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An Eye-tracking Investigation of the  
Effect of Writing Advice on Reading**  
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Legal Translation: A Study of Explicitation  
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Giannoni, Davide Simone/Frade, Celina (2010): *Researching Language and the Law: Textual Features and Translation Issues*. Frankfurt a. M. u. a.: Lang. (Linguistic Insights: Studies in Language and Communication). ISBN: 978-3-0343-0443-6, 278 Seiten.

The book contains 13 papers that were presented at the 2009 CERLIS Conference in Bergamo, divided into two parts, one with 6 chapters focusing on textual features of legal discourse, and the other with 7 chapters addressing issues in legal translation and interpreting.

### **Part 1: Textual Features**

Estrella Montolío Durán discusses the importance of using conditional clauses to fulfill the communicative function of legal discourse, and provides examples drawn from Babylonian and present-day Spanish legislation. The value of the chapter lies in the detailed analysis of the clause order and discourse function of conditional structures in a historical perspective which compares the temporal extremes in the legal writing of statutory texts, i. e. the first recorded legal system in the world (Hammurabi's Code of Laws) and contemporary legislation (the Spanish laws passed in 2008). The study, though, does not provide any diachronic analysis, as the editors wrongly assume in the introduction; in fact, no evidence whatsoever is provided as to the recurrent use of conditional logical connectors in statutory texts between the mentioned temporal extremes.

In spite of the erudite reference to the Babylonian legal codes, the methodological approach of the research is rather weak for a number of reasons (inconsistency, incoherence, hyper-generalization, etc.). For instance, the first research question ("Why do conditional constructions recur with such frequency in the writing of legal texts?") would call for an intralinguistic comparison between legal texts and other text types – which is totally missing in the study – in order to verify the assumed higher frequency of conditional clauses in legal texts. The question remains unanswered. Furthermore, the assumption on which it rests can be easily falsified by quickly checking the occurrence of "if-clauses", for instance, in a technical text: a random check on a technical manual of 6,013 words came up with 15 of them, i. e. relatively much more than the 22 occurrences in Law 1/2008, which consists of 13,693 words (p. 21). Equally inconsistent is the comparison with the causal sentences within the same law, which returned 4 occurrences of causal structures. Again, if compared to the 0 occurrences in the technical manual above, it would not make a much more striking contrast.



The author introduces her study by saying that she used what she calls “a double corpus” – i. e. a parallel corpus<sup>1</sup> consisting of the English and Spanish versions of Hammurabi’s Code of Laws, consisting of 282 clauses (each introduced by “if”) amounting to 9,506 words in King’s English translation<sup>2</sup> (without prologue and epilogue) – to exemplify Babylonian legislation, and the body of laws passed in Spain in 2008 (amounting to 150,000 words) to exemplify contemporary legal texts. For no apparent reason, the author decided to “randomly” select (p. 21) only one of the Spanish laws (i. e. Law 1/2008 consisting of 13,693 words) to conduct her analysis, but further in the study she contradicts herself as she provides examples drawn from Laws 2, 3 and 4 as well. The author also assumes that by just comparing conditional and causal structures in Law 1/2008 (13,693 words) she would prove “the structural importance of conditional sentence [...] in the writing of any law” (p. 22)!

Apparently, the author tries to incorporate corpus linguistics into discourse/text analysis with little or no cognition of the issues involved (representativeness, size, etc.). The chapter would have gained in value without such inconsistencies.

The fallacious research methodology proposed in Durán’s chapter is counterbalanced by Susan Kermas’s sound investigation of the influence of French on English legal language in Europe, and the consequently increasing distance between British and American legal nomenclature. The former research hypothesis is corroborated by lexicographical examination of the English and French versions of the documents in the EUR-Lex archive, followed by an investigation of British and French legislation (retrieved from governmental web sites) aimed at determining any semantic deviations due to the culture/system-bound nature of legal terminology. The latter research hypothesis is studied by checking the presence of terms found in EU legislation in separate corpora of British and American news (and in broadly searched French websites) in order to spot any divergences between technical legal discourse and general usage.

Kermas notes three main trends emerging in European legal discourse as a consequence of the Europeanization of law: a new wave of French loan words (e. g. *juriconsult*, *stagiaire*, and *domiciliataire*); nomenclature previously used being replaced by mixed Anglo-French forms (e. g. *appellation of origin*, *domestic burglary*, and *volume crime*); and the semantic extension of English cognate words to host previously unknown French meanings (e. g. *dispose of*, *competent*, and *sanction*).

Kermas’s research confirms that European legal drafters and revisers have contributed to creating a new variety of legalese, strongly influenced by the dominant role of French – which is causing a rift between British and American legal nomenclature – and that this new variety, although attested by corpus analysis, has not yet – unsurprisingly<sup>3</sup> though – been perceived by lexicographers as a European standard.

<sup>1</sup> “A parallel corpus, sometimes also called a translation corpus, is a corpus of original texts in one language and their translations into another (or several other languages). Reciprocal parallel corpora are corpora containing original texts and translated texts in all languages involved. Sometimes parallel corpora contain only translations of the same texts in different languages, but not the text in the original language.” (W. Teubert & A. Čermáková, 2004: 122).

<sup>2</sup> Hammurabi’s Code of Laws, King’s English translation: <http://eawc.evansville.edu/anthology/hammura-bi.htm>.

<sup>3</sup> As Sager puts it (1990: 115), “Standardisation is a retrospective activity which follows naming after an indeterminate length of time”.



Stanislaw Goźdz-Roszkowski's study revolves around the concept of keyword as understood in present-day corpus linguistics, i. e. as a "statistically significant word form" (p. 71)<sup>4</sup>. The aim of the chapter (identifying salient keywords in legal journal articles both quantitatively and qualitatively in order to characterize the genre) is pursued through careful investigation of a 600.000-word corpus of journal articles randomly selected from different US law school online resources. What makes this contribution stand out from other studies based on the analysis of keywords is the author's decision to part from the usual comparison of a specialized corpus against a general-purpose corpus such as the BNC or COCA, and compare the journal article wordlist against a larger reference wordlist generated from six other legal genres (bills, opinions, contracts, briefs, professional articles, textbooks) collected in a 5-million-word corpus in the hope of isolating the most characteristic, genre-specific words. As a result, the author identifies five distinctive categories: citation keywords (*Id.*, *supra*, *note*, and *see*), self-mention keywords (*we*), legal terms as keywords (*discovery*, *governor*, *harm*, *penalty*, *prosecutors*, *sentencing*, *sovereignty*, and *treaty*), legal reasoning keywords (*beliefs*, *estimates*, *model*, *probability*, *problems*, *results*, *responsibility*, *theory*), and general-language keywords (pertaining to the spheres of health care, education, welfare, family, crime, and ethics). Based on the top 100 positive keywords listed in the table on pages 86–87 and on the author's attempt at lexically characterizing the genre of legal academic journals, it is arguable that we can consider the identified categories as "unique" (p. 84) to the genre, with the only exception of citation keywords, ranked among the first five keywords in order of keyness (a result that would also very likely hold when comparing the legal journal article wordlist with a general-reference corpus wordlist). The high frequency of non-salient (unless proven differently) keywords such as *these* (ranked 10), *are* (ranked 12) or *even at* (ranked 50) casts a huge doubt on the methodological opportunity of comparing wordlists within the same specialized domain. It seems as if the author has obtained the same homogeneous findings he had feared he would have come to, had he compared his specialized corpus against a general reference corpus (p. 73). A wealth of studies testifies to the contrary.

Vanda Polese's and Stefania D'Avanzo's study focuses on five EU directives on immigration and asylum to investigate vagueness in their structure and underlying ideology. The methodology applied relies on former studies on vagueness in normative texts and, more generally, on discourse analysis. The authors point out a change in the EU's attitude, from an inclusive approach to the recognition of migrant's civil rights towards a more exclusive stance vis-à-vis refugees and displaced persons, as a result of the delegation of power to member states through forms of lexical and legal vagueness. The argument is sustained by thorough<sup>5</sup> analysis of cases of strong vagueness (where adjectives seem to be the main lexical resource encoding it) and weak vagueness (mainly expressed through prepositional and adverbial phrases that determine time).

<sup>4</sup> Mike Scott's idea of a keyword is rather different, though: "The key words are words which occur unusually frequently in comparison with some kind of reference corpus." (Scott: 2010, 35) and "The reference corpus word list is assumed to be a big one, which will help WordSmith work out what is unusual about the words in your chosen text(s)." (Scott: 2010, 36) [http://www.lexically.org/wordsmith/step\\_by\\_step\\_guide\\_English.pdf](http://www.lexically.org/wordsmith/step_by_step_guide_English.pdf).

<sup>5</sup> Some criticism, though, could be raised when the "vague" label is also applied to those cases in which *as soon as possible* is followed by a time clause based on the structure *after + N + VP/PP*, e. g. *As soon as possible after the granting of refugee or subsidiary protection status* (p. 103), since the time clause still refers to a specific deadline, even if implied, e. g. *ninety days*, as in the more explicit example 21 (p. 104).



Ross Charnock's contribution aims at proving that, contrary to the general assumption that legal texts are lexically and syntactically complex, most of the current English judgments, as transcriptions of the judges' "speeches" (p. 115), retain many of the essential features of oral discourse, while older judgments are more likely to display the features of written language as a consequence of the use of Latin and "macaronic" (p. 116) Legal French which confirms that judgments were drafted in advance before being read in court. In order to support the formulated counter-assumption, the author refers to 36 cases from English Reports 1220–1865 and The Law Reports (1865–present). After analyzing some of the rhetorical and semantic features of common law judgments as written discourse (cohesion, abbreviations and subtitles) and as oral discourse (conversational connectives and interjections, deixis, performative effects, dialogues and storytelling), the author concludes that the language of English judges is "neither syntactically complex nor particularly obscure" (p. 132) considering that judges themselves complain when legal texts make judicial interpretation difficult. A final word is reserved to the importance of cross-disciplinary cooperation especially when judicial analysis touches aspects of legal theory, as "acknowledgement of the problems common to the different disciplines may then lead to reciprocal illumination" (p. 132).

Judith Turnbull conducts a cross-cultural, comparative analysis of the Opinions of British and Italian Advocates General with the intent to assess the degree of harmonization (as defined by Boodman, 1991) of EU across EU member states. The author justifies the choice of AG Opinions in consideration of the influential (though not binding) role they play in the Court's decisions and judgments. Turnbull analyzes a corpus of 40 randomly chosen Opinions of British and Italian AGs (20 each, for a total of 310,162 words), appropriately tagged with TalTac2 and concorded with ConcApp, referring to cases dating from 1998 to 2008. Given the predictable, different nature of judgments (more impersonal, bureaucratic in the Italian legal system; more personal and explicit in the British common law system), the author decided to focus on those features of the language that most expose the judge's attitude and stance, i. e. explicitly personal expressions, which predictably confirm British AGs' greater freedom of expression than the rather "formulaic" language used by Italian AGs, and expressions of politeness in agreements and disagreements, in which neutral, non-polite (Lakoff, 1989) expressions are used by both British and Italian AGs.

However, it is unlikely that the few examples provided (56 altogether for both languages and for both linguistic features investigated) would allow generalization about any degree of adaptation reflecting the process of harmonization in European law, as they could rather be interpreted as "idiolectal usage and personal preferences of expression" (p. 138). A diachronic, intra-genre, intra-linguistic, comparative analysis would better serve the purpose.

## Part 2: Issues in Translation and Interpreting

Patrick Leroyer and Kirsten Wølch Rasmussen set out to challenge the claim that printed dictionaries (or analogous e-resources) are of little or no use at sentence and text level by restoring them as functional tools to be employed by users in two different situations: 1) translating L2>L1 legal texts, and 2) learning about strategies and tactics for L2>L1 legal translations (situations which are reminiscent of the dichotomy between performance and competence). The case study presented revolves around the translation problems encountered in connection with the prepositional phrase *sans préjudice de* while translating a French legal text (T2) into Danish (T1) with the use of French-Danish legal dictionaries and IATE/EUR-Lex term bases. The evidence provided to solve the problems discussed in the study comes from a pa-



ducted among legal translators in the UK (30 Spanish>English and 12 English>Spanish), could be considered of little significance; however, it still has some value, at least in a diachronic perspective, since it testifies to the working conditions prior to September 2011, when the British Ministry of Justice (MoJ) unpredictably decided to grant the monopoly of all interpreting services to one contractor (Applied Language Solutions, now Capita Translation and Interpreting), which proved not to be up to the task (and standards), considering the avalanche of complaints, protests and investigations under which the MoJ has been buried since.<sup>6</sup> The consequences of such an unreasonable decision have been disastrous for the whole category of legal translators and interpreters in the UK, and would require an updated report. Vigier's study would therefore serve as a useful point of comparison in the past.

Rocco C. Loiacono crosses the European borders with his investigation of eleven bilateral agreements signed by Australian and Italian governments between 1963 and 1996 in order to point out the principles and strategies adopted in their translation. These understandably seem to depart from the functional approach applied in the drafting of legislation in Canada where the comprehensibility of the target text for the general public is a primary concern, and to have rather opted for legal equivalence as an objective to be achieved in consideration of the text type at issue, i. e. "agreements drafted solely to be accessible to expert readers" (p. 260).

Legal equivalence is also at the core of Cornelis J. W. Baaij's investigation of EU legislative texts. The author argues that, due to the supranational nature of EU legislation, it is unlikely that the approach adopted in translating it will be different from a source-oriented approach.

### Evaluation

In their volume on the language of the law, the editors Giannone and Frade fruitfully applied the metaphor of globalization to account for the emerging changes that have recently destabilized well-established norms and routines in the practice of legal discourse.

In spite of the few flaws commented on above, the volume perfectly fits with other literature on the topic (Bhatia et al. 2003; Gotti 2009; Šarčević 2009) and is certainly a good read for all specialists concerned in the investigation of legal globalization and the use of legal English in supranational legislation. I believe that there is still considerable room for research in this area, particularly if discourse analytical and corpus-based approaches are adopted synergistically.

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<sup>6</sup> Watch this question time for more details on the ALS/Capita case: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=11582>.

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