Identity and cross cultural aspects in legal texts

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1. Globalization in specialised contexts

This paper originates from a research on intercultural communication in specialist fields and its realisations in language for specific purposes funded by the Italian Ministry of Research and coordinated by the University of Bergamo, and conducted in cooperation with the Universities of Milan, Naples, Turin and IUSM Rome. In this project special attention has been given to specialised discourse, analysed from an intercultural perspective. The theme investigated has given rise to interesting analyses dealing with various aspects connected to it, and presented in various publications on this subject, including two volumes, both edited by the present author together with Christopher Candlin (Candlin / Gotti 2004a and 2004b).

Domain-specific languages are prone to the pressures of intercultural variation, as it is not only the sociocultural factors inherent in a text but also the interpretive schemata which deeply affect its realisation and interpretation within the host professional community (cf. Gotti 2005a). Moreover, intercultural communication is often made more complex by the locutors' need to make their texts as adaptable as possible to contextual features and pragmatic purposes, thus frequently originating great variation in professional genres as well as phenomena of intertextuality and interdiscursivity (Bakhtin 1986, Fairclough 1992). This is particularly evident in certain fields – such as that of mediation (cf. Candlin / Maley 1997) – which require excellent social and linguistic skills, as well as the ability to draw creatively upon other related and more established professions with their associated discourses.

In recent years, the dismantling of cultural, disciplinary and national barriers, especially in the context of co-operation and collaboration in international trade, has accelerated moves towards the globalisation of socio-cultural, business and communication issues. This process of globalisation offers a topical illustration of the interaction between linguistic and cultural factors in the construction of discourse, both within specialised domains and in wider contexts. This process of globalisation has certainly favoured English,

and in the last century this language undoubtedly became the language of international communication in most international contexts.

2. Globalization in the legal field

The globalising trend has also affected the legal field, where an international perspective has become more and more widespread. Legal discourse is thus another significant area where intercultural factors may be investigated. Although legal discourse is often thought to be less likely, in respect to other professional genres, to display strong cross-cultural variations, since law texts are commonly aimed at practitioners closely linked to national legal contexts, cultural aspects do represent an important conditioning factor on its construction and interpretation. Indeed, legal discourse – which used to be employed in narrow professional and local milieus and was thus more closely geared to specific cultural values and identity systems – is now more and more frequently involved in globalization processes, which have relevant consequences on the discourse produced by both native and non-native practitioners working in intercultural and cross-cultural settings. Nowadays many of the texts in use at a local level are the result of a process of translation or adaptation of more general documents formulated at an international level. This is the consequence of the fact that in the context of co-operation and collaboration in international trade, law too is fast assuming an international perspective rather than remaining a purely domestic concern. The increasing need at an international level for accurate and authoritative translation of legal texts and documents across languages relies on the need for them to convey appropriately in both languages the pragmatic and functional intentions and implications of the original text (cf. Gotti / Šarčević 2006). Although all legal documents in all languages address similar issues, they do so in distinctive and also in overlapping ways, because of the different languages in which they are constructed and the cultural differences of the societies in question and of their legal systems. Indeed, legal terminology is so culture-bound (the reasons being at the same time historical, sociological, political and jurisprudential) that a satisfactory translation of all the legal terms of one text from one context to another is at times impossible.[1]

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[1] This also applies to different contexts using the same language. As Nadelmann and von Mehren rightly exemplify, "Even in the same language the meaning of a legal term may differ from system to system. Thus,

The adoption of a particular term instead of another may give rise to ambiguity and misinterpretation. Several examples of this are given by Fletcher (1999), who examines the translation into various languages of the English text of the European Convention on Human Rights. For instance, the translation provided for the expression *fair and regular trial* into *juicio justo y imparcial* (Spanish) and *procès juste et équitable* (French) is not satisfactory, as the use of the non-equivalent adjectives *regular* (English) / *imparcial* (Spanish) / *équitable* (French) can easily show. The same could be said for the rendering of the concept of *reasonableness*, basic in common law systems, where expressions such as *reasonable steps*, *reasonable measures*, *reasonable person* and *proof beyond a reasonable doubt* frequently occur. This concept, instead, when translated into languages spoken in countries adopting a civil law system is considered too vague and its rendering as *ragionevole*, *raisonnable* or *vernünftig* often gives rise to criticism and dissatisfaction.

Other excellent examples of translation discrepancies can easily be found in texts relating to the process of building a common European legal framework. For example, translators into English find it difficult to express such culturally-specific French collocations as *acteurs sociaux, acteurs économiques, acteurs institutionnels, acteurs publics, acteurs politiques*, which have no direct equivalent in the target language (Salmasi 2003: 117), and they sometimes transliterate terms or create calques from one language into another, relying on the false premise of a very close relationship between similar lexemes in different languages (see the examples of *transmettre / transmit* and *prévoir / foresee* in Seymour 2002).

Issues like these are crucial for the construction, interpretation and use of legal language across languages and legal systems. They are especially relevant in international trade, which often involves contracts written in English but incorporating statutes and regulations issued by a third country. Indeed, in the great, rapid changes taking place all over the world, there is a tendency for a single global standard to evolve and dominate over all others – i.e., English. The position of English as the language for international communication is a very strong one and is to become even stronger, due to the need for a common global language. However, as has often been remarked, the adoption of a *lingua*

'domicile' has one meaning in English law and quite different meanings in American jurisdictions." (1967: 195). As Nida aptly remarks, "competent translators are always aware that ultimately words only have meaning in terms of the corresponding culture" (2001: 13).

franca may have important consequences on the approach adopted locally. Indeed, when the language chosen for the international arbitration procedure is English, there is a tendency to adopt procedures typical of common law countries:

> Frequently the presence of American (or British) lawyers in a procedure normally leads to the de facto use of US (or English) procedures. (Lazareff 1999: 37)

The influential role played by this language is much more significant now that English is so frequently used also in cases in which no native English-speaking party is involved. The frequency of this situation is confirmed by Taniguchi's testimony:

> There are very many different arbitral practices associated with different legal and commercial cultures. However, the world has been unmistakingly proceeding toward a single commercial culture. Japanese businessmen, for example, are negotiating business in the English language not only with English speaking businessmen but also Korean, European and Middle Eastern businessmen. This is one of the realities of international trade today. (Taniguchi 1998: 39)

The increasing role of English as a *lingua franca* can also be seen at the European Union level, where the use of English has become prevalent. Indeed, at the Translation Service of the European Union, nearly three-fifths of the documents sent for translation are drafted originally in English. This is nearly double the quantity of material drafted in French, which for decades was the dominant language. The great increase in the use of English in this context is due to the fact that English is often adopted as a 'relay language' for translations between combinations of languages, such as the Baltic languages and almost any other, for which the EU institutions are unlikely to find enough translators who can bridge the gap directly: the first translation is into English and from this a text in another language is then produced.

In this way, English terms are creeping into local legal terminologies. For example, over the last three decades, because of the rapid internationalisation of commerce, an increasing number of English legal terms (such as *leasing*, *factoring*, and *franchising*) has been introduced into Italian legal language. Legislators often attempt to translate some of

these terms, as for example the term *antitrust rules*, which has been adopted by Parliament using the expression *leggi per la tutela della competizione e del mercato* [rules in order to safeguard competition and market]; the original English term avoided by Parliament has recently been reintroduced by the Government in a few legislative decrees (Belotti *et al.* 2003: 214). In some cases the original word has been maintained as the concept itself did not exist in that context; this is the case of the term *joint venture*, the English expression commonly in use also because of the inaccuracy of the numerous translations that have been proposed.

3. Identity traits in specialised discourse

Another aspect that our research project has investigated is the identification of identity traits typical of different branches of specialised English discourse. Indeed, the process of internationalisation of English has strengthened the hegemonic tendencies of this language, with the result that local communities are often marginalised and 'colonised', thus preventing an authentic intercultural discourse (Canagarajah 1999; Fairclough *et al.* 2007). In some cases, however, virtuous strategies are adopted to emphasise participants' specificities and communicative strategies, thus gradually hybridising identities, in contrast or at least in alternative to Anglocentric textual models. Indeed, results from the research carried out by our group (Cortese / Duszak 2005, Gotti 2005b, 2005c, Garzone / Ilie 2007, Garzone / Sarangi 2007) indicate that the internationalisation which makes English the preferred choice of code is coupled with textual inconsistencies and ambiguities that advise against straightforward, simplified conclusions: the apparent dominance of 'Anglocentric' models in the domains and specialised discourses considered reveals specific adaptive attitudes and evidence of cultural resistance in the textual strategies that construct identity-shaping differences.

Within this wider research plan, the Bergamo Unit has chosen to investigate the relationship between socioculturally-oriented identity constructing factors and textual variation in academic discourse, not only in Anglophone countries but wherever institutional and professional settings evolve in a way that transcends the linguistic, cultural and conceptual standards of their local communities. In particular, the focus is on the gradual 'globalisation' or 'hybridisation' of discursive practices first appearing in English-

speaking environments but also affecting smaller languages, subject to standardising pressures in their semantic, textual, sociopragmatic and even lexico-grammatical construction.

So far, relatively few studies have been devoted to the impact of globalisation on language, as identities are becoming increasingly fluid and negotiable. Our Unit's contribution to the project moves in this direction, identifying cases of language variation linked to the encounter/collision of different cultural frameworks within English academic discourse. Our approach focuses on the macrostructural elements of linguistic variation, on the lexico-semantic development of disciplinary discourses, on their rhetorical-pragmatic strategies, and on such textual phenomena as hedging and verbal modality (Gotti / Dossena 2001). The purpose is to better understand how and to what extent language forms/functions correlate to the globalisation of discourse in academic communication.

One of the key factors of verbal behaviour is the affiliation of actors to one or more cultures (whether professional, ideological, or ethnic-geographic), which to a certain extent affect not only the language itself but also the community's thought and internal relationships. For this reason, our project also targets Italian vs. English texts and includes an analysis of interculturality in terms of conflict and the different 'positioning' of participants (cf. Gotti / Heller / Dossena 2002). Such constraints interact, especially in the case of English, with the evident pressures of transversal identities independent of local traits, thus complicating the overall picture, with a tendency to discourse merging and hybridisation in an intercultural sense. The phenomenon raises a number of questions which deserve further attention: How do specialised discourse communities structure and maintain their identities in an age of globalisation? How do such discourses reflect and/or resolve the tensions between local and global identities? Is it possible to assume a hierarchy of identity-building factors? What methodologies are suitable to describe textual variation viewed from this perspective?

4. The CADIS Corpus

As corpora constitute a remarkable tool for the study of discourse, a specific corpus (CADIS = Corpus of Academic Discourse) has been designed as the core and foundation of

this project.[2] Since this corpus is a vital element of our investigation and is expected to remain a major resource for years to come, in designing it we have taken into account a number of parameters (e.g. representativeness, sampling methods, balance) so as to make it compliant with international standards and best-practice guidelines. In view of an in-depth analysis of variation in intercultural communication, our research unit has selected a range of texts produced by scholars and academic institutions in various parts of the world. To identify textual variants arising from the use of English as a first language, second language, or lingua franca of the scientific community, we have devised a corpus formed by English – and in part Italian – texts for academic communication. Besides including two alternative languages, CADIS represents four different disciplinary areas: Legal studies, Economics, Linguistics and Medicine. For each disciplinary area, four different textual genres were considered: abstracts, book reviews, editorials and research articles. So far, the English texts have been taken from a total of 23 peer-reviewed journals available by subscription through the University of Bergamo website. Because all the journals selected have a high impact factor, we are confident that the content of our corpus is highly representative of each specialised community from which it originated. The same principle has been followed in the sampling of Italian academic texts, which have been selected from the most important journals available in each field.

Indeed, apart from representativeness, the structure of our corpus follows a criterion of balance, through an accurate proportioning of its parts. More specifically, 50 texts per genre have been collected and classified within each disciplinary area, totalling 600 texts per discipline and 600 texts per genre. For each language group – native-speakers (NSs) and non-native speakers (NNSs) of English, and native speakers of Italian (ITA) – a total of 800 texts (200 per disciplinary area) have been included in the corpus. When fully implemented CADIS will comprise 2,400 academic texts, reaching a total of about 2 million tokens (primarily from digital formats but if necessary also from print), selected and classified by disciplinary area, genre, language, author (i.e. NS/NNS), geographical provenance (US, UK, CAN, AUS, NZ), date of publication and source journal.

The structural complexity of CADIS reflects its contrastive orientation: it is in fact designed to be internally comparable, so that our researchers can analyse and contrast the chosen texts, not only by disciplinary area, genre, language and culture, but also

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[2] A detailed presentation of the corpus is given in Gotti (2006).

historically. This is possible because the corpus will cover a time frame of at least 25 years, from the early 1980s to the present day. In the first phase of the selection process, priority has been given to English texts published over the last six years, but when this phase is completed, earlier academic texts will also be selected and archived.

5. Current investigations into legal texts carried out with the use of CADIS

The detailed description of each text selected for inclusion in the corpus has been planned so as to enable researchers in our Unit to analyze the most significant macro/microlinguistic variants in terms of identity, evaluation and interpretation in the light of recent linguistic scholarship. More specifically, the data are meant to allow an in-depth analysis of the following aspects:

a. genre and macrostructure, with their resulting lexico-grammatical realisations;

b. speech acts expressing positive/negative evaluation, both exophoric and metatextual;

c. the pragmatic, interpersonal plane of discourse (stance, hedging, politeness);

d. evidence of popularisation and/or promotional discourse;

e. the function of verbal and lexical modality;

f. the degree of background knowledge required (content schemata);

g. the correlation with such authorial variables as gender and academic standing.

In the last two years several investigations have been carried out with the use of the CADIS corpus, as part of the research programme presented above (cf. the corpus webpage at www.unibig.it/Cerlis for a full list). For reasons of space, only those concerning legal texts will briefly be described in this paper.

By using various sections of the CADIS corpus in a contrastive way, Davide Giannoni (forth. a and b) has investigated the use of metaphoric expressions and their ability to amplify emotional response or 'affect' (Martin 2000) in the interlocutor. His analysis of NS English research articles published in peer-reviewed journals from four domains (economics, law, medicine, linguistics) has shown that evaluative metaphors vary considerably across disciplines, in terms of source domain, connotations and polarization,

and that they are linked not only to disciplinary proclivities but also to a discipline's metaphoric identity.

The main focus of Michele Sala's (forth. a) investigation is the expression of identity in academic texts dealing with legal subjects. His analysis of a subcorpus of articles on International Law authored by native speakers of English discusses the linguistic, rhetorical and textual features revealing a particular stance on the part of the author which can be linked to a specific cultural or domain-specific identity. Indeed, the biographical footnotes accompanying the authors' names show that contributors can be divided into two main sub-groups: on the one hand, the members of the academia (professors, researchers, lecturers), who usually approach legal matters through academic and argumentative texts; on the other hand, the 'practitioners' of the law (lawyers, directors and members of legal offices and institutions), usually working with normative, performative or prescriptive kinds of texts. On the basis of this double distinction, the study investigates whether and to what extent specific professional identities (i.e., scholars vs. lawyers) influence academic prose. As an expansion of this study, Sala (forth. b) has investigated the issue of professional identity in legal research articles by focussing on interactional discourse features like interrogative forms. In particular, his main concern is to assess whether and how forensic language influences academic discourse when it is authored by practitioners of the legal field or by people learning and teaching how to become courtroom experts. In a further study (forth. c) he has compared the different rhetorical styles and strategies employed by native and non-native speakers of English and by experts of the Common Law vs. experts of the Civil Law system in discussing legal subjects. The main focus of his analysis is on whether and how the different philosophies behind the two legal systems – i.e., the adversarial approach vs. the inquisitorial approach, the principle of precedent vs. the recourse to the civil code, the primacy of witness examination vs. the primacy of written norms and abstract principles, the emphasis on precision and clarity (Bhatia / Engberg / Gotti / Heller 2005, Wagner / Cacciaguidi-Fahy 2006) vs. the recourse to a formal register and a specialized vocabulary – influence authorial styles and the choice of argumentative-persuasive strategies, especially in terms of data organization, use of quotations and interactional style.

Apart from this research based on the CADIS corpus, as a continuation of previous work on international commercial arbitration discourse (cf. Bhatia / Candlin / Gotti 2003), the present author and Patrizia Anesa (Gotti / Anesa forth.) have taken into consideration

the main linguistic features of awards commonly used in commercial arbitration cases concerning transactions of Italian companies at an international level. As this method of settling commercial and other disputes is commonly considered as an efficient, economical and effective alternative to litigation, the language used in arbitration documents is usually deemed to differ from that of litigation texts. However, in recent years there has been a narrowing between the two practices as litigation processes and procedures have increasingly been seen to influence arbitration practices, with the result that arbitration discourse itself has become, as it were, 'colonized' by litigation practices, thus threatening the integrity of arbitration genres. Drawing on primary documentary data – a corpus of arbitration awards written in Italian, available in the archives of different Arbitration Chambers in Italy, mainly concerned with disputes that have arisen in business contexts – we have investigated the relationship between the professional identity of the arbitrators and the kind of language used in their texts, focusing in particular on the use of legal discourse both by legal and non-legal experts. In particular, our study has shown that in some cases the different professional backgrounds of arbitrators have influenced the way in which awards were finally written, and that the arbitrator's professional identity has thus had some effect on the syntactic, lexical and stylistic choices made.

6. Conclusion

In the last three years several investigations have already been carried out with the use of the CADIS corpus as part of the research programme presented above. Although its structure has not yet been completed, CADIS has already proved to be a very useful resource for the investigation of authentic discourse, and the impact of this new research tool is deeply felt in all the areas of the language analysis carried out by our research unit. Its careful design and accurate construction, based on sound methodological foundations and clear choices, have strengthened the potential of the corpus available and have thus enabled the researchers involved to discover several aspects connected with the issues of identity in cross-cultural communication in specialised contexts.

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