

## **SOME STEPS TOWARDS THE INVESTIGATION OF LEGAL DISCOURSE**

In the last few years there has been a number of changes in attitudes towards language and language learning. Some of the most significant of these changes have been brought about by sociolinguists trying to define what is meant by communicative competence. Chomsky's (1965) concept of 'linguistic competence', our tacit knowledge of formal structures, has been criticized as being too narrow, and it is now accepted that any theory of language must also take into account our knowledge of the social factors that condition our selection and use of these structures. Thus, Chomsky's notion has to be developed into a broader notion of 'communicative competence', which takes into account the relationship between language and the particular situation in which it is appropriate (*Campbell & Wales, 1970; Hymes, 1972*).

This change in emphasis, from the formal rules of the language to what it is that makes language appropriate in a given situation, has given rise to an interest in languages for special purposes (LSP), and in a closer examination of the precise objectives of the language learner. (*Wilkins, 1976; Van Ek, 1975*). This kind of approach takes the communicative factors of language into account from the beginning, without losing sight of grammatical and situational factors. The present state of thinking about language is taken into account, with the belief that more attention should be paid to the purpose for which the language is being studied. It means that the teaching content is matched to the requirements of the learners.

So, English for special purposes differs in terms of particular modes of language that are common in scientific, business and educational settings.

There are different approaches to ESP. The linguists such as Makckay and Mountford (*Responses to English for specific purposes, Peter Master, 1998, p.23*) recommend identifying homogeneous groups of language users characterizing their uses of language in particular circumstances. Widdowson (1981) warns, however, that instruction based on these modes of language must be process-oriented, not goal-oriented. His approach suggests the use of descriptions of specialized language "as evidence of ways of thinking that might indicate how language is to be presented so as to engage the appropriate cognitive styles" (*Widdowson 1981*)

Thus, the methods of teaching the language for special purposes must be based on the knowledge and the results obtained through discourse analysis, which tries to identify how language is used to create different types of communication.

"Discourse analysis is a very large subject; its principles embody a theory of meaning-making that is nearly co-extensive with a theory of human behavior and human culture" (*Brown & Yule 1983;*)

Discourse analysis describes and explains the properties of different discourse types. The term 'discourse' comprises spoken as well as written language use, and may even refer to other types of semiotic activity, such as visual images and non-verbal communication. When referring to text, discourse analysis is related to the discipline of 'text linguistics', which describes and explains the shared features and functions of texts\*.

Unlike traditional linguistics, text linguistics goes beyond the sentence boundary and considers the text a complete grammatical unit. It, thus, includes analysis of textual organization above the sentence, including the ways in which sentences are connected together and the organization of texts.

This is called "a macro level" of description. At this "macro level" a text exhibits several structures. Discourse analysis is involved in describing and explaining text structures and linguistic forms or phenomena that signal them.

It has become increasingly apparent that extended sequences of language are worthy of the attention, since discourse is more than just a random jumble of unconnected sentences.

In fact both spoken and written texts have structures and functions of their own which are entirely missed unless we look beyond the level of the sentence. And once we begin to explore the way language is organized as discourse, the focus necessarily shifts away from the treatment of language as an abstract object to a consideration of the way language is used as a socially situated phenomenon.

The contexts, therefore, for using written language are very different from those in which spoken language is used. The reader is, in most cases, removed in both time and space i.e. s/he reads the text at a different time from when it was written, and in a different place. As a result the language of the written text will have to make greater allowances for the reader in order to facilitate understanding.

Various functions of the written language will be reflected in the characteristics of the texts themselves, observable within the sentences at the level of grammar, and beyond the sentence at the level of text structure. This creates the idea of 'style', which will include such areas as choice of vocabulary, layout, etc.

The value of knowledge of discourse patterns has been demonstrated in text generation and drafting systems. Text generation is a broad term and can range from the selection of information to be communicated and text organization to the generation of linguistically well-formed expressions such as sentences and the lexical choice of the words employed. Text drafting focuses upon the selection of information and the organization of the text. The purpose of those tools usually lies in a better readability of the text in order to enhance its communicative value.

From an interpretative viewpoint, moreover, the conception of discourse employed in such models is narrow, focusing on what is said in discrete interactional episodes and on para-linguistic features in interactional settings (*Cicourel 1980*).

The aim of discourse analysis is to classify types of speech acts (the speech act model), to infer what is being intended by parties to the discourse and how the interaction is proceeding (the expansion

model) or identifying the goal-structure of the participants to the interaction (the problem-solving model) (*Cicourel 1980*).

Knowledge about discourse patterns is equally valuable when implementing other automated text processing tasks. When involved in tasks that require a partial understanding of texts, such as information extraction, this knowledge is very helpful. This is especially true in the field of legal English where we may concentrate on specific text types and their characterizing discourse patterns.

The goal set up in this article is to give general characteristics of the “written discourse” of the legal language (on the basis of two great documents-‘The Constitution of the United States of America’ and ‘Magna Carta’ (British Constitutional Document)). Hopefully, the observations made in this paper would probably add to the major findings in the field of Legal Discourse.

As it is known, the study of legal language is not new (*Danet, 1985; Gunnarsson, 1997*). It has been studied in terms of vocabulary, syntax and textual patterns as well as by analyzing the functions of legal texts. The ultimate aim of these studies has been to find more adequate writing strategies and to create a more standardized and comprehensible legal language (*Swedish Act of Parliament: see Gunnarsson, 1997*).

Some legal documents serve a variety of communicative goals, from stating general norms to resolving individual conflicts, proving commercial transactions or proving the last will of a person. It is important to make explicit the communicative goal and subgoals of the legal text.

Subsequently, it is interesting to study how these goals are realized and linguistically organized by using discourse patterns. Knowledge of these patterns helps to automatically identify information in legal texts or to organize text content in text generation systems.

In the legal field - where we are confronted with specific text types - knowledge about discourse patterns is very valuable to incorporate in information extraction systems and in text processing systems in general. However, intertextual analysis of texts that describes and explains the properties of text types and genres is still undeveloped in legal field.

Intellectual understanding of these texts not only deals with processing the linguistic coding involving complex lexical analysis, syntactic parsing and the application of semantic rules, it has also to consider the whole inferential context (world knowledge, domain knowledge, purpose of understanding the text, pragmatic context) of the comprehension process. If we aim at automatically extracting information from a legal text, an intuitive appeal is to automatically understand the natural language text and then extract the desired information.

However, these problems did not prevent the development of the number of successful systems that extract information from natural language texts. These applications rely upon the principle that certain information is expected to be found in the texts and this information can be identified by interpreting a limited number of linguistic phenomena.

Discourse analysis of legal texts contributes to an improved theoretical framework regarding structurally and semantically important components of the documents.

The study of legal discourse involves the study of separate text types based on a number of representative sample texts and then generalizing the findings. In this way discourse patterns that are specific for the type may be identified.

Confronted with coherent text, it is interesting to see which rhetorical patterns are used to attain a communicative goal, which typical relationships exist between paragraphs, sentences or clauses and which rules and constraints are used to combine the rhetorical aspects. It is also significant to study how the texts as a whole and their composing superstructural and rhetorical segments are likely to be used and interpreted.

Legal documents present themselves in rather conventional forms, allowing the distinguishment of several types. Some of these documents may be part of statute law (treaties, statutes, royal decrees, ministerial decrees, local decrees, etc.). Their function is to state the general rules that their content. Other documents are related to the judicial proceedings: police statements, warrants, official pleadings and court decisions. Each of them indicates a certain step of the procedure, and serves as an official proof thereof. Another kind of document is drawn up as a legal proof in the commercial field, i.e. deeds, contracts and articles of association. Moreover, a number of documents are used for administrative reasons (e.g. tax returns). Finally, there are documents of legal doctrine. These are made up for scientific or research purposes. The texts of these documents manifest themselves in written form, although spoken forms are often used to constitute legal validity (e.g. a witness oath).

Though written text is said to be decontextualized, because the information presented is not necessarily shared and the writer as well as the reader is to rely much more on specialized lexicon and syntax, there is an idea that 'natural' language used in legal text is highly valued, because of its expressive communication power.

It should be stated that the law's calling is to regulate social life, however awkwardly, and its language reflects that purpose. Law provides a rich language for thinking about different issues and is a tool for action as well as talk. But the language of the law, often inapt, regularly fails to achieve its desired effect. Law has centuries of experience with social regulation; it offers a highly articulated method and language for analyzing social problems.

The legal language abounds in productive principles and illuminating analogies. It provides familiar and powerful tools for analyzing many social problems. And to a notable extent, legal terms have been conducted in courts and legislatures. But alluring as the law's language is, it has drawbacks and limits that are not always perceived or understood. Like the attractions of that language, these drawbacks arise from law's role as a means of social regulation. More specifically, the law's language is shaped for a system with a particular aim--social regulation. That aim itself is a limited one--to shape and not to supplant social practices and institutions and the law is a blunt chisel even for that task.

The idioms of the law are often less apt than they might appear. They have arisen in response to needs for social regulation. For example, the law of torts is centrally a way of compensating victims of an injury.

It is common knowledge that words are the principal tools of lawyers and judges, whether we like it or not. This observation on the relationship of law and language is confirmed by other scholars who have noted that the law is “a profession of words” (*Mellinkoff, The language of the law*), and that “words in their proper order are the raw materials for the law.” (*Birkett, Law and literature*)

It is also stated, that legal language mainly possesses the following characteristic features:

1.Accuracy; 2.Brevity; 3.Clarity

In all legal writing the importance of accuracy cannot be overemphasized. Brevity and clarity of expression can be attained by the elimination of “clutter”. “Clutter”, according to Zinner, (*Zinner, “On Writing Well”*) is the conglomeration of “unnecessary words, circular constructions and meaningless jargon”.

The reader of a legal document should have no doubt about the facts and ideas the writer wishes to convey. Clarity begins with “straightforward thinking”. Clarity of understanding must precede clarity of expression. What is the precise word that conveys the exact meaning intended? How will the context in which the word is used affect its meaning? A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and context according to the circumstances and the time in which it is used. (*Stern, The Writing of Judicial Opinions, 1947*)

In the legal vocabulary there are certain words that convey a definite meaning to the lawyer and to the court. These are *words of art*, which promote the clarity of the text, i.e. professional short cuts to express certain concepts. Consequently, in a legal document it is entirely proper and usually necessary to use words that serve as “conceptual labels.” (*Miller, On Legal Style p.235, 255*). The law has many such words as “corpus”, “dictum” and “recognizance”. In a legal document the word “vested” or “contingent” before the word “remainder” conveys a definite meaning to the lawyer. Or the word “person” means individual, corporation, association, firm, and partnership.

Though studies of discourse of legal texts came to prove that *accuracy, brevity and clarity* are the essentials of legal writing, a close look at two legal documents caused a controversy about certain accepted points. In some kinds of legal papers *brevity* and *clarity* can’t be considered dominant features typical of the style of legal writing.

Thus, our study showed that, though there is cohesion in the discourse of the papers we’ve studied, exceptionally long, complex sentences are often observed in the constitutional language, which make the meaning of the sentence more complicated, thus making the language more emphatic and pompous. That is to say, the brevity cannot be accepted as a common criterion for all legal documents.

*i.e. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Member, and a Majority of each shall constitute a Quorum to the Business, but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent members, in such Manner, and under such Penalties as each House may provide.(The Constitution of the United States of America, article I, section 5)*

*i.e. In cases where a Welshmen was deprived or dispossessed of anything without the lawful judgment of his equals by our father King Henry or our brother King Richard , and it remains in our*

*hands or his held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. (Magna Carta, paragraph 57)*

In some papers legal writing can be assumed to be complex and obscure by nature, that's why good legal writing probably can be considered as the antithesis of the wordy, confusing and pretentious prose.

So, we have to agree to what Thomas Jefferson said in 1817: "the art of writing by the legal profession lay in expressing "...everything so that nobody but we of the craft can untwist the diction, and find out what it means..."(*The Constitution of the United States of America, with explanatory notes, 1986*)

The study of two legal documents 'The Constitution of the United States of America' and 'Magna Carta' also revealed the following main grammatical peculiarities:

The absence of the imperative mood and the reliance on declarative sentences, the form most often associated with the delivery of information.

*i.e. We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. (The Constitution of the United States of America, 1986, p19 )*

Modal verbs, which occur in the legal papers, are sometimes used to convey the idea of possibility, rather than to indicate ability or permission.

*i.e. Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin. (Magna Carta, paragraph 6)*

*i.e. The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States (The Constitution of the United States of America, article 2, section 1).*

In legal documents 'shall' and 'will' are used not as future auxiliaries, but they rather preserve their Old English modal meaning ('weoldan', 'sceoldan').

*i.e. Neither we nor any royal officials or other person shall take wood for our castle, or for any other purpose, without the consent of the owner. (Magna Carta, paragraph 31)*

*i.e. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. (The Constitution of the United States, article I, section 3)*

*i.e. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about this matters. (Magna Carta, paragraph 53)*

*i.e. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. (The Constitution of the United States of America, article I, section 10)*

The ‘impersonality’ can also be considered a typical feature of the style of legal papers. It is achieved by the frequent use of passive constructions, which give the text some specific shade of “formality”.

In legal writing lawyers still rarely use 'I' in their reports and evaluations, and they often resort to the passive voice of verbs, as in 'The mixture was then subjected to centrifugal force.' This conscious objectivity focuses attention (including the writer's) on the empirical data and what they show. That is not to say that active voice is not to be used. Direct observations can be active, as can descriptions of opinions and conclusions formulated by the writer. But it is still quite acceptable to use passive voice in legal writing. (*Plain Language Leads To Profits, Say Aussies, Mich. Lawyers Weekly, 1994* )

However, the analysis shows, that the use of passive voice is often observed in legal documents, especially in those, which preserve the style that must present the “officiality” of “lawfulness” of the ideas conveyed.

*i.e. If a free man dies in testate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved. (Magna Carta, paragraph 27)*

*i.e. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.(The Constitution of the United States of America, article3, section1)*

The legal papers under investigation demonstrated a frequent use of parallel constructions, which serve to keep up the ‘style of officiality’ and underscore the ideas expressed.

*i.e. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers, the Authority of the training the Militia according to the discipline prescribed by Congress; ...( The Constitution of the United States of America, article I, section 8)*

It should be noted, that not only words, but some parallel clauses can be reiterated:

*i.e. To all free men of Our Kingdom we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:(Magna Carta, paragraph 1)*

*i.e. But when a long train of abuses and usurpations , pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. (The Declaration of Independence, & The Constitution of the United States of America, p5)*

*i.e. To no one will we sell, to no one deny or delay right or justice.(Magna Carta, paragraph 40)*

As it's known that the style has to do with choice of words, choice of sentence length and structure and with pattern of ideas in writing. (*Brand & White, Legal Writing, p.109, 1976*), some peculiar stylistic devices are used to give a special coloring to the legal texts.

Among them is the inversion, which turns the normal word order of the statements round, thus emphasizing or marking priority and eminence.

*i.e. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.(Magna Carta, paragraph 61)*

*i.e. Witness the above mentioned people and many others.(Magna Carta, paragraph 63)*

*i.e. Nor have We been wanting in attentions to our British brethren.(The Declaration of Independence, & The Constitution of the United States of America, p7)*

The analysis of legal papers also revealed the phenomenon of gender free writing:

The impersonal and objective style of legal language accounts for the infrequent occurrence of most personal pronouns and the possessive adjectives, which are dependent on them.

Similarly, most words used to designate a person who has a particular legal status are not concerned with the characteristics of sex or artificiality. (i.e. the word "trustee" may be used to designate a person who is male, female or a corporation.)

The choice of whether or not to adopt a neutral gender writing style is an individual or institutional one. The clear communication of ideas is the ultimate goal and it does not require the selection of one style in preference to another. There is a better approach -- to adopt a "gender-free" style of writing - one that avoids the pronouns entirely.

Regarding the papers we are studying, it should be stated that there is an absence of second person pronouns, which keeping up the style of official documents, at the same time gives the concept of 'everyone', 'any person'.

*i.e. He has refused his Assent to Laws, the most wholesome and necessary for the public good..(Declaration of Independence, & The Constitution of the United States of America, p.5)*

*i.e. He has abdicated Government here, by declaring us out of his Protection and waging War against us.(Declaration of Independence & The Constitution of the United States of America, p.7)*

*i.e. We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.(Magna Carta, paragraph 32)*

Repetition, that is considered to be the main criteria of text cohesion, also often occurs in the two legal documents.

In coherent text the sentences of a given discourse are situated in some dependent linearity. Sentences are interrelated not only in a linguistic way, but also structurally. In order to keep linearity the same thing should be mentioned for several times. If there is no repetition, the text would make very little overall sense, and the unity of the text may disappear.

*i.e. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it.*(Magna Carta, paragraph 9)

The repetition of the same word combination - creates cohesive ties between sentences.

*i.e. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each constitute a Quorum to do Business;*

*i.e. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member. (The Constitution of the United States of America, section5, p15)*

The study of the vocabulary revealed the following peculiarities:

In legal vocabulary there are certain words that convey a definite meaning to the lawyer and to the court. Very often the precise word is required to convey the exact, intended meaning.

In the documents we've studied, the words and phrases are used from a particular area of meaning. Sometimes the context, in which the word is used, affects its meaning. That is, the words are used here in their connotational meaning giving the text a peculiar style.

*i.e. If a man holds lands of any escheat such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancatser, or of the other escheat in our hand that are baronies, at his death his heir shall give us only the relief and service that he would have made to the baron, had the barony been in the baron's hand.*(Magna Carta, paragraph 43)

(The word 'honour' acquires a special meaning in the text--the meaning of 'estate').

*i.e. In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.*

(The word 'aid' the meaning of its historical term – 'tax, due').

*i.e. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;*( The Constitution of the United States of America, Section 8)

(The word 'to regulate' here is interpreted as 'to encourage, promote, protect').

A word combination can also acquire another meaning in the legal context:

*i.e. The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain or establish. The Judges, both of the supreme and inferior Courts shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.*( The Constitution of the United States of America, article3, section 1)

The sentence with the word combination 'good Behavior' is interpreted: The guarantee that judges shall hold office during 'good Behavior' means, that unless they are impeached and convicted, they can hold office for life.

It should be noticed that legal writing is full of French and Latin borrowings, which create a peculiar official style.

It is stated that the existing richest heritage in the legal system is due to the Roman law. It provides the basic organizing principles of the civil law systems of most of Europe and Latin America and much of Asia.

The sources of Roman law can be organized by analogy with American constitutions, statutes, and common-law judicial opinions. Rome had no written constitution, but for purposes of a legal system, the role of a constitution was played by the Law of the Twelve Tables, adopted about 450 BC (and inscribed on twelve bronze tablets) as a statement of the customary and ritual law that had previously developed. This Law gradually became outmoded and was eventually submerged by the interpretation and commentary that surrounded it. The Romans, however, regarded most subsequent developments in their legal system as an elaboration of this ancient Law.

Here are some of the borrowings that are observed in ‘The Constitution of the United States of America’ and ‘Magna Carta’:

*i.e. Inquest of novel dsiseisin, mort d’ancestor, and darrein presentment shall be taken only in their proper county court.(Magna Carta, paragraph 18)*

*i.e. No Bill of Attainder or ex post facto Law shall be passed.*

An *ex post facto* law is one that provides punishment for an act that was not illegal when the act was committed. (The Latin expression ‘*ex post facto*’ means ‘*after the fact*’)

*i.e. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.(The Constitution of the United States of America, section 9, article 1) (Habeas Corpus –is a special term for legal order.)*

Latin and French expressions make the language of ‘The Constitution of the United States of America’ and ‘Magna Carta’ more powerful, emphatic and pompous.

Thus, some of the observations made through the analysis of lexical, grammatical and stylistic peculiarities of two main legal documents made us believe, that the language and style of legal papers can vary within the legal discourse itself and can differ from paper to paper, from document to document.

Hence, further discourse analytical studies are needed to identify the rules and conventions that govern the discourse of a number of legal text types and also explain deviations from existing rules and conventions. Such studies yield valuable knowledge to be incorporated in text analysis and text generation systems. There is a definite need for standardization making the generation of legal texts.

## References

Alfred H.Kelly, Winfred A. Harbison: “*The American Constitution, Its Origins and Development*”, New York, London 1965

Atkinson J.M.; Drew P., “*Order in Court*”, Oxford, The MacMillan Press, 1979.

Barbara Fox, Dan Jurafsky: *"Cognition and Function in Language"* California 1999

Brand & White *"Legal Writing"* (Textbook) New York, London 1976

Brown Gillian, George Yule: *"Discourse Analysis"* Cambridge: Cambridge University Press 1983

Coulthard, M. *"An Introduction to Discourse Analysis"* Essex, England: Longman Group 1977

Evelyn Hatch: *Discourse and Language Education*, 1992

Feest, Johannes; Blankenburg, Erhard: *"Changing Legal Cultures"*. International Institute for the Sociology of Law, 1997

Mellinkoff, D: *"The Language of the Law"*, Boston, Little, Brown & Co 1963

Miller G. *"On Legal Style"* Oxford, Oxford University Press 1955

Peter Master *"Responses to English for specific purposes"*, 1998

Pier Parolo Giglioli: *"Language and Social Context"* München 1998

Widdowson, H.G: *"Linguistics"* Oxford University Press, 1996

"The Constitution of the United States of America" copyright (c) 1986, World Book, Inc.

"Magna Carta" 1996