



Matej Bel University, Banská Bystrica, Slovakia
Has been issued since 2014
ISSN 1339-6773
E-ISSN 1339-875X

Writer's Stances in Legal Discourse and Linguistic Tools of Their Verbalization

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Abstract

The article deals with the linguistic tools used to verbalize the writer's stances in legal discourse. The author argues that the writer as a discourse category is prototypically organized. The article determines central and peripheral features of the category. The linguistic units possessing central features are considered to be prototypical markers, while those ones lacking central features are considered atypical. Among central and peripheral linguistic tools used to verbalize the writer's discourse stances, the author distinguishes first-person singular and plural pronouns in subjective and objective cases, first-person singular and plural possessive pronouns, proper names, institutional role descriptors, indefinite personal, impersonal and subjectless passive constructions. These linguistic tools are used to represent the writer in legal discourse both explicitly and implicitly varying utterances from personal to impersonal.

Keywords: Writer, legal Discourse, pronoun, verbalization, discourse stance.

Introduction

The language possesses a large number of tools to mark discourse stances of the writer, implicitly or explicitly, with lexical, morphological, or syntactic units.

In Rosch's theory, people categorize items and concepts based on a prototype. Certain features of a category have equal status. Examples that represent all or most of those features become the prototype for that category. Items that do not share the majority of these features may still belong to that category, but do not represent the prototype [8]. Based on Rosch's theory, we have described linguistic units involved in marking the writer in legal discourse. We have suggested that the writer as a category of discourse is prototypically organized, and determined central and peripheral features of the writer in discourse. Accordingly, those language units possessing central features have been considered to be prototypical markers, while those ones lacking central features have been considered atypical.

Review of Literature

The relationship of language and law have been a traditional field of interest for many researchers who analyze various aspects of legal language (N. Golev, A. Pigolkin, V.K. Bhatia, B. Garner, P. Goodrich, D. Mellinkoff, P. Tiersma), legal translation (S. Sarčević, R. Arntz, P. Sandrini, D. Cao), legal terminology (S. Khizhnyak, N. Glinskaya, E. Maksimenko, S. Shcherbakov), linguistic and legal examination (N. Golev, V. Brinev, T. Gubaeva, L. Butakova), legal genres (L. Shevyrdyaeva, C.L. Langford, R. Post). One of the least investigated aspects of legal discourse issues is the characteristics of legal discourse determined by its writer or speaking subject.

Literature analysis shows that, despite a number of researches on subject representation in discourse, the issue of linguistic markers of the writer in legal texts has never been studied by researchers. Only in a small number of works (P. Tiersma, C. Langford, J. George), we can find a surface analysis of this issue.

The basis for our research is the onomasiological approach developed by A. Arnaud, R. Lancelot, L. Weisgerber, G. Guillaume, W. von Humboldt and some others. According to that approach, one and the same category can be expressed by linguistic units of different levels – lexical, morphological, syntactical.

To describe the linguistic markers of the writer as a discourse category we also use the prototype approach suggested by E. Rosch and developed by J. Lakoff, V. Demyankov, E. Kubryakova and some other researchers. According to the approach, some members of a category are more central or prototypical than others.

Materials and methods

The method applied for this study is based on qualitative analysis of linguistic tools used to verbalize the writer in legal discourse.

The qualitative approach aims to investigate the pragmatics of linguistic units in legal genres.

The corpus used in this study consists of legal texts of different legal genres (Last wills, dissenting opinions, judicial decisions, agreements, petitions, legislative acts). All the texts are written within the Anglo-Saxon legal system. For the analysis, more than 70 texts have been thoroughly examined. The texts have been selected from the websites of the US Supreme Court, Legal Information Institute <http://www.law.cornell.edu/>, British legislation <http://www.legislation.gov.uk>, and some others.

Results

On the basis of Rosch's theory, we distinguished between prototypical and peripheral linguistic markers used to verbalize the writer's stances in legal discourse.

To prototypical markers of the writer, we refer the first person singular pronoun *I* and the proper name individualizing the writer. In linguistics, the personal pronouns are traditionally referred to as egocentric units [1, 4 et al.]. The pronoun *I* is a center of the egocentric system, its starting point. 'I'-pronoun is used to characterize the writer as an individual. In legal discourse, 'I'-pronoun has an additional meaning. It shows that the writer has a legal capacity, being of legal age:

I give and bequest all of my interest in the following property ... to the persons or entities as follows (Last Will and Testament).

Additionally, the use of 'I' assigns a subjective meaning to the utterance:

The path it has taken to reach its outcome will, I fear, do damage to this institution (Dissenting, Citizens United v. Federal Election Commission).

It is worth mentioning that most institutional legal genres lack 'I'-pronoun while personalized genres (wills, complaints, judicial dissents) abound with them.

Identifying nature of *proper names*, their ability to serve as individual signs are the reasons why we refer them to prototypical markers of the writer. The proper name refers to a unique human as distinguished from a common noun (e.g., role descriptors). According to Mill [6], proper names have no meaning as they do not correlate to any significatum. Proper names are the most effective identifying tools. In terms of our study, the function of proper names to correlate to a specific referent, individualize an individual is of special significance. In some legal settings, only a proper name may legitimate the utterance of the writer. For example, the text of a last will involves legal effects only being a product of an individualized person:

I, Janet J. Webster, declare that this is my Last Will and Testament (Last Will and Testament).

Combined with a proper name, 'I'-pronoun takes an individualizing meaning, and the utterance becomes a legal action.

*The near-peripheral linguistic markers of the writer slightly deviate from the prototype as they are less egocentric owing to communicative focus shift from the writer to his/her actions or possessions. To the near-peripheral linguistic markers of the writer we refer pronouns *me* and *my*:*

*The notion that the First Amendment dictates an affirmative answer to that question is, in **my** judgment profoundly misguided* (Dissenting, Citizens United v. Federal Election Commission).

*Let **me** be clear that I have nothing against homosexuals* (Dissenting, Lawrence v. Texas).

The objective case of 'I'-pronoun is used for down-toning, eliminating the unnecessary egocentricity of the utterance characteristic of the nominative case. Using the possessive pronoun *my*, the writer positions himself as a "possessor" of a personal view. The possessive pronoun is a tool to shift the communicative focus of the utterance from the writer to his possessum – *judgment*.

The far-peripheral linguistic markers of the speaking subject are as follows: 1) the paradigm of 'we'-pronoun (*we, us, our, ours*), 2) role descriptors, 3) indefinite personal constructions, 4) impersonal constructions, and 5) passive constructions with an implicit subject.

The atypical nature of 'we'-pronoun is due to the fact that it does not refer to a specific subject and has an ambiguous reference. The semantic structure of 'we'-pronoun is more complex than the one of *I*. The first-person plural pronoun has more pragmatic functions. Some researchers have distinguished between two main categories: inclusive *we* and exclusive *we* [3, 5, 7]. Exclusive 'we'-pronoun is the use of first-person plural to refer to the writer/speaker (1), and inclusive 'we'-pronoun is a collective reference to the writer/speaker and someone else, including all humans (2):

(1) We observe in respect to the first, second, and third questions that they are not now open questions in this Court (Woods v. Lawrence County).

(2) Because we agree, we do not reach their alternative contention (Petition New Jersey et al., Petitioners v. Environmental Protection Agency).

Wales [9] points out that the interpretation of the discourse referents of 'we'-pronoun depends upon "the particular context of use and the inferences to be drawn on the basis of the mutual knowledge of the speaker and interpreter". Burkhardt [2] called 'we'-pronoun a "word-accordion" as it can compress and expand at the discretion of the writer/speaker creating various pragmatic effects.

Thus, we can conclude that 'we'-pronoun fulfils various pragmatic functions depending on the stance of the writer.

Role descriptors are used in legal discourse to overshadow the writer's personality and function as:

1) a linguistic tool to identify the writer with the discourse community:

*There was nothing before **the court** to indicate that she was fettering her right to remarry as and when she chose* (Dixon v. Marchant).

Institutional role descriptors create an "aura of objectivity".

2) a linguistic marker of the institutional role of the writer:

Seller shall convey title to **Purchaser** at the time of closing by a good and sufficient general warranty deed free and clear of all liens and encumbrances except as otherwise provided in this offer and subject to easements, zoning and restrictions of record. (Agreement to Purchase Real Estate)

Indefinite personal, impersonal and subjectless passive sentences which allow the writer to omit the reference to him/herself:

*Yet even if **one accepts** this part of Professor Fallon's thesis, **one must** proceed to ask which as-applied challenges* (Dissenting, Citizens United v. Federal Election Commission).

The pronoun *one* produces the effect of referential indefiniteness. The grammatical structure allows attributing writer's views to any human.

It should be noted that these constructions are less common in contracts, where the parties typically wish to spell out exactly who is to do what, and thus have an interest in precise reference to the actors.

Impersonal constructions have no references to the precise actor as well. Instead, the impersonal pronoun *it* is used:

***It seems** that the "societal reliance" on the principles confirmed in Bowers and discarded today has been overwhelming* (Dissenting, Lawrence v. Texas).

Passive constructions with an implicit subject are very popular in legal discourse. Formally, one can speak on the reduced form of voice constructions due to the absence of a formal subject. From the semantic perspective, these constructions render a depersonified meaning of the passive non-activity.

In legal discourse, passive constructions with an implicit subject help emphasize an absolute and universal (in certain cultural and historical circumstances) legal action and are the most widespread tool of language impersonalization. They help distance the legal decision from ordinary actions of individuals and their intents, including the writer's subjectivity. Let us give examples:

*This compilation **was prepared** on 1 July 2006 taking into account amendments up to Act No. 46 of 2006 (Marriage Act).*

*It is expedient that further and better provision **should be made** for the improvement and development of local government services in London* (London Local Authorities Act).

Depersonalization due to passive constructions with an implicit subject makes the utterances more convincing, solid, increases their perlocutionary effect.

Conclusions

We can conclude that the writer in legal discourse is marked with various linguistic units. The writer may be represented both explicitly and implicitly varying utterances from personal to impersonal.

We have distinguished between three variants of verbalizing the writer's stances in legal discourse:

- 1) the full elimination of the writer from the discourse;
- 2) the elimination of personal traces of the writer owing to some linguistic tools in order to express solidarity, share liability, focus on the institutional role of the writer;
- 3) positioning writer's singularity, presenting him/her as a subject of free will who take personal responsibility for discourse.

All these stances are verbalized through a number of linguistic tools, among which we have distinguished first-person singular and plural pronouns in subjective and objective cases, first-person singular and plural possessive pronouns, proper names, institutional role descriptors, indefinite personal, impersonal and subjectless passive constructions.

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