Jan Engberg & Anne Lise Kjær**

Approaches to Language and the Law – Some Introductory Notes

Many are the legal treatises emphasizing the close relations between language and the law. In its most simple form, the statement is rooted in the insight that law cannot exist without it being communicated to the people subject to it. No communication, no law. Busse (1992: 5) expresses this in the following way: „Das Recht [bedarf] der Sprache […], um seine verhaltensregulierende, vorschreibende, d.h. normative Funktion im Leben sozialer Gemeinschaften erfüllen zu können."

This dependency of law on language is the main *raison d'être* for the emerging interdiscipline Legal Linguistics that constitutes the disciplinary framework of the following special thematic section of the journal Hermes. In general terms, the interdiscipline is directed towards studying the relations between Law and Language, and, as is visible from the name itself, the disciplines combined are Law, on the one hand, and Linguistics, on the other. But this is by far not the whole story. In this short introduction, we would like to highlight some of the major challenges and characteristics of the field.

First, it is important not to adopt a narrow view of linguistics as the study of language only as a formal system (which is a position held by some linguists interested in the language system and seeing this as linguistics proper). In our view, the interdiscipline of legal linguistics has to cover a broader range of approaches to the description of language, including language as a structured system (grammar), as a vehicle for expressing and creating meaning (semantics), and as contextually embedded language use (pragmatics).

Second, as Busse (1992: 14) points out, legal linguistics lies in between the disciplines of law and linguistics and also overlaps the neighboring disciplines of sociology, political science and philosophy. If comprehensive, all-embracing descriptions of linguistic operations in law are to be obtained, it is important also to include the outlooks of those neighboring disciplines. Some legal linguistic studies are sociologically and anthropologically informed studies of the role of language and communication in the performance of the law. In that respect it seems unjustified to apply the label of Legal Linguistics for the interdiscipline. Especially in English it seems relevant to opt for the somewhat wider label of Studies in Language and the Law. However, the terms *Rechtslinguistik, linguistique juridique*, and *retslingvistik* are well established in German, French, and the Scandinavian languages, also in the broad sense that we apply. We will not go deeper into the naming problem here.[1] In this introduction we use the two labels interchangeably.

The most central characteristic of the interdiscipline is that it studies Law's dependency on language and communication. Law has the defining role among the subdisciplines constituting the emerging field. To a large extent the issues studied by the field are framed and developed in the light of the problems that arise when law has to be formulated, communicated, interpreted, applied and practiced. The idea is to create a common platform from which researchers from other fields than law cooperate with legal scholars with a view to elucidating the blind spots of conven-

1 For further comments to the language problem, see Galdia (2009: 65), and Mattila (2006: 8).

* *Jan Engberg*
Department of Business Communication
Aarhus University
Business and Social Sciences
Fuglesangs Allé 4
DK-8210 Aarhus V
je@asb.dk

* *Anne Lise Kjær*
University of Copenhagen
Faculty of Law
Studiestræde 6
DK-1455 Copenhagen K
Anne.Lise.Kjaer@jur.ku.dk

tional legal studies. From a position on the outskirts of law the interdiscipline intends to speak into the community of lawyers and to contribute with new perspectives to the discussion of inherently legal problems and issues.

However, although we see the discipline of Law as the *primo inter pares* in the combination of disciplines of Legal Linguistics it is an important characteristic of the interdiscipline that researchers with different backgrounds have different interests in the study of Language and the Law, In order for the interdiscipline to be fruitful, the researchers should take different positions in accordance with their diverse disciplinary outlooks An example of such a relevant difference in perspectives is the fact that scholarly studies in the field of Law are often oriented towards achieving better and more just decisions of legal cases. This is the core *raison d'être* of legal studies, and this fact also influences the interest of many legal scholars in the cooperation with scholars from other disciplines like, e.g., linguistics. In some cases legal scholars even discard the insights from other fields because they see them as useless for their practical purposes. An example of this is a discussion of possible ways of assessing the transparency or intelligibility of contracts in German law for legal purposes (Lerch 2004). The author, who is a legal scholar, ends up opting for non-linguistic criteria from consumer law when assessing the transparency of contracts in court, although he acknowledges that linguistics offers possible approaches to description of the transparency of texts in concrete situations. His argument against applying linguistic insights is that linguistics cannot offer mechanistic and objective standards for transparency (as research has shown that the act of understanding is dependent on the knowledge basis of the reader and not solely on the text structure) and that the question is normative rather than descriptive, and that therefore the courts should set up their own standards, without recourse to other disciplines.

From this example we may deduct a very basic distinction between studies in Law and studies in Linguistics: Prototypically, studies in Law are normative in their approach, as they are directed towards achieving better decisions and thus are used for evaluating possible solutions to a problem. Studies in Linguistics, on the other hand, are prototypically descriptive in their approach. The most important objective is to achieve descriptions that are as accurate as possible, whereas the applicability of the descriptions for normative purposes is generally only relevant at a later stage, e.g., in language didactics. In the example above on transparency of contracts, a linguist would generally be more interested in assessing one or more readers' specific subjective understanding of a contract than in assessing the general transparency of the text in some objective sense. However, in a properly combined legal linguistic perspective, in which the disciplines would be balanced in order to achieve new and deeper insights, researchers should be willing to combine insights from linguistics concerning the relative subjectivity of textual understanding with the needs of courts for absolute standards. Standards emerging from such a combination of insights could consist in setting limits for how many out of, say, 100 subjects must be able to understand the legal consequences of a contract in order for the court to arrive at a positive or negative judgment of the transparency of a contract.

The field of Studies in Language and the Law is still fairly new, and thus the range of possible works falling under this label has not been settled yet. However, three main groups of works may be listed:

- *Studies of the role of language in processes of understanding*: The central interest is in the relations between the production of text and talk in law and the meanings that emerge when subjected to the reception by lawyers and laypersons. This may be studies of special linguistic regularities in legal genres, studies of the intelligibility of legal documents, studies of the relation between the formulation of a legal document and its legal interpretation in court, or studies of the interpretation of multilingual legal documents, to name only a few examples.

- *Studies of the role of linguistic expertise in court proceedings (forensic linguistics)*: Here we find studies interested in how linguistic experts may be used as expert witnesses in court cases. Concrete examples are cases involving blackmailing letters or threats issued via tel-

ephone, as well as copyright and trademark cases where the likeness of different texts or words have to be assessed.

- *Studies of the role of choice and status of languages in the operation of a legal system (language laws)*: Here we find studies interested in the position of official languages of national legal systems and international organizations, including the rules governing minority languages.

The three contributions to this thematic section all belong to the first mentioned group of studies. At the same time, they are good examples of the variety of approaches within this group. The first article is by Davide Mazzi (*"In other words, …": a corpus-based study of reformulation in judicial discourse*). He investigates the variety of reformulation markers in the genre of judgments from the European Court of Justice and from Ireland's Supreme Court. His approach is that of corpus analysis, i.e., he uses computer tools to investigate a large number of tokens of judgments (148 and 34 judgments, respectively, from each of the two sources). Thus, he describes from a linguistic perspective markers of legal argumentation. So apart from assessing conventions for choosing different markers in different settings, he also investigates the role played by this strategy in legal argumentation in two different settings and thus finds identical argumentative elements across the two investigated settings. And here is the overlap of interests between linguists and lawyers characteristic of a legal linguistic venture.

The second article is written by Karin Luttermann (*Cultures in Dialogue. Institutional and Individual Challenges for EU Institutions and EU Citizens from the Perspective of Legal Linguistics*). Point of departure is the problem of securing the principle of the Rule of Law in a multilingual legal system like the European Union with its basic concept of the equal authenticity of all language versions of legislative texts. Underlying this problem is the general problem of interpreting all of these versions in the context of each other and at the same time guaranteeing the stability of interpretations in each language. She presents a model (European Reference Language Model) which intends to preserve the advantages of having the law expressed in more languages (in her proposal in English and German), but solve some of the predictability problems by creating two versions with a higher relevance for interpretation than the rest. All other language versions will also officially be translations of the versions written in the two reference languages. We see here a combination between (linguistic) insights into the functioning of linguistic systems and the differences between them and the (legal) problem or task of having to interpret legal concepts among other things on the basis of written texts.

The third article by Anne Wagner (*The Muslim Veil in France: Between Power and Silence, Between Visibility and Invisibility*) takes a semiotic perspective and looks at the challenges of the relatively indeterminate legal concepts of secularism, neutrality and religious freedom in the recent French society. Especially she investigates the reactions of the state through the legal system towards the explicit demonstration of religious belief through wearing a Muslim veil, a *burqa*. This activity is seen as a semiotic action, the use of a sign, the meaning of which is interpreted differently by different actors. And this interpretative action is also dependent on the interpretation of the legal concepts of secularism and neutrality. The overlapping interest between lawyers and linguists is here found in the process of interpretation, in the quest for meaning in a constant interplay between different factors influencing the semiotic values ascribed to legal concepts.

Finally, the papers in this thematic section may be categorized concerning the distinction between a more descriptive and a more normative approach to language and the law: Mazzi is mainly interested in describing the conventions of formulation and the types of argumentation in the investigated texts. His work generates valuable insights into such conventions of formulation and into ways of thinking in the field. But it does not contribute to the better solution of any strictly legal problems. On the other hand, the two works by Luttermann and Wagner are oriented towards setting up better norms for the solution of practical legal problems like achieving just decisions in a multilingual legal system or a correct evaluation of the meaning created by the use of the Mus-

lim veil in France. They are thus basically normatively oriented. However, in our view all three works belong to the interdiscipline of legal linguistics in our understanding. The consequence of this is that the interdiscipline must be able to contain works placed between the two poles of more descriptive and more normative interests. Still, a limit will exist, beyond which a linguistically and descriptively oriented work may be said not to belong to Legal Linguistics, even though it studies legal texts. This is the case when the thrust of the investigation is to deepen the understanding of language, not law, as in the work by Klein (2000), who investigates the use of determination, tempus and modal auxiliaries in statutes, with the purpose of casting new light on the language system.

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