

Lexical cohesion in legal language: Several US Supreme Court abortion decisions¹

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English legal texts from the perspective of EFL teaching

From a textual perspective, English legal texts have proved to be a highly cohesive type, and it is felt that they are most unlikely to incorporate changes or to modify their layout and internal textual characteristics. This is, perhaps, the reason why legal texts have often been neglected in a systematic study or analysis of English texts; they constitute a closed and invariable text type. They constitute, therefore, one of the most unpopular text types for our students.

From the perspective of English as a foreign language, teaching and learning English legal language is no easy task. Several skills and specialist fields are involved: a general proficiency in English, in particular in matters of syntactic structure and lexical nuances; knowledge of the English and mother-tongue legal systems (in our case a legal system derived from Roman law); and above all, advanced translation skills. Learning legal English involves learning a very specific type of English, with highly technical terms and phraseology. Translation activities at an advanced level are necessary to reinforce syntax and vocabulary.

Legal English is a heterogeneous label which includes a great variety of texts, from highly formal documents to oral interventions – before the court or other judicial or administrative authorities – of a more or less formal character. A great variety of textual variants are encountered: laws, acts, opinions, rulings, statutes, contracts, official communications, etc. In spite of their formal heterogeneity, legal texts are thought to be highly cohesive, tightly structured and opposed to linguistic change. If conversation represents spontaneity, some manifestations of 'legalese' represent perhaps the absence of spontaneity.

When we analyse English legal texts in class, our EFL students recognise quite easily some of their most conspicuous traits: extremely conservative lexis, grammar and discoursal structures (as is shown, for example, in the language of administrative contracts or in the language of court rulings or opinions); objectivity and precision, even authorlessness (Joseph, 1995, 19); long sentences with a large number of subordinate clauses and passive structures; formal and archaic expressions and words ('your lordship', 'I am very much

obliged', 'hereto', 'hereunder', 'pursuant to', etc.); loans or foreign words ('propos', 'assurance', 'res judicata', 'prima facie', 'feme sole', 'certiorari', 'en bloc', 'inter alia', 'ex parte', 'ad litem', etc.); expressive redundancy (constituting near-synonyms such as 'false and untrue', 'fit and proper', 'cease and desist', etc.); euphemisms ('custodial interrogation', 'abortion services'); technical terms ('legal', 'absolute divorce', 'petitioner', 'opinion', 'respondent', 'injunction', etc.). Legal language constitutes a very special and recognisable jargon.

Our students, then, are able to reproduce these and other characteristics of legal English when writing a composition or when translating from English into Spanish (or Catalan) or vice versa. It is much more difficult for them, however, to try to recognise the ways through which semantic and ideological values are conveyed. We intuitively believe that lexical cohesion is one of its chief ways. We have no evidence from any field study, but we think it is well worth investigating, even if it is only for class purposes.

Lexical cohesion in English legal texts: US Supreme Court decisions

Legal texts are mostly recorded in written form and are studded with a number of words and collocations which are – by virtue of the text type in which they appear – accorded a high degree of formality. Constant lexical repetition, reiteration or synonymy reinforce the notion of English legal texts as conservative, cautious and highly cohesive.

In this paper we examine several opinions issued by the US Supreme Court from 1990 to 1997 on one of today's fundamental social issues: abortion. Abortion is a hotly-debated topic which influences the lives of millions throughout the world today. It has long-lasting family, sociological or political implications. Pro and anti-abortionists, women and men, react differently to it. It is not our objective to analyse these reactions but rather the way legal texts record this reality. To do so we will analyse the lexical cohesion devices found in the US Supreme Court opinions mentioned. Through careful linguistic analysis, we will try to reach a conclusion as to whether lexical cohesion in legal texts is or is not a vehicle for transmitting social and ideological values.

Cohesion is perceived as one of the many text-forming devices but is not easily definable. Stoddard reviews some of the definitions of cohesion and shows that there does not seem to be much agreement on what exactly it is and how it works (1991, 11-15). Some see it as the battery of linguistic devices used for putting sentences and whole texts together, i.e., referential links, sentence connectors, etc.; others see it as a basically semantic concept which does not make explicit what a text means but how it should be interpreted.

In Halliday and Hasan's terms, cohesion is "the set of possibilities that exist in the language for making text hang together" (1976, 18). It does not concern the meaning of a text but how the text is constructed "as a semantic edifice" (1976, 26). The interpretation of any item in the text, be it 'abortion', 'Supreme Court' or 'abortion clinic', may depend quite often on other items in

the whole text or discourse, such as 'it', 'they', 'does' or 'Supreme Court' itself. Cohesive ties, such as the presence of pronominals or demonstratives; the presence or absence of nominal, verbal or clausal substitutes; the total or partial ellipsis of elements or the nature of the conjunctive links, go beyond the phonological, morphological or syntactic levels of description. They reinforce the meaning relationships that exist in a text, which are not easily recognisable in traditional linguistic analysis. Halliday and Hasan seem to see cohesion as one of the conditions of coherence (a term which they surprisingly do not define) which is a sort of textual well-formedness comprising the semantic and pragmatic relationships in a text.

For de Beaugrande and Dressler (1981, 3-13) cohesion is one of the seven interrelated standards of textuality; the other six are coherence, intentionality, acceptability, informativity, situationality and intertextuality. They define cohesion as "the ways in which components of the SURFACE TEXTS, i.e. the actual words we hear or see, are *mutually connected within a sequence*" (1981, 3). They also state that coherence "concerns the ways in which the components of the TEXTUAL WORLD, i.e. the configuration of CONCEPTS and RELATIONS which *underlie* the surface text, are *mutually accessible and relevant*" (1981, 4).

Cohesive ties give unity to a text, both intratextually and contextually (Stoddard, 1991, 103) as well as intertextually. They also provide patterned predictability which fulfils the readers' expectations. Court opinions, and especially controversial ones, depend for their effectiveness on lexical accuracy and unambiguous reference: the key concepts at issue are not subject to dispute or discussion but referred to the common accepted meanings found in other legal texts.

The corpus we have tried to analyse is made up of eight U.S. Supreme Court decisions on abortion, with a total number of 15,578 words². Halliday and Hasan make a (slightly blurry) distinction between grammatical and lexical cohesive devices, on a scale from substitution (including ellipsis) to reference, conjunction and lexical cohesion itself. The most strictly cohesive relations are those of substitution and ellipsis, which stick together pieces of text; reference is a semantic relation which links the meanings of linguistic items; conjunction is a different type of semantic relation, "a specification of the way in which what is to follow is systematically connected to what has gone before" (1976, 227).

Very briefly put, we can say that substitution (as well as ellipsis, a zero substitution) is a cohesive device which is seldom used in the legal texts we are dealing with. Only 19 instances of 'one' (0.122% of the total number of words), 10 of 'some' (0.064%) or 8 of 'the same' (0.051%) are found, although they mostly constitute instances of adjectives, numerals or substitutes:

The combined force of the separate interest of *one* parent and the minor's privacy interest outweighs the separate interest of the second parent, and the justification for any rule requiring parental involvement in the abortion decision rests entirely on the best interests of the child.

The fact that §3209 may affect fewer than *one* percent of women seeking abortions does not save it from facial invalidity, ...

... *one* of the respondent clinics which is bordered by a 17 foot-wide sidewalk.

... discouraging *some* potential patients from entering the clinic ...

That such information might create *some* uncertainty and persuade some women to forgo abortions only demonstrates ...

The need for a complete buffer zone may be debatable, but *some* deference must be given to the state court's familiarity with the facts ...

All these examples constitute – almost exclusively – instances of adjectives or numerals, rather than cohesive substitution; that is, they are a way of avoiding ambiguity. In legal texts, substitution is the very exception:

Since none of this Court's abortion decisions dealing with parental consent or notification statutes focused on the possible significance of making the consent or notice applicable to both parents instead of just *one*, ...

... a more limited injunction – e.g., *one* that keeps protesters away from driveways ...

Only at a clausal or sentential level does legal language allow some measure of cohesive substitution – most of the instances, however, of 'so' (12, that is, 0.077%), 'such' (28, 0.179%) or 'not' (119, 0.763%), are used primarily as degree adverbs, determiners preceding adjective + noun collocations or negative adverbs, respectively:

There is no question but that 1008's prohibition is constitutional, since the Government may make a value judgement favoring childbirth over abortion, and implement that judgement by the allocation of public funds. *Maier v. Roe*, 432 U.S. 464, 474. In so doing, the Government has not discriminated ...

... since minors who otherwise would inform one parent were unwilling to do so when such notification would involve ...

... it was irrelevant to petitioners' opposition whether or *not* such travel preceded the intended abortions.

The requirement that both parents be notified, whether or *not* both wish to be notified or ...

We could well conclude that there is an overwhelming tendency in legal language to repetition and avoidance of ambiguity or reference, that is, the avoidance of substitution or ellipsis:

3. Given the focus of the picketing on patients and *clinic* staff, the narrowness of the confines around the *clinic*, the fact that protesters could still be seen and heard from the *clinic* parking lots, and the failure of the first injunction to accomplish its purpose, the 36 foot buffer zone around the *clinic* entrances and driveway, on balance, burdens no more speech than necessary to accomplish the governmental interests in protecting access to the *clinic* and facilitating an orderly traffic flow on the street.

The injunction provisions imposing "*fixed buffer zone*" limitations are constitutional, but the provisions imposing "*floating buffer zone*" limitations violate the First Amendment.

Key terms such as 'clinic' (or 'abortion', 'injunction', 'court' ...) or locative collocations ('fixed buffer zone') are repeated throughout the text, to the exclusion of substitution. Very much the same happens with ellipsis, which is something left unsaid, but understood. It "occurs when something that is structurally necessary is left unsaid; there is a sense of incompleteness associated with it" (Halliday & Hasan, 1976, 144). Although it is a matter of presence or absence of elements (syntax), its completion is primarily a semantic operation.

By far the most common element is the definite article 'the', with 1,075 instances (an impressive 6.9% of the total words). The definite article 'the' and the demonstratives 'this' (54, 0.346%), 'that' (243, 1.56%, an overwhelming majority of which are relative pronouns and subordinating conjunctions), 'these' (8, 0.051%) and 'those' (16, 0.102%), are essentially specifying agents, serving to identify an individual or a group designated by the nouns, but do not contain any specifying element of their own. The definite article has no semantic content of its own, but it does contain the clues to the connections between the different elements in the sentence. One example will suffice:

Third, *the* requirement that a bypass procedure ensure *the* minor's anonymity is satisfied, since H.B. 319 prohibits *the* juvenile court from notifying *the* parents that *the* complainant is pregnant and wants an abortion and requires both state courts to preserve her anonymity and *the* confidentiality of court papers, ...

Among the conjunctive relations in our legal texts, we have to single out the addition ('and', 420 instances, 2.696%; 'also', 20, 0.128%; 'or', 15, 0.096%; etc.), adversative (primarily 'but', 30, 0.192%), cause ('because', 27, 0.173%; 'then', 1, 0%), consequence ('thus', 4, 0.025%), etc.

As for lexical cohesion proper, we should indicate that a limited set of lexical items are used throughout the court opinions, to the exclusion of other terms, in a pattern of tightly-knit lexical cohesive relations which set legal language apart from other linguistic registers. This fact illustrates the extraordinarily important phraseological work carried out by the judiciary in their efforts to achieve linguistic neutrality, expressive balance and a certain euphemisation of experience. The key term in all eight court decisions we are studying is, without a doubt, the term abortion itself, with 115 instances (0.738 %). There is a slight predominance of countable over uncountable uses of the term:

women seeking / a woman seeking / to obtain / having ... an abortion (20 instances)

women seeking / having / restrict / the intended ... abortions (11 instances)

... the abortion ... (7 instances)

But what is surprisingly high is the number of uncountable instances ('opposing abortion', 'regarding abortion as a method ...', 'abortion involves ...', 'opposition to abortion', 'the right to abortion', etc.), which seems to indicate a high tendency towards abstraction, to view abortion as a moral phenomenon rather

than as a surgical operation. There is an effort to coin compound adjectives and nouns ('abortion services', 'abortion decisions', 'abortion procedures', 'abortion information', etc.) which make reference to reality less direct. The verbs accompanying the term 'abortion' are highly formal ('seek', 'obtain', 'perform', 'delay', 'prohibit', 'oppose', 'consent (to)', 'consider', 'contemplate', 'provide', 'support', etc.) or general ('have'). The other words often repeated in these texts are those related to trial proceedings, to their participants, and to the decisions. For example, 'court' (138 instances, 0.885%); 'state' (101, 0.648%); 'clinic' (64, 0.410%); 'interest' (68, 0.436%); 'judgment' (30, 0.192%); 'injunction' (37, 0.237%); 'case' (34, 0.218%); 'opinion' (68, 0.436%); 'petitioner' (37, 0.237%); 'right' (53, 0.340%); 'provision' (36, 0.231%); etc. Legal vocabulary is closely tied to a "syntax of generalization" (Goodrich, 1987, 180), which "deletes the context and specific identity of the agents of the processes described and judged, and assumes a straightforward, unproblematic, continuity between concrete instance and abstract norm" (*ibid.*)

Legal language is lexically dense and some of these items have a very restricted use and constitute a tightly-knit web of near-synonyms. Terms like 'provision' (36, 0.231%), 'regulation' (29, 0.186%) or 'order' (8, 0.051%) can sometimes only be distinguished by specialists. The same can be said of 'opinion' (68, 0.436%) or 'decision' (44, 0.282%); or of such legal adjectives as 'legal' (10, 0.064%) or 'legitimate' (14, 0.089%), 'unlawful' (3, 0.019%), 'illegal' (5, 0.032%) or 'unconstitutional' (8, 0.051 %). Legal language, due to its very specificity and to its importance in everyday life, carefully avoids superordinate terms ("a superordinate term operates anaphorically as a kind of synonym" (Halliday & Hasan, 1976, 275)) and favours rather co-hyponymy. Very few 'general' items appear: 'people' (9 instances, 0.057%), 'person' (14, 0.089%), 'child' (15, 0.096%), 'thing' (3, 0.019%), 'object' (1, 0.006%), 'business' (2, 0.012%), 'affair' (1, 0.006%), 'matter' (3, 0.019%), 'question' (10, 0.064%), etc. More specific, restricted and specialised terms are preferred, which are only applicable to the court context: 'parent' (59 instances, that is 0.378 %), 'minor' (46, 0.295%), 'respondent' (20, 0.128%), 'patient' (18, 0.115%), 'protester/protestor' (15, 0.096%), 'physician' (16, 0.102%), 'doctor' (15, 0.096%), 'victim' (3, 0.019%), etc. Incidentally, and maybe as a manoeuvre of avoidance of sexual confrontation, there are 65 instances of 'woman' or 'women' (0.417%), whereas there are none of 'man' or 'men'.

However, in court decisions very few 'actors' are involved – rather it is 'facts' which are reported. Legal language seems to create a context of its own where all personal and immediate references are toned down and transformed into impersonal and objectifiable ones:

Respondents have conceded that this intrastate restriction is not applied discriminatorily against interstate travelers, and the right to interstate travel is therefore not implicated. *Ibid.* Nor can respondents' §1985(3) claim be based on the right to abortion, which is a right protected only against state interference and therefore cannot be the object of a purely private conspiracy.

A limited set of lexical items recurs again and again, making legal language lexically and collocationally dense – and cohesive. Each occurrence of a lexi-

cal item carries with it a particular collocational environment, highly predictable in some cases. Legal language is lexically dense and constitutes an unmistakable discourse type: "The law speaks to its own" (Goodrich, 1987, 57). A few examples will illustrate this:

The award of attorney's fees and costs under §1988 must be vacated because respondents were not entitled to relief under §1985(3). However respondents' §1985(3) claims were not, prior to this decision, ...

The two-parent notice requirement is mandatory unless, *inter alia*, the woman declares that she is a victim of parental abuse or neglect, in which event notice of her declaration must be given ...

The requirement that both parents be notified, whether or not both wish to be notified of have assumed responsibility for the upbringing of the child, does not reasonably further any legitimate state interest.

One may read legal English indefinitely, with the unsavoury flavour – for both native and EFL speakers of English – of something foreign, something both highly structured and highly predictable but hermetic.

Conclusion

Legal language constitutes, without a doubt, a language in itself. So it has to be learned from scratch, as if students were learning a second or foreign language. We have to learn its phonetics, its morphology and syntax, the complexities of its vocabulary and especially the discoursal and cultural implications of its structures and concepts. We need to be familiar with several codes: general and legal English, general and legal registers in our mother tongue, as well as the legal cultures represented by both languages. We also use translation of words, of structures, of cultural terms, of institutions, of a whole philosophy to approach legal English. In this paper we have attempted to combine two somewhat neglected areas of study: on the one hand legal English, and on the other lexical cohesion. Whereas legal language constitutes a complex and very specific linguistic type, lexical cohesion is one of the main resources for text construction and for the very specificity of legal language itself.

All cohesive links are in fact somehow lexical. There is a pattern of constant lexical repetition, reiteration or synonymy which reinforces the notion of English legal texts as conservative and highly cohesive. From the most strictly cohesive relations of substitution and ellipsis to reference, conjunction or lexical cohesion proper, all cohesive ties reinforce the meaning relationships existing in a text which are not easily recognisable; they give unity to a text, intratextually, contextually and intertextually. Although Beaugrande and Dressler consider that cohesion is a text-centred – but not user-centred – notion (1981, 7) we have to insist on its pragmatic nature: for Stoddard, cohesion is a "mental construct resulting from reader processing" (1991, 17).

Substitution at the word level is the very exception in legal language; only at

a clausal or sentential level does legal language allow some measure of cohesive substitution. There is rather an overwhelming tendency to repetition and avoidance of ambiguity. A limited set of key lexical items are used throughout the court opinions, to the exclusion of other terms, in a pattern of tightly-knit lexical cohesive relations which set legal language apart from other linguistic registers. We observe a strong tendency towards abstraction, to view abortion as a moral phenomenon rather than as a surgical operation. This is seen in the effort to coin compound adjectives and nouns which make reference to reality less direct, less poignant. Verbs accompanying the term 'abortion' are highly formal or general. The other words frequently repeated mainly refer to trial proceedings ('state', 'court', 'interest', 'injunction', 'case', 'opinion' ...) and, for example, although there is a significant reference to 'woman' or 'women' as subjects of abortion, care is taken to avoid any reference whatsoever to 'man' or 'men' unless under the guise of 'doctor', 'petitioner', 'protester', 'physician' and the like. Legal language is lexically dense and most of the items have a very restricted use and thus constitute a tightly-knit web of near-synonyms. Legal language carefully avoids superordinate terms and favours co-hyponymy. Very few general terms ('people', 'person', 'thing', 'object' or 'business') appear; instead, more restricted terms are preferred, which are only applicable to the court context.

Legal language seems to create a context of its own where all personal and immediate references are mitigated and transformed into impersonal and objectifiable ones. A limited set of lexical items recur again and again, making legal language lexically and collocationally dense and cohesive. The enormous importance and transcendence of such an issue as abortion, its influence on women's lives and the political debate it generates make it especially attractive for us and our EFL students with a view to analysing its judicial or legal phraseology. All courts – and fundamentally the Supreme Court of a nation – have to observe absolute impartiality in judging social or personal attitudes and in phrasing verdicts or opinions of a contentious nature. According to Laster and Taylor, judges "engage in a sophisticated linguistic analysis of words and syntax to construct meaning" (1994, xiv). The Supreme Court has as its first legal imperatives both to prevent any ideological bias from entering their texts and to respect all religious, racial or sexual beliefs or inclinations. In spite of all this, there is an unavoidable relationship between language and ideology: language serves to create ideology and ideology works mainly through language (Fairclough, 1989, 1). Neutrality or objectivity in language are not gratuitous.

Endnotes

- 1 This is part of research project UV-97-2207 funded by the Universitat de València, Spain.
- 2 The eight U.S. Supreme Court decisions are on the following cases: no. 88805 (v. Akron Center for Reproductive Health, et al.), no. 881125 (Hodgson et al. v. Minnesota et al.), no. 89-1391 (Rust v. Sullivan, Secretary of Health and Human Services), no. 90-985 (Bray et al. v. Alexandria Women's Health Clinic et al.), no. 91-

744 (Planned Parenthood of Southeastern Pennsylvania et al. v. Casey, Governor of Pennsylvania et al.), no. 92-780 (National Organization for Women, Inc., et al. v. Scheidler et al.), no. 93-880 (Madsen et al. v. Women's Health Center, Inc., et al.) and no. 95-1065 (Schenck et al. v. Pro Choice Network of Western New York et al.).

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