself. Inventions such as the printing press brought about sweeping changes in public access to legal information of every kind. Internet has again opened up the law to a wider audience and seems to be changing people's relationship to legal practitioners. Many of these developments involve shifts in mode and media, and so Kress and van Leeuwen's (2001) four-stratum framework proved useful to examine how the transition to online media affects different areas of legal practice, thinking particularly of ADR. After examining the extent to which ADR blogs can be seen as innovative with respect to traditional professional journals, I then looked at how traditional mediator roles are differentially represented in face-to-face and automated ODR platforms. A brief analysis of the relationships constructed between the mediator, the parties and the platform (or the parties and the platform) in the course of these ODR sessions is provided, paying special attention to the extent to which the platform itself plays a mediating role as a "fourth" (or "third") party. I suggest that multimodal analysts and semioticians have a special role in showing how the use of such platforms brings about changes in the types of interaction that take place in the resolution of disputes. In a different context, Churchill once said that "we shape our buildings, and afterwards our buildings shape us" (Hansard 1943: no. 463). The same is true for web platforms: specialists design them to fulfil certain functions in line with what lawyers want them to do, but once they are operative, the way they function conditions what people do with them and how they interact with each other through them. In the present context, the consensus among professionals as to how the dispute resolution process should be conducted is shaping the platforms used for ODR, but these platforms themselves exert an effect on the way ODR can be performed, the roles that can be adopted and the relationships that can be built.

It remains to be said that the ideas discussed in this paper are based on three case studies, any one of which could be extended to cover a larger number of examples in order to obtain quantitative data, or enhanced qualitatively by applying ethnographic methodology. The approaches illustrated here could also be applied to other areas of law where changes in media are affecting professional practices, including other types of ADR, negotiation, and even litigation. Whatever the topic under scrutiny, it is clear that legal linguists are uniquely situated to understand the transformations

that are under way, and to develop analyses that go beyond language data to take in multiple semiotic modes.

VI. Literature

Abas, Suriati (2011): Blogging: a multimodal perspective. In: *Ascilite* (2011): http://www.ascilite.org/conferences/hobart11/downloads/Abas-concise.pdf (15. 02. 2019).

Australian Dispute Resolution Research Network Blog. https://adrresearch.net/.

Bernstein, Basil (1990): The structuring of pedagogic discourse: Class, code and control. London, New York: Routledge.

Bhatia, Vijay (2004): Worlds of written discourse. London: Continuum.

Bliwas, James (2016): Why law firm blogs aren't read. https://www.linkedin.com/pulse/why-law-firm-blogs-arent-read-james-bliwas (15. 02. 2019).

Breeze, Ruth / Gotti, Maurizio / Sancho Guinda, Carmen (2014): Interpersonality in Legal Genres. Bern: Peter Lang.

Choi, Seongsook (2016): The case for open source software: the interactional discourse lab. In: *Applied Linguistics* (37), pp. 100 – 120.

Craddock, Brian (2008): A blawg odyssey: exploring how the legal community is using blogs and how blogs are changing the legal community. In: *Mercer Law Review* (60), pp. 1353 – 1392.

Djonov, Emilia / Van Leeuwen, Theo (2012): Normativity and software: A multimodal social semiotic approach. In: Sigrid Norris (Ed.): Multimodality and Practice: Investigating Theory-in-Practice-through-Method. New York: Routledge, pp. 119 – 137.

El Confidencial (2017): Un fallo en el sistema telemático de Justicia permitió acceder a todos los casos abiertos. 27 July. https://www.elconfidencial.com/tecnologia/2017-07-27/lexnet-justicia-sistema-telematico_1421771/ (15. 02. 2019).

European Union (2013): Regulation 524/2013 of the European Parliament and Council on Online Dispute Resolution for Consumer Disputes.

European Union (2018): EU Online Dispute Resolution. https://ec.europa.eu/consumers/odr/main/?event=main.home2.show (15. 02. 2019).

Gaitenby, Alan (2006): Proceeding: The Fourth Party Rises: Evolving Environments of Online Dispute Resolution. In: *University of Toledo Law Review* (38), pp. 371.

Garzone, G. (2014): Investigating blawgs through corpus linguistics: issues of generic integrity. In: M. Gotti / D. Giannoni (Eds.): Corpus analysis for descriptive and pedagogical purposes. Bern: Peter Lang, pp. 167 – 188.

Gibson, K. William (2008): Outsourcing legal services abroad. In: *Law Practice* (31), pp. 47.

Gomez-Velez, Natalie (2005): Internet access to court records, balancing public access and privacy. In: *Loyola Law Review* (51), pp. 365 – 438.

Gotti, Maurizio (2014): Interpersonality in mediation discourse. In: Breeze et al. (above).

Halliday, Michael (1978): Language as Social Semiotic. London: Arnold.

Hansard (1943): House of Commons Rebuilding. 28 October.

Heisterkamp, Brian (2006): Conversational displays of mediator neutrality in a court-based program. In: *Journal of Pragmatics* (38), pp. 2051 – 2064.

Herbert Smith Arbitration Notes (2018): http://hsfnotes.com/arbitration/ (15. 02. 2019).

Hillis, Ken (1999): Digital Sensations: Space, Identity, and Embodiment in Virtual Reality. Minneapolis: University of Minnesota Press.

Hodge, Robert / Kress, Gunther (1998): Social semiotics. Ithaca: Cornell University Press.

Hurt, Christine / Yin, Tung (2006): Blogging while untenured and other extreme sports. In: *Washington University Law Review* (84), pp. 1235 – 1255.

IDL (2018): Interactional Discourse Lab. http://interactionaldiscourselab.net/ (15. 02. 2019).

Ito, M. et al. (2010): Hanging out, messing around and geeking out: kids living and learning with new media. Cambridge MA: MIT Press.

Katsh, Ethan / Rifkin, Janet (2001): Online Dispute Resolution: Resolving Conflicts in Cyberspace. New York: John Wiley and Sons.

Kluwer Arbitration Blog (2018): http://kluwerarbitrationblog.com/ (15. 02. 2019).

Kress, Gunther / Van Leeuwen, Theo (2006): Reading Images: The Grammar of Visual Design. London: Routledge.

Madianou, Mirca (2012): News as a looking glass: shame and the symbolic power of mediation. In: *International Journal of Cultural Studies* (15), pp. 3 – 16.

Mania, Karolina (2015): Online dispute resolution: the future of justice. In: *International Comparative Jurisprudence* (1), pp. 76 – 86.

Marcus, Richard (2008): The impact of computers on the legal profession. Evolution or revolution? In: *North Western University Law Review* (102), pp. 1827 – 1867.

Ng, J. (1999): The four faces of face. Implications for mediation. Available from: www.mediate.com (30. 06. 2018).

O'Connor, Thomas (2018): The Automated Law Firm (updated annually). Gaithersburg: Aspen.

Poblet, Marta / Casanovas, Pompeu (2007): Emotions in ODR. In: *International Review of Law, Computers and Technology* (21), pp. 145 – 156.

Salmon, Felix (2011): How blogs have changed journalism. http://blogs.reuters.com/felix-salmon/2011/03/16/how-blogs-have-changed-journalism/ (30. 06. 2018).

Silverstone, Roger (2005): Mediation and communication. In: Craig Calhoun / Chris Rojek / Bryan Turner (Eds.): Handbook of Sociology. London: Sage.

Smartsettle (2018): https://www.smartsettle.com/ (15. 02. 2019).

Susskind, Richard (2008): The end of lawyers. Oxford: OUP.

Thiessen, Ernest / Miniato, Paul / Hiebert, Bruce (2012): ODR and e-negotiation. In: Mohamed Abdel Wahab / Ethan Katsch / Daniel Rainey (Eds.): Online dispute resolution: theory and practice. The Hague: Eleven International Publishing.

Toohey, Lisa (2017): Conclusion of conciliation between Timor Leste and Australia. ADRR Blog, 8 September.

Van Eyken, Eric (2014): The CETA: simplifying International Investment Arbitration. Young ICCA blog, August.

Van Leeuwen, Theo (2005): Introducing Social Semiotics. London, New York: Routledge.

Van Leeuwen, Theo (2013): Critical Analysis of Multimodal Discourse. In: Carol Chapelle (Ed.): Encyclopedia of Applied Linguistics. Oxford: Wiley-Blackwell.

Van Leeuwen, Theo / Djonov, Emilia (2013): Multimodality and software. In: Carol Chapelle (Ed.): Encyclopedia of Applied Linguistics. Oxford: Wiley-Blackwell.

Virtual Mediation Lab (2018): http://www.virtualmediationlab.com/ (15.02.2019).

Wajcman, Judy (2002): Addressing technological change: the challenge to social theory. In: *Current Sociology* (50), pp. 347–363.

VII. Appendix

Appendix 1

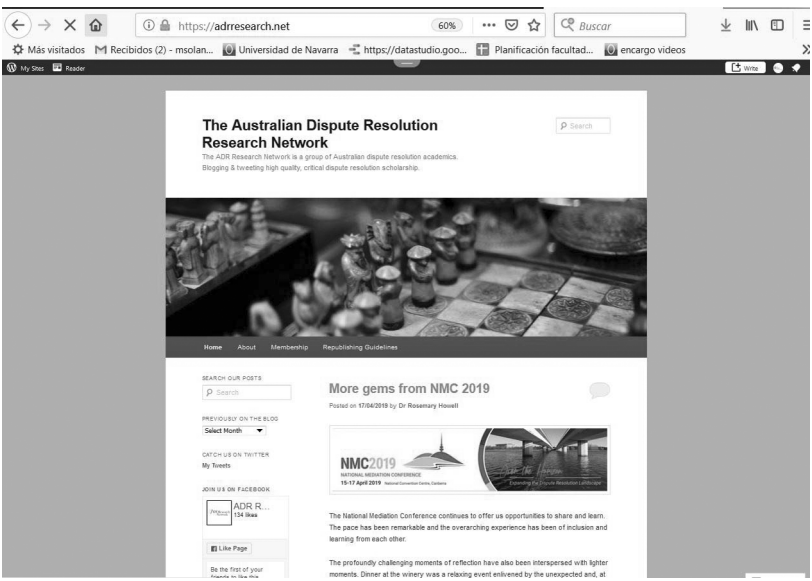

Figure 4: Australian Dispute Resolution Research Network Blog

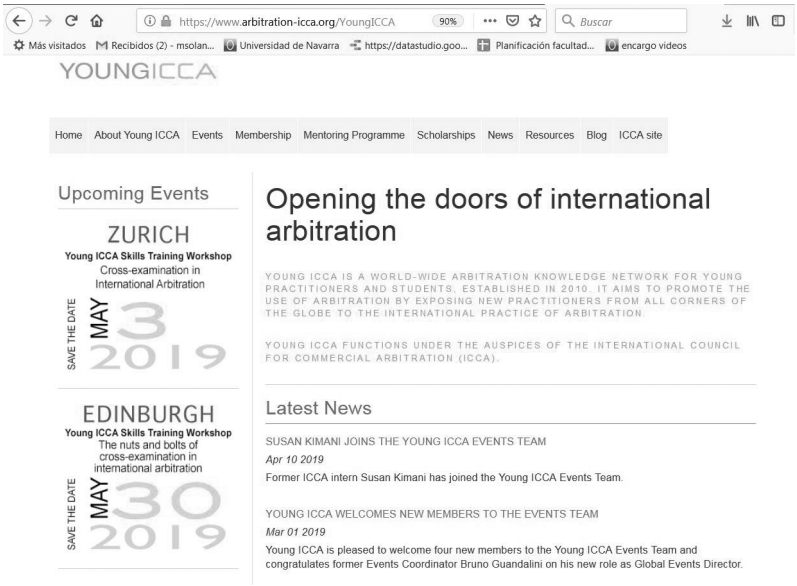

Figure 5: International Council for Commercial Arbitration's Young ICCA Blog

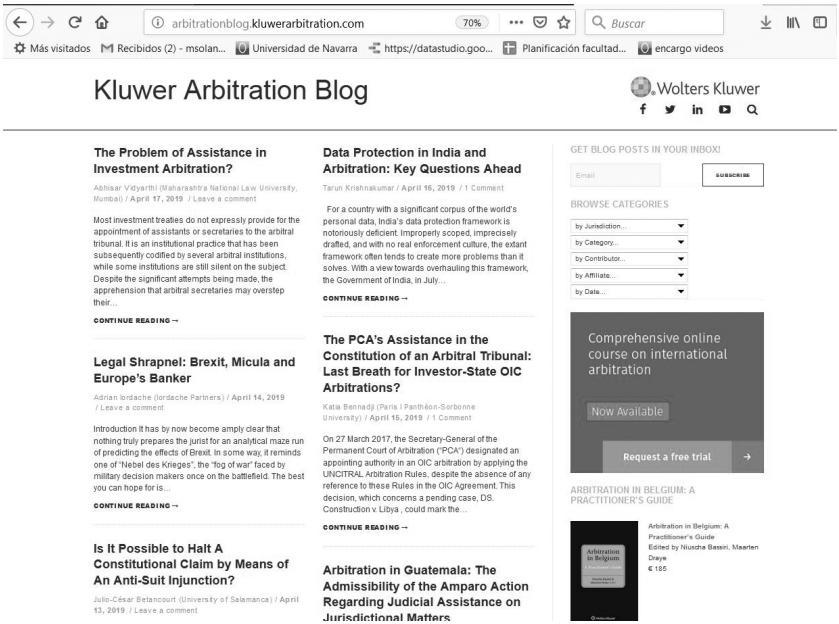

Figure 6: Kluwer Arbitration Blog

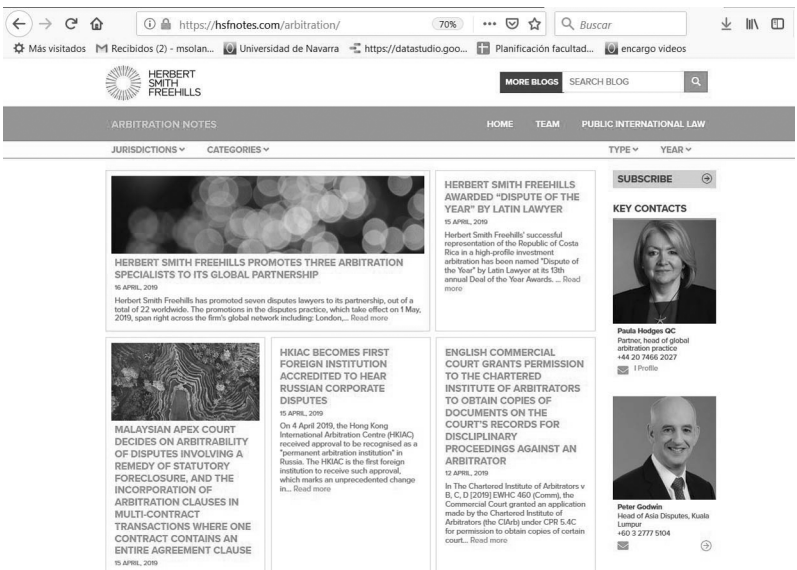

Figure 7: Herbert Smith Arbitration Notes

Appendix 2

Figure 8: Virtual Mediation Lab

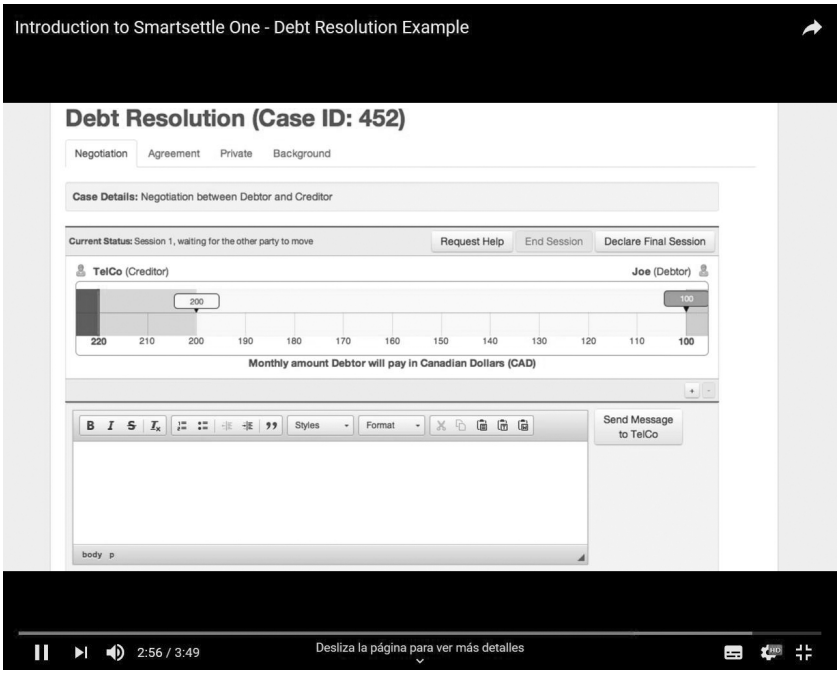

Figure 9: Smartsettle Virtual Negotiation Platform

Appendix 3

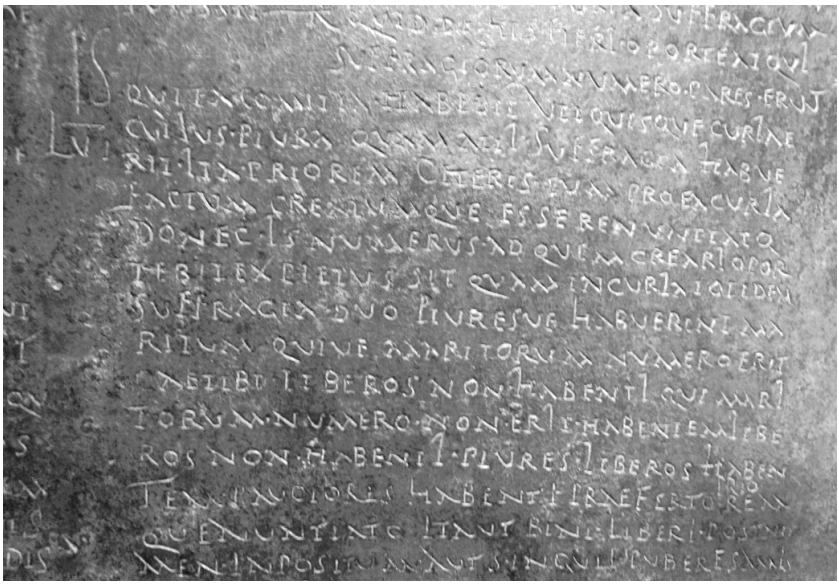

Figure 10: Part of the Lex Flavia Malacitana, a set of five bronze tablets granting municipal status to the city of Malaga during the reign of the Emperor Domitian (c. 84 AD) (Museo Arqueológico Nacional, Madrid).

Figure 11: The top of the basalt stele containing the Code of Hammurabi, (c. 1754 BC) (Louvre Museum, Paris)

Gender-based Violence and the Mediatization of the Law

By *Victoria Guillén Nieto*, University of Alicante

Abstract

This paper focuses on a global social conflict, gender-based violence, that only in Spain caused the death of over one thousand women between 1997 and 2018. From a legal linguistics perspective, we examine the concept of gender-based violence as well as the effects of the mediatization of the law (Hepp / Hjarvard / Lundby 2015: 314 – 324). We hypothesise that gender-based violence is the ultimate social consequence and surface effect of heteropatriarchal values, beliefs, basic assumptions, and ideals which are at the core of this dominant cultural paradigm based on power and domination, and for this reason resilient to change, as illustrated by the emergence of the latest development of gender-based violence: cyberviolence against women. The questions we discuss are: can linguistics help to better understand the overarching concept of gender-based violence? Which roles do the news media play concerning gender-based violence? How do the news media and the law interact with each other? And which are the effects of this interaction? Our methods include *Natural Semantic Metalanguage* (NSM) (Wierzbicka 1972, 1996; Goddard 1998; Wierzbicka / Goddard (Eds.) 2002; Wierbicka / Goddard 2014) and a multidimensional approach to the analysis of heteropatriarchal culture consisting of four interrelated levels: (a) gender as a value dimension, (b) ideology, (c) social practices, and (d) discursive practices.

Keywords: gender-based violence, legal linguistics, mediatization, law

I. Introduction

This paper analyses a global social conflict, gender-based violence, that only in Spain caused the death of over one thousand women between 1997 and 2018, an alarming figure that surpasses the number of people killed by the terrorist group ETA in its more than fifty years of activity in that country. The conflict arises from the clash of two opposing transnational cultural paradigms: one based on power and domination (Heteropatriarchy), the other on solidarity and equality (Feminism). Gender-based violence has been in societies in the world around us since ancient times, but this social phenomenon was not made visible until it was categorised as an object of protection by the law. The Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender Violence[1] in Spain, at the time with no legal precedent in the European Union, must be given the credit for having

[1] http://noticias.juridicas.com/base_datos/Admin/lo1-2004.html [Last access 14/07/2018].

categorised gender-based violence and created comprehensive protection measures whose purpose in theory is to prevent this type of violence, punish the perpetrators, give assistance to the victims, and ultimately eradicate this social scourge.

From a legal linguistics perspective, we examine the overarching concept of gender-based violence as well as the effects of the mediatization of the law. We hypothesise that gender-based violence is the ultimate social consequence and surface effect of heteropatriarchal values, beliefs, assumptions and ideals which are at the core of this dominant cultural paradigm based on power and domination and for this reason resilient to change, as illustrated by the emergence of the latest development of gender-based violence: cyberviolence against women. We discuss these questions: Can linguistics help to better understand the overarching concept of gender-based violence? Which roles do the news media play concerning gender-based violence? How do the news media and the law interact with each other? And which are the effects of this interaction? Our methods include *Natural Semantic Metalanguage* (NSM) and a multidimensional approach to the analysis of heteropatriarchal culture consisting of four interrelated levels: (a) gender as a value dimension, (b) ideology, (c) social practices, and (d) discursive practices.

II. Gender-based violence in the Spanish law

In the Preliminary Title, Section 1. Object of the Law, of the Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender-based Violence, we learn that gender-based violence is the object of protection of this law in Spain:

1) The purpose of this law is to act against violence which, as the manifestation of a situation of discrimination of men against women, of inequality between men and women, and of a power-based relationship between men and women, occurs between former or current spouses or partners, whether, or not, the perpetrator shares or has shared the same residence with the victim[2].
2) This law establishes comprehensive protection measures whose purpose is to prevent, punish and eradicate this violence, and to give assistance to the victims of this type of violence[3]: women, their children, and minors subject to their protection or custody.

[2] This is a translation of the source text in Spanish: "La presente ley tiene por objeto actuar contra la violencia que, como manifestación de la discriminación, la situación de desigualdad y las relaciones de poder de los hombres sobre las mujeres, se ejerce sobre éstas por parte de quienes sean o hayan sido sus cónyuges o de quienes estén o hayan estado ligados a ellas por relaciones similares de afectividad, aun sin convivencia."

[3] This is a translation of the source text in Spanish: "Por esta ley se establecen medidas de protección integral cuya finalidad es prevenir, sancionar y erradicar esta violencia y prestar asistencia a las mujeres, a sus hijos menores y a los menores sujetos a su tutela, o guarda y custodia, víctimas de esta violencia."

3) The gender-based violence referred to in this law includes all acts of physical and psychological violence, including sexual assaults, threats, coercion or arbitrary deprivation of liberty[4].

It is a well-known fact that language does not only describe the world around us, but it also creates reality. The text of the Organic Law 1/2004 describes different types of domestic violence inflicted on women by their spouses or partners, e. g. physical, psychological and sexual, and it also includes the legal statement that this specific type of violence is the effect of several interrelated causes, e. g. discrimination, inequality, and asymmetrical power relations between men and women. In doing so, lawmakers are not only describing the existence of gender-based violence within the family or domestic unit, but they are also creating a reality in which women's and children's fundamental rights are violated and consequently they must be protected by law. Although the Organic Law 1/2004 opens the path to the legal treatment of gender-based violence, it does not explain the reasons for the phenomenon but rather focuses on the surface effects on women's lives in the domestic unit.

Since the Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender-based Violence entered into force on June 29th, 2005, eight hundred and twenty women have died in Spain[5]. This alarming figure shows that far from being eliminated, gender-based violence is, in fact, an ingrained social scourge in Spain and in societies around the world, and therefore extremely difficult to eradicate. On the other hand, many feminist lawyers argue that the application of the law has never been successful because there has never been a genuine political interest in the eradication of this blight. What was initially considered a promising and hopeful law for the protection of women's rights (Torres 2014: 641 – 655) has proved, in fact, to fail for some major reasons: (a) lack of government resources for the implementation of the law and for the protection measures for women (Torres 2015); (b) lack of a gender perspective in the professional training of the legal practitioners that must apply the law; since judges are not free from social prejudice and stereotypical knowledge about gender social roles, it is often the case that the victim is sadly revictimised by the court; (c) the victim withdraws the claim she brought in to the court for fear of reprisals from the perpetrator or moved by sympathy for him; and (d) lack of investment in educational programmes in equality in the school, in the workplace, and in the living community as a whole.

In 2018 the Government in Spain announced the reform of the Organic Law 1/2004 for purposes of meeting the agreements reached in the government pact against gender-based violence at the Congress of Deputies in September 2017. The reform of the law will eventually involve some substantial modifications. One of them is related

[4] This is a translation of the source text in Spanish: "La violencia de género a que se refiere la presente ley comprende todo acto de violencia física y psicológica, incluidas las agresiones a la libertad sexual, las amenazas, las coacciones o la privación arbitraria de libertad."

[5] Portal Estadístico. Delegación del Gobierno para la violencia de género. http://estadisticasviolenciagenero.igualdad.mpr.gob.es/ [Last access 08/10/2018].

to the concept of gender-based violence. To this effect the new definition of gender-based violence will be borrowed from the Istanbul Convention (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence)[6], ratified by Spain on April 10th, 2014. This convention is based on the understanding that: "…gender-based violence against women shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately." (Art. 3, Istanbul Convention, 11.V. 2011). Moreover, the reform of the law will also imply the inclusion of the types of negative acts set out in the Istanbul Convention: civil consequences of forced marriages (Art. 32), psychological violence (Art. 33), stalking (Art. 34), physical violence (Art. 35), sexual violence, including rape (Art. 36), forced marriage (Art. 37), female genital mutilation (Art. 38), forced abortion and forced sterilisation (Art. 39), and sexual harassment (Art. 40).

III. A linguistic perspective of the overarching concept of gender-based violence

Here we raise the question: Can linguistics help to better understand the overarching concept of gender-based violence? To answer this question, we will take two different, but at the same time complementary, paths: *Natural Semantic Metalanguage* (NSM) (Wierzbicka 1972, 1996; Goddard 1998; Wierzbicka / Goddard (Eds.) 2002; Wierbicka / Goddard 2014) and a multidimensional approach to the analysis of a culture.

1. Approaching gender-based violence through Natural Semantic Metalanguage (NSM)

NSM is a method of semantic decomposition that incorporates elements of cognitive semantics. It consists of three major principles. The first principle theorises the existence of semantic primitives, e. g. a semantic core or reduced number of basic words that are indefinable and translatable lexical universals across languages. The second principle of NSM states that there exists an essential irreducible grammar that governs how semantic primes may be combined in a language. The third principle of NSM claims that the meanings of words can only be understood by means of other words and that it is convenient to describe complex meanings in terms of simpler ones. The NSM method also includes universal or near-universal semantic molecules, annotated as (m) in the semantic scripts. These are words that are necessary to build upon to explicate other words. A semantic analysis in the NSM method results in a reductive paraphrase called an explication that captures the meaning of the concept explained. Since gender-based violence is a multifaceted concept, we will divide

[6] https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e [Last access 13/07/2018].

it into smaller relatable categories of meaning. These are: (a) gender, (b) sexism, and (c) violence against women. Gender refers to a biological difference between men and women, while sexism refers to a cognitive element of discrimination driven by the presupposition that men are superior to women, and violence against women refers to the subsequent negative social acts that some men do against women. In what follows we will look at the NSM explication of each of these semantic categories in turn in further detail.

The NSM explication of Gender consists of two steps: (1) everybody knows that there are two kinds of people; because there are two kinds of people's bodies, and (2) people of one kind are men (m), people of another kind are women (m). The first step shows the scientific knowledge that biological sex is classified according to the two standard anatomical forms. Every human being primarily identifies with one specific gender or another. The second step names these two categories: kind of person men and kind of person women. It is important to note that the use of "one kind" and "another kind" does not favour any of these two kinds of people over the other.

The NSM explication of Sexism[7] embraces six steps: (1) everybody knows that there are two kinds of people, because there are two kinds of people's bodies, (2) people of one kind are men (m), people of another kind are women (m), (3) some people think like this: "I know some things about these two kinds of people, (4) one of these kinds of people can't do many good things like people of the other kind can do many good things", (5) people think: "It is very bad if someone thinks like this", and (6) because of this, something very bad can happen to someone of this kind. The first two steps refer to a biological classification of sexes. The third step announces the cognitive scenario, while the fourth step indicates that sexism is grounded in stereotypical knowledge, e. g. "men are strong", "women are weak", and by social expectations about social behaviour, e. g. "men are rational", "women are too emotional". It implies the superiority of one sex and the inferiority of the other sex, and consequently promotes social inequality and discrimination between one sex and the other. The fifth step is a negative social evaluation of sexism. And the last step indicates the potential negative consequences for the target.

The NSM explication of violence against women[8] can be described in four steps: (1) X did something very bad to Y, (2) when X did this, it was like X was thinking at the same time: "Y is very bad", "Y is not like me in any way", "it is like Y is below me", "it is like Y is not a person like me", (3) because of this, I can do anything to Y, and (4) people think: it is very bad to do something like this. The first step is an event. Gender-based violence implies performing a negative act against the target. The intensifier emphasises the severity of the act. The second step introduces the prototypical cognitive scenario, e. g. X's negative assessment of Y, X's disassociation from Y,

[7] This semantic script is borrowed from Stollznow (2017: 322).

[8] This semantic script draws on the semantic script of dehumanise by Stollznow (2017: 145).

X's superiority over Y, X has devalued Y's worth as human being. In the third step, the agent feels justified in treating the target in an inhumane manner. X has a mental license to mistreat, hurt or abuse Y. The fourth step indicates that violence can result in severe consequences for the target who is mistreated in some way, e. g. physically, psychologically, sexually, etc. This final step is a negative social evaluation of this type of violence.

Through *Natural Semantic Metalanguage* we have attempted to offer a semantic definition of gender-based violence, breaking it into three relatable concepts: (a) gender, (b) sexism, and (c) violence against women. The semantic analysis performed allows us to reach the conclusion that gender-based violence arises from a sexist view of gender, rather than from biological differences between men and women, in which women are thought to be socially inferior to men.

2. A multidimensional approach to the analysis of heteropatriarchal culture

For purposes of analysis, we use a multidimensional model of analysis consisting of four main interrelated levels: (a) gender as a value dimension, (b) ideology, (c) social practices, and (d) discursive practices. The model is graphically shown in Figure 1.

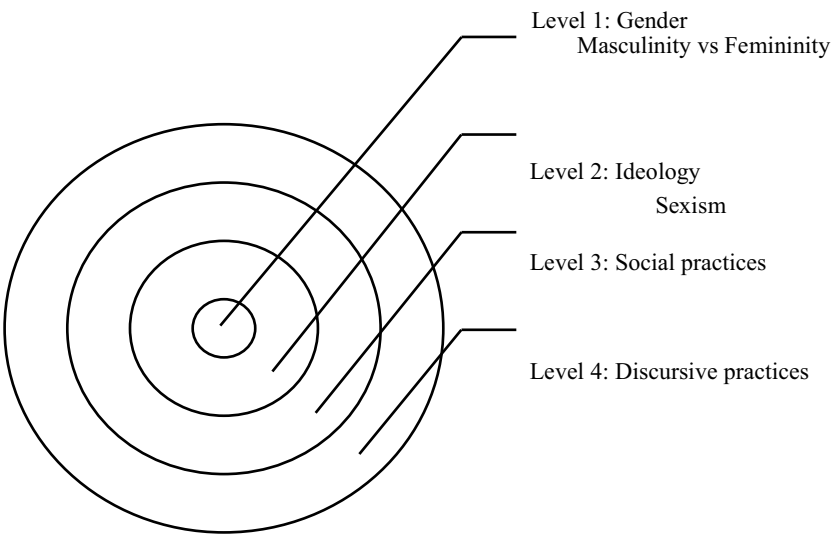

Figure 1: Manifestations of a culture at different levels of depth

In the next subsections we will refer to each of these interrelated levels of analysis in turn in further detail.

a) Level 1: Gender as a value dimension

At the core of a culture, one may find *values*, a category that we borrow from the field of social psychology. Values are "…broad tendencies to prefer certain states of affairs over others." (Hofstede 2003 [1991]: 8). These values are related to five universal dimensions that refer to five basic problems of social life which any society must cope with in relational communication but for which solutions may differ from one culture to another. One of the five basic social problems identified by Hofstede (2001 [1980]) in his empirical research was *Gender.* This was explained as a value dimension that spans a continuum from one opposite extreme (*Masculinity*) to another (*Femininity*) along which cultures may show different degrees of orientation towards one direction or another of the continuum. According to Hofstede:

> Masculinity stands for a society in which gender roles are clearly distinct. Men are supposed to be assertive, tough, and focus on material success; women are supposed to be more modest, tender, and concerned with the quality of life. Femininity stands for a society in which social gender roles overlap: Both men and women are supposed to be modest, tender, and concerned with the quality of life. (2001 [1980]: 297)

A categorical social division between sexes is at the core of heteropatriarchy and permeates the other layers or levels of this dominant cultural paradigm, e. g. ideology, social practices and discursive practices, as we will see in the next three subsections.

b) Level 2: Ideology

Ideology refers to the integrated system of values, basic assumptions, beliefs, ideas, ideals and principles of a culture. They cannot be directly seen but they filter into the other more visible layers of a culture, e. g. social practices and discursive practices. In the field of social psychology, Hofstede (2003 [1991]), drawing a parallel with computer programming, defined culture as the "collective software of the mind". In his words:

> Every person carries within him or herself patterns of thinking, feeling, and potential acting which were learned throughout their lifetime. Much of it has been acquired in early childhood, because at that time a person is most susceptible to learning and assimilating. As soon as certain patterns of thinking, feeling and acting have established themselves within a person's mind, (s)he must unlearn these before being able to learn something different, and unlearning is more difficult than learning for the first time. (2003 [1991]: 4)

In the above quote we learn the way people are, though in a rather unconscious way, mentally programmed since early childhood, as well as the difficulties involved in changing people's patterns of thinking, feeling and behaving once these have been programmed in their minds. From early childhood our mental programming starts with the family; it continues in the school, in youth groups, in the workplace, and reaches the living community. Heteropatriarchy programs people's minds regarding their gender roles so that their patterns of thinking, feeling and behaving meet sociocultural expectations about the traditional stereotyping of social roles on the basis of

unnatural sexual division. Feminist studies (Hartmann 1976: 137–169) draw our attention to heteropatriarchy as a culture of domination whose ideology is based on sexism, because it proclaims the supremacy of the male gender and heterosexuality over other genders and sexual orientations raising social inequality and sex-based discrimination. This ideological worldview of society was promoted through colonialism, by means of which the colonising countries achieved hegemony over the rest of the world, eliminating other gender systems along with other ways of understanding society, gender or eroticism.

c) Level 3: Social practices

According to Marxist feminism, heteropatriarchy rests not only on the family context but also on all the social structures that make it possible to control women's labour and reproduction power (Hartmann 1976: 137–169). In fact, heteropatriarchy reaches the highest political levels of society, that is, the State and all its Institutions, from where the relations of domination imposed by the model are legitimised and backed by laws (Olsen 1990). Under the heteropatriarchal model the State guarantees through an economic system based on this ideology, the dependence of women on a family male figure throughout life (father, brothers, husband, partner, etc.), preventing their full development and even their full recognition as full-fledged citizens. The discrimination of women against men is something inherent in the heteropatriarchal model, because it consecrates a living system that assumes a heteronormativity outlining the roles of men and women in society. For example, one of the main foundations of heteropatriarchy is the normalisation of the ideal family structure. This reinforces the stereotyping social role of men providing wealth and support to the family. The sexual division of labour, the gender wage gap, and the glass ceiling serve to reinforce a man's dominance over his wife or partner for life (Olsen 2018a).

The cinema industry is another illustrative example of heteropatriarchal social practices, as shown in the reduced number of movies directed by female directors, the substantial wage gap between male and female actors, and the phenomenon of sexual harassment (Olsen 2018b) that was made visible thanks to the media coverage of the #MeToo movement in social networks in 2018 related to the sexual harassment affair involving North American film producer Harvey Weinstein.

d) Level 4: Discursive practices

Discursive practices refer to the way in which heteropatriarchal meaning is produced and understood. Male dominance over women is shown in numerous discursive practices that contribute to spread gender inequality. One on them is sexism in the news media (Bengoechea Bartolomé 2002a: 621–642, 2002b: 643–656, and 2003). There are numerous ways the mass media broadcast patriarchal beliefs, ideas and thoughts, e. g. negative coverage of sexual violence, the promotion of gender binaries, and the unceasing discussion of women's appearances and body image.

To illustrate the latter aspect, let us consider, for example, the sexist headline that appeared in the section *Gente & Estilo* of the Spanish conservative daily *ABC* of June 9th, 2018 presenting the new government team in Spain: *El guardarropa de las ministras de Pedro Sánchez*[9]. The headline was accompanied by an image in which the eleven female ministers of the new government team headed by President Pedro Sánchez are dehumanised by way of portraying them as manikins.

Figure 2: Headline in *ABC*

Significantly the article was signed by a female journalist. This paradox confirms the idea that women are also culturally programmed in heteropatriarchal values, beliefs, and basic assumptions. Therefore, they are not free from reproducing stereotypical knowledge about the social roles, behaviours and attitudes that are thought to be socially appropriate for men and women. The publication of the article in the daily *ABC* triggered off a heated social debate on the urgent need to eradicate sexism in the language of the news media (Bengoechea Bartolomé 2000a: 33–58, 2011: 35–53, and 2015). The article must be analysed in the context of the presentation of the Spanish Socialist Workers' Party (PSOE) governing team that replaced the previous executive team, after the motion of censure against President Mariano

[9] Translation into English: *The wardrobe of the female ministers of Pedro Sánchez.*

Rajoy was successful in June 2018. A significant feature of the new governing team is the fact that for the first time in Spanish history, the number of female ministers clearly surpasses that of male ministers. Consequently, the article could have highlighted the unprecedented fact in the European Union that eleven out of the seventeen ministries of Pedro Sánchez's executive team are headed by women; it could have informed the public about the academic qualifications, education and experience of the female ministers; or it could have even attracted the reader's attention to the high responsibilities the eleven women have in the new government, in fact, Deputy Prime Minister, Ministry of Equality, Ministry of Finance, Ministry of State Planning and State Administration, Ministry of Health, Ministry of Environment, Ministry of Employment, Ministry of Trade, Ministry of Tourism, Ministry of Defence, Ministry of Justice, and Ministry of Education. However, the result, as we know, was quite different. The article focuses on the wearing apparel of the female ministers in the new governing team. From a linguistic perspective, the headline is encapsulated in a nominal group. The theme is the noun *guardarropa* [wardrobe] whose semantic meaning refers to a collection of wearing apparel. The preposition *de* [of] indicating ownership links *guardarropa* to *las ministras* [the female ministers], and the second preposition *de* [of] also indicating ownership links las *ministras* [the female ministers] to *Pedro Sánchez.* Consequently, the pragmatic meaning of the headline confirms the social stereotyping of women as mere decorative objects in public life. In addition, the headline degrades the female ministers when it favours a relationship of power and dominance between them and the Chief of the executive team, e. g. *de Pedro Sánchez* [of Pedro Sánchez]. As anticipated by the headline and accompanying image, the content of the article evaluates the female ministers' body images and highlights the hits and mistakes in their way of dressing, at the same time it markets certain well-known cosmetic and clothing brands. Predictably, the *guardarropa* [wardrobe] of President Pedro Sánchez is not news.

Apart from the press, one can find examples of sexist language in the writing of the law (Olsen 1999; Bengoechea Bartolomé 2011: 15–26); in the writing of textbooks (Bengoechea Bartolomé / Simón Díaz 2010: 188–211); and in language use in general (García Pascual / Catalá González 1995; Calero 1999), etc. For example, the layman in the street can also contribute to ensure the permanence of gender binarism by means of using sexist language such as the so-called *piropos* and *micro-machismos.* Whereas the *piropo*, a characteristic linguistic feature associated to a type of male speech in Mediterranean cultures, refers to the shouting by a man of a flirtatious remark or compliment to a woman that is walking down the street, e. g. "estás más buena que el pan" ["you look hot"]; the *micro-machismo* expresses naturalised thoughts, attitudes and comments that can be made by both men and women, though involuntarily, and do their bit in securing permanence of sexual binarism in the society, e. g. "you should be a little more feminine", "boys don't cry", etc.

Sexism in language is also present in digital media. Danet (2013: 641) draws our attention to the interaction of gender with culture online. She specifically discusses the way in which patterns of women's subordination tend to be reproduced online as it

occurs in the discursive phenomenon of *flaming*, e. g. the expression of negative emotions and hostile language in online forums. Other discursive practices are overtly aimed at expressing male dominance over women. Such is the case of the use of Whatsapp as an instrument of control by some male youths over the lives of their girlfriends. Through the malicious use of this technological application, the offender can monitor the life of the target victim and control her social contacts, body appearance, way of dressing, etc. Violence does not begin with aggressions but with behaviours of domination and abuse that are so normalised in the culture that female youths are not aware of them. In this respect, the regional government of the Community of Madrid has launched a special social programme called *No te cortes*[10] for the prevention of gender-based violence in adolescence. The main aims of this social programme are to help female youths and their families to identify situations of mistreatment and abuse perpetrated by their boyfriends, as well as provide them with the necessary guidance to resolve the problem.

A current development of negative discursive practices is cyberviolence against women through computer-mediated communication (Herring / Stein / Virtanen 2013: 3–54). Digital media can be the medium of expression of the language of discrimination against women (Stollznow 2017), e. g. insult, abuse, denigrate, vilify, offend, threat (Shuy 1996 [1993]: 97–117; Muschalik 2018), defame (Tiersma 1987: 303–350; Shuy 2010), harass (Shuy 2005: 99–106; 2012), etc. Additionally, digital media have given rise to the emergence of digital genres (Georgakopoulou 2013: 695–715; Giltrow 2013: 717–737) that can be used as weapons by the perpetrators against the target victims, as shown in the works by Eggington (2008: 249–264); Hancock / Gonzalez (2013: 363–383); Heyd (2013: 387–409); and Gill (2013: 411–436). Some of these new types of cybercrimes that are disproportionately committed by men against women are *psychological cyberbulling*, *sexual cyberbulling*, and *sexting*. Cyberbulling refers to the act of compulsively sending unwanted emails or text messages to the target victim. Sexual cyberbullying is related to offending the target victim online with unwelcome sexually explicit messages, threats of violence or hate speech. And sexting is the sending of sexually explicit images or messages via mobile phone or the internet without the permission of the author who shared them with the perpetrator privately.

Through the multidimensional approach to the analysis of heteropatriarchal culture we have shown that gender-based violence is not grounded in biological differences between men and women but rather in sexism, a cognitive element of discrimination driven by the presupposition that men are superior to women, which is propagated through ideology to the surface social practices and discursive practices in modern societies.

[10] http://www.madrid.org/cs/Satellite?c=CM_InfPractica_FA&cid=1354194793001&language=es&pagename=ComunidadMadrid%2FEstructura [Last access 13/07/2018].

IV. The mediatization of the law

From the 1980s the news media in the Western world have experimented a significant change concerning the role they play in modern societies. As described by Hjarvard (2008: 120) in his comprehensive account of the institutional development of news media, one can differentiate three major stages: (a) the 1920s, (b) from the 1920s to the 1980s, and (c) from the 1980s to the present time. In the 1920s, the press was fundamentally an instrument of propaganda of the political power, e. g. the party press, and its major purposes were persuasion and agitation motivated by specific interests in the institution. From the 1920s to the 1980s, the traditional news media (press, radio and television) evolved progressively to a cultural institution providing public service and representing various institutions in the public arena. Since the 1980s the news media (traditional media and the emergent digital media) has become a relatively independent institution characterised by its professionalism.

On looking at the institutional development of the news media, we learn that before the 1980s these were dependent on the political power. Since media organisations needed the support of the political power to survive, the news media were basically owned by this power and subsequently, all media contents were under its control. However, since the 1980s this relationship of vassalage between the news media and the political power has to a certain extent upturned. At present, whereas the political power is becoming more and more dependent upon the media, the news media is gaining more and more independence from the political power; however, this does not mean that the news media are free from ideological influence, as shown earlier. While this is true for the traditional news media, it is more so for the emergent digital media because with the advent of the new technologies of information and communication, the dissemination of news has gone through a democratisation process, e. g. anyone can disseminate information online (Hjarvard 2008: 367).

The revolution in the news media has given rise to a debate in media and communication research involving two concepts of German origin: mediation (*Vermittlung*) and mediatization, (*Mediatisierung*) (Hjarvard 2008; Lundby (Ed.) 2009; Livingstone 2009: 1 – 18; Hjarvard 2013; Hepp 2013: 1 – 18; Suet Nie / Peng Kee / Latiff Ahmad 2014: 362 – 367; Deacon / Stanyer 2014: 1032 – 1044; Lundby (Ed.) 2014). Mediation, as Hjarvard (2008: 114) explains, affects both the message and the relationship between the sender and the receiver; however, it will not, in the long term, transform social practices or discursive practices. In contrast, mediatization, as argued by Hepp / Hjarvard / Lundby (2015: 314 – 324), is part of a paradigmatic shift within the media and communication research. It can be defined as a "…meta process by which everyday practices and social relations are increasingly shaped by mediating technology and media organizations" (Livingstone 2009: 3). Mediatization encompasses the interrelationship between the media and historical changes in any institutional process (Hepp 2013) giving rise to semiotic, narrative and institutional transformations (Howitt 1998; Lundby (Ed.) 2009 and 2014; Peleg / Bogoch 2012: 961 – 978).

We use the term mediatization to refer to the increasing dependency of society upon media and its logic, e. g. the construction of reality as portrayed by the news media. More precisely, we refer to the action or process whereby the mass media comes to influence the law, specifically gender-based laws. The questions we raise here are: Which roles do the news media play concerning gender-based violence? How do the news media and the law interact with each other? And which are the effects of this interaction in the law?

Basically, the news media can either reinforce or transform public opinion about the global social phenomenon of gender-based violence. On the one hand, the news media can, for example, reinforce sexism by framing family violence, sexual assault and sexual harassment using a recurrent theme of co-responsibility for the violence. Such narratives, according to Easteal / Holland / Judd (2015: 103 – 113), could hinder feminist aims of protecting women's rights and improving access to justice. On the other hand, news media can transform public opinion by denouncing violence against women; raising social awareness about gender-based violence as reflective of male dominance, sexism and misogyny; transforming public opinion; and urging legal changes.

Currently, the law and the news media are viewed as agencies of policing with shared goals such as bringing about social order, justice and peace. As instruments of social reform, news media and the law focus on social failure and what needs to be done to achieve success (Ericson / Baranek / Chan 1991). But they also interact in thought-provoking and productive ways. Fundamentally, the news media play a decisive role in shaping legal reforms concerning gender-based violence, and they serve not only as a vehicle of transmission of new laws and legal changes to the people, but also as an instrument of social evaluation and control of sexism in courtroom decisions, miscarriages of justice, and ultimately of the effectiveness of the law. This interaction is evidenced by the prevalence of justice stories in the news. In what follows we will illustrate the mediatization of the law through four paradigmatic cases having an impact in legal reforms related to gender-based violence. The first two cases concern the Spanish context, while the last two refer to the United States and have a transnational scope.

1. The case of Ana Orantes and the creation of the Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender-based Violence

The murder of Ana Orantes by her ex-husband on December 17th, 1997, after she had been interviewed on TV and given a dramatic account of the way she had been systematically abused and injured by her ex-husband, marked a turning point in public opinion about the social problem of domestic violence in Spain. After this tragic event, the issue of domestic violence gained relevance for its disturbing social consequences and was foregrounded in the news media (Bengoechea Bartolomé 2000b: 9 – 22). Since then gender-based violence has become a central topic of social, polit-

ical and legal debate broadcasted in the news media. For example, from 1998 to1999, the news media disseminated the fight of feminist organisations in Spain against gender-based violence and made public their claims for a comprehensive law for the protection of the victims of gender-based violence, e. g. women and children. Significantly, in the general election campaign held in 2000, all parties included the project of a comprehensive law against gender-based violence in their political agendas. The news media played a central role in broadcasting such political debates, as well as in raising social awareness about the problem. In December 2001, the PSOE registered their proposal for a comprehensive law against gender-based violence in the Congress of Deputies. Nevertheless, the proposal was not successful, because the members of the right-wing party voted against it. The ever-increasing number of women killed by their spouses, in fact, seventy one in 2003[11], together with the dissemination of this social scourge in the news contributed to the presentation of a new law proposal by the Socialists in 2003. This was finally passed by an absolute majority in the Congress of Deputies, and was, in fact, the embryo of the Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender-based Violence. Another effect of the mediatization of the law was the revision and modification of the Spanish Penal Code (PC), specifically the reinforcement of penal sanctions when the perpetrator of psychological or physical mistreatment is a man and the victim is a woman, and these are former or current spouses or partners, whether, or not, the perpetrator shares or has shared the same residence with the victim (Art. 153 PC). The effects of the mediatization of the Organic Law 1/2004 can also be seen in the latest modification of the PC (the Organic Law 1/2015 of March 30th). The lawmaker justifies the reforms because of the need to reinforce the special protection measures that the PC provides the victims of gender-based violence with, as well as to adapt the law to the Istanbul Convention (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence). Some of the most important changes that affect gender-based violence are, for example, the reinforcement of the penal sanctions for insults in cases involving this type of violence (Art. 173.2); and the inclusion of two new crimes: *stalking* (Art. 172b), which involves the usage on the part of the perpetrator of a variety of strategies to regain control and dominance on the target victim and *sexting* (§ 7 Art. 197), e. g. the dissemination of intimate images obtained with consent of the victim but without authorisation for their dissemination.

2. The case of La manada[12] and the revision of sexual offences in the Spanish Penal Law

The brutal gang rape of an eighteen-year old girl during the festivities of San Fermin in the city of Pamplona, in July 2016, the irregularities of the subsequent trial of

[11] Portal Estadístico. Delegación del Gobierno para la violencia de género. http://estadisticasviolenciagenero.igualdad.mpr.gob.es/ [Last access 014/10/2018].

[12] Translation into English: The herd.

the five perpetrators, and the controversial judgment released by the court[13] unleashed a plethora of responses and processes by several actors including social activists, women's organizations, and the highest ranked political functionaries to name just a few. The course of action is still in motion and the news media have played a key role in the whole process of public transformation: the news media (traditional but mostly digital) have not only been a vehicle of transmission of this viral piece of news but also an instrument of social revolution and control of the court ruling decisions in cases of gender-based violence involving gang rapes. The judgement 38/2018 released by the Court in Navarre has raised two mayor controversies. The first one concerns the type of criminal offence perpetrated by the defendants. The complaint filed by the prosecution accused the five men for the crime of *sexual aggression* (Art. 178 PC); however, the court judgment condemned them for five continuing offences of *sexual abuse* aggravated by carnal access (Art. 181.3 & 4 PC), which involves a lower penal sanction than sexual aggression. The Court in Navarre understood that the five men used their situation of prevalence over the victim rather than intimidation or violence, which according to the PC must be present in a sexual offence for this to be interpreted as sexual aggression. The second one is related to whether, or not, the victim consented. Whereas the defendants' lawyer argued that the victim never said "no" explicitly, drawing on the sexist assumption that when a woman does not say "no" she means "yes"; the prosecutors claimed that the victim's submissiveness to the perpetrators' vicious sexual demands must be interpreted within the context of pressure she was put by them. In other words, she did not react violently against them because she was in a state of shock and totally helpless. The mediatization of Judgment 38/2018 resulted in a social revolution all over Spain with thousands of people demonstrating against the verdict, holding placards in which one could read "Yo sí te creo![14]" and demanding the expulsion of the magistrates of the Court in Navarre from the judicial career. However, it must be clarified that technically speaking the verdict was well-founded. The problem, in fact, was the writing of the sections of the PC concerning sexual offences. The ultimate effect of the mediatization of Judgment 38/2018 has been the government's decision[15] to revise the types of sexual offences in the Penal Law from a gender perspective. For this purpose, a social *ad hoc* advisory committee with equal number of male and female magistrates has been set up. They will have to discuss, for example, issues such as the differing perceptions men and women have in relation to *rape* (Ehrlich 2010: 265 – 280) or the different pragmatic implications *intimidation* and *violence* may have for men and women. It is also obvious that the formula a woman should use for giving, or not,

[13] *El Plural* of April 26th, 2018 shared with the readers through Google Drive a pdf containing the complete judgment of the Court in Navarre, in fact, 370 pages. https://www.elplural.com/sociedad/documento-lee-aqui-la-sentencia-completa-de-la-manada_126896102 [Last access 16/07/2018].

[14] Translation into English: I do believe you!

[15] el diario.es of April 24th, 2018 https://www.eldiario.es/politica/PP-Ciudadanos-Unidos-Podemos-Codigo_0_765373697.html [Last access 16/07/2018].

consent to sexual intercourse must also be deliberated. In this respect, Vice-president of the Spanish Government Carmen Calvo[16] has made a controversial proposal. She has suggested that wrong interpretations on the part of the court concerning a woman's consent to sexual intercourse could be avoided by way of inclusion in the PC of the statement: When there is no explicit "yes" on the part of the woman, the act must be interpreted as sexual offence.

3. The case of Harvey Weinstein and the ME TOO bill in the United States Congress

Soon after the sexual misconduct allegations against one of the most powerful Hollywood film producers, Harvey Weinstein, the #MeToo movement, which had been created by American social activist Tarana Burke[17] back in 2006 to help victims and prevent cases of sexual assault and harassment, spread virally in October 2017 as a hashtag used on social media in an attempt to demonstrate the widespread prevalence of sexual violence against women, especially in the workplace[18]. In the eyes of gender studies experts, this social phenomenon is considered a modern version of a feudal lord's right to bed a servant girl inherited from patriarchal societies in the Middle Ages. Specifically, some men still think they have a socially protected right to compell sexual services from the women who work for them. As a result of the #MeToo movement and its subsequent media coverage, cases of sexual assault and harassment have been unveiled and disclosed wordwide. Far from being confined to specific ambits such as the show business, sexual abuse is, like the rhetorical image of *fog* in Charles Dicken's *Bleak House*[19], everywhere: Sports[20], Military[21], Church[22], Law[23], Politics, Governments[24], etc.

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[16] *El Confidencial* of July 10th, 2018 https://www.elconfidencial.com/espana/2018-07-10/gobierno-manada-codigo-penal-si-no-hay-victima-violacion-abuso-sexual_1590520/ [Last access 16/07/2018].

[17] Tarna Burke on why she created the #MeToo movement – and where it's headed by Chris Snyder and Linette López in the *Business Insider* of December 13th, 2017. https://www.businessinsider.com/how-the-metoo-movement-started-where-its-headed-tarana-burke-time-person-of-year-women-2017-12?IR=T [Last access 12/10/2018].

[18] #MeToo Hashtag Becomes Anti-Sexual Harassment and Assault Rallying Cry by Elizabeth Chuck in the *NBC News* of October 16th, 2017 https://www.wowt.com/content/news/MeToo-Hashtag-becomes-anti-sexual-harassment-and-assault-rallying-cry-451145033.html [Last access 12/10/2018].

[19] The Project Gutenberg eBook. *Bleak House*, by Charles Dickens (1853). http://www.gutenberg.org/files/1023/1023-h/1023-h.htm [Last access 15/10/2018].

[20] Sexual abuse in sports: the most notorious case by AFP in the *Mail* Online, published on December 7th, 2017. https://www.dailymail.co.uk/wires/afp/article-5157511/Sexual-abuse-sports-notorious-cases.html [Last access 14/10/2018].

[21] Why Military Women Are Missing from the #MeToo Movement by Antonieta Rico in the *Time* of December 12th, 2017. http://time.com/5060570/military-women-sexual-assault/ [Last access 13/10/2018].

In the media coverage of the #MeToo movement, there has been widespread discussion about the social barriers victims of sexual abuse must overcome to bring a complaint at work, such as the pre-employment agreements, e. g. non-disclosure agreement (NDA) or confidential agreement (CA), the employee is required to sign as a condition of employment. These agreements, considered illegal by social activists, prevent employees from talking about their jobs publicly or taking disputes (including sexual harassment claims) to arbitration or legal proceedings. Other barriers victims must overcome are, for instance, the lack of clear internal reporting mechanisms together with the absence of effective and proactive disciplinary measures. Additionally, victims must also run important risks such as fear of victim shaming, social stigma, not being believed, reprisal or even job loss. By way of illustration, it was reported in the *New York Times* of November 19th, 2017 that a person who makes a sexual harassment complaint at work in France is reprimanded or fired 40 % of the time, while the accussed person is typically not investigated or punished[25]. Moreover, the results of the Equal Employment Opportunity Commission report of 2016, published in the *Reuters* of November 10th , 2017, let people know that although between 25 % and 85 % of women workers in the United States admit having experienced sexual harassment at work, few ever report the incidents, most commonly due to the fear of reprisal[26].

Unquestionably, the mass media has assisted the #MeToo movement in promoting a culture of respect towards women, zero tolerance and no impunity for the perpetrators of sexual assaults and harassment in the workplace. However, in our view, one problematic aspect of the media coverage of the #MeToo movement is related to the fact that, more often than not, the mass media have distracted public attention from the real social problem by disclosing the case as a self-contained soap opera and

[22] Roman Catholic Sex Abuse Cases. News about Roman Catholic Church Sex Abuse Cases, including commentary and archival articles published in *The New York Times.* https://www.nytimes.com/topic/organization/roman-catholic-church-sex-abuse-cases [Last access 13/10/2018].

[23] Brett Kavanaugh confirmed to Supreme Court amid widespread outcry over sexual assault allegations by Mithili Sampathkumar in the *Independent* of October 6th, 2018. https://www.independent.co.uk/news/world/americas/us-politics/brett-kavanaugh-confirmed-supreme-court-justice-senate-donald-trump-christine-blasey-ford-a8572201.html [Last access 14/10/2019].

[24] Westminster sex scandal: Theresa May calls for 'culture of respect'. In the *BBC News*, December 6th, 2017. https://www.bbc.com/news/uk-politics-41881125 [Last access 14/10/2018]. #MeToo allows victims at European Parliament to speak freely by Christelle Guibert and Justine Salvestroni, EURACTIV, 10th October 2018. [Last access 14/10/2018].

[25] 'Revolt' in France Against Sexual Harassment Hits Cultural Resistance by Alissa Rubin in *The New York Times* of November 1, 2017. https://www.nytimes.com/2017/11/19/world/europe/france-sexual-harassment.html [Last access 12/10/2018].

[26] Despite #MeToo, U.S. workers fear speaking out about sexual harassment by Sebastien Malo in the *Reuters* of November 10th, 2017. https://www.reuters.com/article/us-usa-women-sexcrimes/despite-metoo-u-s-workers-fear-speaking-out-about-sexual-harassment-idUSKBN1DA0NY [Last access 12/10/2018].

focusing on the perpetrator, who is usually a high profile public figure. However, as previously discussed, gender-based violence against women is only a surface effect of sexism, an ideology that is deeply ingrained in the collective software of the mind of many people who have been mentally programmed, though in a rather unconscious way, in heteropatriarchal cultural values since early childhood. Consequently, overemphasis on specific individual media cases has to a certain extent blurred the prevailing social picture and defer action, e. g. raising awareness and promoting social debate on the systems that have enabled workplace sexual abuse for so long, as well as discussing policies and meaningful changes to institutional norms that would help those regular anonymous workers who have or are currently experiencing sexual misconducts.

The media coverage of sexual harassment has contributed to the making of the ME TOO bill in the United States Congress[27]. This was proposed by the Democrats as an amendment to the Congressional Accountability Act of 1995. The purpose of the bill is to change the way the legislative branch of the United States federal government deals with sexual harassment complaints. For example, the bill would ensure future complaints could only take up to 180 days, rather than months, to be filed; it would require Representatives and Senators to pay for their own harassment settlements; and the Office of Compliance would no longer be allowed to keep settlements secret. Under the influence of the media coverage of the #MeToo movement, the European Parliament has reiterated its 2014 call on the European Commission to propose a transnational strategy, including a draft law with binding instruments to protect women against any form of gender-based violence[28] in the European Union. After one year of the #MeToo movement, one would expect that the wave of outrage on social media had been enough to promote relevant changes in the dominant culture. However, the reality could hardly be more different. #MeToo has already experienced a severe backlash: the confirmation of Judge Brett M. Kavanaugh's nomination to the Supreme Court of the United States amid widespread outcry over sexual assault allegations.

4. Judge Brett M. Kavanaugh's confirmation hearing

President Donald Trump nominated controversial Judge Brett M. Kavanaugh to become an Associate Justice of the Supreme Court of the United States on July 9th, 2018, filling the vacancy left by the retirement of Anthony Kennedy. The Senate Judiciary Committee began Kavanaugh's confirmation hearing on September 4th. Soon after the process had begun, Kavanaugh was accused of having sexually assaulted a woman while he was a student in an elitist boy's school thirty six years be-

[27] https://www.telegraph.co.uk/news/2018/12/13/metoo-victory-us-congress-politicians-change-sexual-harassment/ [Last access 20/04/2019].

[28] Zero tolerance for sexual harassment and abuse. European Parliament, October 25th, 2017. http://www.europarl.europa.eu/unitedkingdom/en/media/news/2017/october17/harassmentdebate25-10-17.html [Last access 14/10/2018].

fore. *The Washington Post* of September 16th revealed the identity of the alleged victim of an attempt of gang rape, Professor Dr. Christine Blasey Ford[29]. On September 17th President Trump was interviewed by the BBC News which broadcasted his words of support to Kavanaugh: "He is one of the great intellects and one of the finest people that anybody has known."[30] The Senate Judiciary Committee postponed its scheduled confirmation to allow both Dr. Ford and Judge Kavanaugh to respond. In the interim, two other women alleged separate instances of sexual assault by Kavanaugh and his school mates. In the process, Dr. Ford had to undergo a polygraph test that confirmed she was telling the truth. Predictably, Judge Kavanaugh denied all accussations against him but did not have to undergo a polygraph test. Both Kavanaugh and Ford were questioned by members of the Judiciary Committee and the sex crimes prosecutor on September 27th. The session was broadcasted and with it the usual social prejudices against victims of sexual harassment and rape were uncovered. Specifically, the issues at stake were related to the veracity of Dr. Ford's testimony and her revictimization in the confirmation hearing. For many, the fact that the 27th hearing was structured as a *he-said/she-said contest* evidenced there was no genuine interest in knowing the truth about Dr. Ford's accusation. As we know, women have long struggled to be believed in such contests, especially when the accused is a high profile man with power and privilige. President Donald Trump mocked the testimony of Professor Ford, specifically the gaps in her memory about the sexual assault that had taken placed in 1982 and blamed her for having ruined the social prestige and reputation of a highly respectable man[31]. On the other hand, in the opinion of many legal practitioners, Judge Kavanaugh's verbal attacks, anger, interruptions, and refusal to answer questions showed lack of judicial temperament and challenged his qualifications as nominee. Despite strong social opposition, on October 6th the Senate finally voted 50–48 to confirm Kavanaugh's nomination to the Supreme Court. The media coverage of this case has prompted a national discussion regarding the lack of a protocol for examining sexual harassment and assault claims that surface during a confirmation hearing, and has also contributed to stress that there is compelling and urgent need to create new laws and improve policies to protect and seek justice for victims of sexual assault and harassment in the United States.

[29] Californa professor, writer of confidential Brett Kavanaugh letter, speaks about her allegation of sexual assault by Emma Brown in *The Washinton Post* of September 16th, 2018. https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html?noredirect=on&utm_term=.96265e115f4d [Last access 13/10/2018].

[30] *BBC News*, September 17th, 2018. https://www.bbc.com/news/av/world-us-canada-45555514/trump-on-kavanaugh-one-of-the-finest-people [Last access 13/10/2018].

[31] Republicans deplore Trump mocking Brett Kavanaugh accuser in *BBC News*, October 3rd, 2018. https://www.bbc.com/news/world-us-canada-45736951 [Last access 14/10/2018].

V. Conclusions

From a legal linguistics perspective, in this paper we examined gender-based violence, a global social conflict having millions of victims all over the world and considered a State problem in Spain, a modern democratic country in the European Union. The conflict arises from the clash of two opposing transnational cultural paradigms: one based on power and domination (Heteropatriarchy), the other on solidarity and equality (Feminism). As discussed earlier, gender-based violence was not made visible until it was categorised as an object of protection by the law, e. g. the Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender Violence. We looked at the weaknesses of this law, specifically its short-sighted vision of the problem when the lawmaker reduces the overarching concept of gender-based violence to domestic violence. Linguistic analysis indeed helped us to gain insight into the much broader and complex social phenomenon lying under the surface level. More precisely, using the semantic method *Natural Semantic Metalanguage*, we offered a comprehensive semantic definition of gender-based violence by means of breaking it into three relatable semantic categories: (a) gender, (b) sexism, and (c) violence against women. Findings from the semantic analysis show that violence against women is the effect of sexism, a cognitive element of discrimination driven by the presupposition that men and superior to women. Additionally, the multidimensional approach to the analysis of heteropatriarchy supports the idea that gender-based violence is not grounded in biological differences between men and women but rather in sexism which, propagated through ideology, permeates the social practices and discursive practices of societies in which heteropatriarchy is the dominant cultural paradigm. Consequently, it can be concluded that gender-based violence is a cultural artefact of heteropatriarchy.

At present, the law and the news media are viewed as agencies that work for the establishment of social order, justice and peace. These can interact in thought-provoking and productive ways that we call mediatization, e. g. the process whereby the mass media comes to affect the law. This paper illustrated processes of mediatization of the law by means of four paradigmatic cases related to the social phenomenon of gender-based violence. The national media coverage of the case of Ana Orantes changed public opinion concerning violence against women in Spain and gave rise to the creation of the first law in the European Union protecting women's rights, e. g. the Organic Law 1/2004, of December 28th, on Comprehensive Protection Measures against Gender-based Violence. The international media coverage of judgment 38/2018 in the case of *La manada* has widely contributed to the transformation of public opinion about rape victims (Ehrlich 2010: 265 – 280) and urged the revision and modification of the types of sexual offences in Spanish Penal Law. The global media coverage of the #MeToo movement has also raised social awareness about the magnitude of the problem of sexual abuse, encouraged a transnational debate on sexism and gender-based violence against women, and promoted the creation of new laws for the prevention of sexual harassment such as the ME TOO bill in the

United States Congress. Nontheless, Judge Kavanaugh's confirmation hearing has sadly demonstrated how deeply entrenched heteropatriarchal values are in so-called modern societies. Continuing engagement with the media is necessary to ensure community understanding of gender-based violence and the harm that sexist portrayals and narratives in the news media may cause. These may pose a threat to the advance of an emergent and hopeful cultural paradigm based on equality. However, for this new social order to succeed, political involvement in the eradication of the global conflict of gender-based violence should be genuine and firm.

VI. Literature

Bengoechea Bartolomé, Mercedes (2015): Lengua y Género. Madrid: Síntesis.

Bengoechea Bartolomé, Mercedes (2011): Non-Sexist Spanish Policies: An Attempt Bound to Fail. In: *Current Issues in Language Planning* 12 (1), pp. 35–53.

Bengoechea Bartolomé, Mercedes (2011): El Lenguaje Jurídico No Sexista, Principio Fundamental del Lenguaje Jurídico Modernizado del S. XXI. In: *Anuario de la Facultad de Derecho* (4), pp.15–26.

Bengoechea Bartolomé, Mercedes (2003): Sexismo y Redacción Periodística. Valladolid: Junta de Castilla y León.

Bengoechea Bartolomé, Mercedes (2002): El Lenguaje Igualitario en el Habla y en los Medios de Comunicación. In: *Mujeres, Hombres y Medios de Comunicación* (4), pp. 621–642.

Bengoechea Bartolomé, Mercedes (2002): Orientaciones para una Representación Femenina No Discriminatoria en la Textualización de la Noticia. In: *Mujeres, Hombres y Medios de Comunicación* (4), pp. 643–656.

Bengoechea Bartolomé, Mercedes (2000a): Historia (Española) de las Primeras Sugerencias para Evitar el Androcentrismo Lingüístico. In: *Revista Iberoamericana de Discurso y Sociedad* (2), pp. 33–58.

Bengoechea Bartolomé, Mercedes (2000b): En el Umbral de un Nuevo Discurso Periodístico sobre Violencia y Agenda Femenina: De la Crónica de Sucesos a la Reseña Literaria. In: CIC: *Cuadernos de Información y Comunicación* (5), pp. 9–22.

Bengoechea Bartolomé, Mercedes / Simón Díaz, José (2010): Gender Identity in Words for Professional Titles in Textbooks. In: Rosa María Jiménez Catalán (Ed.): Gender Perspectives on Vocabulary in Foreign and Second Languages. Basingstoke: Palgrave, pp. 188–211.

Calero, M. A. (1999): Sexismo Lingüístico. Análisis y Propuestas ante la Discriminación Sexual en el Lenguaje. Madrid: Narcea.

Danet, Brenda (2013): Flaming and Linguistic Impoliteness on a Listserv. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 639–664.

Deacon, David / Stanyer, James (2014): Mediatization: Key Concept or Conceptual Bandwagon? In: *Media, Culture & Society* 36 (7), pp. 1032–1044.

Easteal, Patricia / Holland, Kate / Judd, Keziah (2015): Enduring Themes and Silences in Media Portrayals of Violence against Women. In: *Women's Studies International Forum* (48), pp. 103 – 113.

Eggington, William G. (2008): Deception and Fraud. In: John Gibbons / M. Teresa Turell (Eds.): Dimensions of Forensic Linguistics. Amsterdam, Philadelphia: John Benjamins Publishing Company, pp. 249 – 264.

Ehrlich, Susan (2010): Rape Victims. In: Malcolm Coulthard / Alison Johnson (Eds.): The Routledge Handbook of Forensic Linguistics. London, New York: Routledge, pp. 265 – 280.

Ericson, Richard V. / Baranek, Patricia M. / Chan, Janet B. L. (1991): Representing Order: Crime, Law, and Justice in the News Media. Toronto: University of Toronto Press.

García Pascual, Enriqueta / Català González, Aguas Vivas (1995): Ideología Sexista y Lenguaje. Valencia: Galaxia d'Edicions.

Georgakopoulou, Alexandra (2013): Narrative Analysis and Computer-mediated Communication. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 695 – 715.

Gill, Martin (2013): Authentication and Nigerian Letters. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 411 – 436.

Giltrow, Janet (2013): Genre and Computer-Mediated Communication. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 717 – 737.

Goddard, Cliff (1998): Semantic Analysis: A Practical Introduction. Oxford: Oxford University Press.

Hancock, Jeffrey / Gonzalez, Amy (2013): Deception in Computer Mediated Communication. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 363 – 383.

Hartmann, Heidi (1976): Capitalism, Patriarchy, and Job Segregation by Sex. In: *Signs* (Special Issue: Women and the Workplace: The Implications of Occupational Segregation) 1 (3), pp. 137 – 169.

Hepp, Andreas (2013): Cultures of Mediatization. Cambridge, England: Polity Press.

Hepp, Andreas / Hjarvard, Stig / Lundby, Knut (2015): Mediatization: Theorizing the Interplay between Media, Culture and Society 37 (2), pp. 314 – 324. Online available (doi): 10.1177/0163443715573835.

Herring, Susan C. / Stein, Dieter / Virtanen, Tuija (Eds.) (2013): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton.

Herring, Susan C. / Stein, Dieter / Virtanen, Tuija (2013): Introduction to the Pragmatics of Computer-mediated Communication. In: Susan C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 3 – 54.

Heyd, Theresa (2013): Email Hoaxes. In: Susan. C. Herring / Dieter Stein / Tuija Virtanen (Eds.): Pragmatics of Computer-mediated Communication. Berlin, Boston: De Gruyter Mouton, pp. 387 – 409.

Hjarvard, Stig (2013): The Mediatization of Culture and Society. London: Routledge.

Hjarvard, Stig (2008): The Mediatization of Society. A Theory of the Media as Agents of Social and Cultural Change. In: *Nordicom Review* 29 (2), pp. 105 – 134. Online available (doi): 10.1515/nor-2017-0181.

Hofstede, Geert (2001 [1980]): Culture Consequences. Thousand Oaks, CA: Sage Publications.

Hofstede, Geert (2003 [1991]): Cultures and Organizations. London: Profile Books.

Howitt, Dennis (1998): Crime, the Media and the Law. New York: John Wiley and Sons.

Livingstone, Sonia (2009): On the Mediation of Everything. In: *Journal of Communication* 59 (1), pp. 1 – 18.

Lundby, Knut (Ed.) (2014): Mediatization of Communication. Berlin, Boston: Walter de Gruyter.

Lundby, Knut (Ed.) (2009): Mediatization. Concept, Changes, Consequences. New York: Peter Lang.

Muschalik, Julia (2018): Threatening in English. A Mixed Method Approach. Amsterdam, Philadelphia: John Benjamins.

Olsen, Frances (2018a): The Big Split: Sex Based Salary Inequality. In: Women and Hollywood. Yesterday, Today, and Tomorrow. This seminar was given at the University of Alicante on 9th May 2018.

Olsen, Frances (2018b): Is the Casting Couch a Castaway? Sexual Harassment in Hollywood: Law and Practice. In: Women and Hollywood. Yesterday, Today, and Tomorrow. This seminar was given at the University of Alicante on 9th May 2018.

Olsen, Frances (1990): The Politics of Law. A Progressive Critique. New York: Basic Books.

Peleg, Anat / Bogoch, Bryna (2012): Removing Justitia's Blindfold: The Mediatization of Law in Israel. In: *Media, Culture and Society* 34 (8), pp. 961 – 978.

Shuy, Roger W. (2012): The Language of Sexual Misconduct Cases. Oxford, New York: Oxford University Press.

Shuy, Roger W. (2010): The Language of Defamation Cases. Oxford, New York: Oxford University Press.

Shuy, Roger W. (2005): Creating Language Crimes. How Law Enforcement Uses (and Misuses) Language. Oxford, New York: Oxford University Press.

Stollznow, Karen (2017): The Language of Discrimination. Muenchen: LINCOM GmbH.

Suet Nie, Kho / Peng Kee, Chang / Latiff Ahmad, Abdul (2014): Mediatization: A Grand Concept or Contemporary Approach? In: *Procedia – Social and Behavioural Sciences* (155), pp. 362 – 367. Online available (doi): 10.1016/j.sbspro.2014.10.306.

Tiersma, Peter M. (1987): The Language of Defamation. In: *Texas Law Review* 66 (2), pp. 303 – 350.

Torres Díaz, María Concepción (2015): Mujeres y Derechos Humanos ante la Violencia de Género o la Crisis como Excusa frente al Contrato Sexual. In: *Revista Cahiers de Civilisation Espagnole Contemporaine. De 1808 au Temps Présent* (15) (Online Journal).

Torres Díaz, María Concepción (2014): El Derecho a una Vida Libre de Violencia de Género como Derecho Fundamental: Crítica Constitucional desde el Paradigma Feminista. In: VVAA, Igualdad y Democracia: el Género como Categoría de Análisis Jurídico (Estudios en Homenaje a la Profesora Julia Sevilla), pp. 641 – 655.

Wierzbicka, Anna (1996): Semantics: Primes and Universals. Oxford: Oxford University Press.

Wierzbicka, Anna (1972): Semantic Primitives. Frankfurt: Athenäum.

Wierzbicka, Anna / Goddard, Cliff (2014): Words and Meanings: Lexical Semantics across Domains. Oxford: Oxford University Press.

Wierzbicka, Anna / Goddard, Cliff (Eds.) (2002): Meaning and Universal Grammar: Theory and Empirical Findings. Amsterdam, Philadelphia: John Benjamins.

Laws

Código Penal. 22ª edition. Madrid: Tecnos, 2015.

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Istanbul Convention 11. V. 2011. Council of Europe Treaty Series, No. 210. Online available: http://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e [Last access 13/07/2018].

Judgment No. 00038/2018. Second Section of the Provincial Court of Navarre, Pamplona, 20th March 2018. Online available: https://www.elplural.com/sociedad/documento-lee-aqui-la-sentencia-completa-de-la-manada_126896102 [Last access 16/07/2018].

Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence. Online available: http://noticias.juridicas.com/base_datos/Admin/lo1-2004.html [Last access 13/07/2018].

Courts, Constitutionality and Conflicts in Media Representations

A Case Study in Polish Rule of Law Crisis

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Abstract

Ever since its landslide victory in the 2015 general election, Poland's right wing ruling party Law and Justice (PiS) has been pushing with its plan to overhaul the Polish judicial system. At the heart of the proposed judical reform have been changes affecting the workings of two most important judcial bodies: the Constitutional Court (pol. *Trybunał Konstytucyjny*) and the Supreme Court. The stand-off between the executive and the judicial powers along with the ensuing political conflict and social protests has attracted a great deal of media attention. This paper thus focuses on media representation of the judicial reform and those involved in it, along with ideological and cultural factors that influenced particular media choices. Drawing on a combination of quantitative and qualitative methods within the methodological frameworks of Corpus-Assisted Discourse Studies (e. g. Partington 2013), we apply the Media Proximization Approach developed by Kopytowska (2013, 2014, 2015a, b, c, 2018) explicating how the sociopolitical reality is discursively co-constructed and mediated for the general public. We will demonstrate how, by reducing various dimensions of distance (spatial, temporal, epistemic, axiological, and emotional) between events, issues, and groups presented and the audience, media/journalists increase the salience of issues, along with their emotional appeal, and in this way potentially influence public perceptions and evaluations. The data used comes from the national and international online coverage of post-election conflict in Poland between December 2015 and December 2017.

Keywords: social conflict, constitutionality, rule of law, media representations, corpus-assisted discourse analysis, media proximization model

I. Introduction

Recent changes to the judicial system in Poland offer an opportunity to examine strategies employed by the news media to cover legal and social conflicts. The controversial reform, regarded by many as the Polish constitutional crisis, started in November 2015 with the cancellation of the appointment of five Constitutional Tribunal judges and, in many respects, it is still in progress. This may explain why, to date, very limited amount of work has been done on these events and even less is known about the role of news media in reporting differences, in which these changes have been portrayed in English language and Polish news media. Our focus is thus on linguistic

evidence and on the ways in which the news media in Poland and abroad construct the conflict centred around the constitutional court. Comparing the discursive strategies of *The Guardian* newspaper, representing a liberal voice, and the right-wing Polish Niezalezna.pl news website allowed us to explore trends in both international and domestic news discourses covering the events. More specifically, we intend to address the following questions:

– How are certain fundamental legal concepts, such as *constitutionality, rule of law, judicial independence,* as well as the complex legal realities of the conflict mediated and evaluated in the media?
– How is the legal social and political conflict construed linguistically? Are there any prevalent strategies used? Do they vary across different media outlets?
– How are the major institutional actors (e. g. judges, government, parliament) positioned with regard to each other and the key events of the conflict?
– How does the ideological and cultural embedding of the news media (national vs. international, right- vs. left-wing, conservative vs. liberal) impact on the discursive representation of the conflict?

While conflict in itself (due to its social, political and legal consequences) is attractive for the news media, its newsworthiness will be enhanced with the use of different discursive strategies depending on the ideological/cultural/geographical positioning of the media. Various aspects of it will be selected and made salient (proximized), resulting in varying assessment of the social/political and legal actors involved, character of the conflict and its socio-political implications and possible solutions to it.

II. The conflict in context

It should be pointed out that the conflict surrounding changes to the judicial system in Poland has had different faces and phases. Matczak (2018: 2) insists that what he refers to as "assault" on the rule of law in Poland "has been multidimensional" and "there were several elements of that assault." Admittedly, as many as three major judicial institutions responsible for protecting the rule of law in Poland have been affected. These include the Constitutional Tribunal, the National Council of Judiciary and the Supreme Court. In addition, the changes imposed by the government with regard to the judiciary should be viewed against the wider background of other governmental actions, i. e. seeking to control the national public media, the enactment of invigilation laws, and limitations of the right to assembly. In this study, we confine the analysis to the Constitutional Tribunal. The timeline of the conflict related to the Constitutional Tribunal marks the first stage of the perceived constitutional crisis in Poland and it spans the period between November 2015 and December 2016, when a new chief justice (head) of the Constitutional Tribunal was appointed (cf. Matczak 2018).

In late 2015, soon after the general election in Poland was won by the conservative Law and Justice party (PiS), five judges, members of the Constitutional Tribunal (Pol. *Trybunał Konstytucyjny*), appointed by the previous Parliament, were sacked. In their place, five new judges were appointed by the new Parliament. In fact, some argued that the conflict had been provoked by the previous Parliament, which apparently had the authority to appoint only three rather than five judges. The response by the new government and the Parliament to annul the appointments of the five judges was rightly considered as premature in light of the Tribunal's ruling in December 2015, according to which the appointment of two judges replacing those, whose terms expired in December was unconstitutional, while the other three were nominated legally. However, the government argued that the Tribunal did not have the right to make judgments about the constitutionality of parliamentary appointments, and the President, Mr Duda, swore in five judges elected by the new Parliament. Andrzej Rzepliński, the head of the Tribunal, responded by only allowing those two filling the December vacancies to assume their duties.

The government tried to break this impasse by amending the Constitutional Tribunal law (the so-called 'repair law') to increase the number of judges required to make rulings in the most important cases from nine to thirteen; thereby hoping to oblige Mr Rzepliński to recognise all of those appointed by the new Parliament. The government's opponents claimed that these changes would paralyse the Tribunal and accused the ruling Law and Justice party of undermining the fundamentals of democracy and the rule of law. The government's supporters, however, defended its actions as necessary to restore pluralism and balance to the Tribunal, which they said had been expropriated by supporters of the previous governing party. More broadly, they claimed that opposition to the government was being orchestrated by well-entrenched, and often deeply corrupt, post-communist elites.

The Law on Constitutional Tribunal was amended in December 2015. In March 2016, the Tribunal found the law unconstitutional. The Tribunal decided that it was empowered by the Constitution to ignore these amendments and declared the 'repair law' unconstitutional arguing that they dramatically limited the Tribunal's ability to function properly, while the rushed way in which the 'repair law' was adopted violated constitutional procedure.

In response, the Polish government banned the Court from publishing the judgment that criticised the new executive controls over judges, which were passed in a hasty parliamentary vote. The government argued that the Tribunal had no power to review the law (as the Constitution stipulates its rules are regulated by parliamentary statute), which had come into effect as soon as it was passed, and refused to publish the judgement in the official journal, a necessary step for Tribunal rulings to become legally binding. What followed was an unusual stand-off between the judicial and executive power, with the Constitutional Tribunal insisting on operating under the earlier June 2015 law and the Tribunal majority, led by its head Mr Rzepliński, which does not recognise the December amendments nor three of the five

justices appointed by the Law and Justice-dominated Parliament. On the other hand, the government will not publish Tribunal judgments which are not in line with the 'repair law', nor will the President swear in the three judges nominated by the previous Parliament. This led to the emergence of a legal limbo (Matczak 2018) and a serious legal issue if the Tribunal started to rule in other cases on the basis of the old procedural rules, and the government continued to refuse to recognise these judgements by not publishing them.

In the meantime, other institutional actors became involved in the conflict when the yet new law (passed by the Parliament on 22 July 2016) on Constitutional Tribunal was challenged by the first President of the Supreme Court and the Commissioner for Human Rights. Amicus curiae briefs were filed by the Polish Bar Council and the National Bar Association. As part of an unprecedented investigation, the European Commission announced that there was "a systematic threat to the rule of law in Poland" (Poland's rule of law under systematic threat, says EU executive, [Guardian 2016])[1].

Apart from undermining the credibility of the constitutional court in Poland and, more generally, the weakening of the rule of law, the conflict affected the perception of the justice system in the Polish society at large. Surprisingly, the Tribunal saw a substantial decline in its approval ratings while the government's ratings remained relatively high. A December 2016 survey by the CBOS agency found that only 28 per cent of respondents evaluated it positively (down from 42 per cent in March 2015), compared with 42 per cent who viewed it negatively (12 per cent in 2015) while 30 per cent of the respondents remained indifferent (compared with 46 per cent in 2015).[2] In what follows, we attempt to account for this trend in terms of media coverage of the conflict.

III. Institutional Context: Poland's Constitutional Tribunal (*Trybunał Konstytucyjny*)

In this study, we chose to focus on Poland's constitutional court, literally Constitutional Tribunal (Pol. *Trybunał Konstytucyjny*) created in 1982 with the principal task of resolving disputes related to the constitutionality of actions undertaken by public institutions and ensuring the compliance of statutory law with the Constitution of the Republic of Poland. [3] Prior to the changes implemented in 2015, the Tribunal operated under the Constitution of 2 April 1997 and the law on Constitutional Tribunal of 25th June 2015. The Tribunal consists of 15 justices elected for the term of 9 years. Judges are elected by the *Sejm* (the lower house of the Polish Parliament)

[1] https://www.theguardian.com/world/2016/jul/27/poland-rule-of-law-systematic-threat-european-commission.

[2] See: https://www.cbos.pl/SPISKOM.POL/2016/K_171_16.PDF.

[3] It should be noted, however, that the Constitutional Tribunal started adjudicating in 1986; more info about the court can be found at http://trybunal.gov.pl/en/.

and elected judges take an oath of office, which must be accepted by the President of the Polish Republic.

The Tribunal can adjudicate in the following cases:

– whether legislative acts (statutes) and international agreements are in conformity with the Constitution;
– whether legislative acts are in conformity with international agreements whose ratification required a prior statutory approval;
– whether laws made by national bodies (central state organs) are in conformity with the Constitution, ratified international agreements, and statutes;
– constitutional complaint; settling disputes over authority between the central constitutional bodies of State; determining whether purposes or activities of political parties are in conformity with the Constitution.

There are two other superior courts in Poland: the Supreme Court and the High Administrative Court, each exercising independent jurisdiction within its area of competence. The Constitutional Tribunal remains at the very top of the judicial structure, largely on account of being vested with the competence to review ordinary statutes and other legal regulations and to annul them in case of unconstitutionality or nonconformity with the international instruments to which Poland is a party. Such decisions of the Tribunal are final and binding on all other courts, the Supreme Court included (Garlicki 2007).

In his paper published in 2007, prof. Lech Garlicki, a leading expert on constitutional law and a judge of the Constitutional Tribunal (1993 – 2001) and the European Court of Human Rights (2002 – 2012), wrote that "[Tribunal] represents one of the best-established constitutional jurisdictions among the "new democracies" of Europe"(2007: 57). Nine years later the situation seemed to have changed dramatically.

IV. Theoretical framework of the study

In its theoretical orientation, the present article departs from the constructivist assumption that *language* is a major society-forming tool which allows for objectivation, institutionalization, and legitimation of meaning, or, to use Berger and Luckmann's words, that it is responsible for the fact "that subjective meanings *become* objective facticities" (1991/1966: 30). Searle (1995), who sees language as "the presupposition of the existence of other social institutions", argues that it "equips" things and individuals with a certain status and "deontic powers", and in virtue of the collective acceptance of that status, they can perform functions that they could not perform otherwise. In other words, the very utterance of speech act components (declaratives, performatives) creates social phenomena (families, organizations, nations, money, etc.) if people accept the declarations (Searle 1995, 2006, 2010). Searle's theory of social ontology still remains one of the most influential approaches,

with speech act theory accounting for the performative potential of language (and being extensively applied in the context of legal language). Foucault (1972: 49) argued that it is *discourse* that shapes the social world as the "regimes of truth" it creates are behind the social production of meaning, along with perpetuation of existing power and status quo of groups and individuals. Critical discourse analysts also see discourse as "a form of social practice" with a dialectical relation to society: "The discursive event is shaped by the situation(s), institution(s) and social structure(s) but it also shapes them" (Fairclough / Wodak 1997: 258). Accordingly, for Fairclough (1992: 64) discourse is "a practice of not just representing, but signifying, constituting and constructing the world in meaning". It becomes a key tool in creating, reproducing and challenging power relations within society as it legitimates control or "naturalizes" the social order (see Wodak 2011: 53–54) and thus Wodak (2011: 52) observes that the goal of CDA is "to demystify discourses by deciphering ideologies".

The notions of "construction" and "ideology", as well as the socially constitutive potential become particularly important in the case of media discourse. Apart from informing, the media, in particular the news media, have always had an important role in persuading, i. e. shaping societal notions, deductions, attitudes, and perceptions.[4] Cottle observes that in today's mediatized world, "politics and conflicts are often played out on the media stage" (Cottle 2006: 22). Their role becomes even more significant in times of conflicts, when they play a major role in creating a sense of threat and axiological urgency and constructing *us* vs. *them* opposition (Kopytowska 2015b). While the media representation of various socio-political aspects has been studied extensively from discourse analytical perspective, the representation of legal matters has not received much attention (Breeze 2016). Most of the analyses focus on politics in a broader context, or on crime and/or criminal justice (Schlesinger / Tumber / Murdock 1991; Haltom / McCann 2004; Boyd 2013). The example of the former can be Wodak's book, *The Discourse of Politics in Action* (2009), where she examines the "backstage" of "doing politics" (including law) by European MPs. Boyd (2013), who focuses on the use and recontextualization of certain legal lexis in the representation of mediatized legal discourse, observes (following Cotterill 2002: 147) that in this particular kind of media representation considerable amount of information comes from the genre of trials, which produces "multiperspectival and multi-voiced" narratives of legal discourse. In his paper, following a comprehensive characterisation of legal disocurse in terms of its structural and functional determinants, Boyd makes an important observation about the embeddedness of legal discourse in the local legal system, which is of particular relevance to our analysis.

[4] Hall et al. (1978) argued that media act as secondary definers who obtain official and authoritative sources from primary definers, such as the law enforcement institutions. In their role as secondary definers, they supply primary definers with "public opinion", which in reality very often is "media reaction".

> Legal language is distinctive because it presupposes the existence of a legal system and presupposes particular rules of law, against the background of which legal system obtains its meaningfulness and particular meaning, and because of the distinctive features of rules of law as rules. (Cao 2007: 16, cit. in Boyd 2013: 38)

In their discussion on socio-political reality, Kaid et al. (1991, cit. in McNair 2003: 12) distinguish its three dimensions, namely (a) an *objective* political reality, comprising events as they actually occur, (b) a *subjective* reality – the "reality" of events as they are perceived by actors and citizens, and (c) a *constructed* reality – events as they are covered by the media. Kopytowska (2015c) introduces the term "mediated social reality", which she treats as another meta-level of Searle's construction of social reality. In her Media Proximization Approach (MPA), Kopytowska (2013, 2014, 2015a, 2015b, 2015c, 2018, forthcoming) argues, the process of construction of mediated social reality is contingent upon journalistic/media manipulation of distance between the members of the audience and the elements of presented reality to which they have limited access. Importantly, "limited access" and thus resulting distance, may be understood in both physical sense and cognitive sense. Hence, different dimensions of dictance have to be distinguished. Spatial and temporal dimensions of distance concern the fact the entities represented are "located" out there in the world, beyond the audience's immediate physical reach. The dimension of epistemic distance results from the fact that members of the audience have varying degrees of knowledge concerning the events and phenomena presented to them. Epistemic distance is thus related with media users' experience-based cognitive schema of interpretation and gains particular prominence in the case of news about distant unfamiliar places, mass-mediated scientific discourse (Sousa / Kopytowska 2014), religious discourse (Kopytowska 2018) or, as in the case here, legal discourse. Axiological distance is connected with differences in cultural or ideology-related values, beliefs and practices and often involves the opposition of *us* versus *them*, or *us* versus *the other*. Finally, emotional distance concerns various degrees of emotional involvement on the part of the audience. Proximization consists in reducing distance in its various dimensions through discursive-cognitive operations, involving both verbal and visual strategies. Media Proximization Approach has its origin in Chilton's Discourse Space Theory (DST) (Chilton 2004, 2005); Deictic Space Theory in 2014) which explains how people, using background assumptions and indexical cues, position various entities (people, events, ideological constructions, etc.) in relation to themselves (the Self – I or we), being in the deictic centre (DC), along three intersecting axes within DS – time, space and modality. In further developments of the theory, Hart (2010), and Cap (2010, 2013), who adds the axiological dimension in his STA model, demonstrate how the perception of distance from the Self can be skilfully manipulated in political discourse to legitimize the actions taken by political actors. MPA argues that proximization is inherent to the process of "mediatization" through which media transform contemporary society and inherent to creating a mediatized social reality.[5] Hjarvard (2013: 17) defines mediatization as:

[5] For overviews of mediatization see: Lundby (2009); Hjarvard (2013).

> […] the process whereby culture and society to an increasing degree become dependent on the media and their logic. This process is characterised by a *duality*, in that the media have become *integrated* into the operations of other social institutions and cultural spheres, while also acquiring the status of social institutions in *their own right*.

Since media representation is highly selective (in this *proximization* process), audiences do not only acquire factual information about public affairs from the news media, but also learn how much importance to attach to a topic on the basis of the emphasis placed on it in the news – which, in media studies, has been discussed within the frameworks of agenda setting, framing, and priming (Scheufele / Tewksbury 2007; D'Angelo / Kuypers 2009) – by making some events more salient than others, media can influence both what issues people pay attention to and have potential impact on judgements and evaluations of politicians and policies as well as public problems and potential solutions to them. There exists a widespread assumption that what is shown in the news is what should be considered significant and relevant (Couldry 2009: 437). Importantly, when we look at news discourse as a "process", that is journalistic strategies of news selection and production, various dimensions of distance and proximization seem to be at stake. Events "out there in the world" are more likely to be included in the news bulletin if they are temporally, spatially, epistemically, axiologically or emotionally "close" to the audience. At the same time, however, journalists' work consists in enhancing newsworthiness of these events, which means making them even "closer". These "proximizing dynamics" influence journalistic choices and are behind routines of covering events.

Striving to achieve "geographical and cultural proximity", journalists choose events which are close to the audience because they concern their close environment (spatial proximization) or their culture, values and beliefs (epistemic and axioloical proximization). This epistemic and axiological closeness can be linked to Hester's (1973) concept of "cultural affinity". Since viewers or readers will understand an event better if they are able to "incorporate" it into their "mental map", that is culturally determined knowledge about the structure of reality (Hall et al. 1978), to proximize such an event or phenomenon epistemically journalists will refer to the already existing scenarios of representation, ideological patterns and cultural stereotypes (which they will assume the audience to be familiar with). The consequences of this fact are two-fold: firstly, events which are compatible with such "schemata of interpretation", or "mental scripts" are more likely to be included in the news (Schank / Abelson 1977), and secondly, new events and phenomena will often be simplified, recontextualized and interpreted in terms of the already familiar ones. If we understand epistemic proximization as an attempt to reduce the cognitive effort of the audience in their interpretation process, the discursive reproduction of ideologies and related hegemonic worldview turns out to be the result of not only the conscious and manipulatory endeavours of political elites, but also of professionally-motivated choices. Such an approach sheds a different light on the notion of ideology itself, placing greater emphasis on its "professional" dimension (related to journalistic ethics/culture and news/media discourse as a process; see Kopytowska 2015b).

Berger and Luckmann (1991/1966: 111) argue that "knowledge precedes values in legitimation of institutions". Accordingly, we espouse the view that the axiological dimension of distance is, to a large extent, contingent on the epistemic one; the unfamiliar in most cases receives negative valuation as it is perceived as a potential threat to the status quo. As demonstrated by philosophical, anthropological, and psychological theories, the Self has a natural tendency to position itself vis-à-vis others within the environment and to group or classify surrounding entities as spatially and thus epistemically and axiologically close/distant (similar/different). The ingroup vs. outgroup representation becomes especially important in the situation of conflict in its various dimensions (political, ethnic, cultural, religious, etc.). Such dynamics are captured by van Dijk's "ideological square" (1998: 33), set to present "us" in a favourable light and "them" unfavourably, and consisting in emphasizing "our" good properties/actions, while highlighting "their" bad properties/actions. Defining the Other allows for the (re)definition of the Self and for creating collectivities of similar values and norms with an inclusive subject "we". This dichotomy prompts the personalization of conflict which in turn "functions to promote straightforward feelings of identification, empathy or disapproval and to effect a metonymic simplification of complex historical and institutional processes" (Fowler 1991: 15).

Cognitive-discursive operations in this context can thus be characterized by three functions (see also Kopytowska 2015b):

1) establishing axiological status: "our" values/norms;
2) delineating axiological conflict: incompatibility of "our" values/norms with "their" values/norms;
3) conveying axiological urgency: responding to a threat posed (often by "their" actions) to "our" values/norms and accepting moral responsibility to act.

Finally, journalistic work also concerns emotional distance. Increasing the emotional involvement of media users seems to be one of the ways of making selected aspects of objective reality more salient than others, and, at the same time, a factor enhancing persuasiveness of media messages. Emotions are inherent to news values such as "negativity" and "superlativeness". Their discursive manifestations include, for example, negatively loaded words, hyperboles and quantity expressions, comparison and contrast, etc. Likewise, presenting events from the perspective of individual experience (value of "personalization"), which at the level of discourse brings forth personal narratives has a highly proximizing function.

History has provided numerous examples which, as argued by Kopytowska, can be treated as effects of proximization process, ranging from CNN effect and media-generated "collective compassion" to media-waged war on terror. More recently, the role of media (including social media) has been discussed in the context of socio-political protests, including the Arab Spring.

In the present article we want to focus on framing as one of the proximization triggers spanning over different dimensions of distance. While Entman (1993) points to

the lack of a precise theoretical definition of frames and their influence on thinking, the common perception among those who have used this concept in linguistics (cf. Fillmore 1975; Lakoff 1987, 1996, 2004, cognitive psychology (cf. Fodor 1983, 2000; Minsky 1975), communication science (cf. Gitlin 1980; Entman 2004), anthropology (cf. Bateson 1972), and sociology (cf. Goffman 1974), is that the function of a frame is to help people to organize the complexity of the world into meaningful categories. While some researchers believe that frames are to be found in media coverage (cf. Entman 1991, 1993, 2004; Pan / Kosicki 1993), others claim they are in the recipient's mind (cf. McLeod / Detenber 1999; Scheufele 2004), or both in the sender and recipient. Entman (1993: 52) argues that "frames have at least four locations in the communication process: the communicator, the text, the receiver and the culture". A distinction should be made, however, between media frames, constructed by the journalist to make the event more accessible to the public, and audience frames, or "information-processing schemata" (Entman 1991: 7), composed of the interpretations enabling a person to understand the incoming information, or in the words of Goffman (1974: 22) to "locate, perceive, identify, and label".

As pointed out by Kopytowska (2009), in Cognitive Linguistics frames have been defined as cognitive structures, based on prior knowledge and used to facilitate the thinking process, while framing has been referred to as a process of selectively using frames to evoke a particular image or idea. Since every word evokes a frame with certain background knowledge and a set of presuppositions, each framing implies something different. Even this general description shows two dimensions of a frame: the "internal" one, corresponding to individual frames and involved in the process of schema formation, and the "external" one, which is related to media frames, "persistent patterns" of presentation used by journalists to change the degree of salience of the issues described.

By providing and repeating certain words and visual images, and putting them in a particular context, media evoke particular frames thus proximizing some aspects of reality while obscuring other elements. This in turn means greater probability that audience members will focus their attention on a given piece of information. In this way, news frames contribute to the process of schema formation, termed frame setting (cf. De Vreese 2005: 51–53).

In this study, we adopt the methodological perspective of corpus-assisted discourse studies (Partington 2004; Partington et al. 2013) departing from the assumption that Corpus Linguistics, in particular when used in combination with qualitative approaches, is a valuable tool for discourse analysis as it, first, allows for the quantification of recurring linguistic features necessary to substantiate qualitative insights and, second, enables reliable generalizations concerning the effects of various linguistic choices (Stubbs 1997: 107, 111; O'Keeffe 2006: 51, 158; see also Baker 2006; Baker et al. 2008). Given the nature of the mechanism in question, and the fact that news texts tend to render a particular meaning system through key words combined in a specific form, a careful examination of word choices, the extent of

their use in news coverage as well as their semantic associations should reveal a lot about the decisions on framing (Kopytowska 2009) and help in identifying patterns within discursive representation (cf. Kopytowska / Grabowski 2017; Kopytowska, Grabowski / Woźniajk 2017). It is our assumption that this discursive representation reflects the standpoint of editors, journalists, and readers of the press in question, their judgments and evaluations of the CT crisis, but at the same time is likely to be constitutive for the public perception of this crisis.

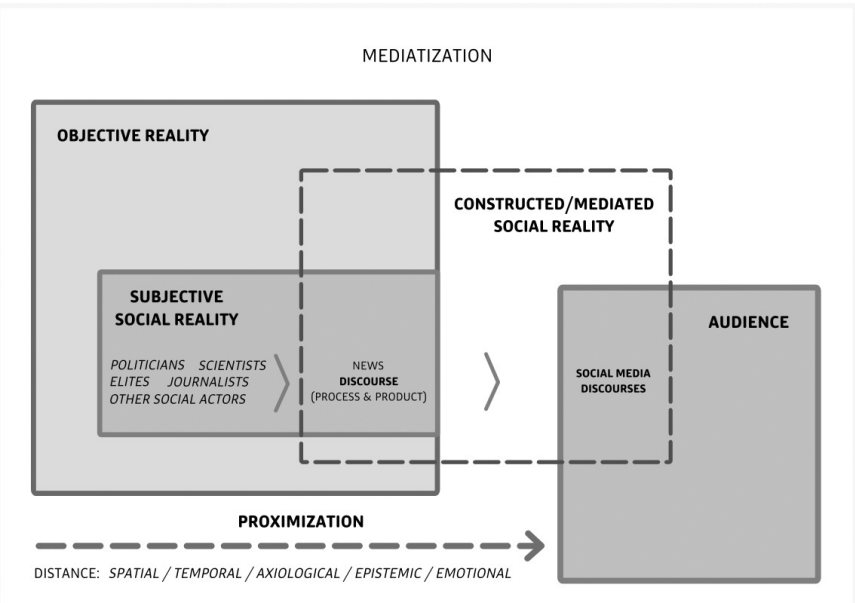

Fig. 1: Proximization Process and Mediated Social Reality

V. Material and Method

Our aim in this study is to investigate the representation of the conflict in the international liberal media discourse and contrast it with the image constructed in Polish right-wing discourse in terms of the proximization strategies and the ensuing salience of issues related to this institution and other legal and political actors. Consequently, this study draws upon two datasets which represent the national and international online coverage of the post-election conflict in Poland between December 2015 and August 2016. The period selected is considered crucial to the first stage of the conflict, and it usefully sets the scene for the on-going rule of law crisis in Poland.

One corpus consists of 21 press articles culled from the international edition of *The Guardian*[6] and totalling 14,659 words. The other collection of 20,828 words consists of 33 texts obtained from *Niezalezna.pl.* (lit. the independent), a conservative web portal in Poland, which is notorious for being explicit in its right-wing and nationalistic ideology and is the leader among conservative web portals in Poland[7]. The Polish data were tagged and parsed using Sketch Grammar for Polish, developed on the basis of the tagset of the IPI PAN Corpus of Polish, implemented into the SketchEngine (Kilgarriff et al. 2014). We also use the *National Corpus of Polish*[8] and the *British National Corpus* for the purpose of cross-referencing.In our analyses we combine the analysis of word frequencies, word keyness, and word combinations in collocations and clusters with the scrutiny of the contexts of relevant words, their axiology (semantic prosodies; see Sinclair 2004) and figurative (metaphoric) meanings in order to uncover how selected concepts are *proximized* and, in consequence, opinions and attitudes are formed. We work on the assumption that, by combining quantitative and qualitative research methods offered by Critical Discourse Analysis and corpus linguistics (Stubbs 1997; Baker 2006), it is possible to identify recurrent linguistic patterns necessary to substantiate qualitative insights as well as to arrive at reliable generalizations of the effects of making various linguistic choices. Our analysis starts with the identification of keywords as the basic unit of analysis in the two datesets. Keywords considered relevant to the conflict were then further investigated in terms of their co-occurrence patterns. To that end, we used the SketchEngine (Kilgarriff et al. 2014) to generate the so-called *word sketches*, that is lexical profiles featuring the most important grammatical and collocational relations of words. Finally, the qualitative stage of our research consisted in analysing these *word sketches* using several dimensions of proximization, that is spatio-temporal, axiological, epistemic and emotional (Kopytowska 2013, 2015).

VI. Results and discussion

We first turn to consider keywords generated from *The Guardian*'s data in order to find out which aspects of the crisis are made salient in the discursive representation of the Constitutional Tribunal and how the conflict is constructed from the international perspective. In the analysis, we focused on the top 100 keywords as computed by the software. Each item was scrutinized in terms of its word sketches provided by SketchEngine (Kilgarriff et al. 2014). The keywords were then arranged into distinct meaning groups, i.e. semantic categories with items expressing a shared discoursal function. Below are provided the most salient categories. Keywords that could not be assigned to any specific category were removed from further analysis.

[6] https://www.theguardian.com/international.

[7] http://niezalezna.pl/63258-niezaleznapl-nadal-liderem-wsrod-prawicowych-portali (accessed 15th January 2015).

[8] http://pelcra.clarin-pl.eu/NKJP/.

1. The Guardian and the EU crisis frame

The coverage from *The Guardian* unequivocally places the EU (as "us") in the deictic centre. What is then proximized, that is made salient, is what is seen relevant from the perspective of the EU, a collective body which is portrayed as a community of values and which is (expected to be) committed to safeguarding and upholding these values for the sake of the common good (1).

The dominant frame is thus the one of crisis resulting from an axiological conflict. The situation of axiological urgency is created, with EU values being under threat. Phrases like *community of values, common values, collective responsibility* emphasise communitarian *raison d'être* of this institution, considered to be based on "the rule of law" (which is another keyword). The crisis frame requires the source of crisis, the agent responsible for it, as well as potential solutions. As already mentioned the crisis comes from a threat posed to by the changes in Poland which are viewed as *anti-democratic* and in conflict with *the rule of law.* Table 1 below lists keywords proximizing various aspects of this frame.

Brussels, EU commission, rule of law procedure, commission vice-president, European parliament, unprecedented investigation, systemic risk, systemic threat, official warning, persistent problem, unprecedented decision, persistent breach, values

How EU reacts to the events in Poland tends to be perceived as a litmus test for how serious the EU institutions are about tackling the issue. While the EU is portrayed as a collective body sharing common values (1), responsibility for implementing these values is attributed to various institutional actors expected to identify possible threats (2) and, if necessary, undertake action of verbal or material nature (3–6).

(1) But the country whose fortunes will play a major role in determining how far the European Union […] remains a credible *community of values*, is Poland.

(2) Leaked draft opinion from advisers to the Council of Europe also warns of *dangers to the rule of law and human rights.*

(3) Rejecting accusations of interfering in Polish politics, Timmermans said he was "dispassionate and legal", and that the *commission had a duty to uphold the rule of law.* "The European Union is built on *common values* enshrined in the treaties", he said. "Making sure *the rule of law is observed* is a *collective responsibility of all EU members.*"

(4) *European commission urges* Polish government *to guarantee independence* of constitutional court for three months.

(5) The move appears to have set the government on *a collision course with the European Union*, which *launched an unprecedented investigation* in January into the reforms, which could result in punitive measures.

(6) The *stand-off* has prompted the European commission *to consider sanctions*, including the suspension of EU voting rights, for what it has described as a *"systemic threat to the rule of law in Poland"*.

The EU is thus represented as an institution that needs to exercise its authority and which has a duty to act and prevent a further deterioration of the situation. Interestingly, in the first sentence of Example (5), the situation in Poland is assessed unequivocally as "autocracy". The second sentence contains a cohesive link expressed through the value-laden expression *anti-democratic measures* which is just one of many indications of 'evaluative harmony' (Partington 2013). Apart from ensuring cohesion, this helps to describe the events in Poland in a consistent manner that is understandable and expected in the case of an audience that is ideologically and geographically distant from the reported events.

(7) The *EU*'s Poland problem: How will *Brussels* react to *Warsaw's autocracy?* The ruling Law and Justice party has introduced several anti-democratic measures that have angered many in the country and will test the powers of the *European Union.*

There are several keywords which clearly portray the events as a crisis and threat to democracy:

constitutional crisis, *dangerous turn, autocracy, standoff, democratorship.* These are illustrated in (8) and (9):

(8) *Poland's crisis* began last month *when the government appointed five judges* to the 15-member Tribunal.

(9) Poland is locked in a *constitutional crisis.*

With the nature of crisis characterised, agency and responsibility for it are also attributed. The main actors (Polish prime minister, right-wing government, Polish parliament, justice minister, parliamentary majority, PiS, Jarosław Kaczyński) are characterised both by modifiers and predication-qualities and actions attributed to them. As far as the former are concerned their conservative and nationalist character is made salient, which is enhanced even more by expressions like staunch/staunchly or ultra (10–13). While we can assume that *conservative* as a modifier could be used to provide factual (referring to political orientation) information and thus act as epistemic proximization trigger further modification brings in axiological dimension. So do actions attributed to these politicians expressed by negatively charged verbs (10), (12–15), or noun phrases (14). Importantly, other law-related changes and political actions are mentioned too, namely those concerning media law (12, 15), or national budget (14). These are characterised as *hasty* and *chaotic.* What also contributes to the negative evaluation of these actions is presenting them in terms of their negative consequences – here orientational metaphors (*plunged into*, *descended into*) act as powerful epistemic, axiological, and emotional triggers. Finally, they are also represented in terms of intentions implicitly attributed by journalists (12) or other political actors (16).

(10) The Law and Justice party (PiS), led by *staunch conservative ex-premier Jarosław Kaczyński*, has already *plunged the country into a political crisis* since being elected in October, partly over controversial nominations to the constitutional court.

(11) *ultra-conservative* Law and Justice (PiS) party.

(12) *the nationalist-minded, eurosceptic* PiS has *tightened its control over public news media* and state prosecution and *moved to weaken the country's highest court.*

(13) *The staunchly conservative PiS* has been on a collision course with Brussels since it *introduced sweeping changes to Poland's institutions.*

(14) Over the Christmas holiday, the *Polish parliament descended into farce*, with opposition MPs staging a sit-in in the main chamber while members of the ruling party *passed the national budget by a chaotic show of hands* in a neighbouring room.

(15) It is conducting a separate inquiry into Poland's media law, after *the Polish government rushed through legislation* empowering it to appoint the heads of state TV and radio.

(16) The opposition has denounced the law as *an attempt to interfere with the constitutional court's independence.*

Axiological urgency is also enhanced, and "us-defenders of democracy and them-threat to democracy opposition" conveyed by making the aspect of social protest salient; the keywords related to it include: *Polish opposition, popular mobilisation, anti-government demonstration, outside parliament, opposition support.* It is either the scale of the process that is emphasised (17 – 19) or it is explicitly evaluated positively as in (17). It should be pointed out here that the anti-conservative sentiment as well as emphasis on social protest is something to be expected if we consider the ideological slant of *the Guardian* and its target readership. It is not surprising then that such values are made salient in the coverage.

(17) The *good news* is that *Polish society is already mobilising in defence of liberal democracy.* (20) As early as last November, an opinion poll found 55 % of respondents saying democracy is threatened in Poland.

(18) *Thousands of people have joined anti-government demonstrations* across Poland.

(19) The political crisis has brought *thousands of protesters out on the streets against the government's actions.*

Lastly, what constitutes an important aspect of epistemic proximization is the way in which the technical legal issues (aspects of the crisis) are explained to an international audience; the relevant keywords here include: *simple majority*, *two-thirds majority, Polish constitution, new law, ruling, official gazette*. By contextualising the crisis in the Polish legal system, the newspaper seems to construct grounds for legitimacy of the arguments it presents.

(20) The new law raised the bar for constitutional court rulings from a *simple majority* to a *two-thirds majority*, while requiring 13 judges to be present for the most contentious cases, instead of nine previously.

(21) The government has, for more than two months, refused to publish in *an official gazette* an opinion issued by the Constitutional Tribunal on the changes imposed on it by the government.

(22) This means, the court's critical *ruling* is not valid.

(23) In Poland, the constitutional *court's rulings* are not considered to have legal effect until they are printed in *an official journal*, which is produced by a printing press controlled by the government.

(24) He (court's chief justice) said, the government's refusal to recognise the legitimacy of a number of the *court's rulings* threatened to "create a double legal system, with some courts upholding our rulings, and others not. Judges really don't know what is the law, and without that, in a continental system, courts cannot operate."

2. Niezalezna.pl and responsibility frame

The representation of the crisis in *Niezalezna.pl* is completely different, which shows the extent to which proximization (and thus framing) is contingent upon the ideological stance of the medium and its target audience. Here, *problem Trybunału* [Tribunal's problem] is presented as self-generated with responsibility being attributed to its president – *prezes trybunału* [Tribunal's president], *Andrzej Rzepliński* – and the previous party in power. Other relevant keywords here include: *skok platformy* [Civic Platform's hold-up], *TK ubezwładniony* [Tribunal incapacitated by its own Chief Justice], *kuriozalna akcja* [Tribunal's antics], and *złamanie* [violation of the Constitution by the Tribunal].

The *status quo* of the Tribunal receives negative evaluation being linked to concepts like *element antydemokratyczny* [anti-democratic element] and *mainstream ubekistanu* [main institution in a state controlled by secret police]. Rather than being an institution associated with democratic values, it is in fact presented as an antithesis of a democratic rule of law. By linking it to communist past along with the activity of the secret police (epistemic and axiological proximization), the latter of the two concepts mentioned above implicitly refers to a form of control over this institution, thus substantiating one of the main "pro-change" arguments. Likewise, *czas dyktatora* [dictator's time] seems to imply control over this body, which seems to be in opposition to the democratically ruled state. The situation of axiological urgency is thus constructed differently from the way it was in *the Guardian.* Here, Polish society (represented by the target audience of Niezalezna.pl), along with the government in power that is the initiator of change (law concerning Tribunal) become *us*, while the Tribunal, together with its president – *akuszer trybunału* [Tribunal's midwife], other judges appointed previously and political elites associated with the Civic Platform party are given the status of *them.* The latter group is overtly discredited by linking it to behaviour, which is either socially unacceptable (and harmful for the country and its citizens) or illegal. As shown by example (25) through deictic reference (*nasze* [our]), acting as axiological and emotional proximization trigger, CT judges are clearly put in opposition to *us* – Polish citizens. Both naming and predication strategies are at work here; judges are referred to as *lazy-bones* excessively spending public money, which is explicitly assessed as abnormal. A similar discrediting argument of financial nature is employed in (26), where the word *balował* [an informal term for 'to party'] is used. Needless to say arguments of this kind have a strong proximizing potential in the Polish context when it comes to axiological and emotional proximization.

(25) *Lenie za nasze pieniądze.* Zarabiający po blisko 20 tys. zł miesięcznie sędziowie Trybunału Konstytucyjnego bardzo chętnie korzystają w swojej pracy z usług zewnętrznych doradców, kosztujących kolejne dziesiątki tysięcy złotych. – *To nie jest sytuacja normalna*; [*Lazy-bones for our money.* CT judges earning almost 5 thousand euro a month … *This is not a normal situation.*]

(26) Tak *balował Trybunał Konstytucyjny.* "Do głowy mi nie przyszło żeby wydawać pieniądze na takie bzdury". [This is how *CT judges were partying.* I would never think of spending money on such nonsense.]

Also the behaviour of the president of the Tribunal is presented as both illegal (27–28) and detrimental to this institution (29). Motivations behind his actions are also identified or rather attributed to him with the use of epistemic adverbial *prawdopodobnie* [probably] and these are also put in conflict with democratic governance. Axiological urgency created in this way requires action that would ensure protection and restoration of democratic values. The paralysis metaphor in (29) also has a strong epistemic and emotional potential.

(27) Sędzia Rzepliński *łamie prawo.* [Justice Rzepliński *breaks the law.*]

(28) Prezes Rzepliński stał się funkcjonariuszem PO i poprzez *naginanie prawa dla celów politycznych prawdopodobnie usiłuje doprowadzić do obalenia demokratycznie wybranej władzy* oraz powrotu rządów Platformy… [Tribunal's president, Rzepliński became an agent of the Civic Platform and by *bending the law for political purposes is trying to overthrow the democtratically elected government* and secure the Civic Platform's comeback to power.]

(29) Andrzej Rzepliński sparaliżował go. [Rzepliński has *paralysed the Tribunal.*]

As in *the Guardian* technical aspects of the change are discussed; the relevant keywords in this case include: *skład TK* [composition of the Tribunal], *wybór nowych sędziów* [electing new judges], *uchwała Sejmu* [parliamentary resolution], *orzekać* [adjudicate]. Yet, analysis of word-sketches and concordances reveals that even these technical terms are used in highly evaluative contexts. While it is presupposed that the composition of the Tribunal is a matter of political games which the new law is supposed to prevent, its actions are presented as unreasonable.

(30) Senatorowie Prawa i Sprawiedliwości zaproponowali poprawkę, która zakładała, że ustawa wejdzie w życie 1 stycznia 2016 r. Miałoby to *zablokować polityczne gry wokół składu Trybunału Konstytucyjnego.* […to *block the political games around the composition of Constitutional Tribunal.*]

(31) *Kuriozalna akcja* Trybunału Konstytucyjnego. *"Zabronił" Sejmowi* wyboru nowych sędziów [*Constitutional Tribunal's antics.* The Tribunal *"banned" the Parliament* from electing new judges.]

Appeals to authority also work here as axiological proximization triggers. Moral authority comes from *our* side again. The statement in (32) has two important implications. Firstly, the fact that *anti-communist* veterans are in opposition to the Tribunal may imply its link (which is done repeatedly) with pro-communist environment and communist past. Secondly, if it has to be taught *the importance of democracy* it must

have been acting against it so far. As far as axiological proximization is concerned, this statement also tells us on what grounds community of values is created in *our* group and which values are evoked explicitly or implicitly. Example (33) is a reference to the Polish president's words. Here, rationality and order are appealed to.

(32) *Kombatanci AK i weterani opozycji antykomunistycznej* uczą Trybunał Konstytucyjny demokracji. [*Home Army and anti-communist veterans* teach Constitutional Tribunal the importance of democracy.]

(33) Bo *nikt rozsądny nie pozwoli* na to, aby *Trybunał stał w kraju ponad prawem*, aby nie przestrzegał prawa uchwalonego przez parlament. Bo *to jest anarchia* – powiedział prezydent. [*No reasonable person would tolerate* the *Tribunal standing above the law*, disregarding laws passed by the Parliament. *This is anarchy*- said the President.]

What is also important from the point of view of evaluating the conflict is linking its origin not to the new law (as was the case in *the Guardian*, for example) but to the previous law – *czerwcowa ustawa* [June law] – introduced by the previous party in power – Civic Platform. Once again responsibility frame is triggered with blame for the current situation being shifted to Law and Justice predecessors, namely *Sejm poprzedniej kadencji* [former Parliament], *poseł PO* [Civic Platform MP], *poprzednia kadencja* [previous term of Parliament]. The previous law is thus presented as *unconstitutional* and current actions in this respect are meant as regressive actions.

(34) Przepis umożliwiający wybór dwóch dodatkowych sędziów TK przez poprzedni Sejm jest *niekonstytucyjny* – uważa prokurator generalny. [The law providing for the election of two additional judges by the previous Parliament is *unconstitutional* in the opinion of Attorney General.]

(35) PiS próbuje *naprawić to, co zepsuła Platforma* – powiedziała w środę rzeczniczka rządu Elżbieta Witek odnosząc się do wyboru przez Sejm pięciu sędziów TK zgłoszonych przez PiS. [The Law and Justice is trying *to fix what the Civic Platform destroyed* – said government spokesperson Elżbieta Witek, referring to the election of five judges proposed by Law and Justice.]

VII. Conclusions

With their long-standing role as *gatekeeper and watchdog,* the media "interpret" or "mediate" government policies and legislation for the general public. In doing so, they do not only explain complex legal issues but also evaluate these issues along with other aspects the judicial system and its interface with the government. Hence a number of studies have discussed the role of media in the public perception of criminal justice (Boothe-Perry 2014; Kort-Butler / Sittner Hartshorn 2011; Garcia-Blanco / Bennett 2018) or, in the United States, the Supreme Court (Jessee / Malhotra 2013).

Our study was an attempt to explain how the representation of conflict, connected with Constitutional Tribunal in Poland, has been construed by the news media, along with motivations behind this process and possible implication it might have for the

public perception of this issue. As already mentioned, there has been considerable change in the public assessment of the Tribunal (CBOS 2016). As far as the assessment of the justice system in Poland is concerned, in February 2017 as many as 51 % of Poles assessed it negatively (compared to 61 % in December 2012). Importantly, only 18 % of Poles surveyed in 2017 point to personal experience as the factor determining their assessment of the judiciary. In most cases, views concerning the justice system are based on media coverage (54 %) (CBOS 2017). Additionally, the dissatisfaction with the performance of the judiciary is higher among the supporters of Kukiz'15 (56 %) and PiS (55 %), who constitute majority of the audience of *Niezalezna.pl* (CBOS 2017). While the direct link between media coverage and public attitudes cannot be taken for granted here, we argue that media framing and thus selective representation of "the Constitutional crisis" and, more generally, the judiciary, does play some role in shaping these attitudes.

Although the audience tends to assess the news in line with their previous knowledge, interpersonal resources, and direct experiences, media frames do shape individual frames by rendering particular concepts more accessible than other concepts, and thus constraining the range of options that the members of the audience have in making sense of the world. In this way, frames serve several functions, both cognitive by linking together disparate facts, events, and people, and evaluative, by naming perpetrators, identifying victims, and attributing blame.

Acting as proximization triggers, frames are meant to provide contextual cues, simplifying complex problems, actions, and events, by slotting the new into familiar categories and thus evoking particular moral evaluations. While the epistemic dimension is constructed by relying on culturally-embedded stereotypes, facts, and figures, as well as opinions mentioned, axiological proximization triggers include either explicit or implicit negative evaluations of character traits or actions. The emotional dimension of proximization, being in a way a consequence of both knowledge and moral judgement, consists in evoking emotions of fear and anger, or, alternatively, empathy and solidarity. In the data analyzed, differences in framing and thus proximization strategies concern the nature of the crisis (legal, political, social), its origin and responsibility for it (who is responsible and who is affected), as well as possible solutions. Within axiological dimension we also examined how axiological urgency is created and whose values are constructed as threatened. Unsurprisingly, if we consider target audiences and newspapers' ideology, for *The Guardian* these are collective European values linked to liberal democracy which need to be preserved, while *Niezalezna.pl* tends to operate with "anti-values" represented by the opposition party and linked to Poland's communist past. While in the former case nationalism attitudes emerge as a threat, in the latter case, nationalism is explicitly or implicitly associated with protecting the interests of citizens. Differences concerning factual and emotive language can also be observed between the two sources of data. *The Guardian* tends to rely on the former with epistemic proximization often becoming an implicit basis for the axiological one. In the case of *Niezalezna.pl,* the link between axiological and emotional dimensions of proximization is more visible. Journalists tend

to work with anti-values represented by *them* and concentrate on discrediting the actions of the other side of the conflict – "them". The problem ceases to be a technical issue as such and becomes part of ideological battle often waged with *ad personam* arguments. Framed as an EU crisis resulting from a threat to democratic (communitarian) values, the Tribunal issue triggers concern and desire to intervene, approached as blaming campaign, it may evoke outrage and aversion towards *pinpointed* groups and individuals. We have to remember that in both cases the representation is selective which is a consequence of the fact that it is aimed at particular target groups whose knowledge, experience, and values the media have to address while mediating the legal issue.

VIII. Literature

Baker, Paul (2006): Using Corpora in Discourse Analysis. London: Continuum.

Baker, Paul / Gabrielatos, Costas / Khosravinik, Majid / Krzyzanowski, Michał / McEnery, Tony/ Wodak, Ruth (2008): "A useful methodological synergy? Combining critical discourse analysis and corpus linguistics to examine discourses of refugees and asylum seekers in the UK press". In: *Discourse & Society* 19(3), pp. 273 – 305.

Bateson, Gregory (1972): Steps to an Ecology of Mind: Collected Essays in Anthropology, Psychiatry, Evolution, and Epistemology. Chicago: University of Chicago Press.

Berger, Peter / Luckmann, Thomas (1991) [1966]: The social construction of reality. A treatise in the sociology of knowledge. London: Penguin Books.

Boyd, Michael (2013): Representation of Foreign Justice in the Media: the Amanda Knox case. In: *Critical Approaches to Discourse Analysis across Disciplines*, http://cadaad.net/journal 7(1), pp. 33 – 50.

Boothe-Perry, Nicola A. (2014): Friends of Justice: Does Social Media Impact the Public Perception of the Justice System? In: *Pace Law Review* 35(1), pp. 72 – 114.

Breeze, Ruth (2016): Courts in the news: mixed-method research into media representations of court. A conference paper delivered at the 4t^{h} conference Law, Language and Communication: negotiating cultural, jurisdictional and disciplinary boundaries, Caserta, May 2016.

Cap, Piotr (2010): Axiological aspects of proximization. In: *Journal of Pragmatics* (42), pp. 392 – 407.

Cap, Piotr (2013): Proximization: the pragmatics of symbolic distance crossing. Amsterdam: Benjamins.

Carrabine, Eamonn (2008): Crime, Culture and the Media. Polity, Cambridge.

CBOS (2016): Opinia publiczna o sporze wokół Trybunału Konstytucyjnego. In: Komunikat z badań no. 62. Warsaw. Accessed at: https://www.cbos.pl/SPISKOM.POL/2016/K_062_16.PDF (25 October 2018).

CBOS (2017): Społeczne oceny wymiaru Sprawiedliwości. In: Komunikat z badań no. 34. Warsaw. Accessed at: https://www.cbos.pl/SPISKOM.POL/2017/K_031_17.PDF (25 October 2018).

Chilton, Paul (2004): Analysing political discourse: theory and practice. London: Routledge.

Chilton, Paul (2005): Discourse Space Theory: geometry, brain and shifting viewpoints. In: *Annual Review of Cognitive Linguistics* (3), pp. 78–116.

Chilton, Paul (2014): Language, space and mind: the conceptual geometry of linguistic meaning. Cambridge: Cambridge University Press.

Cotterill, Janet (2002): "Just one more time": Aspects of intertextuality in the trials of O. J. Simpson. In: J. Cotterill (Ed.): Language in the legal process (pp. 147–161).

Cottle, Simon (2006): Mediatizing the Global War on Terror. Television's Public Eye. In: Anandan P. Kavoori / Todd Fraley (Eds.): Media, Terrorism and Theory: A Reader. Oxford: Rowman and Littlefield Publishers, pp. 19–48.

Couldry, Nick (2009): Does "the media" have a future? In: *European Journal of Communication* (24), pp. 437–449.

D'Angelo, Paul / Kuypers, Jim A. (2009): Doing news framing analysis: empirical and theoretical perspectives. New York: Routledge.

De Vreese, Claes. H. (2005): "News framing: Theory and typology". In: *Information Design Journal + Document Design* 13 (1), pp. 48–59.

Entman, Robert M. (1991): "Framing U.S. coverage of international news: Contrasts in narratives of KAL and Iran Air incidents". In: *Journal of Communication* 41, pp. 6–27.

Entman, Robert M. (1993): "Framing: Toward Clarification of a Fractured Paradigm". In: *Journal of Communication* 43(4), pp. 51–58.

Entman, Robert M. (2004): Projections of Power: Framing News, Public Opinion, and U.S. Foreign Policy. Chicago: University of Chicago Press.

Fairclough, Norman (1992): Discourse and social change. London: Polity Press.

Fairclough, N. / Wodak, R. (1997): Critical discourse analysis. In: T. A. van Dijk (Ed.): Discourse as social interaction. London: Sage, pp. 14–31.

Fillmore, Ch. (1975): "An alternative to checklist theories of meaning". First annual meeting of the Berkeley linguistic Society, University of California, Berkeley.

Fodor, J. A. (2000): The mind doesn't work that way: the scope and limits of computational psychology. Cambridge, Mass.: MIT Press.

Foucault, Michel (1972): The archaeology of knowledge. New York: Pantheon Books.

Fowler, Roger (1991): Language in the news: discourse and ideology in the press. London: Routledge.

Garcia-Blanco, Iñaki / Bennett, Lucy (2018): Between a 'media circus' and 'seeing justice being done': Metajournalistic discourse and the transparency of justice in the debate on filming trials in British newspapers. In: *Journalism* 1–20. Accessed at: http://journals.sagepub.com/doi/full/10.1177/1464884918760025 (25 October 2018).

Garlicki, Lech (2007): Constitutional courts versus supreme courts. In: *International Journal of Constitutional Law* (5), Issue 1, pp. 44–68.

Gitlin, T. (1980): The Whole World Is Watching. Mass Media in the Making and Unmaking of the New Left. Los Angeles: University of California Press.

Goffman, Erving (1974): Frame Analysis. New York: Harper and Row.

Goźdź-Roszkowski, Stanisław (2018): Facts in law. A comparative study of *fact that* and its phraseologies in American and Polish judicial discourse. In: Stanisław Goźdź-Roszkowski / Gianluca Pontrandolfo: Phraseology in Legal and Institutional Settings. A corpus-based interdisciplinary perspective. London: Routledge, pp. 143 – 159

Goźdź-Roszkowski, Stanisław / Pontrandolfo, Gianluca (2013): Evaluative patterns in judicial discourse: A corpus-based phraseological perspective on American and Italian criminal judgments. In: *International Journal of Law, Language and Discourse* 13(2), pp. 9 – 69.

Hall, Stuart / Critcher, Chas / Jefferson, Tony / Clarke, John / Roberts, Bryan (1978): Policing the crisis: mugging, the state and law and order. London, UK: Macmillan.

Haltom, W. / McCann, M. (2004): Distorting the law: politics, media and the litigation crisis. The University of Chicago Press.

Hart, Christopher (2010): Critical Discourse Analysis and cognitive science: new perspectives on immigration discourse. Basingstoke: Palgrave.

Hester, Al (1973): Theoretical considerations in predicting volume and direction of international information flow. In: *International Communication Gazette* (19), pp. 239 – 247.

Hjarvard, Stig (2013): The mediatization of society. New York: Routledge.

Jessee, Stephen / Malhotra, Neil (2013): Public (Mis)Perceptions of Supreme Court Ideology: A Method for Directly Comparing Citizens and Justices. In: *Public Opinion Quarterly* 77(2), pp. 619 – 634.

Kaid, Lynda Lee / Gerstlé, Jaques / Sanders, Keith R. (Eds.) (1991): Mediated politics in two cultures: presidential campaigning in the United States and France. New York: Praeger.

Kilgarriff, A. / Baisa, V. / Bušta, J. / Jakubícek, M. / Kovář, V. / Michelfeit, J. / Rychlý, P. / Suchomel, V. (2014): "The Sketch Engine: ten years on". *Lexicography* 1(1): pp. 7 – 36. [doi 10.1007/s40607-014-0009-9].

Kopytowska, Monika (2009): Corpus linguistics and an eclectic approach to the study of news – the mechanism of framing. In: Barbara Lewandowska-Tomaszczyk / Katarzyna Dziwirek (Eds.): Studies in Cognitive Corpus Linguistics, Frankfurt am. Main: Peter Lang, pp. 83 – 109.

Kopytowska, Monika (2013): Blogging as the mediatization of politics and a new form of social interaction. In: P. Cap / U. Okulska (Eds.): Analyzing genres in political communication. Amsterdam: Benjamins, pp. 379 – 421.

Kopytowska, Monika (2014): Pictures in our heads: crisis, conflict, and drama. In: Yusuf Kalyango / Monika Kopytowska (Eds.): Why discourse matters: negotiating identity in the mediatized world. New York: Peter Lang, pp. 89 – 109.

Kopytowska, Monika (2015a): Ideology of "here and now". Mediating distance in television news. In: *Critical Discourse Studies* 12(3), pp. 347 – 365.

Kopytowska, Monika (2015b): Covering conflict: between universality and cultural specificity in news discourse genre and journalistic style. In: *International Review of Pragmatics* (Special Issue on Communicative styles and genres: between universality and culture-specificity) 7, pp. 308 – 339.

Kopytowska, Monika (2015c): Mediating identity, ideology and values in the public sphere: towards a new model of (constructed) social reality. In: *Lodz Papers in Pragmatics* 11(2), p. 133 – 156.

Kopytowska, Monika (2018): The Televisualization of Ritual: Spirituality, Spatiality and Copresence in Religious Broadcasting. In: Paul Chilton / Monika Kopytowska (Eds.): Religion, Language and Human Mind. New York: Oxford University Press, pp. 437 – 473.

Kopytowska, Monika (forthcoming): Culture, Mediated Experience and the Semiotics of Distance. In: Artur Gałkowski / Monika Kopytowska (Eds.): Current Perspectives in Semiotics. Signs, Signification, and Communication. Frankfurt am Main: Peter Lang, pp. 221 – 244.

Kopytowska, Monika / Grabowski, Łukasz (2017): European security under threat: mediating the crisis and constructing the Other. In: Christian Karner / Monika Kopytowska (Eds.): National identity and Europe in times of crisis: Doing and undoing Europe, Bingley: Emerald Publishing, pp. 83 – 112.

Kopytowska, Monika / Grabowski, Łukasz / Woźniak, Julita (2017): Mobilizing against the Other: Cyberhate, refugee crisis and proximization. In: Kopytowska, Monika (Ed.): Contemporary discourses of hate and radicalism across space and genres, Amsterdam, Philadephia: John Benjamins, pp. 57 – 97.

Kort-Butler, Lisa A. / Sittner Hartshorn / Kelley J. (2011): Watching the Detectives: Crime Programming, Fear of Crime, and Attitudes about the Criminal Justice System. In: *The Sociological Quarterly* 52, p. 36 – 55.

Lakoff, George (1987): Women, Fire and Dangerous Things. What Categories Reveal about the Mind. Chicago, London: Chicago University Press.

Lakoff, George (1996): Moral Politics: What the Conservatives Know that Liberals Don't. Chicago, London: University of Chicago Press.

Lakoff, George (2004): Don't Think of an Elephant! Know Your Values and Frame the Debate. Chelsea Green: White River Junction.

Matczak, Marcin (2018): Poland: From Paradigm to Pariah? Facts and interpretations of Polish constitutional crisis. The article is based on a lecture delivered by the author in Wolfson College, University of Oxford, on 8th March 2018, during the seminar "Poland: From Paradigm to Pariah?", organized by the Foundation for Law, Justice and Society. https://www.academia.edu/36140112/Poland_From_Paradigm_to_Pariah_Facts_and_interpretations_of_Polish_Constitutional_crisis (accessed May 30, 2018).

McLeod, Douglas M. / Detenber, Benjamin H. (1999): "Framing Effects of Television News Covergae of Social Protest". In: *Journal of Communication* 49(3), pp. 3 – 23.

Minsky, Marvin (1975): A framework for representing knowledge. In: P. H. Winston (Ed.): The Psychology of Computer Vision. New York: McGraw-Hill. pp. 211 – 277.

O'Keeffe, Anne (2006): Investigating Media Discourse. New York: Routledge.

Pan, Zhongdang / Kosicki, Gerald (1993): "Framing Analysis: An Approach to News Discourse". In: *Political Communication* 10, pp. 55 – 75.

Partington, Alan / Duguid, Alison / Taylor, Charlotte (2013): Patterns and Meanings in Discourse. Theory and practice in corpus-assisted discourse studies. (CADS). Amsterdam, Philadelphia: Benjamins.

Partington, Alan (2004): Corpora and discourse: A most congruous beast. In: A. Partington / J. Morley / L. Haarman (Eds.): Corpora and Discourse. Bern: Peter Lang, pp. 11–20.

Schank, Roger C. / Abelson, Robert P. (1977): Scripts, plans, goals, and understanding. Hillsdale, NJ: Erlbaum.

Scheufele, Dietram A. (1999): "Framing as a theory of media effects". In: *Journal of Communication* 49, pp. 103–122.

Schlesinger, Philip / Tumber, Howard / Murdock, G. (1991): The media politics of crime and criminal justice. In: *British Journal of Sociology* 42(3).

Searle, John (1995): The construction of social reality. London: The Penguin.

Searle, John (2006): Social ontology: some basic principles. In: *Anthropological Theory* 6(1), pp. 12–29.

Searle, John (2010): Making the social world: the structure of human civilization. Oxford: Oxford University Press.

Shoemaker, Pamela / Cohen, A. (Eds.) (2006): News Around the World. Content, Practitioners, and the Public. New York: Routledge.

Sinclair, John (2004): Trust the Text: Language, Corpus and Discourse. London: Routledge.

Sousa, Alcina / Kopytowska, Monika (2014): Mediating science in cyberspace. Paper presented at GESIPI International Conference, "Identity: Representations and Practices", Faculty of Letters, University of Lisbon, 12th Sept. 2014.

Scheufele, Dietram A. / Tewksbury, David (2007): Framing, agenda setting, and priming: The evolution of three media effects models. In: *Journal of Communication* 57, pp. 9–20.

Stubbs, Michael (1997): "Whorf's Children: Critical comments on Critical Discourse Analysis (CDA)". In A. Ryan / A. Wray (Eds.): Evolving models of language. Clevedon: BAAL in.

van Dijk, Teun A. (1998): Ideology. London: Sage.

Wodak, Ruth (2011): Critical Linguistics and Discourse Analysis. In: Jan Zienkowski / Jan-Ola Ostman / Jef Verschueren (Eds.): Discursive pragmatics. Amsterdam: John Benjamins, pp. 50–70.

Wodak, Ruth (2009): The discourse of politics in action. Politics as usual. London: Palgrave. Macmillan.

Reports from the ILLA Relaunch Conference 2017 in Freiburg

Report on the Workshop on Forensic Linguistics at the ILLA Relaunch Conference in September 2017

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Keywords: Authorship, baseline, benchmarking, corpus, courtroom, data defamation, face, interrogation, linguistics, other, penal law, phonetics, self, style, software, testimony, veracity

I. Introduction

At the relaunch of the International Language and Law Association (ILLA) in September 2017, the forensic linguistics workshop harkened back to the first conference associated with ILLA which was held in 2006 in Dusseldorf at Heinrich Heine University. Under the guidance of Prof. Dr. Dieter A. Stein, the 2006 Conference included the broad spectrum of work in language and law, including forensic linguistics and forensic phonetics. We are pleased to report that forensic linguistics, including phonetics, remained a focus within ILLA in the relaunch.

At the same time, the forensic linguistics workshop looked forward to the broadening and strengthening of the "ILE paradigm in forensic linguistics." This paradigm is associated with the Institute for Linguistic Evidence (ILE). Founded in 1998, ILE was the first non-profit organization devoted to research in forensic linguistics. The ILE paradigm developed from Chaski's Visiting Research Fellowship at the United States Department of Justice, National Institute of Justice from 1995 – 1998. At this time in the United States, the Daubert standard requiring known reliability and error rates for scientific evidence was just beginning to affect forensic science techniques. Chaski developed the paradigm as a way for forensic linguistics to meet the new standard for scientific evidence. The ILE paradigm provides principles so that methods in forensic linguistics can meet legal standards for scientific evidence, be admitted for trial testimony and be practiced as safe investigative techniques. A growing body of research has shown that forensic examiners can be cognitively biased toward confirmation of a desired outcome (e. g. Dror (2012), Kassin et al. (2013a, 2013b), Murrie et al. (2013), Dror et al. (2015)). The ILE paradigm protects the forensic examiner from cognitive bias by proposing that methods, and standard operating procedures for applying methods, be developed outside of any litigation on ground truth data so that the method's results cannot be contaminated by any desired outcome when the method is applied following standard operating procedures.

Succinctly, from the legal perspective, scientific evidence must be scientifically respectable and reliable enough to be worthy of the Court's time. The ILE paradigm proposes that forensic linguistic methods can become fully-admissible scientific evidence when they are:

1) developed independent of any litigation, in the course of normal scientific research;
2) tested for accuracy outside of any litigation;
3) tested for accuracy on "ground truth" data;
4) able to work reliably on "forensically feasible" data;
5) tested for known limits correlated to specific accuracy levels;
6) tested for any errors of individual testing techniques that could cause accumulated error when combined with other techniques;
7) replicable when performed by trained analysts;
8) related to a specific expertise and academic training;
9) related to standard ("generally accepted") techniques within the specific expertise and academic training; and
10) related to uses outside of any litigation in industries or fieldwork in the specific expertise (cf. Chaski 1997, 2001, 2013).

In line with current legal standards, the ILE paradigm puts the focus on the method itself, rather than the status or persuasion of the practitioner. By focusing on the calculation of reliability and error rate, the ILE paradigm opens the door for innovations in forensic linguistics and provides linguists of all ranks a chance to develop methods that may become fully-admissible scientific evidence. The forensic linguistics workshop provided a venue in which various aspects of the ILE paradigm were evident in papers from linguists at all stages in their careers. As we present an overview of the workshop, it will be obvious how current research exemplifies various aspects of the ILE paradigm, with some presentations fully embracing the ILE paradigm for admissible forensic linguistic evidence.

The workshop covered a wide range of topics in forensic linguistics: author identification, speaker identification, forensic linguistic corpus development and text-typing, language crimes, and courtroom interaction.

II. Author Identification

In "Style and Authorship", Carole Chaski presented the argument that identifying style is not the same exercise as identifying authorship. For many forensic linguists, "style" is approached through superficial and highly salient features such as word choice and word frequency. Chaski's argument was based on three things. First, stylometric approaches to authorship have failed to identify authorship based on blind

tests. Second, stylometrists are now providing software to obfuscate authorship by manipulating style. Third, when a stylist attempted to foil a syntactic approach to authorship by editing the style of a text, his stylistic changes were not able to change the syntactic measurements, based on statistical testing of the original and edited version of the text. Therefore, Chaski concluded that style and authorship are not actually equivalent terms, contrasting style as a surface feature of language from authorship as a deep feature of language.

In "Approaches to style in qualitative authorship analysis", Eilika Fobbe presented the results of a stylistic analysis of three short extortion letters by applying Brinker's text linguistic approach to the texts. The paper examined the author's approach to the complex communicational task of extortion and focused on obligatory and optional text patterns, on how they were arranged and linguistically expressed. It was pointed out that by including the text level into stylistic analysis, one could extract additional information about the author's way of dealing with the situation even from very short texts. It was also suggested that this information could possibly be of investigative value.

In "Benchmarking Author Recognition Systems for Forensic Application", Hans van Halteren described how he benchmarked a reasonably good authorship recognition system against the written texts in the British National Corpus. Given the excellent author recognition results in (near) ideal circumstances, Van Halteren doubts anyone would hesitate using the system in court. However, in worse and realistic circumstances, evoked primarily by reducing the amount of training and test material, the recognition quality quickly degraded. Van Halteren strongly suggested that, for a system judgement to be accepted in court, its quality should be tested on material of known origin under the same circumstances that apply in the court case.

In "Demonstration of ALIAS: Automated Linguistic Identification & Assessment System", Carole Chaski showed the ALIAS software analysing forensic linguistic data. First, Chaski presented reasons for automating forensic linguistic methods, including objectivity, algorithmic standardization, lack of confirmation bias, and removal of human fatigue. Second, Chaski demonstrated the components of ALIAS™, including TATTLER™, the text analysis system, and the modules for analytical procedures, ALI™ for fully automated linguistic analysis, ALEX™ for automated linguistic analysis with expert interaction, and ALISTAR™ for automated linguistic analysis with scientist-linguist input. Finally, Chaski presented the research paradigm underlying the ALIAS analytical procedures (Chaski 2001, 2005, 2013).

III. Speaker Identification

In "Voice profiling: forensic phonetics applied in the case of the clumsy kidnapper", Gea de Jong-Lendle showed how forensic phonetics can be applied in the case of a kidnapping. In this case the police requested a forensic analysis of three phone calls made to the family of the victim. The caller, assumed to be the same in all three

calls, spoke German fairly fluently but clearly with a foreign accent. De Jong-Lendle demonstrated the phonetic methods to create a profile of the kidnapper based on his voice, his language and other linguistic features, including geographical dialectology.

IV. Spanish Forensic Corpus

In "A Spanish Corpus for Forensic Linguistic Research", Ángela Almela Sánchez-Lafuente, Carole Chaski, Gemma Alcaraz Mármol, Clara Pallejá López, Victoria Guillén Nieto and Arancha García Pinar presented the methods for developing a database of Spanish writing that can be used for forensic linguistic research, including data collection procedures and challenges. Specifically, the main instrument used for data collection has been adapted from Chaski (2001; 2013) and translated into Spanish. This instrument consists of ten tasks, by means of which the subjects are asked to write formal and informal texts about different topics which evoke different registers. To date, 93 undergraduates from University of Alicante, Polytechnic University of Cartagena and University of Castilla-La Mancha have already participated in the study. Further, using the same instrument, text data have been collected from prisoners who fit a specific crime profile. The corpus has four potential uses within forensic linguistics, namely identification, text-typing, inter-textuality, and linguistic profiling, which is in line with some previous analyses of Spanish corpora for forensic purposes (e. g. Almela et al. 2013; 2015).

V. Forensic Computational Linguistics

Gender-based violence is receiving more and more attention from professionals and researchers within the legal, criminological and psychological fields, exploring several aspects related to both the victim and the abuser. However, the linguistic profile of those involved in gender-based violent acts has been hardly explored. In the English-speaking world, several scholars have demonstrated the applicability of linguistic analysis in detecting some subjects' tendency to commit certain types of crime (Drouin et al. (2017); Taylor et al. (2013)). Within this framework, "The Gender-based Abuser: A Proposal for Forensic Linguistic Analysis from a Computational Perspective" by Ángela Almela Sánchez-Lafuente, Carole Chaski, Gemma Alcaraz Mármol, Clara Pallejá López and Pascual Cantos Gómez presented a pilot study of quantitatively and computationally differentiating the language of domestic abusers from a control group. The domestic abusers have been convicted of a violent crime in the domestic context, while control group members have not. The results of analyzing the two groups' linguistic behavior in writing, responding to the same stimuli were presented. Furthermore, results of clustering and classification to determine the statistical reliability of differentiating the language of domestic abusers were presented.

VI. Court Testimonies / Courtroom interaction

Elizabeth Allyn Smith in collaboration with Myriam Raymond-Tremblay presented "Influences of felicitous and non-felicitous presuppositions on belief in French", the first full-scale replication of Loftus (1976) and Loftus and Burns (1982) in a language other than English. The results suggest the possibility of a cultural difference when it comes to the effect of presupposition on long-term memory, though further corroboration is needed. This work contributes to an increasingly strong body of evidence showing that linguistic factors can bias evidence and testimony obtained through questioning techniques. Further, the empirical results undermine the prevailing assumption of some interview techniques that interviewees will automatically challenge questions that presuppose false information. The study indicated the possibility of a high rate of false confessions given the number of presuppositional questions used in interviews.

Carl Vogel and Justine Reverdy presented "Levels of linguistic description in repetition effects associated with 'successful' and 'unsuccessful' dialogue". This research focused on the methodology for quantifying the certainty one can have in rejecting a null hypothesis that interlocutors have not understood each other in dialogue. It was shown that the circumstances brought to court in which the precise question at hand is whether one individual can be said to have understood another, with merely a transcript available as the basis for decision. This method requires calibration on many data sets, and one factor in this calibration relates to the levels of linguistic description involved, just as in authorship attribution research, the linguistic level of tokenization has also been explored extensively. This paper analyzed the levels of repetition (which may be understood in relation to grounding for repetition of "other", and evolving dialogue plan maintenance for repetition of "self") visible at levels of description from sub-lexical to phrasal and levels inclusive of abstract syntax, in short dialogues that external observers are likely to characterize as successful or not with clear intuitions. Analysis was conducted with respect to a data set in which an independent assessment of communication success is available in the form of performance of a collaborative task. The data used was the Human Communication Research Centre (HCRC) Map Task dialogue corpus. One participant communicates a path (Information Giver, IG) on a map to the other (Information Follower, IF). Success in the task was measured in terms of the deviation between the two paths for the map. All participants have four attempts at the task. Factors that were analyzed included partner familiarity, dialogue role, availability of eye contact. It was proved that participants do better as task experience increases. Familiar partners have slightly more success than unfamiliar partners. Where there is significant other-repetition (summing across levels of linguistic description), this yields low deviation scores (more success) for familiar partners in first games but high deviation for unfamiliar partners. Repetition "helps" unfamiliar partners after the first game. Significant repetition (self- and other-repetition) by information givers leads to greater task success. In contrast, lexically based repetition (self- and other-) by information followers cor-

relates with unsuccessful communication; but IF-repeated syntactic structures (self- and other-) does signal successful communication. This contributes to understanding of baselines in repetition effects for "normal" dialogues (Reitter / Moore 2007; Vogel, 2013; Reverdy / Vogel, 2017a, 2017b). An interpretation of the results in legal settings draws to light interrogations: one might reconsider the merits of interrogators repeating themselves or words and phrases of a suspect; one might feel better about suspects repeating themselves and their interrogators.

In "Veracity Assessment of speaker-witnesses in child-abuse cases", Martina Nicklaus and Dieter Stein discussed methodological issues relating to the linguistic underpinning of approaches and procedures in a legal context where verbally given evidence is paramount in establishing veracity, in addition to established psychological evaluation. It would seem that linguistic expert knowledge is called for in the form of modern psycholinguistic theory of the narrative that relates output at each occasion to specific factors at the time of production. Another important issue is establishing a linguistic "baseline": What is a deviation from such a baseline, such as repetition, false starts, tense changes, particles etc., which cannot automatically or schematically be interpreted in a simplistic way as indicators if veracity or otherwise without taking into account the other types of information such as videotapes or recordings, if and hopefully also available. The discussion was based and inspired by work on a concrete case of child abuse as reflected in a narrated interview.

VII. Language Crimes

In "Defamation as a language crime" Victoria Guillén-Nieto (University of Alicante) examined defamation as a language crime within the theoretical framework of impoliteness theory (Culpeper 2011), e. g. affective impoliteness. Guillén Nieto's research is grounded in the analysis of a reference corpus of 150 judgments rendered by High Courts of Justice in Spain between 2013 and 2017. The study demonstrated that impoliteness theory provides the language expert with a socio-pragmatic categorisation of offence, e. g. face intentionality, face attack, and face loss, as well as with a description and explanation of the processes involved in the construction and deconstruction of offence: (a) a bottom-up process through which the victim perceives and constructs the offender's intentionally face-threatening behaviour. And (b) a top-down process through which the court deconstructs and appraises behavior in context, and within a legal culture and system, e. g. Constitution, Civil Law, Penal Law, Penal Code, etc. Findings from this study showed that in Spanish courts not every offence implying face damage is a crime by law, e. g. minor injuries, low intensity insults, degrading expressions, and cross-accusations with no public significance were decriminalised by law in 2015. Moreover, courts in Spain apply weighting techniques in their legal reasonings. More specifically, they clearly favour the prevalence of the Rights to Freedom of Expression and Information over the Right to Honour

when the alleged defamatory text is based on facts and does not include high intensity insults, degrading expressions and false accusations.[1]

VIII. Conclusion

Overall, the workshop demonstrated that forensic linguistics can be a productive and worthwhile field when it focuses on applying reliable methods from mainstream linguistics to forensic questions. The variety and depth of knowledge of linguistics in the presentations are extremely encouraging for the field and we look forward to continued growth of forensic linguistics in the supportive and intellectually-stimulating context of International Language and Law Association.

IX. Literature

Almela, Ángela / Alcaraz-Mármol, Gema / Cantos, Pascual (2015): Analysing deception in a psychopath's speech: A quantitative approach. In: *DELTA: Documentação de Estudos em Lingüística Teórica e Aplicada* 31(2), pp. 559–572.

Almela, A. / Valencia-García, Rafael / Cantos, Pascual (2013): Seeing through Deception: A Computational Approach to Deceit Detection in Spanish Written Communication. In: *Linguistic Evidence in Security, Law and Intelligence* 1(1), pp. 3–12.

Chaski, Carole (1997): Who Wrote It? Steps Toward a Science of Authorship Identification. In: *National Institute of Justice Journal.* September 1997. Available online at http://www.ncjrs.orgNCJ184604.

Chaski, Carole (2001): Empirical Evaluations of Language-based Author Identification Techniques. In: *International Journal of Speech, Language and Law* 8(1), pp. 1–66.

[1] As an additional study to the one presented in the forensic linguistics workshop, Guillén Nieto presented "Impoliteness theory and the appraisal of intentional defamation in Spanish courts" in the general session of ILLA Conference. Drawing on the same reference corpus of 150 judgements for cases of defamation rendered by High Courts of Justice in Spain between 2013 and 2017, she focused, this time, on the impact of impoliteness strategy (conventional direct formulaic impoliteness vs nonconventional indirect formulaic impoliteness) on the final verdict. After analyzing the impoliteness strategies present in the defamatory texts of the 150 cases together with their corresponding verdicts in the High Courts of Justice (acquittal vs guilty verdict), both qualitatively and quantitatively, e. g. Chi-square test, the null hypothesis was proved, e. g. conventional direct formulaic politeness does not promote guilty verdicts, and nonconventional indirect formulaic impoliteness does not have impact on acquittals. Moreover, the fact that Spanish courts seem to allow more cases in which defamation is encapsulated in conventional direct formulaic impoliteness than those in which the offence is packed in indirect formulaic impoliteness, suggested that the latter may be considered an elusive defamatory strategy since the linguistic evidence may not be strong enough to build a court case of defamation. Other factors rather than the way the meaning is conveyed seem to have more impact in the final verdicts, e. g. the professional status of the target victim, the public significance of the offence, widespread dissemination, reckless contempt of the truth, among others.

Chaski, Carole (2005): Who's At the Keyboard? Recent Results in Authorship Attribution. In: *International Journal of Digital Evidence* 4(1). Available online at http://ijde.org.

Chaski, Carole (2013): Best Practices and Admissibility of Forensic Author Identification. In: *Journal of Law and Policy* 21(2), pp. 332–376.

Culpeper, Jonathan (2011): Impoliteness. Using Language to Cause Offence. Cambridge: Cambridge University Press.

Dror, I. E. (2012): Cognitive bias in forensic science. In: *Science & Technology Yearbook*, pp. 43–45, McGraw-Hill.

Dror, I. E. / McCormack, Bridget M. / Epstein, Jules (2015): Cognitive Bias and Its Impact on expert Witness and the Court. In: *The Judge's Journal*, Vol. 54 No. 4. Available online at https://www.americanbar.org/publications/judges_journal/2015/fall/cognitive_bias_and_its_impact_on_expert_witnesses_and_the_court.html.

Drouin, M. / Boyd, R. L. / Hancock, J. T. / James, A. (2017): Linguistic analysis of chat transcripts from child predator undercover sex stings. In: *The Journal of Forensic Psychiatry & Psychology.* Vol. 28, Issue 4. Available online at https://doi.org/10.1080/14789949.2017.1291707.

Kassin, S. M. / Dror, I. E. / Kukucka, J. (2013): The forensic confirmation bias: Problems, perspectives, and proposed solutions. In: *Journal of Applied Research in Memory and Cognition* 2, pp. 42–52.

Kassin, S. M. / Dror, I. E. / Kukucka, J. (2013): New application of psychology to law: Improving forensic evidence and expert witness contributions. In: *Journal of Applied Research in Memory and Cognition* 2, pp. 78–81.

Kelty, S. F. / Julian, R. / Ross, A. (2013): Dismantling the Justice Silos: Avoiding the pitfalls and reaping the benefits of information-sharing between forensic science, medicine and law. In: *Forensic Science International.*

Loftus, Elizabeth (1976): Unconscious transference in eyewitness identification. In: *Law & Psychology Review* 2, pp. 93–98.

Loftus, E. / Burns T. E. (1982): Mental shock can produce retrograde amnesia. In: *Memory & Cognition* 10, pp. 318–323.

Murrie, D. C. / Boccaccini, M. T. / Guarnera, L. A. /Rufino, K. A. (2013): Are forensic experts biased by the side that retained them? In: *Psychological Science* 24.

Reitter, David / Moore, Joanna (2007): Predicting Success in Dialogue. In: *Proceedings of the 45th Annual Meeting of the Association of Computational Linguistics*, pp. 808–815.

Reverdy, Justine / Vogel, Carl (2017): Measuring Synchrony in Task-Based Dialogues. In: *Proceedings of the 18th Annual Conference of the International Speech Communication Association (INTERSPEECH2017)* pp. 1701–1705.

Reverdy, Justine / Vogel, Carl (2017): Linguistic Repetitions, Task-based Experience and a Proxy Measure of Mutual Understanding. In: *Proceedings of the 8th IEEE International Conference on Cognitive Infocommunications (CogInfoCom 2017)*, pp. 395–400.

Taylor, P. J. / Dando, C. J. / Ormerod, T. C. / Ball, L. J. / Jenkins, M. C. / Sandham, A. / Menacere, T. (2013): Detecting insider threats through language change. In: *Law and Human Behavior* 37(4).

Vogel, Carl (2013): Attribution of Mutual Understanding. In: *Journal of Law and Policy* 21(2), pp. 377–420.

The Freiburg Relaunch Conference on Language and Law in a World of Media, Globalisation and Social Conflicts

A brief Conference Comment

By *Dieter Stein*, Düsseldorf

Keywords: Orientation, Science, Society, Perspectives

As one of the founders of ILLA, I have been honored to be invited to offer my personal take on the first meeting of the re-founded society in a new garb.

The raison d'etre for this society (in 2006), as it was defined in the very first beginning of this society in initial discussions between Peter Tiersma, Larry Solan, and myself, and after many consultations with interested colleagues, was to bring together in a canonised form the theoretical, foundational and philosophical dimensions of the many facets of the inherent relationship between language and law. The best way to do that was in an international society with that particular, more theory-oriented, broad-scope disciplinary focus.

It was clear from the very beginning that there would be partial overlaps between such a society and other, in part preexisting, societies, whose briefs, however, are differently oriented, such as more practical-oriented or focused on a particular sub-domain, such as forensics or semiotics. The relationship of ILLA to these societies is more of a complementary nature, and not a competitive one. This is witnessed by the large number of scholars and practitioners who are members of more than one society and actively participate in their different meetings, including the Freiburg meeting, and by a measure of overlap between the themes of their meetings.

After the untimely death of Peter Tiersma and a period of uncertainty and experimentation, the relaunch of the society under the energetic hands of Friedemann Vogel from the linguistics side and Ralf Poscher from the law side at Freiburg University and their committed collaborators, the message of the meeting is a new sense of direction and impetus. In what follows, I will offer my personal take on this orientation.

The meeting confirmed the philosophical and theoretical orientation of the society in a resounding way, including a definition of the governance and the procedures. More importantly, however, the meeting accentuated, punctuated by the plenaries, themes that both highlighted the specific orientation of this meeting, but also pointed forward in the direction of the further development of the society. Part of establishing

identity is an account of the history and provenience. Such was offered Larry Solan in a plenary on history of the pursuit of language and law, with special emphasis on the US. Solan made it clear that what has crystallised in the format of a society has many diverse roots in Europe and the Americas, although with very different emphases in different linguistic and legal cultures. In a way, the next general meeting of ILLA (UCLA Los Angeles in September of 2019) will go back to one specific such root in the US, to the place where Mellinkoff initiated a significant tradition of dealing with the linguistic basis of law, including the first monograph and textbook in the field (Mellinkoff 1994).

It was a hallmark of the Freiburg meeting that it responded in several ways to challenges of contemporaneous modernity, as highlighted by the very motto of the meeting. Significant work (and a plenary by Ruth Breeze) was represented from different countries on the way the new media represent new challenges to the law and the way new computational means provide new methodological access to the analysis of legal discourse. Represented on a major scale were also pragmatic issues – not an analytical dimension normally associated with language and law – in the wider sense, ranging from the analysis of spoken genres to interpretive and rhetorical issues. Classic issues formed the mainstay of the conference, like how to commit a crime through the use of language and how they are reflected in lexis.

Naturally, in the modern world, where cultures need to communicate more than ever, multilingualism in the law and ways to deal with it in translation received broad attention, with language regimes and translation issues in the European Union, also represented by a plenary talk by Ninon Colneric (a former judge at the Court of Justice of the European Community), linking the special demands to the specific nature, at the center of discussions in the meeting.

However, this very topic, multilingualism in the law and its challenges, suggests, in its ubiquity and its globality, two potential directions of future development for ILLA and, in particular, the ILLA meeting. The focus on multilingualism, while preserving European issues, should be extended to cover Asian languages, with the corollary that a stronger participation from and orientation towards Asia would be welcomed in view of the claim of the society to broaden its theoretical purview. The issues arising in translation involving culturally very distant languages are qualitatively different from the legal-cultural and the translational equivalence point of view from the ones traditionally dealt with with respect to Europe. An extension of purview of issues of multiculturalism also extends to and necessarily includes a broadening of perspective on a dimension of law that has a major impact on linguistic issues, the legal systems, their difference in terms of legal cultures, legal concepts, and the status of law with respect to other societal bases like politics and religion. There are drastic differences with respect to how this is reflected in linguistic issues and to the appeal to difference linguistic approaches (common law is congenial to the descriptive categories of discourse analysis, Roman law more to "interpretation" of written language and subsumption). To name just one issue, notions of "literalness",

basically a linguistic issue at the core of both legal interpretation and of interpretation in the sense of translation, are very different in different legal cultures, and in legal translation with a vengeance. A society and a main conference with a theoretical claim to theoretical generality will have to address this issue at the center of its adjudicational activities.

The relevance of differences between legal cultures and their consequences for the role of linguistics and the types of analysis appropriate for its description even extends to the more applied branch of language in the law field, forensic linguistics. This point becomes very clear in discussions of how oral genres at court, such as cross exams, an important element in common law systems, can be instrumentalised for social purposes (e. g. Eades 2012). Even the role of the forensic linguist is very different in Common and in Roman law (Fobbe 2017), with obvious consequences for the professional status, the role and the training of forensic linguists as applied linguistics.

The focus of ILLA, to represent law and language issues from a more abstract, more theoretical and more global perspective, would thus lead to an extension of the purview of the society and its main conference meetings to include more of a globally "contrastive" view of all ramifications of the mutually dependent relationships between types of law and types of language, ranging from ideologies to applied issues and their essential coherence. This is also the reason why an applied discipline like forensic linguistics cannot be relegated to some lowly "practical corner" unconnected to larger theoretical issues. The policy, supported by the larger number of colleagues who are part of both worlds and who attend both the main and the focus conference, is to keep forensic linguistics in close intellectual and spatial proximity to the main conference.

There were two more perspectives on language and law adumbrated by two plenaries that define directions for deeper exploration. One was the talk by Alexander Lorz who, as a law professor at Düsseldorf, had a key role in enabling the 2016 meeting in Düsseldorf, including gathering essential financial support from the law community and who has continued his support in his political offices as a member of the government of the state of Hessia. His perspective was how law, as a "textualised" physical, written language fact, comes into being in a complicated process of political negotiation on the political floor. His talk provided an intriguing view of the complexity of any notion of "intention", and whose intentions, of laws. Essentially, however, his talk opened up the perspective to a wider view on the political dimension of politics and the law, packaged in and accessible through language, that includes not only the political side of law drafting, but, in extrapolation, generally also to the political side of law, and to the legal side of political free speech as further perspectives the society should turn to.

Finally, in the same broader and political vein as Lorz, Olsen also, in a wide-ranging talk with a historical and developmental perspective, offered a vista on the wider political, social and literary embedding of "making" law. It is this wider perspective

on law as the backdrop of creating law and of the role of law and access to it through language in political and societal processes that will be the theme of the next ILLA conference.

Thus, while the classic themes and permanent everyday concerns, from multilingualism and its consequences in the legal process to "legal interpretation" in the widest sense, the definition linguistic crime and the forensic approach to crime, including the practical concerns will continue to be at the center of ILLA, especially the choice of plenaries at the Freiburg conference accentuated issues that are to be moved into the ambit of ILLA, without displacing the more traditional concerns. It is also envisaged that this direction and enlargement of ambit will further broaden interest in ILLA and widen the geographical and cultural "catchment area" of attendees of future meetings.

Literature

Eades, Diane (2012): The Social consequences of language ideologies in courtroom cross-examination. In: *Language in Society* 41, pp. 471–497.

Fobbe, Eilikka (2017): Forensische Linguistik. In: Ekkehard Felder / Friedemann Vogel (Eds.): Handbuch Sprache und Recht. Berlin: de Gruyter, pp. 271–290.

Mellinkoff, David (1994 [1963]): The language of the law. Toronto: Little, Brown & Co.

Report from the first ILLA Junior Researcher Panel at the ILLA Relaunch Conference in September 2017

By *Yinchun Bai*, Freiburg, *Isabelle Gauer*, Freiburg, *Jana Werner*, Berlin

From September 7th to 9th, 2017 the International Language and Law Association (ILLA) held an international conference, hosted by Prof. Dr. Friedemann Vogel in Freiburg, Germany. It was an exciting event uniting over 100 scholars from linguistics, law, social and cultural sciences, marking the starting point to relaunch ILLA as a sustainable and up-to-date organization. When ILLA was founded in 2007, it was an initiative by legal linguists Peter Tiersma, Lawrence Solan and Dieter Stein to create a network of linguists and lawyers around the world working on the matrix of language and law. Over the years, hundreds of people joined the organization, as it became an important voice in the field of language and law through the newsletters that Peter Tiersma distributed until shortly before his passing in 2014. Its present presidents are Prof. Dr. Frances Olsen (UCLA, USA) and Prof. Dr. Friedemann Vogel (Freiburg, Germany). Members of the steering committee include Prof. Dr. Anne-Lise Kjær (Copenhagen, Denmark), Prof. Dr. Ralf Poscher (Freiburg, Germany), Prof. Dr. Lawrence Solan (New York, USA), and Prof. Dr. Dieter Stein (Düsseldorf, Germany).

The ILLA 2017 relaunch conference focused on the overall topic of "Language and Law in a World of Media, Globalisation and Social Conflicts". 34 panel presentations, 5 keynotes, and 2 workshops were held during the conference. One of the workshops was dedicated to junior researchers in the field of legal linguistics, organized and chaired by Yinchun Bai (Freiburg, Germany), Isabelle Gauer (Freiburg, Germany), and Jana Werner (Berlin, Germany), which took place on September 8th, 2017 in addition to the main conference program. Participants in this panel were Master's students, PhD candidates, and post-doctoral researchers at different stages of their research projects. The aim of the panel was to provide a platform for junior researchers to be informed about the development in the working field, to exchange project ideas and methodologies, and to work towards the establishment of a junior researcher network within ILLA.

There were eleven speakers in the panel, representing different countries and diverse academic cultures, ranging from China through Kenya and to different European countries. The panel contributions were in the form of "Lightning Talks" – 5-minute presentations of the individual research projects in terms of their topic,

methodology, and hypotheses/results. The research projects reflected a wide range of research interests and are hereby documented:

Sofiya Kartalova (Tübingen, Germany) – *The strategic value of ambiguity for the authority of EU law in the dialogue between the European Court of Justice and the national courts:* With the appliance of empirical methods the study aims to identify if ambiguity facilitates the perpetuation of the authority of EU law by enabling the transition towards a vertical and multilateral relationship between the ECJ and the national courts, or by enhancing the coherence of the system either through promoting mutual understanding between the parties or through effective constitutional conflict management.

Alina Busila (Chişinău, Moldova; Brno, Czech Republic) – *English – as the worst language choice for legal communication in the EU:* The study points out the problems of using English as the parent language for legal terminology in the EU legal communication against the backdrop of globalization. As there is an incongruity in the legal law systems between the common law which is common in native English countries and civil law which is common in the most continental European states, a body of shared terminology in English was created. Even though they may be acceptable for legal specialists, they are not for terminologists and translators who strive for precision and accuracy.

Irene Otero Fernández (Florence, Italy) – *Multilingualism and the meaning of EU law:* The project analyses the two moments where meaning is authoritatively injected into the law: law-making and judicial interpretation. Part of the work will rely on empirical methods, namely through fieldwork and interviews at the EU legislative institutions. The theoretical framework is interdisciplinary, combining EU institutional law, translation theory, philosophy of language, linguistics, and legal theory.

Milan Potočár (Bratislava, Slovakia) – *The automatized evaluation of the legal translation between smaller languages:* This project deals with the evaluation and feature-identification of legal translation between Dutch and Slovak. It is part of the major project TransIus – From conventions to norms in the legal discourse, a cooperation between the Matej Bel University in Banská Bystrica and Comenius University in Bratislava, which aims to create a coherent theory of legal translation and to eliminate the terminological disunity of legal language.

Daniel Benrath (Freiburg, Germany) – *Using legal analysis as a tool for linguistic research in illocutionary acts:* Examining the legal attribution of certain ambiguous declarations in German contractual law, the study reveals different mechanisms on the illocutionary level in favor of the recipients of the ambiguous declarations, and thus adds to the understanding of language use and other forms of social interactions contained by social rules.

Jie Yang (Beijing, China) – *On the Accuracy of the Courtroom Interpreting in China:* The study points to existing problems in courtroom interpretation in the present-day Chinese legal system. Through a survey study, it attributes the problems to three reasons: lack of competent court interpreters, inadequate payment to court interpreters, and general insufficient knowledge of foreign legal systems.

Shaoqing Li (Beijing, China) – *On Pragmatic Enrichment of Legal Translation:* The study points out that legal translation requires the translators to have not only knowledge in the source and target languages, but also in the corresponding legal systems. Therefore, pragmatic and contextual enrichment based on the translators' legal expertise and other encyclopedic knowledge can help to deal with uncertainties and ambiguities in legal translation.

Ruta Liepina (Florence, Italy) – *Language of Causation – a case study:* Using the example of a US vaccine case (Althen), the study examines the use of a set of commonly accepted expressions to identify various ways the language of causation is expressed by various participants in the legal setting. It aims to find out whether or not there is a distinct use of causal language in law in terms of its meaning and function.

Linda Pfister (Uppsala, Sweden) – *Identity Proof in Final Asylum Decisions: It matters who Children are 'written' to be:* The project studies how the "best interests of the refugee child" have been justified linguistically in the precedents of Swedish Migration Court during the past ten years. From a systemic-functional grammar perspective, it attempts to find out which meanings are constructed and which interests are verbalized in different cases, by different natures of text, and if there are differences to be observed over time.

Gatitu Kiguru (Nairobi, Kenya) – *"Hearing" persons with communication disabilities in courts:* The project seeks to investigate ways of availing cost effective augmented and alternative communication (AAC) strategies for persons whose ability to use language in court is incapacitated. It will review the existing AAC strategies and customize as well as popularize them to judicial officers and potential users in Kenya.

Christina Blanco Garcia (Santiago de Compostela, Spain) – *Annotating the Corpus of Historical English Law Reports 1535 – 1999:* The project describes the annotation work involved in the CHELAR project – the Corpus of English Law Reports 1535 – 1999, which is compiled at the Research Unit for Variation, Linguistic Change and Grammaticalization based at the University of Santiago de Compostela. It is a new useful resource for linguists as well as interested lawyers working on legal English, from both a synchronic and a diachronic perspective.

After the lightning talks, the participants were asked to vote anonymously for the most convincing project. The results were very close, but Linda Pfister, with the high social and political significance of her project and the passionate way of presenting it, convinced the majority of the panelists. Gatitu Kiguru was a close second with only one vote less than Linda Pfister. Therefore, the price went to Linda Pfister, which was a signed author's copy of "The Pragmatic Turn in Law" from the conference organizer Prof. Dr. Friedemann Vogel.

The participants were also asked to prepare mini posters in relation to their lightning talks, which were displayed near the coffee break and evening buffet area throughout the conference days. This offered the opportunity to initiate discussions with other conference participants.

The last segment in the PhD panel was to discuss how the members would like to work together and/or keep in touch in the future. Besides the official ILLA-Newsletter, a mailing list could help to keep each other informed about news, upcoming events and opportunities for collaborations in the working field of language and law. Since all the participants are affiliated with different home institutions and working communities, they might have access to information of interest for the other members of the network. Therefore the mailing list aims to make it possible and even easier to share them. To broaden the network, establish new contacts and trigger faster discussions, the use of different social media platforms such as a dedicated Facebook group was suggested. There will also be a centralized information page

about the PhD network on the ILLA website and an online gallery of the mini-posters displayed during the conference. In general, it was agreed that meetings should happen on a regular basis either in connection with other ILLA events or based at the home institutions of the participants.

To sum up, the PhD panel was a great success. All participants were highly motivated and engaging in both the conceptual and the organizational parts of the discussion. The atmosphere was professional yet friendly, supporting and constructive. More importantly, it established the first structured international network of junior researchers in the field of legal linguistics.

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