A corpus-based study of vague language in legislative texts: Strategic use of vague terms

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ARTICLE INFO

ABSTRACT

Legislative language is a sub-type of legal discourse that is less extensively explored than other subjects like contracts. It is contended that while all legal texts share some similarities, such as precision and inclusiveness, each variety may have its own peculiarities in linguistic features and illocutionary acts. This article investigates vague language, specifically in legislative texts, using a corpus-based approach, and explores the role that vague use plays in the discoursal functions of legislative language. The analysis shows that vague language is mainly used in relation to four semantic groups in legislative texts: 1) 'quantity' (e.g. *a number of*); 2) 'time' (e.g. *from time to time*); 3) 'degree' (e.g. *appropriate*); and 4) 'category' (e.g. *such measures*). The results also suggest that a strategic use of vague language can achieve several communicative purposes of legislative texts, for example, to extend applicability of legal terms, to provide flexibility in fulfilling obligations and exercising power, and to mitigate potential problems. This article concludes that vague use should be considered as one of the specialised communicative strategies for drafting legislative texts, and explicit instructions on such a strategy may help develop legislative draftsmen's communicative competence.

1. Introduction

The common use of vague language in legal discourse needs little demonstration. A number of researchers have shown how vague expressions are frequently utilised in legal texts such as contracts, patents, and regulations (Anesa, 2007; Arinas, 2012; Bhatia, 2005; Cotterill, 2007; Endicott, 2001; Engberg & Arinas, 2011). They argue that vagueness is an inevitable and sometimes desirable part of legal texts. Yet not enough attention has been paid to how vague use may contribute to the discoursal functions or communicative purposes of legal texts, which provides the basic motivation for the current research.

Often legal discourse is discussed as a general term for a variety of language specific to legal situations of use (Bhatia, Candlin, & Engberg, 2008; Gibbons, 2013). However, it would be inaccurate to view different sub-types of legal language as identical to each other in their communicative purposes, even though they share some similarities common to all legal texts. Each variety of legal language may have different authorship and audience groups. According to Cao (2009, p. 1330), there are at least four main types of legal language: a) legislative language, e.g. international treaties, multilingual laws and other laws produced by lawmaking authorities; b) judicial language produced in the judicial process; c) scholarly language produced by lawyers or legal scholars in their work and commentaries; and d) other legal language used in private legal

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documents such as contracts, leases, wills and litigation documents. Thus, each sub-type of legal language exhibits its own peculiarities in illocutionary acts and linguistic features. For instance, common illocutionary acts used in legislative texts are: defining, establishing institutional facts, imposing obligations, conferring a power, prohibiting, and repealing (see Cao, 2009; Maley, 1987). Linguistic forms chosen for legislative texts may tend to exhibit meanings that are perpetual, mandatory, general, formal, explicit, condensed and vague (cf. Maley, 1987, p. 40-41).

These genre-related features of legislative texts may call for specialised communicative skills, drafting skills, or using Maley's (1987) term, "legislative communicative competence". This refers to the knowledge of a set of strategies draftsmen use to organise linguistic means to appropriately express rules of law in a legislative text and serve institutional purposes (cf. Engberg & Arinas, 2011, p. 56; Maley, 1987, p. 26). More importantly, Maley argues that legislative communicative competence cannot be simply 'picked up' but rather must be learnt, which means explicit instructions on such communicative skills are needed.

This study thus focuses on the use of vague language, which is considered a drafting strategy in legal discourse, and explores what role it plays to fulfil the communicative purposes of legislative texts. To this end, the JRC-Acquis, a multilingual parallel corpus which contains mostly legislative texts, is chosen. Specifically, the current research uses the English section of this corpus (55 million tokens) which provides adequate data for analysis. Many previous studies discussing vague terms in legislative discourse (or legal documents in general) have based their analysis on a small quantity of data. Research questions for the current investigation include: A. What linguistic features are exhibited in vague use in legislative texts?; B. In what situations are vague expressions usually used?; and C. Does vague language contribute to the communicative purposes of legislative texts, and if so, how? It is hoped that answers to these questions will provide new insights into the understanding of legislative communicative strategies.

2. Vague language used in legal discourse

2.1. Identifying vague language in legal discourse

There is no lack of studies on vague language, and yet there is still no standard or agreed definition of it in terms of legal texts. This section will discuss two definitions that are often cited by researchers: one by Channell (1994) and the other by Pinkal (1981, 1995).

Channell (1994, p. 20) proposes that a vague expression should satisfy three criteria: a) it can be contrasted with a precise term; b) its vagueness is intrinsic; and c) it is purposely vague.

The first criterion in her definition in a way suggests that language can be vague as well as precise, which distinguishes her definition from the one adopted in philosophy. Philosophers like Russell (1923) assert that all language is inherently vague, even logical words like *or* and *not* (see also Ongley & Carey, 2013; Smith, 2008; Williamson, 1994). However, this philosophical approach, despite its appreciation of vagueness in language, is not very useful for a linguistic analysis of vague language. The first criterion is thus necessary in Channell's definition.

The second criterion in Channell's definition states that the vague nature is intrinsic. It means that vagueness is not caused by external factors, e.g. the speaker's own habit of language or misinterpretations by the interlocutor(s). This criterion adds a level of stability and 'precision' to the understanding of vague language.

The third criterion indicates that vague use is deliberate. However, this point is not fully supported by other researchers. For instance, Crystal and Davy (1975, p. 112) show three scenarios where the use of vague language may not be purposeful: 1) memory loss, i.e. the speaker forgets a word, or it may be "on the tip of his tongue"; 2) there is no word in the language for what the speaker wants to say, or s/he does not know the appropriate word; and 3) the conversation does not require precision, and an approximation or characterisation will do (see also Cutting, 2007). Jucker, Smith, and Lüdge (2003) suggest that a lack of knowledge or an inability to access the expression mentally can also be reasons for using vague language.

On the other hand, Pinkal (1981, 1995) used the term "semantic indeterminacy" to refer to vagueness. He put forward two requirements for vague language: a) it is at least theoretically possible to make the utterance more precise; and b) that in-determinacy must arise from the linguistic expression (Engberg & Heller, 2008, p. 147). In fact, these two requirements coincide, respectively, with the first two criteria in Channell's definition. Thus, these two definitions approach the phenomenon from different angles, yet give similar descriptions of vague language.

However, what makes the situation complex is the actual practice of identifying vague language. Many researchers in the field of legal discourse may add their own interpretations in this process. As a consequence, in addition to the comprehensive list of vague expressions provided by Channell (1994), many other controversial items are sometimes viewed as vague language. For instance, Anesa (2007, p. 14-17) discusses "weasel words" such as *reasonable*, *necessary* and *appropriate* as examples of vagueness (cf. Butt & Castle, 2006, p. 204; Endicott, 2001, p. 382-384; Engberg & Heller, 2008, p. 148). Engberg and Arinas (2011) include expressions like *or other x* (e.g. *or other information*) and *such x* (e.g. *such procedures*) as vague category identifiers (cf. Anesa, 2007, p. 19). Arinas (2012, p. 61-72) further introduces more vagueness markers particular to U.S. patents like *between*. He explains that the preposition *between* is used "essentially to achieve spatially vague descriptions" and "offer ranges of values", and thus it should be seen as an "approximator" (p. 66). Given the above complex situation and a lack of a better definition for vague language or specific procedures to identify it, this study chose to examine all of the vague expressions considered by previous studies (see Section 3.2).