

# Power distance and persuasion: The tension between imposition and legitimation in international legal genres



María Ángeles Orts\*

*Department of Translation and Interpreting, School of Humanities, University of Murcia, Spain*

Received 29 May 2015; received in revised form 19 November 2015; accepted 23 November 2015

Available online 29 December 2015

## Abstract

The present study is aimed at the analysis of three major legal documents applied widely in international trade: The London Court of International Arbitration Rules, the Geneva Convention for the International Carriage of Goods by Road and Lloyd's Institute Cargo Clauses. It has been carried out under the umbrella of genre analysis, with the aim of scrutinizing the internal communicative mechanisms deployed by the members of the very specialized communities that integrate the legal one as a whole. Our work introduces the concept of 'power distance' to study the asymmetries between the interactants of the texts, with a view to unveiling the hidden nuances of power and imposition concealed in their discursive devices. Secondly, this paper has analyzed the presence of metadiscourse markers in these texts as the textual and interactional devices deployed by their senders or writers to influence the attitude and behavior of their recipients. Our application of speech acts and metadiscourse markers to these three paradigmatic texts has attempted to shed some light on the tension between persuasion and power distance in legal discourse.

© 2015 Elsevier B.V. All rights reserved.

*Keywords:* Power distance; Persuasion; Legitimation; Legal genres; Metadiscourse; Legal texts

## 1. The purposes of our study: power-distance and persuasion in legal texts

The present article aims to explore the relationship between power and persuasion in international legal texts, with a view to furthering the understanding of how legal genres are “constructed, interpreted, used and exploited in the achievement of specific goals” (Breeze et al., 2014:18). There is a dual assumption underlying the present study: the first is that the law is an institution inextricably linked to power as much as it is to language. Agar (1985:164, in Simpson and Mayr, 2013) defines an institution as a “socially legitimated expertise, together with those persons authorized to exercise it”. As the most powerful of all institutions, the law uses the enabling mechanisms of authority, status and influence to exert domination, coercion and control over subordinate groups and this power is imposed – through language – by the state, by its laws and conventions or by the organizations for which we work (Barnet and Duvall, 2004; Cutler, 2003). This means that in law, there are “role-structured, institutionalized and omnirelevant asymmetries between participants” (Drew and Heritage, 1992:48) which are constructed and reproduced by language.

In a previous study, I illustrated the unending problems of comprehension that formal English language in documents of international transactions poses, mainly for Continental lawyers, English for Specific Purposes practitioners and legal

\* Correspondence to: Departamento de Traducción e Interpretación, Facultad de Letras, Plaza Sto Cristo s/n, 30071 Murcia, Spain.  
Tel.: +34 626 58 30 93.

E-mail address: [mageorts@um.es](mailto:mageorts@um.es).

translators (Orts, 2015a). In contrast, the present study focuses on the analysis of the tension that exists between power asymmetries and persuading devices in texts. Regarding the former, Salmi-Tolonen (2011:1) states that language and law actually become purposeful and powerful in the hands of those who have institutional power, and power must be exercised according to the rules laid down by that authority (McDowell, 2010:160), who is also subject to those rules. However, the acquisition or exhibition of supremacy by the specialized community that produces the legal texts is achieved through the technicality, precision and complexity of its written texts (Gibbons, 2004), which constitute an intentional exercise of elitist and exclusionary practices (Goodrich, 1987). Complexity and detachment, in turn, solidify the cohesiveness and ‘insiderness’ of the legal profession, and contribute to the relative distance between those with the power to make the laws and those who legitimately use it. After all, rules have to be imposed for the exercise of social control, which is why the predominant character of international treaties, constitutions, orders, regulations, insurance policies and contracts is mainly prescriptive. These general features – that is, the social distance between those who issue and those who use the law, and the hierarchical order that legal communities (whether law courts, or international legal organizations and bodies) wish to establish – contribute to the perception of legal language as a “frozen genre” (Bhatia, 2004) or a “fossilized language” (Alcaraz and Hughes, 2002:9). By using the concept of power-distance to study the differences in symmetry between the interactants in legal discourse, my goal will be to try to reveal the ways in which power and imposition are concealed in the linguistic devices used by legal institutions when issuing their texts for the alleged benefit of their users. What has been termed as the ‘power-distance index’ (Hofstede, 1983, 1985) should help to ascertain the presence or absence of authority in them and/or the existence of an unequal status relationship between interactants.

However, my second assumption is that power – mainly in democratic societies – cannot be administered without consent. In other words, if those subject to the law are to comply with power, they must be persuaded to believe in the legitimacy of rules (Simpson and Mayr, 2013:7). In fact, according to Kairys et al. (1990), the great source of the law’s power is that it enforces, reflects, constitutes, and legitimizes dominant social and power relations without the need for or the appearance of control from outside. Gramsci’s concept of ‘hegemony’ states that social practices and formations need to become “natural or commonsense” for subordinate groups to accept their values (Gramsci, 1971, in Simpson and Mayr, 2013:9). In other words, dominant groups have to work at staying dominant by generating consent among the population, and consent is achieved through the dissemination through language of the beliefs, practices and discourses of the ruling group. It is precisely because the power of law needs to be seen as legitimate in order to be accepted that this process of legitimation is mainly expressed, not through coercion (imposed by legislation and law courts) but, as we shall see, through the deployment of strategies of verbal persuasion on the part of the law-makers, those who produce legal texts. Specifically, the present paper seeks to study how the issuers of legal texts deploy an array of linguistic devices which narrow the distance that separates them from the receivers of those texts. Textual and interactional mechanisms are, I would like to suggest, clues to the way in which persuasion is exercised in this discourse of authority, i.e., law-makers’ discourse to the law-takers (Salmi-Tolonen, 2014:70). An analysis of these mechanisms may therefore be able to reveal exactly how this idea of consistency is conveyed by the community that issues the texts, thereby giving the impression that a dialogue is taking place between law-makers and law-takers for the legitimization of rules.

## 2. Description of corpus and method

### 2.1. Corpus description

It is the hypothesis of the present study that power and persuasion are present in legal texts to different degrees, depending upon the ultimate communicative purpose such texts are aimed to perform. To test this hypothesis I propose to analyze a corpus composed of three legal documents widely used in international trade: the London Court of International Arbitration Rules, the Geneva Convention for the International Carriage of Goods by Road and Lloyd’s Institute Cargo Clauses (henceforth, LCIA, CMR and ICCs, respectively). I have selected these documents precisely because they are documents of international pre-eminence, they are written in the same language, i.e., English, and they are of similar length; but, mainly, because they are all normative texts that can ostensibly illustrate the tension between power and legitimization, imposition and persuasion, to different degrees.

Firstly, the ICCs are a group of contractual clauses that belong to a singular system of law – the Common Law of England and Wales and the conceptual framework that holds them together is exclusive to English law – but which are, nonetheless, universally adopted as standard terms by international marine insurance organizations in general. Nowadays, the consequences of the widespread use of the ICCs are quite astounding, since 70% of the world’s insurance transactions for marine cargo are currently subject *de facto* to these English insurance clauses (Hudson and Allen, 1995:3). Because they are exclusively subject to English jurisdiction, the insured entity/person who wishes to sue on the policy must institute proceedings in England, and, hence, any translation made of them is unofficial, non-binding (Cao, 2007:101), and carried out for purely informative purposes.

Download English Version:

<https://daneshyari.com/en/article/932493>

Download Persian Version:

<https://daneshyari.com/article/932493>

[Daneshyari.com](https://daneshyari.com)