

Volume 12/2012

Comparative Legilinguistics

International Journal for Legal
Communication

Institute of Linguistics
Faculty of Modern Languages and Literature

Indexed by Comparative Legilinguistics

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Wydanie publikacji dofinansował Instytut Językoznawstwa

Czasopismo znajduje się na liście Ministerialnej czasopism punktowanych z 2012 roku z liczbą 8 punktów.

The issue has been published with financial grant from the Institute of Linguistics, Poland.

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Printed in Poland

ISSN 2080-5926

Nakład 100 Egz.

Redakcja i skład: Pracownia Legilingwistyki

Druk: Zakład Graficzny Uniwersytetu im. A. Mickiewicza

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Reviews

AN APPRAISAL OF LANGUAGE AND LAW IN TIMES OF EXPANDING LEGAL LINGUISTICS

*Review of **The Oxford Handbook of Language and Law**, edited by Peter M. Tiersma
and Lawrence M. Solan, Oxford University Press, 2012, pp. 642.*

Marcus GALDIA, professor
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Summary The Oxford University Press published in 2012, within its series Oxford Handbooks in Linguistics, a volume entitled *The Oxford Handbook of Language and Law*. The volume was edited by two prominent American writers on law and language, Professor Peter M. Tiersma and Professor Lawrence M. Solan. The volume of 642 pages invites a longer review as it comprises contributions by forty-eight authors in forty separate chapters. Also some fundamental, yet omitted legal-linguistic issues necessitate critical comments by the reviewer. Overall, however, the reviewer read the book with interest as its singular contributions include many inspiring thoughts. Meanwhile, these original contributions are somehow in contrast to the declared character of the volume that according to the publisher and the editors should portray the state of the art in the interdisciplinary field covering language and law in the form of a handbook. In spite of the valuable input to the development of legal-linguistic research in the singular contributions one might doubt whether the main goal, as defined by the publisher and the editors has been achieved by this publication. Therefore, also a bitter reflection is included in the final part of this review. This criticism notwithstanding, the reviewer welcomes the published collection of papers by renowned scholars and younger researchers as one more valuable contribution to the development of legal-linguistic studies.

Handbook's Structure

The Handbook consists of an Introduction, authored by the editors, and subsequent nine main parts: Legal Language, Interpretation of Legal Texts, Multilingualism and Translation, Language Rights, Language and Criminal Law, Courtroom Discourse, Intellectual Property, Identification of Authorship and Deception, and Speaker Identification. Each part is composed of three to six chapters, written mostly by single authors. The disparate range of issues labeled in above headlines of the main parts indicates the first structural problem of the publication. Notably, the question arises whether this loose string of issues that incontestably corresponds with the content of chapters (or articles), published under each headline, reflects the optimal or even

efficient structure for a handbook that should portray the field of legal-linguistic studies. After all, the legal-linguistic research seems today much too advanced to justify this all too 'tolerant' and noncommittal approach to the demanding task of structuring the diversified legal-linguistic research in times of its otherwise rejoicing proliferation. The flow of issues in the nine main parts of the Handbook that appear isolated from their epistemological contexts will not facilitate the reception of the reviewed publication that due to its name raises systematical expectations. Although the uniform editorial layout that was designed for all chapters may engender the first impression of a systematic treatment, it cannot replace a systematized exposition of the subject matters treated. As a rule, the appropriate structure for the exposition of subject matters that are relevant to a branch of knowledge is almost automatically dictated by the method applied in a particular field. Understandingly though, in an interdisciplinary undertaking the task of structuring is more demanding as an interdisciplinary field has to cope with a multitude of competing, complementary, or even contradictory methods. However, this circumstance does not mean that the field of 'Language and Law' could not have been defined and structured more firmly by the editors.

Reviewer's Remarks to Editors' Introduction

The interdisciplinary object of study is seized, also in the book title, as 'Language and Law', apparently as a conscious reversal of the established order of 'Law and Language' in the English-speaking countries. The editors probably wished to broaden the scope of the published topics and avoid terminological controversies as to which matters belong to Law and Language and which matters make part of other related (interdisciplinary) branches of knowledge such as forensic linguistics or legal linguistics. Meanwhile, at the actual stage of research into law and language the contrary, stricter approach would be more persuasive. For instance, J. Engberg and A.L. Kjær (2011) required a methodologically more precise distinction between law and language studies and legal linguistics, mainly due to the increase in the number of publications that declare themselves as belonging to legal linguistics. One might discuss whether the time is already ripe to draw the distinctive line between legal linguistics (legilinguistics), philological research into language use in legal texts, analyses of legal concepts with help of logical or historical methods, technology of speech analysis and the like. However, when fundamental research and methodological studies are not taken into consideration, one may easily miss the forest for the trees. Engberg's and Kjær's claim should therefore be taken into consideration by future authors of publications that commit themselves to the legal-linguistic paradigm. Moreover the intricate relation that the legal-linguistic research maintains with legal theory, legal logic or legal informatics is not mentioned in the introduction. Recently, A. Aarnio (2012) stressed again the importance of deontic logic, developed by G.H. von Wright, for any reflection upon the language of law. It is particularly disappointing for the reviewer not to find in the book any reference to G.H. von Wright, who succeeded L. Wittgenstein in Cambridge. The works by H. Putnam, W. Quine and S. Kripke are mentioned in the Handbook; yet these authors were much less influential in the area of fundamental research into law than G.H. von Wright who is remembered as a teacher of generations of legal theoreticians, and this not only in the UK and in Scandinavia. While overall it is understandable that

selection of issues and authors has to take place in works such as the reviewed Handbook, more explanation from the editors on the methodology of the underlying selection would be helpful also for readers unaware of the existence or of the state of the legal-linguistic research.

Parts of the Handbook in Overview

Part I Legal Language includes a chapter on the history of the legal language that mostly focuses on the processes in which the legal English has emerged; it includes a thought-stimulating, yet very brief, section 1.5. about the globalization of the legal language (pp. 25–26). Meanwhile, the linguistic aspects in legal globalization could have been connected with the proposals for the globalization of law, such as R. Domingo's (2010), who anticipated many of the issues in the challenging debate about the future language of law. The following chapters focus on the legal vocabulary (legal terms and legal concepts, polysemy and synonymy, relation to ordinary language); the structure of legal texts that stresses syntactic analysis, yet also mention speech acts in law and the legal discourse; and the plain language movement. Maurizio Gotti's chapter on text and genre that sums up the problems of textual complexity of legal discourses is very clear and didactic (pp. 52–66). Part I is composed of contributions written by authors who follow different methodological approaches and therefore it would be in vain to demand a more consistent account of legal language at this place. However, a more coherent connection between the identified elements of the 'legal language' could have been proposed. Authors such as E. Vinnai (2010, 2011) have shown the way in which the legal discourse is constructed from smaller, yet coherently connected elements. P. Anesa (2009) also structured the complex legal discourse convincingly. An approach grounded in the legal discourse would help avoid the traps concealed in the analysis of legal terminology that often focuses on separate linguistic units and thus contributes less to the most interesting issue in the legal-linguistic research, i.e. the processes of meaning emergence in law. M. Gotti's chapter sheds much light on the legal language in the sense mentioned in the research by Vinnai and Anesa whose works are not indicated in the handbook. The influence of electronic media and the fact that jurists increasingly work with texts available online could also have been considered as topics worthwhile to mention in Part I. Impressive research into these new and relevant topics, by R. Berring (2000), and R. Danner (2006), is available. Moreover, the terminological perspective upon the legal language could have been broadened along the vistas developed by H.P. Glenn (2010), W. Menski (2006) or J. Husa (2007) in the area of comparative law. Such an integrative approach would enable to characterise the language used in law all over the planet and enrich the description provided in Part I that mainly concerns the legal English. Part II The Interpretation of Legal Texts includes chapters on statutory interpretation, constitutional interpretation, ambiguity and vagueness in legal interpretation and an elucidating account by Brian H. Bix (pp. 145–155) on legal interpretation and the philosophy of language. Bix develops his analysis around the concept of indeterminacy and by so doing he also clarifies some previous chapters that concentrated on selected, less systematic issues in the area of legal interpretation. His brilliant analysis stresses the limits of linguistic interference into the process of concept interpretation in law. This view is definitely right because legal interpretation is not a philological activity; it is

a politically dominated process of finding the best law within a discursive framework of reference defined by power structures, which govern state and society. The limited logical coherence of all interpretive attempts in law finds its explanation in this particularity of law. The course of Part II is interrupted by a chapter on contract formation as a speech act that would better accompany the article on speech acts in penal law of the Part V. Part II is mainly focusing on problems in the interpretation of American law. European legal writers such as A. Aarnio (1988), R. Alexy (1983), M. Atienza (2010) made valuable contributions to all problems described in Part II. None of them is mentioned in the Handbook, unlike the American author R. Dworkin whose theory is comparable with approaches of the named European scholars. Furthermore, Brian G. Slocum (2012) described recently problems of ‘ordinary meaning’ in law in a way that is innovative and comprehensive. Part III Multilingualism and Translation includes a chapter on bilingual interpretation rules as a component of language rights in Canada; an original chapter by Jan Engberg on word meaning and problems of a globalized legal order; challenges for the legal translator; language and law in the European Union, and the past fifty years of multilingual interpretation in the European Union. Again, the order of the contributions is rather surprising. Due to its very loose structure Part III finds, therefore, an inconclusive end. Part IV is entitled Language Rights and deals with linguistic human rights; language policy in the U.S.; legal rights of linguistic minorities in the European Union; and the language situation in Africa. The legal-linguistic situation in Asia is not covered in this Part. This is particularly unfortunate because reliable data concerning the mechanisms of language protection in Asia is difficult to obtain. Possibly, some recent contributions on the formation on linguistic identity of speakers could broaden the perspective upon the legislative developments in the area of language rights that is still dominated by conceptions construed in the public international law several decades ago. Part V Language and Criminal Law devotes separate chapters to issues such as: the meaning of silence in the right to remain silent; potential impact of juvenile suspects’ linguistic abilities on Miranda understanding; the caution in England and Wales; the language of consent in police encounters; the language of crime; and the interrogation through pragmatic implication. Part VI Courtroom Discourse also deals with issues related to criminal law, so in chapters on the discourse in the courtroom where pleas, pleadings, voir dire, opening statements, testimonies and closing arguments are analyzed. Further follow chapters on courtroom discourse in Japan’s new judicial order; courtroom discourse in China; the language of criminal trials in the Netherlands; linguistic issues in courtroom interpretation, and on instructing the jury. In Part VI, Meizhen Liao (pp. 395–407) analyzes the influence of two traditional concepts of the Chinese legal culture, ‘fa’ and ‘li’ and their influence upon the structure of contemporary Chinese court decisions. This paper is particularly elucidating because it combines the cultural elements of remote past and the modern court system practices. Liao’s approach explains the law in its broader context and shows the complexity of the legal discourse. It is also valuable as an input into the debate about the globalization of law where cross-cultural discursive segments and cultural particularities must be distinguished. Courtroom discourse research is all too often focused on criminal matters that Liao also critically reflects. Law, however, is much more than a repressive mechanism of criminal persecution. The struggle for law in

society concerns, as a rule, other than criminal cases. Overall, the legal-linguistic research seems to be overburdened with analyses of criminal cases to the detriment of sometimes more significant private law cases. Hopefully the non-criminal cases that may appear to legal linguists as rather sterile and, at the first glance, less spectacular would attract more of their attention in the future. Part VII is devoted to linguistic aspects of Intellectual Property and more specifically to trademark and copyright cases, including a chapter on psycholinguistic basis of distinctiveness in trademark law. Part VIII Identification of Authorship including K. Kredens's and M. Coulthard's chapter on corpus linguistics in authorship identification also brings some samples taken from the Polish language (pp. 504–516). Another chapter concerns plagiarism detection. Finally, Part IX describes problems of Speaker Identification with articles on determination of origins of asylum seekers, lay persons' identification of speakers; and forensic speaker comparison. The reviewer approaches, with some reservations, the issue of academic contributions to origin identification in asylum seeker cases as the procedure involves, in the eyes of some scholars, obstacles of ethical nature. Parts VIII and IX also include remarks on problems in cooperation between forensic linguists and jurists and show the limits of linguists' involvement in some areas of legal practice such as meaning determination. Jurists tend to misinterpret the nature of linguists' interest in meaning and sometimes perceive linguists as specialists who know what a 'word really means'. Likewise, jurists tend to underestimate speakers' input into processes of meaning determination. Linguists, in turn, regularly overestimate jurists' competence for understanding linguistic expert opinions. Some of these remarks and observations on the inherent frictions in communication between linguists and jurists are revealing about the state of practical cooperation between both professional groups. They are truly instructive and their study can help both groups to overcome some of the existing communicative barriers. However, they also make clear the methodological weaknesses of forensic linguistics that seems to perform efficiently when it uses advanced technology as is the case with speaker identification procedures. Its non-technological methods seem to be less reliable or practically insignificant. A rather banal example on p. 491 shows this intricate situation. There, a culprit is identified because he obstinately misspells the word 'library' as 'libary'. Meanwhile, every policeman with minimal criminalistic training and some common sense should be able to solve investigative puzzles of this sort without additional linguistic expertise that is at best Holmesian. Some of the non-technological approaches to language in forensic linguistics seem to be problematic from the methodological point of view of language sciences. Meanwhile, the Handbook does not elucidate this admittedly disconcerting aspect of linguists' forensic involvement. Finally, the extensive bibliography of the Handbook (pp. 572–628) comprises almost exclusively publications in the English language. One may add that in Heikki E.S. Mattila's (2002) *Vertaileva oikeuslingvistiikka* (Comparative Legal Linguistics), published already ten years ago, the representative legal-linguistic literature seems to have been rendered more fully than in the Handbook that often reflects the contributions of its co-authors rather excessively.

Some Critical Remarks Including a Bitter Reflection

On the book jacket the reviewed publication is praised as “encyclopedic in scope” and as a “handbook.” The goal to produce a handbook is also stressed in the publication’s title. Meanwhile, the editors (p. 4) distanced themselves from this idea to a certain extent while proclaiming: “This book contains some of the leading ideas that have arisen from the research. It is not encyclopedic. Rather, it is intended to capture the state of the art at the moment, and to reflect what we consider to be some of the most promising directions for continued research.” In fact, the publication is an interesting collection of papers on legal-linguistic issues that makes for good reading. However, it is clearly not ‘encyclopedic in scope’ neither is it a ‘handbook’ on the interdisciplinary subject called regularly ‘Law and Language’ or ‘Legal Linguistics/Legilinguistics’. Systematic and methodological problems of the subject are not discussed in it and they were eschewed through the innovative creation of a field called ‘Language and Law’ that is not further developed in the publication. Probably due to the neutral approach adapted to the choice of the studies represented under ‘Language and Law’ the term ‘legal linguistics’ used sporadically by one of the contributors does not even appear in the index (pp. 629–642). The diachronic perspective is largely missing in the book if some digressions on the Roman law in the introduction and a sketch of the history of legal English are taken apart. Particularly surprising is, however, that legal argumentation – unlike legal interpretation – is not explicitly treated in the book. Such a fundamental issue for any discussion of the legal language should not have been omitted. One can furthermore assume that due to the fact that only eighteen of forty-eight contributors work in non-English speaking countries and of those eighteen five co-authors are professors of English, the book is overwhelmingly centered on the English language. It also tends to stress problems in the legal tradition of the common law such as originalism or constitutionalism in the American constitutional interpretation. One might doubt whether these issues can be perceived as so central for legal-linguistic research that they would have to be included in a book that aspires to render the general knowledge about the field. Also formulations such as: “...the form of a valid agreement ordinarily involves an offer, an acceptance, and consideration...” (cf. p. 101) are misleading because they concern exclusively the common law of English origin. Contract laws in civil law countries do not include the consideration as requirement of contract enforceability. Therefore, ‘ordinarily’ a contract does not include the requirement of consideration. Furthermore, the Handbook is unfortunately not particularly well adapted to the needs of students who are usually looking for a systematic overview of this interdisciplinary branch of knowledge, nor does it provide a globally valid state of the art account that would interest more advanced researchers. The volume will not convince especially those jurists who are rather skeptical about the usefulness of legal-linguistic studies for the practice of law because it in many respects falls behind its powerful competitor, the mainstream legal theory. This embarrassing calamity is particularly visible in the omitted manifest challenges that the legal argumentation engenders in law. This criticism applies equally to the selective treatment of legal interpretation that has been exposed by many legal theoreticians, e.g. by A. Smirnov and A. Manukyan (2008), more comprehensively and in a more general manner, i.e. less dependent upon the American exceptionalism. It seems that the editors prepared rather a collection of research papers and essays, an

academic product which typically presents the results of international conferences where some recent research papers as well as essays of general kind can be found and enjoyed by colleagues with more or less benefit. Most disappointingly, the chance offered by one of the most distinguished publishing houses in the world to make the quintessence of the legal-linguistic research known all over the world has been missed. The renowned publishing house also deserves to be blamed for calling a collection of research papers and essays an 'encyclopedia' and a 'handbook'. Unfortunately, it occurs not for the first time that Oxford University Press announces an essential handbook on an academic subject and then offers a loose collection of (admittedly and regularly) interesting research papers. By so doing, the publisher contributes to the dilution of academic genres and discourages potential readers from taking its 'Handbook' series at face value. In sum, the reviewed publication illustrates, although probably in an involuntary way, the urgent need to compile a handbook on issues relevant to contemporary legal-linguistic investigations. Such a publication would help systematize the hitherto accumulated yet dispersed methodological and material knowledge and it would structure the particular research areas more rigorously. A synthetic and systematizing work would definitely contribute to the further strengthening of the expanding field of legal-linguistic research, also in terms of its institutionalization.

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