LEGAL TEXTS: A GENRE STUDY

By Alexandra Anca Codreanu

Abstract

The present analysis of major legal communicative events intends to contribute to their validation as genres while providing discrimination criteria of sub-genres from genres.

Our claim is that language use in a professional framework is better highlighted by the category of genre than by the concept of specialised language in view of the fact that the text as a linguistic product is influenced by exterior factors, which contribute to its organisation in cognitive structures.

The importance of the study resides mainly in the fact that it offers a theoretical grounding for attaining a higher level of efficiency in teaching/training students to operate well in the fields of law and business through the medium of English. Also interpreters and translators of legal texts could benefit from the genre analysis provided by the study to achieve a more accurate meaning of laws and contracts in another language.

The study identifies the social aim of the analysed texts and the role it plays in structuring the respective social communication events. This involves establishing the goal of the participants, the common public goals, communication mechanisms and discourse expectations shared by the professional community hosting the communicative events under analysis, highlighting the options and constraints imposed by the socio-cultural conventions.

A number of stylistic features are identified like the presence of the value aspect, descriptive and prescriptive parts placed in *if – then* causal relationship, hypothetical situations, decontextualisation, all-inclussiveness, precision and accuracy, sentence length, scarce cohesion devices, use of present and past tenses, words of authority, deixis, use of semantic principles.

Legal provisions and contracts are confirmed as social endeavours, members of networks of texts, found in predominant Causal: Reason - Consequence, Purpose related and Conditional semantic relations or of the higher level of problem solution type. The grammatical relations and moods as well as embedded values are highlighted.

Chapter One provides an introduction to the study, placing the present genre analysis into context, stating the theme and aim, the hypothesis and the research questions answered by the study. It sets the overall background, points out the specificity of the legal domain as reflected

in its texts. Also, after the conceptual and methodological framework, the structure of the study is given along with the methodology.

A reflection on how research and breakthroughs in science occur, and on the instruments and systems needed in carrying out the work, exemplified with Copernicus' discovery serves as a general frame of the research in discourse and genre analysis as a field of research and discovery, with an emphasis on the constructed character of the devices and tools employed. The field of law is mentioned, along with the social conventions it is based on, which confers the specific character of the truth it is in pursuit of (by virtue of those conventions).

Speaking of the specificity of the legal domain as reflected in its texts, the importance of "capturing meaning in the right words" is stated and justified by reasons related to the use of the texts in the legal practice and also in training future judiciary officers and in interpreting or translating such texts.

The concepts of register as used by Halliday and of genre in Swales, Bahtia and Kress' approaches are briefly described as forming the conceptual and methodological framework of the study.

Finally, the methodology section includes a review of the problems that were considered when tackling the subject, an overview of the approach used in conducting the research, a description of how the necessary data were collected as well as the analytical procedure used to draw conclusions based on this information.

Among the problems or questions mentioned are identifying the social aim the texts observed are supposed to fulfil and the role this identified aim plays in structuring the respective social communication events. The common public goals, communication mechanisms and discourse expectations as to the types of texts shared within the professional community hosting the communicative events under analysis are mentioned as features that determine genre identification.

The approach used in conducting the research is described as a combination of those of Bhatia, Fairclough, Heuboeck and Mureşan, in that there are macro and micro levels of analysis, coherence among categories of units of analysis is sought, the context is widened to the extralinguistc, social events the communicative events are part of, and consideration is given to the linguistic as well as sociologic and psychological aspects that are manifest in the texts.

The data collection section provides a description of the corpus and justification of the selection of items within the economy of the study.

The analytical procedure to draw conclusions mentions closeness to Strauss' grounded theory method. It marks researching and developing a hypothesis as the start, followed by data collection through a variety of methods and identification of features from empirical observations and concluding that the features put together constituted a genre. Feature presence or absence in the texts enable establishing the identity of the respective genre.

Chapter Two carries a literature review. It shows how genre has been understood and used in various fields of linguistics such as Genre Analysis, Discourse Analysis, Rhetoric, Critical Discourse Analysis, Stylistics, Pragmatics, Speech Act theory, Semantics. Genre is looked at from rhetorical, critical discourse analysis and pedagogical ESP teaching perspectives.

The author mentions the semiotic perspective justified by the importance of meaning, present in laws and contracts by a process of signification, a key issue in laws and contracts, a concern and a matter of contention of both their writers and readers.

In the field of semantics, Kinneavy's theories of meaning and of reference are discussed, followed by Coşeriu's concept of structural semantics, Wiersbicka's culture specific words and Gary B Palmer's cultural theory of linguistic meaning and polythropes.

Because of the need to establish what is meant in the texts and how it is meant, i.e. in what way the world is changed or shaped by their existence and operation (enforcement) the study appeals to pragmatics, and the names mentioned are Paul Grice with his Cooperative Principle and Conversational Maxims, Brown and Levinson and their Politeness Theory, Geoffrey Leech and his Politeness Maxims, Levinson with Presumptive Meanings, Jürgen Habermas speaking of a universal pragmatics, Dan Sperber and Deirdre Wilson – authors of the Relevance Theory.

Speech Acts follow with a look at Austin, for performative utterances and illocutionary acts, Searles for indirect speech acts, as well as Cornilescu and Chiţoran and their analysis of sentence meaning.

Style is represented by Kinneavy with a description of the expressive discourse style, Coteanu – a scholar of the functional style, and Crystal and Davy, who give a description of the English legal style.

In the Register analysis section M. A. K. Halliday is mentioned, with the concepts of **field, tenor** and **mode,** and the limitation of the method to a surface-level linguistic description.

Among the Discourse Analysis scholars mentioned are Kinneavy, Shiffrin - with a comparison of six approaches of the domain, Beaugrande and Dressler and the seven standards of textuality, Van Dijk and Kintsch for a text linguistics model, Brown and Yule with given/new status of information introduced in discourse, Guy Cook and his schema theory.

Genre Analysis includes the names of Swales with a focus on genre theory in ESP, Miller supporting genre as reflecting rhetorical practice and representing action, Bhatia considering genre "thick description of language in use", Baktin with his *chronotopes*, and cultural linguistics issue of how time and space are perceived in Russian, Skelton - proponent of moves as building blocks of a unit, Mureşan, a researcher of genres of the economic discourse.

Cognitive linguistics quoted representatives are Lakoff and Johnson and their idea of **embodied mind** and metaphors in a person's conceptual system, Sperber and the conceptual interpretation of utterances.

In Rhetoric, Aristotle is present with his communication triangle: topic, writer or speaker, audience, Perelman with the argumentation in legal discourse, Kinneavy with the four aims: reference, persuasive, literary, and expressive an *kairos,* related to the situational context and the communication triangle and Burke with a grid of intelligibility that attributes meaning to the world.

The Critical Discourse Analysis section mentions Fairclough and his three-dimensional framework: text, discourse practice and socio-cultural practice and Bourdieu for his interest in the value and power of discourse, language substitutes acceptability for grammaticality and "symbolic capital".

The chapter includes literature from the field of application i.e. law, with Hart for his description of the legal system as a complex of primary and secondary rules and a mention of the cultural study of law by Rosemary Coombe, on understanding legal representation.

Chapter Three displays a theoretical framework of *topoi,* as used in classical rhetoric, in argumentation as part of a rhetoric of communication, as a method of proof to secure adherence, followed by *topoi* categories, *topoi* in pragmatics and CDA. Then there is a focus on law, specifically legal reasoning, and characteristics of legal *topoi* are identified. The final part of the chapter is an application that deals with *topoi* in specific legal genres: laws and contracts.

The chapter shows that *Topoi* are present in laws and contracts as organising factors, either expressed or implicit, capturing polyphonic and argumentative aspects: a law in force is the expression of the acceptance of the audience for whom it has been meant. It also points to the *topoi* scalar nature, which plays an important part in ensuring the "all-inclusiveness" of the law, allowing the actors in charge with enforcing the law to decide whether a certain feature of an act under scrutiny falls to a larger or smaller extent under the jurisdiction of the respective law.

The *topoi* discussion starts with rhetoric, as 'places' where arguments can be found in rhetoric. Then *topoi* are viewed as rules or procedures in van Eemeren's argumentation theory, also content-related warrants which can be expressed as conditional 'conclusion rules' as viewed by Riesigl and Wodak in CDA. Kreuzbauer's understanding of *topoi* as a "systematization of reasoning", places *topoi* in opposition to the "rationalist reasoning" of the French philosopher René Descartes. What in Kreuzbauer's opinion really shapes legal discourse are the pragmatic discourse rules, like *lege artis argumentation* or the ideas of class consciousness, reputation and rationality by procedure.

Another meaning of *topoi* mentioned, as semantic macrostructures, is given by Teun A. van Dijk, it representing what speakers find most important. In his view "topics operate as regulators of the overall coherence of discourse, they point to how discourse is planned and globally controlled and understood, and are best remembered by the recipients".

Ducrot and Anscombre's theoretical framework is given, in which *topoi* are gradual inference rules in many cases argumentation is based upon. These rules link gradual properties called topic fields.

When *topoi* are looked at as methods of proof to secure adherence, Perelman's contribution is mentioned, in having identified a "topical" mode of reasoning in the theory of legal reasoning in France. Emphasizing the importance of acceptance in the operation of a legal system, Perelman refers to *topoi* as certain theses whose acceptance by the audience can be assumed and from which the arguer can proceed to develop his line of reasoning.

Another section in the chapter deals with *topoi* categories, the classification by Kreuzbauer into abstract, professional and *topoi* of human life being presented in more detail.

Knowledge representation in a pragmatic framework is discussed in the ***Topoi* in Pragmatics** section. *Topoi* as "gradual inference rules" link gradual properties called topic fields and can underlie argumentation. Ducrot's concept of polyphony is also introduced.

In a Critical Discourse Analysis outlook, *topoi* are assimilated to arguments and several ways of putting them forward are mentioned, in a system of analysis including Actors, Actions and Argumentations as levels of analysis.

Narrowing down the focus, the next section looks at *Topoi* of Law, with a subsection on *topoi* in legal reasoning, Hart's rules being mentioned again as rules of recognition, rules of change, rules of adjudication. Open texture is discussed as a characteristic of law required so as to give the rules the flexibility to cope with cases that would fall out of the jurisdiction of a too "closed" texture provision.

Then legal *topoi* characteristics are dealt with: the implicit logic of the legal order, topical orderings, standard solutions, acceptability of solutions due to their following intersubjectively traceable paths within fields bounded by commonly accepted value judgments. Legal maxims, general clauses, concepts, institutions, doctrines, the rules of the legal art are presented as additional elements to the rules of law in precedents or statutes making up a legal system.

The final part of the chapter is an application of the *topoi* theory to the genres under analysis in the present study.

A sample of the British Law, the Education Reform Act 1988 is analysed, *topoi* like the purpose, situatedness, authority, scope of jurisdiction, object and its sub categorisation being discussed. Scalarity as understood by Ducrot and Ascombre is also identified.

The same analysis is carried out on a sample of the Romanian Law, *Legea educaţiei naţionale*.

The section dealing with *Topoi* in Contracts discusses *topoi* in a State Of Colorado Department Of Higher Education Performance Contract and in a *Contract de grant* (Grant Contract) between the Romanian Ministry of Education and a higher education provider.

Chapter Four represents the analysis of the corpus and has three main sections: the legal provision, the contract and related genres. The main genre characteristics, context, communicative purpose, professional community, as well as the language and the cognitive structure are discussed. Genres are viewed as distinct text types and also in the relationship with other genres belonging to the same institutional use of the language.

Laws as a genre are identified to belong within the legal discourse described by Moriss as designative – incitive.

The chapter discusses definitions of legal provisions in English and Romanian, distinguishing their communicative purpose. The relation of causality between the purpose and the style of the legal provisions is mentioned.

The legal provision context of use is then presented, mention being made of legal provisions operation within chains or networks of genres, with examples from court, everyday life and education.

The intertextuality feature of legal provisions is mentioned as well as their position as regards ideology.

The language of legal provisions is then discussed, starting with semantic relations between sentences and clauses, grammatical relations between clauses and types of statement.

The study describes how the social events served by legal provisions are represented, and what process types are manifest, followed by information about the social actors, modality and values and their realisation, with examples.

The cognitive structure of a legal provision is identified to contain a hypothesis, a prescription and a sanction, as mentioned by the Romanian definition.

Types of legislative provisions are discussed, first as identified by Bhatia/Gunnarson to be action, stipulation and definition rules and then as classified in a Romanian explanatory text as imperative or categorical on the one hand and permissive or dispozitive provisions.

The professional community is then mentioned with its various categories, each relating in a specific way to the genre under study.

Speech acts are identified in European and Romanian regulatory texts on Quality Assurance in Higher Education as Directives, requestives and indirect Illocutionary Acts: false constatives, assertives, really directives.

Deixis is also discussed, indexical expressions as pronouns, local and temporal adverbs, verbal tenses being found, expressing person deixis, place deixis, time deixis, social deixis and even discourse deixis, in the specific form of text deixis *hereby, thereby, whereto,* a.s.o.

Cultural issues are then mentioned.

The section on the language of legal provisions starts with a discussion of the value aspect of legal provisions according to Kinneavy's three dimensional nature of the *self that expresses.*

Semantic aspects are then analysed, referents and referends, the relationship between the descriptive and prescriptive parts of legal provisions (mostly *if-then*), the findings proving a different way of expressing it.

Grammatical features of the expressive discourse are then mentioned: syntactic (sentence length, complex prepositional phrases, use of binomial and multinomial expressions, qualifications and syntactic discontinuities), and morphematic.

An impersonal and decontextualised style is confirmed to exist, aimed at ensuring all-inclusiveness as well as precision and accuracy.

Cognitive aspects are mentioned and there is a discussion about the way coherence/cohesion is achieved.

The choice of words section highlights Words of Authority, mostly modal verbs expressing duties, rights, prohibitions and entitlements (*shall, shall not, must, will, may, must not, may not)* and tenses used in legal provisions mention being made of the special meaning of the present and past tenses and how they relate to the performativity thereof.

In point of cognitive structuring, the moves and *topoi* present in legal provisions are analysed.

Another important section of Chapter Four refers to the contract.

The communicative purpose and communicative context of contracts are established, followed by a discussion of definitions of contract in the Romanian, American and UK law systems.

Another section deals with contracts versus contract law, establishing the relationship between the two related genres. One way the two genres are compared is in their relation to time. Event and repeatability in Derrida's understanding are the features that distinguish contract present tense from contract law present tense meanings.

The contract as genre is then looked at, followed by a section on types of contracts, which discusses various ways of classifying contracts and provides examples of types of contracts in Romanian law.

A series of specific contracts are discussed separately: the "one-off" contracts, the renewable or "period" contracts, framework arrangements, partnership arrangements, and contracts in the academic field ("knowledge contracts").

The next section discusses the contract professional community, a point being made of the absence of the author, this according to Foucault depriving the text from the author function as an authoritative interpretive principle. The audience duplicates in the *audience addressed* – actual or intended readers and the *audience invoked* – created fiction of the writer, with consequences in the world the contract is meant for.

Speech acts are then analysed and then the language of contracts.

In point of cognitive structure, the issue of limitation of meaning is mentioned, i.e. the interest of the parties that the meaning of the agreement be identical for all stakeholders, at any moment during the validity of the contract, this resulting in the specific configuration, content and wording of contract clauses. Three contract sections: boiler plate, merger clause and severability clause**,** are discussed in an effort to demonstrate how such drafting conventions establish constructs attempting to stabilize meaning in contracts.

Moves and *topoi* in contracts are identified.

The section on related genres looks at the larger context of operation of contracts in the social practice, specifically at the way quality assurance in higher education is served by European regulations and their reflexion in Romanian administrative documents and practice.

The following are analysed: Romanian legal texts related to education law: *1) Lege privind asigurarea calitatii in educatie (proiect), 2) Regulament privind asigurarea calităţii serviciilor educaţionale... ,* an assessment report 3) *Comentarii, observaţii şi recomandări - proiectul de Lege privind asigurarea calităţii în educaţie* to see how their ideational, interpersonal and textual functions are achieved, having also regard to what can be called a legal text at European level, (4) Standards and Guidelines for Quality Assurance in the European Higher Education Area taken from the Report of the European Association for Quality Assurance in Higher Education (ENQA).

The context of operation is set with globalisation and the "knowledge-based economy" as factors of influence. Two directions of analysis are mentioned: Romanian authority yielding decision taking to the lesser actors, and Romanian authority stepping in, taking charge of matters beyond EU jurisdiction (based on the subsidiarity principle).

The text belonging to networks of social action genres and of text genres is noted. Similar communicative purposes are identified for three of the text types analysed: the law, the regulations and the guidelines, with differences pertaining to their contexts of use, while the

purpose of the fourth one, "assessment report" differs widely from the rest, in that unlike the first three, the object of the last one is a document on whose value it is supposed to decide.

The voices of the texts, according to Ducrot's polyphony theory, are discussed and their cognitive structures (moves and *topoi*), followed by considerations on the ensuing social change.

The results of the research are given in Chapter Five, along with a summary of the research, limitations and opportunities, perspectives and final remarks.

The results of the research include a section on the style of legal provisions and contracts, another one about legal provisions and a third one about contracts.

The conclusions of the style research mention the presence of the value aspect, of descriptive and prescriptive parts in legal provisions in a causal relationship, describing hypothetical situations. Legal discourse is categorised as argumentative. The style is impersonal and decontextualised so as to achieve all-inclusiveness. It shows precision and accuracy and the rather large sentence length, cohesion between sentences being rarely present. Presence of present and past tenses and of words of authority is signalled and the prevalence of text deixis. Also semantic principles expressed in Latin are mentioned.

The conclusions on legal provisions refer to their nature of social endeavour, their belonging to chains or networks of texts, the semantic and grammatical relations present, the predominant grammatical moods and embedded values.

Contracts in three different law systems are identified as belonging to one genre, while one difference between contracts and contract law refers to the meaning of the present tense used.

The criteria of contract classification are mentioned and the professional community using contracts is identified as well as the fact that the contract genre belongs to a chain of genres needed to fulfill the contract promise.

Contract language and meaning features are also mentioned.

The section on limitations and opportunities identifies coverage and the interdisciplinary approach as limitations, while opportunities are found in improved legal drafting and reaching the true meaning of the law by using the genre approach.

The study considers the relationship between texts and text users as a possible direction for further research, for instance the influence of context awareness on the way legal provision interpretation is materialized in the judges' decisions.

The study ends with the final remark that communication for social action will benefit more and more from the use of genre.

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