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Review

New Insights into the Semantics of Legal Concepts and the Legal Dictionary

Martina Bajčić (2017)

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This book is a contribution to the field of jurilinguistics[1] and more specifically to the field of jurilexicography, which has tended to be neglected in the literature. It consists of nine chapters including an introduction and a conclusion. The introductory chapter defines the basic building blocks of terminology and lexicography, traces the cognitive shift in terminology, and explores its relevance for legal lexicography. Chapter 2 investigates the relationship between language and law (p. 45). The challenges posed by indeterminacy and polysemy to legal precision are discussed in the context of EU law. The interpretative approaches adopted by the US courts and the Court of Justice of the European Union (CJEU) are examined in Chapter 3. Chapters 4 and 5 concentrate on key aspects of EU law such as its conceptual autonomy, multilingual nature and the role of the CJEU. Chapter 6 elucidates the relationship between legal translation and legal lexicography. Existing lexicographical resources are analysed and their shortcomings exposed. Chapters 7 and 8 are devoted to methodology. A very brief final chapter makes the case for digital and customised lexicographic products.

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Discussion

The title of this volume is somewhat misleading. Essentially, what is proposed here is a 'new' termontography[2]-based methodology for the compilation of multilingual EU law dictionaries. Termontography marries 'theories and methods for multilingual terminological analysis of the sociocognitive approach' with 'methods and guidelines for ontological analysis' (Temmerman and Kerremans 2003: 3). It draws on 'a predefined framework of categories and relationships, derived at in collaboration with field specialists, to which terms and verbal constructions are mapped' (p. 8). Bajčić's model differs from that of those authors in that it 'favours an onomasiological approach' (p. 170). It is hard to argue that such a separation is not also present in the termontography model. There is little novel or insightful here. Before evaluating the merits of the author's methodology let us first address two key aspects of the legal and linguistic context.

1. Theory and lexicography

A single paragraph is devoted to the role of theory in dictionary making. The author rightly points out (p. 143) that no specific theory of lexicography is posited by practitioners. Lexicography, it is true, would appear not to have truly engaged with linguistic theory until the beginning of this century. Indeed, great monuments of lexicography such as the *OED* are founded on established principles that go back to the *Thesaurus Linguae Latinae* (1531). Lexicography has traditionally been viewed primarily as an art or a craft, a purely practical activity. Atkins (1992/1993: 5–7) insists, however, that linguistic/theoretical considerations are ever present in Johnson's *Plan of a Dictionary*. Rundell (2012) has pointed out that the decision-making of lexicographers draws on theoretical underpinnings. This section of the book would have benefited from an analysis of the relationship between metalexicographers and practising lexicographers, and of the reception of the 'modern theory of lexicographic functions'. Also absent is any discussion of relevant linguistic theories such as frame semantics, corpus linguistics and corpus pattern analysis. The potential of such theories to also benefit legal lexicography should have been explored (Pimentel 2015).

2. Multilingualism, the EU and the interpretation methods of the ECJU

The diversity of European languages is an EU value (p. 91). Translation serves as a bridge between that aim and the seemingly contradictory aim of integration. The Court's interpretative role is complicated by the fact that the EU views all language versions of legislation as equally authentic.[3] The author sets out the approaches adopted by the Court when faced with divergent language versions (p. 95). She believes that the main interpretative practice (identified as the teleological approach) should be followed in lexicographic description as:

> [b]oth the teleological and the cognitive terminological approach underline the importance of the concept and not the term (p. 104).

This claim is problematic. Firstly, it fails to take account of the diversity of the Court's interpretative practice. Secondly, it appears to be founded on a misunderstanding of the nature of the teleological approach. Baaij's (2015: 142) analysis of the judgments of the court over 50 years points to at 'least a similarly dominant role for the literal or textual approach'. The teleological method of interpretation is also seen as an alternative to the linguistic-semantic method and does not entail the conceptual analysis that Bajčić seems to associate with it (Paunio 2013).

Two final related points concern the role of definitions in EU law. The author questions the value of both EU statutory and case-law definitions for the legal lexicographer. The former can be 'obscure, imprecise and inconclusive', while the latter are 'explanatory at best' (p. 147). A possible role for statutory definitions is, however, acknowledged: 'there is a place for definitions in a dictionary of law, provided that they are redefined and not drafted as statutory definitions in order to be more user-friendly' (p. 147). One wonders why case-law definitions are so objectionable. In the absence of statutory definitions for key terms such as marriage,[4] we have long relied on that source. The CJEU has, likewise, had occasion to interpret terms such as 'spouse'[5] (which is not defined in the Citizens Directive). Such definitions should undoubtedly have their place. An ancillary question involves the use of dictionaries by the CJEU: 'only rarely have Advocates General performed a comparison of the dictionary meanings of a word' (p. 102). This is not entirely true. A search for the term 'dictionary' on the Curia database yields some 243 results. It is precisely in the Opinions of Advocates General that such references are mainly found. General language lexicographical sources such as the *Shorter Oxford English Dictionary*, the *Cambridge Dictionary* and the French *Larousse* are cited in addition to more technical works such as D. Crane's *Dictionary of Aeronautical Terms*. Legal dictionaries such as *Black's Law Dictionary* are also consulted. Courts cite general dictionaries precisely because they are not contaminated by the law (Hutton 2009), but the motivation for citing legal dictionaries is less clear. Devinat (2014) identifies the somewhat surprising motive of a quest for the ordinary meaning of terms. Given the principle of equal authenticity mentioned above, one might ask which 'ordinary meaning' is being sought by the Court of Justice? One approach adopted by the Supreme Court of Canada, where both the English and French versions of statutes have equal authority, is to simultaneously identify one meaning. For example, in *Monsanto Canada Inc. v. Schmeiser*, the meaning of 'use'/'*exploiter*' is discussed:

> The starting point is the plain meaning of the word, in this case 'use' or '*exploiter*'. *The Concise Oxford Dictionary* defines 'use' as 'cause to act or serve for a purpose; bring into service; avail oneself of': *The Concise Oxford*

> *Dictionary of Current English* (9th ed. 1995), at p. 1545. This denotes utilization for a purpose. **The French word '*exploiter*' is even clearer**. It denotes utilisation with a view to production or advantage: '*tirer parti de (une chose), en vue d'une production ou dans un but lucratif. […] Utiliser d'une manière avantageuse*': *Le Nouveau Petit Robert* (2003), at p. 1004.[6] (bold emphasis added)

Such parity of treatment of lexicographic sources could never be achieved in the context of a multilingual EU law. Rare are the cases where lexicographic sources from more than one language are consulted (a notable exception being Case C-90/16, where the *Oxford Advanced Learner's Dictionary*, the French *Larousse*, the German *Duden* and the Polish *Słownik języka polskiego* are all consulted for a definition of the term 'sport'). It is perhaps no coincidence that references to lexicographical sources are largely confined to Opinions of the Advocates General. Let us now turn to the core of Bajčić's book: her methodology.

3. Methodology

The methodology consists of four phases: an analysis phase, a search phase, an information-gathering phase and a refinement phase. The analysis phase involves consideration of the domain and the intended users of the dictionary. A paragraph is devoted to the creation of the corpus (search phase). The reader is referred to Appendix 1 for a list of the 'selected sources'. We are given no information as to why these sources were chosen, the size of the corpus or how representative it is. The relevance of corpus data to studies of legal discourse is not clearly established. Note, for example, that it was only in June 2016 that a state supreme court expressly approved the use of corpus linguistics in statutory interpretation.[7] Some scholars have even questioned the potential benefit of corpora for the analysis of legal discourse because of the formulaic nature of this frozen genre (Bhatia, Langton and Lung 2004). Others are more receptive, pointing to the potential of corpora for legal translation training, legal lexicography and legal terminology (Biel 2009). Any employment of this methodology in legal lexicography should be accompanied by a justification of its merits.

The information-gathering phase involves term extraction. We learn little about the process other than that a 'relevance criterion' was applied and that experts were consulted in cases of doubt. The selected terms were then 'grouped ontologically' and linguistic labels added (p. 177).

Finally, in the refinement phase the following categories were included: subfield (SF), related concept (RC), includes, *implemented as*. This methodology produces entries such as the following:

	public health		
EN	public health		
DE	öffentliche Gesundheit		
HR	javno zdravlje		
	SF internal market	definition: justification of limiting the freedom of movement between Member States	source: TFEU
		includes	epidemiological diseases
			contagious diseases
			diseases caused by parasites

The choice of definition is somewhat baffling. The author eschews definitions based on 'traditional lexicographical principles' in favour of a 'teleological definition' (p. 182). The definition for the term 'public health' is taken from Article 45(13) TFEU which provides for the free movement of workers 'subject to limitations justified on grounds of public policy, public security or public health'. Are 'public policy' and 'public security' also to be given the exact same definition? A more rigorous search would have indicated certain sememes that could have provided a basis for a definition: physical, mental and social wellbeing, not just the absence of disease or infirmity, fundamental right, health of populations, relationship between member states and their populations, etc.[8] The entry for 'subsidiary company' reads as follows:

subsidiary company	part_of parent company

EN	subsidiary company
DE	Tochtergesellschaft
HR	društvo kći *implemented_as* ovisno društvo

The inclusion of hypernymic relationships is of course to be welcomed. But this is not novel. They are a standard component of numerous law dictionaries such as the *Vocabulaire du juriste débutant* (Lerat 2007) and the *Guide du langage juridique* (Bissardon 2005). The relationship *implemented as* has a better claim to innovation. It should be noted, however, that diverging discursive norms in implementing jurisdictions can influence the degree of terminologisation (Whittaker 2014).

This book's flaws are not limited to its substance. Minor quibbles include the failure to correctly cite EU legislative acts and case-law, the neglect of original sources (why not cite *Black's Law Dictionary* for the definition of the Latin maxim *noscitur a sociis* [p. 71]?), and the omissions from the bibliography (Hutton's 2014 article, the basis for much of the discussion on legal interpretation by the US courts, is a notable absentee). A more serious concern is the quality of the writing. Sentences such as the following contribute little to the coherence of the argument: 'in light of the made considerations, it is futile to search for a theory of lexicography. There simply cannot be one ultimate theory that fits all lexicographic nooks and crannies out there' (p. 199). The style is somewhat reminiscent of irrelevant or unsolicited emails – for 'ailing relative' replace the word 'lexicography', for 'financial remedy' read 'termontography'. To conclude, termontography may well have its place in legal lexicography (conceptual prototypes [perhaps married to phraseological prototypes] may be the way forward). This book does little, however, to further its cause. The new methodology promised for legal lexicography will have to wait another day.

Notes

1. See Gémar and Kasirer (2005).
2. This methodology is the result of the collaboration between terminologists from CVC Brussels and ontology engineers within the framework of the European project FF POIROT (IST 2001-38248).
3. Article 55 TEU and Article 358 TFEU and *Case 283/81*, CILFIT [1982] ECR 3415.
4. *Hyde v. Hyde* [L.R.] 1 P. & D. 130 (1886).
5. Case 59/85 Reed, EU:C:1986:157; Joined Cases C 122/99 P and C 125/99 P D and *Sweden v. Council EU*:C:2001:304.
6. *Monsanto Canada Inc. v. Schmeiser [2004]* 1 SCR 902, 2004 SCC 34.
7. *People of MI v. Sean Harris*, Mich, 2015. See also Mouritsen (2011).
8. See the WHO 1978 Declaration of Alma Ata.

References

Atkins, B. T. S. (1992/1993) Theoretical lexicography and its relation to dictionary-making. *Dictionaries: Journal of The Dictionary Society of North America* 14: 4–43.

Baaij, C. (2015) Legal integration and language diversity: the case for source-oriented EU translation. Doctoral thesis, University of Amsterdam.

Bhatia, V., Langton, N. and Lung, J. (2004) Legal discourse: opportunities and threats for corpus linguistics. In U. Connor, and T. Upton (eds.) *Discourse in the Professions: Perspectives from Corpus Linguistics* 203–231.Amsterdam: John Benjamins.

Biel, Ł. (2009) Corpus-based studies of legal language for translation purposes: methodological and practical potential in reconceptualizing LSP. *Online Proceedings of the XVII European LSP Symposium*.

Bissardon, S. (2005) *Guide du langage juridique: vocabulaire, pièges et difficultés* (2nd edn). Paris: Litec.

Devinat, M. (2014) Dictionary use at the Supreme Court of Canada: establishing meaning in a bilingual and bijural context. In M. Mac Aodha (ed.) Legal Lexicography: A Comparative Perspective 201–221. Farnham: Ashgate.

Garner, B. (ed.) (2014) *Black's Law Dictionary* (10th edn). St Paul, MN: West Publishing.

Gémar, J.-C. and Kasirer, N. (eds.) (2005) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*. Brussels: Bruylant; Montréal: Thémis.

Hutton, C. (2009) *Language, Meaning and the Law*. Edinburgh: Edinburgh University Press.

Hutton, C. (2014) Defining ordinary words for mundane objects: legal lexicography, ordinary language and the word vehicle. In M. Mac Aodha (ed.) *Legal Lexicography: A Comparative Perspective* 177–200. Farnham: Ashgate.

Lerat, P. (2007) *Vocabulaire du juriste débutant*. Paris: Ellipses.

Mouritsen, S. (2011) Hard cases and hard data: assessing corpus linguistics as an empirical path to plain meaning. *The Columbia Science & Technology Review* 13: 156.

Paunio, E. (2013) *Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice*. Oxford: Routledge.

Pimentel, J. (2015) Using frame semantics to build a bilingual lexical resource on legal terminology. In H. Kockaert and F. Steurs (eds.) *Handbook of Terminology* vol. 1 425–451. Amsterdam: Benjamins.

Rundell, M. (2012) It works in practice but will it work in theory? The uneasy relationship between lexicography and matters theoretical (Hornby Lecture). In R. V. Fjeld and J. M. Torjusen (eds.) *Proceedings of the 15th EURALEX Congress* 47–92. Oslo: University of Oslo.

Temmerman, R. and Kerremans, K. (2003) Termontography: ontology building and the sociocognitive approach to terminology description. *Proceedings of CIL17*. Prague.

Whittaker, S. (2014) The harmonization of legal cultures, concepts and terms: depth of harmonization and research design. In R. Temmerman and M. van Campenhoudt (eds.) *Dynamics and Terminology: An Interdisciplinary Perspective on Monolingual and Multilingual Culture-Bound Communication* 61–78. Amsterdam: John Benjamins.