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**Index.**

- Article 1.** Stanisław Goźdz-Roszkowski & Gianluca Pontrandolfo. Evaluative Patterns in Judicial Discourse: A Corpus-based Phraseological Perspective on American and Italian Criminal Judgments 9-69
- Article 2.** Martin Warren and Maggie Leung. *At any time after any proceedings ...: Why is any so frequent in legal texts?* 70-102
- Article 3.** J. R. Martin and M. Zappavigna. Youth Justice Conferencing: Ceremonial redress 103-142





## **Title**

Evaluative Patterns in Judicial Discourse: A Corpus-based Phraseological Perspective on American and Italian Criminal Judgments<sup>1</sup>

## **Authors**

Stanisław Goźdz-Roszkowski

Gianluca Pontrandolfo

## **Abstract**

The present paper aims at exploring the pivotal role of evaluative phraseology in judges' discourse, typified in the legal genre of the judgment. This contrastive cross-language study involves a bottom-up approach to evaluation based on the investigation of judgments dealing with criminal cases delivered

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<sup>1</sup> This paper stems from the ideas of both authors on the subject matter. Sections 1 and 4 were written by Stanisław Goźdz-Roszkowski, whereas sections 2 and 3 by Gianluca Pontrandolfo.

by the courts of last resort in the United States and Italy: the *Supreme Court of the United States* and the Italian *Corte Suprema di Cassazione*. The bilingual comparable corpus for the analysis is made up by two sub-corpora, the American and the Italian ones, of approximately 1,000,000 tokens respectively. From a methodological point of view, Hunston's semantic sequences (2008) – in particular the *Noun + that-clause* ('*N che*') – are used as probes to discover evaluation patterns in judicial reasoning and as a means to explore differences and similarities between US and Italian judicial reasoning. The preliminary findings provided in this contribution point to a striking similarity in the way both Italian and American judges carry out evaluative meanings.

***Keywords:***

Evaluative language, phraseological patterns, legal language, corpus, criminal judgments

*What is it that I do when I decide a case? [...] I take judge-made law as one of the existing realities of life.*

Cardozo (1921: 10-11)

## 1. Introduction

This paper centres around specialised meanings and how they are expressed and encoded by recurrent phraseological items in the domain of law. The study adopts the Corpus Linguistics analytical framework whereby priority is given to examining how and in what ways “select strings of words serve specific discursual purposes or how interactants perform implicit or explicit verbal actions in different and specialised contexts of situations” (Schulze & Römer 2008: 266). Austin’s famous statement (1975) that speakers and writers do things with words could be extended to argue that speakers and writers do things, to a large extent, by relying on patterns of phraseological items. Phraseological items can be broadly understood as “strings of words that are highly structured, well-organised and firmly entrenched in the human being’s mind”<sup>2</sup> (Schulze & Römer 2008: 266). This contribution starts from the premise that such sequences of words give shape to commonly held beliefs and values, as well as social and cultural structures (Robinson 2006: 8); and legal culture, its institutions and discourse are no

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<sup>2</sup> The concept of ‘phraseological item’ or ‘phraseological unit’, as well as ‘phraseology’ in general, is discussed in greater detail in the next section.

exception. We begin to explore the relationship between the special uses of language and the domain of law by looking at the role of selected phraseological patterns in creating evaluative meanings in judicial discourse belonging to two different legal systems and cultures, i.e. the Anglo-American common law system and the Italian civil law system. Two concepts require some further introduction: evaluation and the institutional frameworks in which the judicial discourse is embedded.

For the past several years, many different linguists have attempted to study the linguistic mechanisms employed by speakers and writers to convey their personal feelings and assessments. Such investigations have been carried out to examine different linguistic areas using a wide range of conceptual and theoretical approaches, including appraisal (Martin and White 2005), stance (e.g. Biber 2006), metadiscourse (e.g. Hyland and Tse 2004), modality (e.g. Palmer 1987), sentiment (e.g. Tabouada and Grieve 2004), evaluative, attitudinal or affective language (e.g. Ochs 1989), evidentiality (e.g. Chafe and Nichols 1986) and evaluation (e.g. Hunston 1994; 2011). While any systematic and comprehensive overview of this phenomenon is obviously beyond the scope of this paper (interested readers are encouraged to refer to Hunston 2011 for what is probably the most recent and highly informative treatment on this subject), it is possible to signal a few fundamental aspects that

seem to pervade all the above-mentioned approaches. First, evaluation is essentially subjective in that evaluative utterances convey personal opinions, which tend to be positive or negative (Thompson and Hunston 2000: 1) and necessarily elude the true-false distinction. At the same time, evaluation may be intersubjective because it usually involves some social interaction<sup>3</sup>. Second, evaluation occurs within a specific social and institutional framework. For example, legal interactants create and construe evaluative statements within the constraints of values valid for a particular legal system and legal culture. Third, there is a sense that evaluative language is extremely context-dependent and many lexical items studied out of context are unlikely to provide a reliable indication of evaluative meaning. For the purpose of this study, we adopt Hunston's (1994: 210) term 'evaluative language' as referring to language "which indexes the act of evaluation or the act of stance-taking. It expresses an attitude towards a person, situation or other entity and is both subjective and located within a societal value system". The concept of evaluative language is then operationalised as a set of

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<sup>3</sup> It should be noted that Hunston (2011: 51) distinguishes – under the heading of 'evaluative language' – between 'evaluation' (the ascription of a value to an entity, whether inside or outside the text) and the interactive 'stance' (indications in the text that a human being, the writer, is communicating with another human being, the reader).

words and phrases which express evaluative, attitudinal meaning. If conceptualised in terms of textual indications, evaluative language appears to be particularly amenable to the use of the Corpus Linguistics analytical framework for two main reasons. First, advanced computer tools in conjunction with large balanced and representative corpora make it possible to investigate the distribution of phraseological items across different registers or genres within one language corpus or across different language corpora (see, for example Biber 1988, 1995), especially when aided by tests of statistical significance. Second, qualitative corpus research uses corpus data to scrutinise individual word forms and sequences of words in context. The examination of relevant concordance lines enables one to identify implicit evaluative meanings. At the same time, corpus techniques are particularly suitable for discovering recurring patterns of lexical items, which are often difficult to intuit or observe in the course of one's daily professional activities based on a limited number of texts. This problem was noticed by Sinclair and Coulthard when they refer to "latent patterning" (1975). The combined quantitative and qualitative research techniques have been used in this study to examine comparable corpora of American and Italian judgments.

As already signaled, in this paper we intend to look at selected patterns of evaluation in the discourse of

judicial court opinions. The importance of evaluative language in judicial discourse cannot be overstated. Indicating an attitude towards a legal entity, process or interactant is inherent in the acts of persuasion and argumentation, which in turn appear to be an integral part of judicial discourse. For example, Cotterill (this issue) shows the extent to which overt evaluation is present in the judge's sentencing statements. A substantial part of judicial opinions involves expressing agreement or disagreement with decisions given by lower courts, opinions expressed by counsel representing the parties, as well as the opinions arrived at by fellow judges from the same bench. The literature on evaluation in judicial discourse tends to focus on the relationship between testimonial evidence and subjective judgements of witnesses providing such evidence. A case in point is Heffer (2007), who in his empirical study examines the linguistic construal of evaluating witnesses and defendants by trial lawyers and judges. By employing the semantic appraisal framework of judgement (Martin and White 2005) and a corpus of official court transcripts, Heffer showcases the tension between rational, legally-framed fact-finding and subjectively evaluative narrative construction (2007: 176). Less directly perhaps, evaluation and argumentation studies overlap in respect of issues related to the disciplinary epistemology, especially the assertion of facts and their interconnections in judicial argumentation. Mazzi (2007,

2010) represents a recent trend in using a genre-based, corpus linguistics approach to study key linguistic components employed by judges in different jurisdictions. Mazzi (2007) takes a comparative approach to the study of generic moves and the reporting verb ‘hold’ in European and English/Irish judgments. It turns out that the judgments differ in respect of the generic move “Arguing the case” but the verb ‘hold’ is overall one of the most frequent tools used in the discursive construction of argumentation in this move to signal “either an authoritative stance taken by the Court or an equally authoritative reported argumentation of another judge or court” (Mazzi 2007: 21). Mazzi (2010) is of even greater relevance to this study as his paper offers a linguistic analysis of judicial evaluation strategies in US Supreme Court judgments. Mazzi focuses on evaluative lexis and finds that judges employ a range of different strategies to express stance. The present study corroborates and extends Mazzi’s findings which point to the central importance of the pattern *‘this/these/that/those* + labeling noun. As will be demonstrated in Section 3, a similar pattern incorporating nouns followed by *‘that’* appositive clauses turns out to be a widely-used linguistic resource both in American and Italian judgments.

The focus of the study is the language of a specific law professionals’ community, namely judges. Judicial



discourse, traditionally typified in the legal genre of judgments, represent a fertile ground for the study of evaluation, since they illustrate the reasoning, i.e. the arguments, that led them to make a particular decision. We decided to focus on the highest courts' judgments because of their importance for the criminal judicial systems of both United States and Italy. The texts produced by the Supreme Court judges, being the product of a long historical tradition, represent a point of reference, not only for jurists, but also for lower-court judges (Taruffo 1988: 198). Moreover, their opinions are considered, by legal communities, as one of the most striking examples of 'living law' or *law in action* to refer to the 1910's pioneer paper by the distinguished legal scholar Roscoe Pound (cf. Garavelli 2010: 154, Cadoppi 1999: 253). Despite the differences between the Common Law and the Continental Civil Law, the Supreme Courts in both the US and Italy share some similarities with respect to their roles and functions. There are reasonable grounds to consider the United States Supreme Court and the Italy's *Corte Suprema di Cassazione* as directly comparable. According to Cappelletti et al. (1989: 142), the Supreme Court should be compared to the highest courts of appeal on the Continent.

As far as the US Supreme Court is concerned, it is the ultimate appellate court and consists of the Chief

Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law.

When it comes to the Italian counterpart, the *Corte Suprema di Cassazione* is the court of last instance (unless we consider the jurisdiction of Court of Justice of the European Communities). Among its major functions, there is the duty to ensure the correct application of the law and its uniform interpretation (cf. Scarselli 2010: 227-258, Pontrandolfo 2011: 212-213). It decides only on points of law, the *quaestio iuris*, and not on the *quaestio facti* (the merits of the facts), which are dealt with by the lower courts. The Court of Cassation is arranged into divisions (penal, civil, administrative and military) headed by one main president and a deputy. Most cases are heard by a panel of five judges, whereas in some circumstances the judges gather all together (the so-called ‘united sections’, cf. Scaparone 2012: 70). In addition, a public prosecutor must state his/her interpretation of the applicable law in every case submitted to the court to aid judges in reaching their decision. Albeit not binding for the decisions of other judges in analogous cases, the judgments of the

*Cassazione* have an authoritative and exemplary value for all courts in the system (Ondelli 2011: 17). Apart from the substantial similarities between these two institutions in terms of their role and function, we believe there are also some shared linguistic resources, i.e. specific phraseological patterns employed frequently in judgments to express evaluation. The remainder of this paper is concerned with the description of this linguistic construct and an attempt to illustrate how it fits within the discursive and generic practices.

The paper is divided into 4 sections. Section 2 introduces the key methodological concept of semantic sequence and describes the make-up of the corpora used. In Section 3 we provide and discuss the findings of our analysis and Section 4 brings conclusions and directions envisaged for future research.

## **2 Method**

### **2.1 Key methodological concepts**

A brief overview of the key concepts of our study is a fundamental step towards the understanding of the methodology we adopted to answer the research questions.

The study of evaluative patterns involved the preliminary decision on which kind of phraseological patterns had to be considered in the analysis.

First of all, phraseology is a complex field that has fuzzy borders with at least four major fields: semantics, morphology, syntax and discourse (Granger & Paquot 2008: 29). The complexity of this field is easily demonstrated by the broad range of near-synonymous terms used in literature to refer to its object of analysis: ‘word combination’ (Cowie 1981), ‘unit or meaning’ (Sinclair 1991), ‘phraseme’ (Mel’čuk 1998), ‘phraseological unit’ (Burger 1998), ‘phraseologism’<sup>4</sup> (Gries 2008) to name a few.

For the purposes of our study, we favoured the ‘distributional approach’ to phraseology, that is the one which recognises that the boundaries between phraseology and syntax are not clearly distinguishable (ibid.: 34) and that even ‘grammatical collocations’ (Benson et al. 1997) or ‘grammar patterns’ (Francis et al 1996/1998 in Hunston 2008: 278) can and do play a role in the phraseological universe. In particular, we decided to add a further dimension, semantics, by trying to analyse the relationship between (grammatical) form, in particular phraseology, and meaning. We therefore resorted to Hunston’s (2008: 271) concept of ‘semantic

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<sup>4</sup> “The co-occurrence of a form or a lemma of a lexical item and one more or additional linguistic elements of various kinds which functions as one semantic unit in a clause or sentence and whose frequency of occurrence is larger than expected on the basis of chance” (Gries 2008: 6).

sequences’, namely “recurring sequences of words and phrases that may be very diverse in form and which are therefore more usually characterised as sequences of meaning elements rather than as formal sequences”. The term ‘meaning elements’ refers basically to grammatical words (such as ‘after’, ‘and’, ‘did’, ‘for’, ‘that’, ‘there’, ‘not’, etc.) considered as ‘salient items’ (Gledhill 2000: 115) in the sequences they identify. Hunston (2008: 272) argues that such words are the best starting point for identifying semantic sequences in specialised corpora, and that such sequences identify “what is often said” in those corpora. We decided to use ‘semantic sequences’ as probes to discover evaluative patterns in judicial discourse in our corpus.

The correlation between phraseology and judicial evaluation becomes even more evident if we consider that one of the approaches to investigating ‘evaluation’ in a text consists in the analysis of the broad range of lexical indicators of evaluative meaning (Hunston 2011: 13). Evaluation is contextual: the evaluative meaning of any word cannot be identified reliably if the word is encountered in isolation. This is the reason why the corpus approach proves to be particularly suitable for the study of evaluative patterns.

Among the broad range of lexical items, the one with a likelihood of being evaluative in context are nouns, verbs, adjectives and adverbs (Hunston 2011: 13).

Following this author (2008: 278-284), the starting point of our study was indeed a ‘grammar pattern’, namely the ‘N *that*’ pattern, where a noun is followed by an appositive *that*-clause (e.g. ‘the observation that’, ‘the suggestion that’, ‘the idea that’, etc.). It is widely acknowledged (e.g. Halliday & Matthiessen 2004: 637) that the noun in this pattern indicates the epistemic status of the proposition expressed in the *that*-clause and that projected *that*-clauses of this kind are important to disciplinary epistemology. Moreover, ‘that’ as conjunction plays an important role in reformulating the claim as a cognitive research process (Gledhill 2000: 149). A close attention to the co-text of a set of nouns with evaluative significance can show both similarities and differences in the ways they are used, which in turn throws some light on the role of language and of ideas in our corpus (cf. Hunston 2011: 99).

It has been amply demonstrated (Hunston 2008, 2011, Gledhill 2000, Charles 2004, Groom 2007) that semantic sequences – of which our ‘N *that*’ pattern is an example – are most usefully investigated in the area of specific, specialised discourses, where grammatical words play a pivotal role. We therefore decided to investigate the use of this pattern in judicial setting, aware of the fact that, as already mentioned in the Introduction, judges have to motivate their opinions in their judgments and, to do so, they are forced to use

status nouns shedding light on the reasoning leading them to reach a specific decision. Indeed, as pointed out by Mazzi (2010: 374), although judges are expected to draft linear lines where the formulation of the decision merely reflects the application of the relevant legal norms to the facts of the case, the articulation of the judges' argumentation presupposes a certain degree of subjectivity. Judges are no more considered as mere *bouche de la loi* (literally mouth of law), as simple translator into practice of the legal norms (cf. Garavelli 2010: 97): their 'presence' in the texts they produce is becoming more and more evident.

One of the easiest and most immediate ways of studying the semantics of evaluative patterns could be that of looking at neutral, positive or negative polarity<sup>5</sup> of a given word in a given context, an observation that can be carried out by focusing on a co-text no longer

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<sup>5</sup> In the literature we find different terms to refer to the way in which certain seemingly neutral words can be perceived with positive or negative associations through frequent occurrences with particular collocations. Louw (1993) was the first to use the term 'semantic prosody' – inspired by Firth's (1957) concept of phonological prosody – although it was attributed to Sinclair (1991) who developed the concept in later work (e.g. Sinclair 2004). Stubbs (2001: 64) also used the term 'semantic preference'. Throughout our paper, we are going to refer to the term *semantic polarity* as a general term to indicate the semantic attraction that a word has towards the negative or positive/neutral semantic pole.

than a concordance line of something between 80 and 500 characters long (Hunston 2011: 15). From a methodological point of view, we decided not to consider ‘neutral polarity’, since we conceive of evaluation as essentially a dualistic, highly polarised phenomenon. We found that, in most of the cases analysed in our corpus, the distinction between neutral and positive polarity becomes blurred, thus misleading the focus of the study.

## 2.2 Corpus description

This paper is a contrastive cross-linguistic study involving a bottom-up approach to evaluation based on the investigation of judgments delivered by the highest courts in the US and the Italian criminal justice systems, namely the *Supreme Court of the United States* and the *Corte Suprema di Cassazione*.

As already mentioned in the Introduction of this paper, the focus of the study is the language of a specific law professionals’ community, namely judges (Solan 1993, Philips 1998, Heffer 2007).

The bilingual comparable corpus<sup>6</sup> for the analysis is an ‘ad hoc’ corpus (Aston 1999), meaning that it has

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<sup>6</sup> A comparable corpus can be defined as a corpus containing components that are collected using the same sampling frame and similar balance and representativeness (cf. McEnery 2003: 450), e.g.



been compiled precisely to investigate evaluative phraseology, and is made up by two subcorpora: the American and the Italian ones, of approximately 500,000 tokens<sup>7</sup> respectively. Both of them deal with criminal cases for two main reasons: first of all, narrowing down the huge normative subjects the two courts are asked to rule on has allowed us to focus on a coherent and consistent share of case-law. Secondly, this would provide us with the opportunity, in the near future, to test empirically the hypothesis of a correlation between a specific field of law (e.g. civil, anti-tort, labour law, etc.) and the type of evaluative patterns involved in these texts.

Turning to the composition of the corpus, the American data set includes 122 opinions totaling over 1,000,000 tokens and it comes from the American Law

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*the same proportions of the texts of the same genres in the same domains in a range of different languages in the same sampling period. [...] the subcorpora of a comparable corpus are not translations of each other. Rather, their comparability lies in their same sampling frame and similar balance (McEnery & Xiao 2007: 3).*

<sup>7</sup> A single linguistic unit, most often a word, although depending on the encoding system being used, a single

word can be split into more than one token, for example *he's* (*he* + *'s*). (Baker et al. 2006: 159).

Corpus (Goźdz-Roszkowski 2011). For the purpose of this study, only opinions dealing with criminal law were chosen. The selection offers a synchronic glimpse into the judicial practice of the US Supreme Court during the period 1999-2006. The opinions were accessed via FindLaw.com, a well-known legal information web portal. While the collection represents only a fraction of the Court's enormous output, it should still capture the lexico-syntactic trends in patterning evaluation representative for the collective end product of the nine judges. In fact, an opinion is usually written by one judge (usually referred to as 'justice') after winning the approval of the majority<sup>8</sup>. However, the process of opinion writing can be a difficult and time-consuming task. It seems that, in most cases, an opinion is the collective product involving a long process of persuasion, or even bargaining. It is clear that all of the judges, at one time or another, are constrained by group and institutional concerns. The Supreme Court's opinions, although ostensibly the work of one person, are really the product of many minds, in the sense that the judge who writes the opinion often has to add to, delete, or modify the original draft in order to retain the support of his or her colleagues (Abraham 1998: 143).

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<sup>8</sup> Detailed description of how opinions are drafted can be found, for example, in Abraham (1998) and Rogowski & Gawron (2002).

As far as the Italian subcorpus is concerned, it is a part of the subcorpus of the Corpus of Criminal Judgments (COSPE, Pontrandolfo 2013), named COSPE-Sup. It comprises 230 judgments, all of them delivered by the criminal division of the Italian Supreme Court in the period 2005-2011. It amounts to over 1,000,000 tokens, and it was designed according to two basic criteria: first of all, the subject matter, since all the select judgments deal with criminal cases; secondly, the time span, since it only includes judgments issued between 2005 and 2011. All the judgments were collected from the large case-law section of the online De-Jure database<sup>9</sup>. When it comes to the drafting of the judgments, although they are the joint result of the opinions of the five or nine judges composing the Court, they were actually drafted by a single judge, the so-called ‘reporting judge’ (*giudice relatore/estensore*), whose function is to explain the main points of the case, most of the times by using a rather standardised template (cf. Zaza 2012).

As far as methodology is concerned, first of all, we checked to what extent Hunston’s methodology (2008, 2011) – developed for the English language – was compatible with the Italian language. The replicability of

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<sup>9</sup> <http://www.dejure.giuffre.it> [accessed on July 2012]

Hunston's corpus analysis with the Italian subcorpus guaranteed the soundness of the methodology.

We queried our corpus for the 'N *that*' pattern (pattern '*N che*') and we looked at the frequency of individual nouns found in this pattern and their functions in co-texts. To do so, we relied on two concordance tools<sup>10</sup>: WordSmith Tools (version 5.0), developed by Mike Scott and AntConc (version 3.2.4), created by Laurence Anthony. After converting the judgments into .txt format in order to be read by such tools, we obtained our findings by combining a quantitative and a qualitative procedure.

First of all, we used the CONCORD(ANCE) function provided by both tools. By typing in the desired pattern, the function provides the analyst with an all-inclusive list of corpus occurrences of that pattern in context. We used the *wildcard* asterisk (\*) instead of the noun, in order to get a comprehensive list of the 'N *that*' pattern, with the aim of highlighting any evaluatively significant collocational environments. In the case of the

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<sup>10</sup> A concordancer is a software tool that searches through a corpus for each instance of a given word, phrase or other element and the immediate context in which each instance occurs, to create a concordance (a list of all of the occurrences of a particular search term in a corpus, presented within the context in which they occur – usually a few words to the left and right of the search term) (Baker et al. 2006: 42-44).

American subcorpus, for example, we typed ‘the \* that’ to obtain a long list of ‘N *that*’ patterns (‘the fact that’, ‘the argument that’, ‘the conclusion that’, etc.) that were later on scrutinised qualitatively to ensure that they were the right pattern we were searching for. As for the Italian, the query took longer, because of the feminine and masculine gender of the article (‘il/la’ instead of ‘the’). We therefore typed ‘il \* che’ and ‘la \* che’ to obtain a parallel list (‘il fatto che’/the fact that, ‘la circostanza che’/the circumstance that, ‘il rilievo che’/the objection that, etc.).

Secondly, after having the full list of both subcorpora at our disposal, we analysed each single item in its collocational environment to get a clearer picture of the contextual patterns they occur within. This proved to be crucial for the identification of evaluation on text surface, providing us with the possibility to study the prevalence of positive or negative semantic polarity.

To retain methodological rigour, we fixed a cut-off point at 5 occurrences per 1,000,000 words and we additionally applied the multiple-text requirement whereby a given noun in this pattern had to appear in at least 5 different judgments to guard against judges’ idiosyncrasies (cf. Goźdz-Roszkowski 2011: 110).

Comparability across the two languages – meaning the discovery of patterns serving the same evaluative

function – was assured by the repetition of the same procedure for the two datasets, and by the final comparison of the semantic function of the phraseologisms in the two languages/judicial cultures.

In the next section, we shall discuss findings on the ‘N *that*’ patterns identified in our corpus.

### **3. Corpus findings**

Table 1<sup>11</sup> contains the list of the most frequent status nouns<sup>12</sup> followed by *that*-clauses in both subcorpora:

US SC subcorpus	IT CSC subcorpus
1. <i>fact</i> (316)	1. <i>fatto</i> (fact) (539)
2. <i>evidence</i> (190) <sup>13</sup>	2. <i>circostanza</i> (circumstance) (202)
3. <i>argument</i> (171)	3. <i>rilievo</i> (objection) (83)
4. <i>conclusion</i> (168)	4. <i>motivazione</i> (grounds) (32)
5. <i>view</i> (93)	5. <i>considerazione</i> (consideration) (36)

<sup>11</sup> The number in brackets indicates the raw frequency, that is single occurrences in each subcorpus (per 1,000,000 tokens).

<sup>12</sup> Following Huston (2011: 27), “one of the basic tenets of the concept of status is that all propositions in texts are evaluated in terms of how they are aligned with the world”. Status is marked linguistically by a variety of lexico-grammatical features. One set of such resources are ‘status nouns’, “a subset of the nouns that may be followed by appositive *that*-clauses. Evaluation of status reifies propositions, and status nouns are the resource by which this is most obviously done” (2011: 116).

<sup>13</sup> The 190 instances of this word include both technical and non-technical (evaluative) senses.

6. <i>proposition</i> (73)	6. <i>presupposto</i> (assumption) (38)
7. <i>contention</i> (54)	7 <i>possibilità</i> (possibility) (38)
8. <i>assumption</i> (53)	8. <i>affermazione</i> (34) statment
9. <i>suggestion</i> (52)	9. <i>ipotesi</i> (20) hypothesis
10. <i>possibility</i> (49)	10. <i>valutazione</i> (evaluation) (18)
11. <i>assertion</i> (46)	11. <i>assunto</i> (assumption) (18)
12. <i>belief</i> (35)	12. <i>dichiarazione</i> (declaration/statement) (16)
13. <i>notion</i> (32)	13. <i>consapevolezza</i> (awareness) (13)
14. <i>presumption</i> (30)	14. <i>agomentazione</i> (argument) (12)
15. <i>theory</i> (19)	15 . <i>dichiarazione</i> (statement) (11)
16. <i>impression</i> (18)	16. <i>interpretazione</i> (interpretation) (12)
17. <i>allegation</i> (16)	17. <i>convinzione</i> (belief) (11)
18. <i>certainty</i> (5)	18. <i>profilo</i> (point of view) (11)



19. <i>interpretation</i> (5)	19. <i>tesi</i> (thesis) (10)
	20. <i>conclusione</i> (conclusion) (9)
	21. <i>deduzione</i> (deduction) (8)
	22. <i>certezza</i> (certainty) (5)

Table 1 ‘N *that*’ pattern in the American and Italian subcorpora

Both lists contain similar semantically-related status nouns. In particular, they all deal with the act of thinking or forming an opinion about a subject (e.g., ‘argument’, ‘view’, ‘assumption’, ‘notion’, ‘opinion’, etc.), so they are particularly relevant for the purposes of evaluation. As mentioned in the Introduction, it is interesting to note that these findings are in line with Mazzi’s (2010: 379-383) results, although phraseology was not his main focus and he carried out the analysis on a slightly different pattern, namely ‘this/these/that/those + labelling noun’. Francis (1986) identifies a category of nouns to which she refers as ‘anaphoric nouns’ or ‘A-nouns’. These are nouns phrases which serve the purpose of ‘encapsulating’ the concepts and argumentation contained in a preceding stretch of text. Encapsulation can be very useful because it allows the writer to develop the argument by adding new information or providing an

interpersonal ‘value judgement’ (cf. Partington 1998: 97). Virtually all the nouns listed in Table 1 belong to the category. This seems to suggest that judicial discourse might favour the use of encapsulation for the purpose of labeling propositions. Evaluation could be effected either by the choice of a particular noun (consider *fact* as opposed to *belief* or *impression*) or by qualifying the noun, as in *an illogical notion*.

The nouns in the table do play a pivotal role in our corpus, as they are used by judges to motivate their opinions on the case and, more generally, they contribute to the construction of judicial discourse. As a matter of fact, nouns such as ‘fact’, ‘argument’, ‘ground’, lead to deductions, which ultimately lead to decisions. From a semantic point of view, indeed, they all belong to the large set of elements that signal the argumentative nature of judgments. From a phraseological point of view, many of them collocate with a variety of elements that confer them either a positive or a negative polarity. This is what makes the occurrences evaluative and therefore indicative as to the expression of the judges’ stance (Mazzi 2010: 381).

If we compare the English and the Italian lists, we realise that items retrieved in the two datasets are similar in their form. As a matter of fact, almost every single item in the US list has its corresponding one in the IT list (ex. ‘statement’/‘allegation’/‘assertion that’ might well

correspond to the Italian ‘dichiarazione che’; ‘possibility that’ might correspond to the Italian ‘possibilità che’; ‘theory’ to ‘tesi’; etc.). However, we decided not to focus exclusively on the strict comparative (formal) analysis, based on the *prima facie* translation equivalents, thus avoiding the risk of missing important features of evaluative language in the two datasets. We preferred taking the quantitative approach, by focusing on very frequent, as well as interesting patterns in both languages.

Turning to the single items, ‘fact’ is by far the most frequent status noun in both subcorpora, a result which is in line with the high occurrences of ‘fact that’ reported by Hunston (2008, 2011) not only in Law, but also in other discourses (Politics, Education, Humanities, Social Science, etc.). The widespread use of ‘fact’ with *that*-clauses to express epistemic stance in other disciplines is also documented in Biber’s corpus-based study of spoken and written university registers (2006: 112). Indeed, Biber identifies other nouns controlling *That*-clauses which “label the status of the information presented in the *that*-clause”, such as *argument*, *assumption*, *case*, *claim*, *idea*, *knowledge*, *notion*, *possibility*, *reason*, and *sense*. (Biber 2006: 112). As can be seen, half of the nouns provided by Biber is also listed in Table 1 suggesting that there is perhaps a wider, cross-disciplinary use of *That*-clauses controlled by nouns or N + *that* pattern (to use the terminology

adopted in this paper). When viewed as single word forms, the nouns listed in Table 1 do not represent any disciplinary specificity. None of these nouns is inherently 'legal'. It is rather the cumulative, quantitative effect of having so many such nouns in judgments suggesting that there might well be some degree of generic specificity. Obviously, any such claim would need to be supported by large-scale, multi-genre and multi-disciplinary research.

Through the analysis of the co-texts of these nouns – that is, through the computer-assisted tool Concordance that allowed us to retrieve concordance lines of these key nouns (methodology known in corpus linguistics literature as KWIC, key words in context) – we managed to isolate interesting evaluative patterns in both subcorpora.

Similar trends can be outlined: first of all, as already mentioned, the evaluative patterns identified are similar in the American and in the Italian subcorpora; secondly, we discovered that these status nouns tend to co-occur with semantically charged propositions (positively or negatively); finally, there seems to be a consistency in the way negative or positive polarity co-occurs with the syntactic position, that is to say negativity and positivity are associated with the syntactic position of the status noun (e.g. subject or object of the sentence).

Our corpus findings revealed that there are status nouns in both subcorpora that are used rather exclusively with one polarity. For example, certain nouns tend to have negative polarity (e.g. in the American subcorpus: *notion* that, *suggestion* that, *argument* that; in the Italian subcorpus: *rilievo* che (objection that), *tesi* che (thesis that), while others are used primarily with a neutral or positive polarity (e.g. in the American subcorpus: *view* that, *belief* that; in the Italian subcorpus: *valutazione* che (evaluation that), *conclusione* che (conclusion that)).

In the following sections, we shall analyse the negative (3.1) and positive (3.2) polarity associated with a select number of status nouns and we shall hint at the correlation between polarity and syntactic position (3.3).

### 3.1 Negative polarity

The detailed analysis of the status nouns' co-texts in our corpus revealed interesting phraseological behaviours in the American subcorpus as well as in the Italian one.

Dominant negative polarity characterises status nouns, such as *suggestion*, *notion* or *argument* in the American subcorpus. In particular, 'suggestion that' is used 85% of the time<sup>14</sup> in negative contexts, with the

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<sup>14</sup> As pointed out also by Mazzi (2010: 382), percentage frequencies of evaluative occurrences for each lemma hardly ever amount to 100%, if added to each other. This needs not be surprising, because

negative polarity expressed chiefly through the use of contextual elements such as the co-occurring verb ‘reject’, as in [1]:

[1] *These courts have rejected the suggestion that* due process imposes such limits because they have understood the difference between a man accused and a man convicted.

Negativity is also phrased in the following ways:

[2] *We are unpersuaded by the suggestion that,* because a defendant may be able to waive his right to appeal entirely, [...]

[3] *Nor does the Court find compelling the suggestion that,* if states are not the exclusive judicial arbiters [...]

A similar behaviour characterises the pattern ‘notion that’. Over 70% of all instances when ‘the notion that’ appears in the US subcorpus are linked to evaluative language, that is to say, the pattern is mainly adopted by the judges to express either disagreement

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not all pattern occurrences are evaluative. Indeed, there are patterns that are explanatory statements in which the judge does not express any evaluation at all.

(*We discounted* the notion that [...], *we rejected* the notion that [...], etc.) or appreciation<sup>15</sup> (The notion that [...] *is absurd*, the notion that [...] *is dubious*, etc.). Negativity is found in 60% of the hits, the rest being positive or neutral, with the pattern being used to express support (the notion that [...] *supports*, the notion that [...] *dovetails*), cause (The notion that [...] *is based on*, the notion that [...] *is premised on*, etc.) or consistency with other data (The notion that [...] *is reflected in* our cases).

Like ‘suggestion’, the negative polarity is expressed explicitly through the use of the lemma ‘reject’ (24%):

[4] *We have firmly rejected **the notion that** an official action is protected by qualified immunity unless the vey action in question has previously been held unlawful.*

The negativity is also found in the co-occurring items of discount/undermine ‘the notion that’ and a few

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<sup>15</sup> “With appreciation we turn to meanings construing our evaluations of ‘things’, especially things we make and performances we give, but also including natural phenomena – what such things are worth (how we value them). In general terms appreciations can be divided into our ‘reactions’ to things (do they catch our attention; do they please us?), their ‘composition’ (balance and complexity), and their ‘value’ (how innovative, authentic, timely, etc.)” (Martin & White 2005: 56).

cases in which ‘the notion that’ is the subject of the clause:

[5] **The notion that** the application of a ‘coercion’ principle would lead to a more consistent jurisprudence is *dubious*

[6] **The notion that** California law has surgically excised a discrete activity that hermetically sealed off from the larger interstate marijuana market is *a dubious proposition*.

[7] **The notion that** media corporations have constitutional entitlement accelerated judicial review of the denial of zoning variances is *absurd*.

This pattern shows a trait which will be further analysed in section 3.3: when used as initial-clause (in subject position), it tends to carry negative polarity explicitly through the co-occurrence between the nouns and value-laden lexis, i.e. *dubious* [Ex.5], *dubious proposition* [Ex. 6] and *absurd* [Ex. 7].

Also ‘the argument that’ shows clear negative polarity, with a strong co-occurrence of the verb *reject* (24%) and *court* as subject of the clause (examples [8] and [9] respectively). When used in subject position, ‘the argument that’ is used evaluatively, often with negative polarity:



[8] **The argument that** virtual child pornography whets pedophiles' appetites and encourages them to engage in illegal conduct *is unavailing* because (...).

[9] *The Court also rejected the argument that* it failed to consider the significance of advances in computer technology; [...]

The status noun 'argument' plays a pivotal role in the US subcorpus, since it is used by the Supreme Court judges to refer to the reasons that lead them to reach a particular decision. The occurrences reveal that, in the context of the opinion drafting, 'argument' can be referred to two possible 'interlocutors': the colleagues sitting on the same bench with whom the judge who is writing the opinion disagrees (as in the first example) or the arguments, adduced by the lower-court judges, that the judge is evaluating to reach the decision of allowing or dismissing the appeal (as in the second example). Such distinction is crucial given the 'polyphony' of different judicial voices in US opinions. Thus, there may be a plurality opinion occurring when the final outcome is agreed by majority but for differing reasons. For example, in a 6:3 decision (there are nine members of the US Supreme Court), two judges could write one concurring opinion, three judges could write another concurring opinion, one judge could write his or her

opinion and three judges could dissent. Concurring opinions are those which agree with the majority decision for different reasons, while dissenting opinions are given by judges who disagree with the majority . The identity of a particular voice is often marked by surface linguistic items such as the word ‘Court’ in [9] or the personal pronoun ‘we’ used to express the opinion of the Court:

[10] *We rejected* the petitioner’s argument that [...]

Example [10] marks both the argumentative stance adopted in the plurality opinion, as well as the identity of the ‘interlocutor’, i.e. the petitioner.

It is interesting to note that our observation of ‘argument’ negative polarity is in line with Mazzi’s (2010: 382) findings. The overwhelming majority of occurrences of argument in his corpus shows negative semantic polarity provided by contextual elements such as: *is unavailing, irrelevant, contradicted by, misses the point, not convincing, unpersuasive, bewildering, wrong, etc.*

As far as the Italian subcorpus is concerned, we detected similar patterns as in the case of the status nouns *rilievo* (objection) and *tesi* (thesis that).

With regard to the former, the noun ‘rilievo’ in Italian legal language can be used in two different

meanings: as synonym of ‘objection’ (critical observation on a particular issue) or as a synonym of ‘observation’ (in its neutral meaning). The corpus findings revealed that in our criminal judgments it is most commonly used in the former meaning (87%) than in its neutral one (13%). It tends to appear in a distinct negative context and it is mainly used to criticise a specific behaviour: something that somebody should have done, but did not do, that is to say an act of negligence or omission that invalidates the truthfulness of the thesis<sup>16</sup>. It is generally referred to the grounds of the judicial decision, as in the following examples:

[11] Il Tribunale, invece, dichiarava di *non condividere* le anzidette argomentazioni sui **rilievi che**: a)...

[The Court stated that it *disapproved* the above mentioned arguments based on **the objections that**: a)...] ]

[12] Quello che più importa è che la "ratio decidendi", che ha fondato l'annullamento, consiste proprio nel **rilievo che** il giudice di merito della

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<sup>16</sup> Indeed, from a syntactic point of view it generally follows the ‘past conditional’ in Italian, whose function is similar to the III type conditional – unreal condition – in English.

decisione annullata ha *illegittimamente ed erroneamente* inserito anche l'autonoma condotta illecita del dichiarante [...].

[The most important aspect is that the ‘ratio decidendi’ upon which the overruling has been based consists in **the objection that** the lower-court judge of the overruled decision has also added, *illegitimately and erroneously*, the autonomous illicit behaviour of the person releasing the declaration [...]]

In [12], the judge is listing the objections that lead him/her to ‘disapprove’ with the arguments adduced by the lower-court judges (‘il Tribunale’/‘the Court’) and that will guide him/her, ultimately, to formulate the decision. In [12], we find another example of the articulation of the judge’s argumentation process. The key noun ‘rilievo’ is used as linchpin of the sentence: the appeal has been overruled because of a specific objection, namely the fact that the lower-court judge resorted to an illegitimate and erroneous argument.

If we move to the pattern ‘tesi che’ (thesis that), we realise that is used 80% of the times with negative polarity as well:

[13] L'articolata **tesi che** ora *si contesta* sembra poi *trascurare* l'argomento teleologico

[The complex **thesis that** here *we are questioning* seems to *overlook* the teleological argument]

[14] Quanto alla particolare menzione, contenuta nell'art. 495 c.p. nel testo ricordato dal giudice, è appena il caso di ricordare come si tratti di un inciso che reca un contributo assai opinabile alla **tesi che** qui *si esclude*

[As for the specific mention of Art. 495 CP, in the text mentioned by the judge, we have to remember that it is just an incidental note that gives an arguable contribution to **the thesis that** here we are *excluding*]

In both examples, ‘thesis that’ is used as synonym of the noun ‘argument’. In [13], the negative semantic polarity of the noun is provided by the contextual verb ‘contestare’/‘to question’, together with the verb ‘trascurare’/‘overlook’. The judge is demolishing the argument of the lower-court judges and is explaining the objective reasons why the thesis cannot be accepted. In [14], there are no uncertain terms: the Supreme Court judges are excluding the thesis. They also refer to Art. 495 of the Italian ‘Codice Penale’ (Criminal Code), substantiating the fact that their decision merely reflects the application of the relevant legal norms to the facts of

the case. The negativity is also present in the contextual adjective ‘opinable’/‘arguable’.

### 3.2 Positive polarity

Negativity is not the only semantic polarity we found in our corpus. Some status nouns, indeed, show neutral or positive polarity.

The nouns *view* and *conclusion* are two notable examples in American judicial opinions. The former is predominantly (91% of the cases) used to provide support for a particular proposition:

[15] Justice Breyer *takes* **the view that** the Attorney General may issue a Westfall Act certification if he contests the plaintiff’s account of the episode-in-suit.

[16] Today’s opinion *takes* **the view that** because §30 of the National Bank Act, 12 U. S. C. §§85, 86, provides the exclusive cause of action for claims of usury against a national bank, all such claims--even if explicitly pleaded under state law--are to be construed as "aris[ing] under" federal law for purposes of our jurisdictional statutes. Ante, at 9. *This view finds scant support* in our precedents and *no support whatever* in the National Bank Act or any other Act of Congress. I respectfully dissent.

Both [15] and [16] illustrate what could be referred to as neutral polarity, or rather that ‘grey area’ between positive and negative polarity and the difficulty one may have when faced with the task of distinguishing between them. Example [16] conveys the neutral sense of supporting a particular viewpoint and it comes from a footnote to the plurality opinion in the *Pat Osborn, Petitioner v. Bary Haley et al.* case in which Justice Breyer’s chose to be “concurring in part and dissenting in part”. It is cited in support of the argumentation put forward by the Court and it thus leans more towards the positive end of the positive-negative cline. In contrast, [16] is an excerpt from a dissenting opinion written by Justice Scalia in *Beneficial National Bank et al., Petitions v. Marie Anderson et al.* The use of ‘takes the view that’ could be interpreted as neutral if we confine our analysis only to the first sentence. However, the second sentence reveals an unequivocally negative evaluation of the view concluded by *I respectfully dissent*. Fortunately, such cases of neutral polarity morphed into a highly negative polarity in less immediate co-text have turned out to be relatively infrequent.

Overall, the results which we obtained corroborate Mazzi (2010: 382) findings that the noun ‘view’ tends to be inserted in contexts where positive polarity prevails.

Examples [16] and [17] provide evidence that *the view that* can be combined with strong and overt markers of positive evaluation.

[17] This is perfectly consistent with **the view that** the §9706(a) power to assign does not extend beyond October 1, 1993.

[18] I find much to commend **the view that** the Establishment Clause [...)].

In example [17], ‘this’ refers anaphorically to the preceding argument and marks its coherent ties with the proposition contained in the *that*-clause. Highly appreciative, albeit personal expression of evaluation, can also be found in [18], Justice Thomas’ concurring opinion. If we relax the rigidity of our pattern and allow other preceding words, then we can notice a significant co-occurrence (23%) between the first person pronoun *I* and *view that* employed to stress the judge’s personal opinion:

[19] I *adhere* to my **view that** limiting a jury's discretion to consider all mitigating evidence *does not violate the Eighth Amendment*.

[20] I write separately to *state* my **view that**, *even if* no finding were made concerning Martinez's belief that refusal to answer would delay his treatment, or Chavez's intent to create such an impression, the interrogation in



this case would remain a clear instance of the kind of compulsion no reasonable officer would have thought constitutionally permissible.

This use of *the view that* is obviously restricted to concurring and dissenting opinions. In [19] the polarity is neutral bordering on the positive due the positive propositional content of *does not violate the Eighth Amendment*. Limiting a jury's discretion, which might be otherwise viewed negatively, here receives a positive evaluation. In both [19] and [20] the choice of the collocating verbs, *adhere* and *state*, seems to make the expression of the judges' views more emphatic. It strengthens their position in the face of potential counter-arguments, such as those related to limiting a jury's discretion in [19] or consider the hypothetical clause (*even if*) in [20].

The other example is the noun *conclusion* which is found with an overwhelmingly positive polarity in over 90% of the cases. Examples [21] and [22] illustrate a strong and statistically significant co-occurrence between the phrase *the conclusion that* and the lemma 'support':

[21] The documents provide strong *support* for **the conclusion that** Thompson suffered from episodes of schizophrenia at the time of the offense.

[22] This proviso surely *supports* **the conclusion that** it was the only exception intended by Congress from the otherwise total prohibition of at-large elections.

In total, ‘support’ plus the conclusion that accounts for 37% of all instances where this phrase is found. It is interesting to note that neither court nor related interactants are salient in the co-texts where ‘the conclusion that’ is found. The two examples above already signal that support for the conclusion come from specific documents or legal instruments.

[23] Despite the fact that *these traditional tools of statutory interpretation* lead inexorably to **the conclusion that** respondents can state a claim for discrimination against the relatively young, the Court, apparently disappointed by this result, today adopts a different interpretation.

[24] *Two aspects of the Michigan Court of Appeals' process* following plea-based convictions compel **the conclusion that** Douglas, not Ross, controls here.

As [23] and [24] show, conclusions are derived from specific, well-defined sources. We can note also the choice of collocates. In [23], the combination of the verb *lead* with the adverb *inexorably* produce the effect of

inevitability. A similar effect is achieved in [24] through the use of the verb *compel*.

If we move to the Italian subcorpus, we find cases of positive polarity with the status nouns *valutazione* (evaluation) and *conclusione* (conclusion).

The pattern ‘*valutazione che*’ is followed by a clear positive statement (58% of the times). Evaluation is, evidently, a key noun in our corpus. Positivity can be explicitly marked in the texts (as in [26] or [27]) or expressed through to circumlocutions, as in [25]:

[25] [...] **valutazione che** *non presenta aspetti di manifesta illogicità*

[**evaluation that** *is not characterised by evident illogicality*]

[26] [...] **valutazione che** *è logicamente accettabile*

[**evaluation that** *is logically acceptable*]

[27] [...] **valutazione che** *la Corte di merito ha congruamente compiuto*

[**evaluation that** *the merit Court has carried out congruously*]

In all of these examples, the pattern ‘*valutazione che*’ is used by the judges of the *Corte di Cassazione* to express the fact that they agree with the grounds and conclusions expressed by the lower-court judges. It is interesting to note that, in [25], we find a typical feature of Italian legal language, that is the use of the double negative (‘non’ + ‘illogica’). This syntactic shift is mainly used for politeness purposes, that is to say to express agreement with trial judges (Kurzon 2001: 69-70): instead of saying ‘the evaluation is logical’, judges prefer to say ‘the evaluation is not illogical’, thus relating to the positive face of the addressee (in this case, lower-court judges) and therefore resorting to a subtle strategy that mitigates the effect of their evaluation.

A similar pattern is ‘*conclusione che*’, chiefly characterised by positive evaluation (58%):

[28] **La conclusione che** nel presente processo la perizia non era atto dovuto, *ha una perfetta dignità* in termini di rigore motivazionale, tanto che [...]

[**The conclusion that** in this trial the examination was not necessary *has a perfect dignity* in terms of rationale,...]

[29] Conclusivamente può dirsi che *correttamente* i Giudici di merito sono pervenuti alle **conclusioni che** il m.llo I., con le sue puntigliose indagini...

[Finally we can say that the judges of the lower courts *correctly* reached **the conclusions that** the warrant officer, with his punctilious investigations...]

[30] A fronte di questi segnali è *del tutto logica* **la conclusione che** era obbligo preciso del medico disporre per ulteriori e più approfonditi esami

[In view of these signals, it is *completely logical* **the conclusion that** it was the doctor's duty to carry out more detailed examinations]

The examples show three cases in which the judges endorse the arguments adduced by their lower-court colleagues. The pattern takes on a positive semantic polarity by virtue of its collocations with the adjectives 'logica' (logical), 'corretta' (correct), 'giusta' (right), 'legittima' (legitimate), etc.

In the next section, we shall focus on an interesting finding: the correlation between positive and negative polarity with the syntactic position of the status noun.

### 3.3 Semantic polarity and syntactic position

The corpus-based study of the concordances has revealed that there seems to be a consistency in the way evaluative meaning co-occurs with the syntactic positions of the status nouns identified in Table 1. In particular, as evident in examples [5], [6], [7] and [8], when the ‘N that’ pattern is the subject of the sentence, it is quite likely that the rest of the proposition contains negative evaluative patterns.

This trend is evident with the most frequent status noun of the corpus, namely ‘fact’. ‘The fact that’ in subject position co-occurs with negative particles and negativity in general, in the US subcorpus as well as in the Italian one. The same does not necessarily apply when ‘the fact that’ is the object of the clause.

As far as the US subcorpus is concerned, ‘the fact that’ in subject and sentence-initial position accounts for 28% of the instances (of which 62% are examples of negative polarity). These figures are markedly higher than what Biber (1999: 676) reports for the four registers of conversation, fiction, news and academic (80 occurrences per million in the corpus of US judgments vs. 10-20 occurrences per million in Biber’s data). The following examples show the distinctive negative correlation between this status noun and contextual negative elements:

[31] **The fact that** mental-illness evidence may be considered in deciding criminal responsibility *does not compensate* for its exclusion from consideration on the mens rea elements of the crime.

[32] **But the fact that**, for example, conspiracy to commit murder can at the same time violate ordinary criminal laws and the law of war, so that it is "a combination of the two species of offenses," Howland 1071, does not establish that a military commission would not have jurisdiction to try that crime solely on the basis that it was a violation of the law of war.

These two examples illustrate an interesting pattern of co-occurrence at the level of a clause. The occurrence of the phrase *the fact that* in subject position co-occurs with a negated verb phrase in the predicate position. The high frequency of occurrence of the phrase *the fact that* placed as subject of the main clause in judgments obviously results from a discursive strategy to mark the proposition in the *that*-clause as factual or generally accepted information. The co-occurring negation in the main verb phrase suggests that this construction is frequently employed by judges to advance counter arguments.

If we move to the Italian subcorpus, 'il fatto che' appears in subject position 30% of the times. As a matter

of fact, almost 70% of these occurrences carry negative evaluation, as can be seen in the following examples:

[33] **Il fatto che** la donna sia stata colpita mortalmente in casa *stride* con le dichiarazioni degli imputati.

[**The fact that** the woman was struck dead in her house *clashes* with the declarations of the defendants.

[34] **Il fatto che** il F. abbia indicato la B. solo in sede dibattimentale, *prova poco* [...]

[**The fact that** Mr. F only indicated Ms. B. during the hearing stage *proves almost nothing*]

[35] **Il fatto che** [...] è *irrilevante/non ha rilievo/poco rilevala nulla rilevalè privo di rilievo/non ha molto rilievo/ha scarso rilievo/...*

[**The fact that...is unimportant/is not important/has little importance/nothing proves/lacks in importance/has no great importance/has little importance/...]**

As can be seen in the examples, the objective clause following our pattern tends to be characterised by negative elements, especially verbs. [35] shows a strong collocative pattern: ‘fatto’ + ‘rilevare’/‘rilievo’ (to be important/importance).



In the next section, we will take stock of the analysis, while paving the way for future research.

## 4 Conclusions

The way judges report the reasons behind their decisions is influenced by two considerations: power and neutrality (Solan 1993: 3). There is pressure on judges to speak decisively. At the same time, the language of judges should be free of overt forms of evaluation. As Solan notes: “Opinions do not often rely on statements like “I think that those sentenced to death get too many appeals, so I routinely vote to affirm death sentences in order to increase the number of executions per year” (1993: 3).

This paper set out to investigate whether evaluation has a role to play in the language of judges by exploring the relation between phraseological patterns and the creation of evaluative meaning in judicial discourse. By applying the new concept of recurrent semantic sequences – in particular, the N+*that* pattern – to a large, genre-based cross-language corpus, we began to explore the linguistic construal of evaluation by judges. The semantic sequence is conceptualised in this study as a significant correlation between the frequent occurrence of nouns belonging to the semantically defined category of ‘argumentation’ as listed in Table 1, followed by appositive *that*-clauses and linguistically varied items

expressing evaluative meaning. Thus, the evaluative meaning component is not carried out by one prevalent phrase. Instead, it is realised by linguistically discrete items such as adjectives (e.g. *dubious*, *unavailing*, *compelling*, etc.), verbs (e.g. *rejected*, *commend*, *disapproved*, etc.), adverbs (e.g. *inexorably*) and nouns (*support*, *proposition*). Worth stressing is that the semantic sequence is not fixed, i.e. items belonging to the evaluative component can be found at various syntactic positions in a sentence or, importantly, in more extended co-texts. This observation seems to corroborate the findings demonstrated in Hunston (2011) and suggesting that evaluation is to a great extent contextual and cumulative, i.e. evaluative meaning is spread across phraseologies rather than attached to individual words.

In addition, the analysis of our corpus has shown that evaluative meanings are not always immediately conspicuous. Indeed, some patterns are actually ‘invisible’ or rather ‘latent’ in the judicial discourse and they become clearly manifest, thanks to the possibilities offered by corpus linguistics. We mentioned in the Introduction the term ‘latent patterning’, adopted by Sinclair and Coulthard (1975: 125) to refer to patterning in language that is not obvious to intuition or to language as it is observed in single texts. The study of the concordances has revealed that, apart from overtly and explicitly evaluative items (nouns like *omission*, *problem*;

verbs such as *disagree*, *agree*; adjectives as *illogical*, *logical*, *correct*; adverbs like *wrongly*, *correctly*, etc.), there is a whole range of nouns that pass unnoticed because they are connoted in a less explicit way. Table 1, as well as the examples analysed in Section 3 provide an excellent example: there is nothing intrinsically positive or negative in nouns like *fact*, *argument*, *conclusion*, *view* or *fatto*, *conclusione*, *valutazione*, *tesi*, and yet these status nouns are employed by the judges in contexts marked by strong positive or negative polarities. The same applies to the syntactic position: far from being a mere coincidence, we are convinced that these patterns are part of the ‘legal grammar’ of the judges, stylistic and phraseological conventions settled in time by usage and which have become part of the judges’ discourse strategies.

The quantitative part of the study corroborates the claim made in Hunston (2008) that semantic sequences can be usefully employed to investigate epistemology in disciplinary discourses. It seems that there is a considerable overlap between scientific and legal discourses in the way ‘*the* + Noun + *that*-clause’ pattern is crucial to their epistemologies. Interestingly, this type of phrase appears to have a wider distribution as both American and Italian judges display a marked tendency to resort to it in their opinions. The evidence presented above suggests that starting with a grammar pattern in

search for such constructs is a highly productive way of detecting evaluation in judicial discourse. In fact, it adds to the growing evidence indicative of the same tendency present in other types of legal discourse. For example, Goźdz-Roszkowski (2012) explores semantic patterns in legal academic journals and textbooks. A small-scale study of two nouns (*idea* and *notion*) frequently found in the pattern *the* + Noun + *that*-clause reveals an underlying semantic sequence of ‘institution’ + ‘accept or reject’ *the notion* + *that*-clause.

An important finding is that many of these nouns tend to be found in predominantly negative or positive co-texts, an observation that is by no means immediately clear on the basis of individual texts. Particularly noteworthy are status-indicating nouns, such as *notion*, *argument* and *suggestion* in English and *tesi* che in Italian, found in phraseological patterns containing negative polarity because they do not display this semantic property when viewed in isolation as individual word forms. It is hoped that in this paper we managed to draw attention to the important role of evaluation in the construal of argumentation in judicial discourse and the central importance of the ‘N+*that* pattern’ as a widely-used device to label and assess arguments advanced in legal opinions by lower court judges or colleagues from the bench.

The present study could be extended in many directions. First of all, other grammar patterns could be taken as a starting point in the search for semantic sequences or other types of recurrent expressions. For example, the analysis of important evaluative phraseologies could commence with the ‘small words’ such as prepositions (cf. Gledhill 2000). There are obviously other resources used for status modification or more generally evaluation, such as verbs, nouns and adjectives governing that-clauses (e.g. *It has been suggested that*), adverbs and adverbials (e.g. *probably, allegedly*, etc.), modal auxiliaries, etc. Armed with computer tools and corpus resources, the analyst is now in a position to undertake a study of known and explicit markers of evaluation on a much larger scale than so far.

The strategies of construing evaluation can be also seen in terms of politeness phenomenon. Judicial discourses might differ in the extent to which they employ subjective, value-laden words (e.g. *absurd, dubious*) with negative polarity to evaluate concepts and argumentation in law. In his seminal study of politeness in British and American judicial opinions, Kurzon (2001) documents how politeness is essentially adhered to even in the case of disagreement. Interestingly, the judicial behavior of judges appear to vary with American appellate judges indulging not infrequently in rather overt expression of criticism towards their colleagues on

the bench and judges from lower courts. These findings are highly relevant to the present study because they raise important questions concerning, more generally, the role of a particular jurisdiction and legal culture in shaping the linguistic strategies of expressing evaluation.

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### **Title**

*At any time after any proceedings ...: Why is any so frequent in legal texts?*

### **Authors**

Martin Warren and Maggie Leung

This paper explores phraseologies specific to legislative legal texts, but, unusually, it does this by examining phraseologies consisting of grammatical words as well as those which are lexically richer. The general determiner *any* is much more frequent in legislative legal texts than in general English. This was discovered in a corpus linguistics project examining the phraseologies specific to legislative legal texts in engineering- and financial services-related corpora. Many of the most frequent phraseologies associated with these legal texts were found to include this general determiner. Examples of these phraseologies are described and discussed in order to better understand why phraseologies containing *any* are so frequent, and so necessary, in legislative legal texts. The paper also explores the implications of its methodology for future studies seeking to uncover the linguistic representations of linguistic reality.

*Keywords:* phraseology, legislative legal texts, genre analysis, corpus linguistics, phraseological variation

## **1. Introduction**

This paper is based on a larger-scale project which aims to identify the phraseologies specific to two specialised corpora: the Hong Kong Engineering Corpus (9.2 million words) and the Hong Kong Financial Services Corpus (7.3 million words), representing two professional registers. In this study, the approach adopted in the identification of the phraseologies is corpus-driven in that the phraseologies are identified fully automatically rather than being nominated by the researcher (Cheng, Greaves, & Warren, 2006; Cheng, Greaves, Sinclair, & Warren, 2009). This was achieved by using *ConcGram 1.0* (Greaves, 2009), software designed to find all of the co-occurring words in a corpus without the nomination of search items and irrespective of constituency and positional variation. Constituency variation is when other words are found between the co-occurring words, and positional variation is when the co-occurring words occur in different sequences relative to one another. The inclusion of variation when searching for co-occurring words means that the phraseologies in a corpus, termed 'congrams' (Cheng, Greaves, & Warren, 2006; Cheng, *et al.*, 2009), can be accounted for more fully, compared to studies confined to fixed contiguous sequences of words (i.e. n-grams, also known as 'bundles', 'chunks', and 'clusters').

Part of the on-going larger scale project investigating the phraseologies specific to engineering

and financial services registers involved studying the individual genres which make up these two registers. It was while studying the sub-corpora of Ordinances<sup>17</sup> that we became interested in a particular set of phraseologies that consisted of the determiner *any* co-selected with another word. The two sub-corpora of Ordinances were subsequently merged into one genre-specific corpus: the Hong Kong Ordinances Corpus (HKOC).

When studying the raw data of two-word co-occurrences (i.e., two-word concgrams) derived from the HKOC, we had observed that a number of the most frequent two-word concgrams contained the word *any*. This led us to check whether *any* is more frequent in the HKOC than in a corpus of general English. In the HKOC, it ranks eighth in the single word frequency list with 6,786 instances, which is approximately 1.36% of the entire corpus. In the British National Corpus (BNC), a 100 million-word reference corpus representing a cross-section of general English, *any* occurs 120,629 times, approximately 0.13% of the entire BNC. This means that *any* is ten times more frequent in the ordinances than in general English. An extract chosen to highlight this relatively higher frequency is given below. In this extract, *any* occurs three times.

*... whether in relation to all or **any**, or **any** part of all or **any**, of the regulated activities ...*

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<sup>17</sup> These are the laws relating to the engineering and financial services sectors in Hong Kong, many of which are derived from their UK equivalents, and all of which are drafted in English and take legal precedence over their Chinese translations in Hong Kong's courts.



(HKOC)

Another determiner, *all*, is used twice in the phrase *all or any* and this might lead one to think that *all* is also more frequent in ordinances. However, the determiner *all* is actually more frequent in general English. The BNC has 273,000 instances (0.29%) whereas the HKOC has 956 (0.18%). This finding regarding the determiner *all* makes it even more interesting to compare *any* in the two corpora.

## 2. Previous studies of *any*

While this is the first study to examine the functions of *any*-related phraseologies in legislative legal texts, and the first to focus on why *any* is more frequently used in the legal register, it is by no means the first to study *any*. There is a substantial literature and an overview is presented here.

A review of some of the most widely used grammar reference works shows that *any* is described in a variety of ways, but with basically similar conclusions reached. In grammar by Sinclair, *et al.* (1990: 52), *any* is listed among the "general determiners" which are used to talk "about people or things in a general or indefinite way", and it is also noted that *any* can be a pronoun. In an earlier grammar of spoken English (Sinclair, 1972: 154-155), when covering "nominal group structure", *any* is described as a "general deictic" as opposed to a "specific deictic" which relates to "the type of reference made by the deictic to the noun", and it is pointed out that *any* is often found in "negative clauses, where it alternates with

the positive *some*". Halliday and Matthiessen (2004: 315) also use the term 'deictic' and describe "non-specific deictics" which are "total or partial determiners" and include *any* in this category. This type of deictic is said to "convey the meaning of all, or none, or some unspecified sub-set" (*ibid*: 315).

Carter and McCarthy's (2006) grammar of spoken and written English describes *any* as a determiner which has a "strong form" and a "weak form" (*ibid*.: 353). Whether *any* takes its strong or weak form is determined by whether or not it is stressed and a different meaning is produced as a result of this choice (*ibid*: 365). In its strong form, *any* can be "used with any type of head noun, whether singular, count or non-count" (*ibid*.: 354). An example of its strong form is "*Why doesn't he have **any scissors?***" (*ibid*.: 355). The weak form of *any* can "only be used with a non-count noun or a plural count noun" (*ibid*.: 356). The weak form "indicates an indefinite quantity of something" while the strong form means "it doesn't matter which" (*ibid*.: 365-366). An example of the former is: "*Are there **any messages** on the answerphone?*"; and of the latter: "**Any fruit juice** will make you sick if you drink enough of it" (*ibid*.: 365-366). They also describe how weak forms of *any* typically occur in negative declarative clauses (*ibid*.: 366-367), and in interrogative clauses, where *any* is "more open-ended and does not necessarily project an answer the speaker expects" (*ibid*.: 367). In another grammar of spoken and written English, Biber, *et al.* (1999: 176) describe *any* as a "non-assertive determiner/pronoun" (*ibid*.: 176), and say that it is used in negative clauses after the negative form, and also in

positive interrogative, conditional and temporal clauses (*ibid.*: 176). *Any* is described as combining with countable and uncountable nouns, referring to "an arbitrary member of a group or amount of a mass" (*ibid.*: 276). In their grammar, Biber, *et al.* (1999) also study the distribution of quantifiers, across the four corpora upon which the grammar is based - conversation, fiction, newspapers and academic writing - and they find a uniform distribution of between 800 and 1,000 instances of *any* per million words (*ibid.*: 278). It is interesting to note here that if one converts the frequencies of *any* in the BNC into instances per million words, it is 1,255, which is higher than that found by Biber, *et al.* (1999). However, in the HKOC, it is much higher at 12,947 per million, confirming the fact that *any* is ten times more frequent in legislative legal texts. The relatively higher frequency found in the BNC compared to the corpora examined by Biber *et al.* is probably accounted for by the fact that the BNC includes a small number of legal texts, unlike Biber *et al.*'s four corpora.

Quirk *et al.* (1985: 377) list *any* as one of the "major indefinite pronouns and determiners". They also state that *any* is a "nonassertive form" in that it does not "claim the truth of the corresponding positive form" (*ibid.*: 83). In other words, in the example, "No, I haven't found *any* yet" (*ibid.*: 83), the speaker is not saying that there are some to be found. They note that "generic use of the indefinite article" which identifies "any representative member of the class" as in "the best way to learn *a language* is to live among its speakers" can be substituted by *any* (*ibid.*: 281). *Any* is further described as a "nonspecific determiner" which usually conveys

"only restrictive modification" (*ibid.*: 1241) and this "modification at its 'most restrictive' tends to come after the head", as in "Any person *who wishes to see me* must make an appointment" (*ibid.*: 1242).

An English usage reference work (Sinclair, *et al.*, 1992: 57) advises that *any* is used "to say something is true about each thing or person of a particular type, about each member of a group, or about each part of something". This particular interpretation of the meaning of *any* is particularly pertinent to the current study. In addition, *any* is also used "as part of the object of a negative sentence", as in "*I don't have any money*" (*ibid.*: 641).

Among linguistic researchers, *any* is sometimes more specifically described as a quantifier (see, for example, Aloni, 2007; Jacobsson, 2002; Kadmon and Landman, 1993 Yasutake, 2008) rather than as a determiner (see, for example, Quer, 2000; Yasutake, 2008). A number of these studies (see, for example, Aloni, 2007; Jacobsson, 2002; Kadmon and Landman, 1993; Duffley and Larrivé, 2010; Quer, 1999; Tovená and Jayez, 1999; Yasutake, 2008) have looked at the difference in meaning, if there is indeed a difference in meaning, between what is often termed "free choice" *any* and "polarity sensitive" *any*. The former is said to be when *any* is chosen by a speaker or writer as a "universal quantifier" from a range of possible determiners/quantifiers, whereas the latter is when *any* is "is a sort of indefinite and is often represented by an existential quantifier" (Tovená and Jayez, 1999: 1). The consensus in more recent studies (e.g., Jacobsson, 2002) seems to be in line with the position of Kadmon and

Landman (1993) who make the case for *any* having one meaning; and that is, conveying the sense of "widening" and "strengthening".

An important point to note regarding all of the above studies is that the examples of *any* used by the researchers, if they use real world example at all, they all come from general English and not from legislative legal texts, where *any* is much more commonly used,. A relatively small number of studies have investigated the distinctive language use found in legal texts (e.g. Bhatia, 2004, Kurzon, 1997). A study of speech acts in English contract law, for example, uncovered the important role of modal verbs in such texts (Trosborg, 1995). In another study, Bhatia (2004: 138) examined a variety of legal genres and described some of the characteristics of legal language, such as its longer and more complex structure and the use of arcane terms, all of which makes legal texts more difficult for the layperson to interpret, despite the fact that we are all subject to abide by such texts. Others (see, for example, Lin and Hsieh, 2010; Jablonkai, 2010) studied the words and phrases used in legal language. Jablonkai (2010), for instance, studied the most frequent four-word n-grams in a 1.2-million-word corpus of official European Union policy documents, of which approximately 63% are legal texts (*ibid.*: 256). However, this means that the findings, while useful, inevitably exclude all instances of phraseological variation and all phraseologies consisting of less than four words; in other words, the overwhelming majority. In a natural language processing-based study using a 1-million-word corpus of Australian contract language, Curtotti and McCreath (2011) automatically extracted "a

domain ontology for contracts" (*ibid.*: 1). Their study is of particular interest because they identified single words which had a higher occurrence than that found in a two 1-million-word reference corpora, the Brown and Reuters corpora (*ibid.*: 4). One of the words they identified as being a "key term in a contract" (*ibid.*: 4) is *any*, but they did not closely examine its functions, or its co-selections, beyond stating that *any*, along with other key words such as *that*, *or*, *may*, *must*, and *will*, typically marks "the occurrence of rules" (*ibid.*: 4). This finding supports the high frequency of *any* found in the HKOC, and ordinances are, of course, basically sets of rules.

### **3. The present study**

This study focuses on a cross-section of the more frequent phraseologies in which *any* is co-selected with other words in the HKOC. To understand why *any* is so frequent in these legal texts, examples of these frequent phraseologies are described and discussed based on their different functions. Also, the possible reasons for their genre-specificity are discussed. Finally, the methodology used and the focus on phraseological variation adopted in the study are discussed in terms of their potential for wider applications in future studies which seek to gain a better understanding of linguistic representations of linguistic reality in legal texts.

In this study, we adopt the notion set out by Kadmon and Landman (1993: 374) that *any* has one basic meaning which conveys a sense of "widening" and "strengthening". Also adopted is the definition offered by Jacobsson (2002: 9) that *any* is "one or more, no

matter who/what/which/of what kind', connoting arbitrariness, random selection, lack of limitation". This definition is, perhaps, more simply captured by Sinclair et al. (op cit.: 57), who state that *any* is used "to say something is true about each thing or person of a particular type, about each member of a group, or about each part of something". It will be seen that these characteristics of *any* help to explain both its high frequency, and the necessity for *any*-based phraseologies, in legislative legal texts.

#### **4. Data and methodology**

The data used are three specialised corpora and a corpus of general English (BNC). The specialised corpora were the Hong Kong Engineering Ordinances Corpus (HKEOC, 139,176 words), the Hong Kong Financial Services Ordinances Corpus (HKFSOC, 384,950 words) Hong Kong Ordinances Corpus (HKOC) which is comprised of the HKEOC and the HKFSOC. The HKEOC and the HKFSOC were used to examine whether or not the phraseologies are specific to a particular register rather than to ordinances generally. The British National Corpus (BNC), comprising 100 million words of written and spoken texts of general English, was used as a reference corpus.

Before the phraseologies were identified, *ConcGram 1.0* (Greaves, 2009) was used to generate the list of two-word concgrams from the HKOC. This list was fully automatically generated by the software without any prior intervention. Then, the concgrams containing the word *any* were identified. As the two-

word concgram list only provides the frequencies of co-occurrence, and not all of the concgrams are necessarily meaningfully associated, the next step was to generate the concordance lines to determine whether the two words simply co-occur or are meaningfully associated. The parameters of ‘associatedness’ in this study are whether the two words combine to form a meaningful unit (for example, *any* + *person* as in ‘*any specified person*’) and whether they frame lexical items in between them to form a larger unit(s) (for example, *any* + *under* as in ‘*any revision under this subsection*’).

After frequent phraseologies containing *any* in the HKOC had been identified, the frequencies of the words comprising the phraseologies were examined. Whether they are frequent or not as single words may have implications for their co-selection with *any*. The same phraseologies were then searched for in the BNC. By comparing the relative frequencies of the phraseologies in the HKOC and the BNC, the specificity of the phraseologies with regard to legislative legal texts was determined. The same procedure was then applied to the HKEOC and the HKFSOC to determine whether certain phraseologies are more specifically associated with ordinances dealing with the financial services or the engineering sector.

## **5. Findings and discussion**

Examination of the two-word concgram list of the HKOC shows that phraseologies consisting of the general determiner *any* are commonly found. In the list, five phraseologies containing *any* were among the top 50



congrams: *any/the*, *any/of*, *any/or*, *any/to*, and *any/in*. Comparison of the HKEOC and HKFSOC was then carried out. Table 1 shows the top ten two-word congrams containing *any* in the two sub-corpora.

Table 1: Top 10 two-word congrams containing *any* in the HKEOC and the HKFSOC

Hong Kong Engineering Ordinances Corpus	Frequency (%)	Hong Kong Financial Services Ordinances Corpus	Frequency (%)
<i>any/the</i> <sup>18</sup>	1,307 (0.94%)	<i>any/the</i>	5,329 (1.38%)
<i>any/of</i>	1,173 (0.84%)	<i>any/of</i>	5,255 (1.37%)
<i>any/or</i>	956 (0.69%)	<i>any/or</i>	4,519 (1.17%)
<i>any/to</i>	750 (0.54%)	<i>any/to</i>	3,085 (0.80%)
<i>any/in</i>	636 (0.46%)	<i>any/in</i>	2,837 (0.74%)
<i>any/a</i>	551 (0.40%)	<i>any/a</i>	1,646 (0.43%)
<i>any/and</i>	385 (0.28%)	<i>any/and</i>	1,218 (0.32%)
<i>any/person</i>	309 (0.22%)	<i>any/by</i>	1,168 (0.30%)
<i>any/shall</i>	271	<i>any/under</i>	991

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<sup>18</sup> Congrams are written alphabetically with a forward slash to denote that they exhibit variation.

	(0.19%)		(0.26%)
any/gas	267 (0.19%)	any/person	982 (0.26%)

Table 1 shows that the two sub-corpora of legislative legal texts share eight of the top ten two-word concgrams with *any*. Of the two which are not shared, only *any/gas* is register-specific in the sense that it is found only in the HKEOC. From these top ten and others in the list, we have tried to classify the phraseologies in terms of the associated words and their grammatical classes as well as the functions the *any*-related phraseologies perform in the ordinances. As a result, the study has identified five colligational patterns of *any*: *any* + noun, *any* + preposition, *any* + conjunction, self-collocation *any* + *any*, and *any* + modal verb.

### 5.1 *any* + noun

A frequent phraseology containing *any* is the combination of *any* + *noun*. Table 2 lists the top ten *any* + *noun* phraseologies in the HKEOC and the HKFSOC to help to determine the extent to which this pattern is register-specific.

Table 2: Top 10 instances of *any + noun* in the HKEOC and the HKFSOC

Hong Kong Engineering Ordinances Corpus	Frequency (%)	Hong Kong Financial Services Ordinances Corpus	Frequency (%)
any/person	309 (0.22%)	any/person	982 (0.26%)
any/gas	267 (0.19%)	any/section	607 (0.16%)
any/premises	171 (0.12%)	any/corporation	577 (0.15%)
any/part	156 (0.11%)	any/ordinance	431 (0.11%)
any/authority	121 (0.09%)	any/securities	413 (0.11%)
any/water	95 (0.07%)	any/subsection	410 (0.11%)
any/service	87 (0.06%)	any/commission	384 (0.10%)
any/pipe	78 (0.06%)	any/respect	308 (0.08%)
any/work	67 (0.05%)	any/part	306 (0.08%)
any/time	65 (0.05%)	any/time	286 (0.07%)

Some of the phraseologies containing *any + noun* are evenly distributed across the sub-corpora, while others are more specific to one register. In both corpora, *any/person* is the most frequent phraseology of this type. It occurs 309 (0.22%) and 982 (0.26%) times respectively in the HKEOC and the HKFSOC, and so is

proportionately the same regardless of register. This suggests that *any/person* is commonly used in ordinances generally, and so are *any/time* and *any/part*. The rest are more register-specific. We find, for example, *any/gas*, *any/water*, and *any/pipe* are specific to the HKEOC; whereas *any/corporation*, *any/securities*, and *any/commission* are specific to the HKFSOC.

Figure 1 shows sample concordance lines of *any/person*, taken from the HKOC.

1 any purpose other than a domestic purpose. (3) **Any**  
 2 **person** who contravenes subsection (2) shall be  
 3 of their being subject to those restrictions **any**  
 4 **person** whom he does not know to be aware of th  
 5 Subject to sections 38A(2) and 38B(5), where **any**  
 6 **person** becomes or ceases to be a director or  
 7 corporation or the other corporation, and **any**  
 8 such **person** referred to in subsection (2), with  
 9 issued share capital of- an intermediary, or **any**  
 10 other **person** carrying on the business of the  
 11 effect to a specified extent, in relation to **any**  
 12 specified **person** or to members of a specified  
 13 with section 33. The arbitrator may appoint **any**  
 14 legally qualified **person** to advise him on any  
 15 990) (1) The Authority may exempt in writing **any**  
 16 **person** from any of the provisions of these regu  
 17 iness or identity, or the trading particulars, of **any**  
 18 such **person** being ascertained from it; (b) wit  
 19 y or season ticket of which he is the holder to **any**  
 20 other **person**. (iii) All monthly and season

Figure 1: Sample concordance lines of *any/person* from the HKOC

Across both corpora, *any +person* is the most frequent phraseology of this type. This is probably due to the fact that these ordinances ultimately regulate the behaviour of people and their organisations. In lines 1-3, *any +person* occurs as the n-gram *any person* and in lines 4-7 constituency variation is observed. In these

two variations, *any* functions as an all-encompassing determiner, by which the writer intends to include all of the items following it, in this case, *person*, without exception. The intervening words in the instances with constituency variation serve to further modify the word *person*, such as '*specified*' and '*legally qualified*' (lines 6 and 7). Thus, in most of these instances, the intervening words together with *person* form the noun phrase. The phraseology *any/person*, which can be an n-gram but can have constituency variation, expresses the meaning of including at least one or every person, or a particular person when *person* co-selects other words to form a noun phrase. Since one of the major functions of legal texts is to act as a written record to regulate the behaviour of people and entities, the drafters of the texts intend to be as inclusive as possible. In the case of *any + person*, the ordinances set out to regulate the rights or behaviour of seemingly *any person*, and it can be seen from the concordance lines that *any + person* is always used with the all-encompassing meaning of *any*. In the contexts of ordinances, the requirement to be seen to treat all of the persons in a society equally obviously requires this meaning to remain intact.

Another example of *any + noun* is *any/premises* which also has a similar pattern and function when the two words occur in the positional variation *any + premises*. As shown in Figure 2, the two words *any* and *premises* form an n-gram in lines 1-3, with *any* acting as an all-encompassing determiner widening and emphasising *premises*. In lines 4-5, the two words are not contiguous, with intervening words that are adjectives. Together with *premises*, they form a noun

phrase. In these instances, whether *any* is directly modifying *premises* (n-gram) or is part of a noun phrase with *premises* as the head noun (constituency variation), the concgram *any/premises* expresses the meaning of encompassing one, no matter which one, or all premises or particular premises. Here we see how the legislative legal texts set out to regulate activities with regard to premises, with the use of *any* underscoring the extent to which a particular ordinance applies to premises.

1 (2) Where a gas fitting has been installed in **any**  
**premises** before the commencement of these  
2 subregulation (1), no person shall install in **any**  
**premises** a gas pipe which is- (a) made of  
3 unsatisfactorily or restricting the supply to **any**  
**premises** the consumer shall, if so  
4 no authorized officer shall enter or search **any**  
domestic **premises** except- (a) by virtue  
5 persons as may be necessary, and on leaving **any**  
unoccupied **premises** which he has entered  
6 that purpose; (iv) place his feet on a seat in **any** part  
of the **premises** including the  
7 for the management of the **premises** or **any** part  
thereof; and (c) gives an  
8 to admit **any** person onto the **premises** or **any** part  
thereof at **any** time, and shall not be  
9 ground for entry into the **premises** for **any**  
purpose specified in subsection (1); and  
10 means the pipes and fittings in **premises**, and **any**  
pipes and fittings between the **premises**

Figure 2: Sample of concordance lines of *any/premises* from the HKOC

These examples of phraseologies of *any/person* and *any/premises* were also searched for in the two profession-specific ordinances sub-corpora, HKEOC and HKFSOC, to examine whether some of these phraseologies containing *any* are specific to the engineering or financial services register. The occurrence

of *any/person* is 0.22% and 0.26% of the HKEOC and the HKFSOC, respectively, showing that *any/person* is not specifically associated with either sub-corpus but is generally specific to legislative legal texts. However, the occurrence of *any/premises* in the HKEOC is 0.12% but only 0.003% in the HKFSOC. Thus *any/premises* is more specific to the legislative legal texts related to the Engineering sector.

### 5.2 *any + preposition*

Half of the top 10 phraseologies containing *any* are comprised of *any + preposition*, consisting of a determiner and a preposition, which is termed a collocational framework (Renouf and Sinclair, 1991). It might be argued that the frequent occurrence of this type of phraseology is due to the fact that prepositions are frequently found in any text or corpus. Nonetheless, two examples of this type of phraseology are described and discussed below to explain the particular functions they perform and the unique meanings they express, and to determine whether they can be described as specific to this legal genre.

Figure 3 shows some sample concordances of *any/in*, with two positional variations, *any/in* and *in/any*.

1            If so, give full particulars. 10. Has he at **any**  
time **in** the last 10 years failed to satisfy any  
2    be adjusted by the Exchange Company to reflect **any**  
error **in** a previous return or remittance (as th  
3            are cancelled or the registration of **any**  
shares **in** a corporation is removed to a registe  
4    subsection (1)(a). (Added 51 of 1992 s. 6) (2) **Any**  
power mentioned **in** subsection (1) shall also be  
5    subsection (1)(a). (Added 51 of 1992 s. 6) (2) **Any**  
power mentioned **in** subsection (1) shall also be

6 of such corporation or business; engaged **in any**  
 judicial or other proceedings; a party to a  
 7 point. 3. No bend or curve shall be made **in any**  
 pipe so as to diminish the waterway or alter t  
 8 apply to the reinstallation of a gas fitting **in any**  
 premises as they apply to the installation of a  
 9 of the Ordinance; closing date **in** relation to **any**  
 relevant securities, means- the date specified  
 10 for the purposes of issue- **in** the case of **any**  
 advertisement, invitation or document made in

Figure 3: Sample concordance lines of *any/in* from the HKOC

The major pattern of the positional variation *any/in* is in the form of *any + noun phrase + prepositional phrase with in*, for example, ‘*any error in a previous return or remittance*’ in line 2, and *any + noun phrase + verb in past participle + prepositional phrase with in*, such as ‘*any power mentioned in subsection (1)*’ in line 4. In these instances, *any* performs its all-encompassing function in relation to the noun or a noun phrase. This is similar to the phraseology *any + a noun or a noun phrase*, however, the inclusive meaning is delimited by the prepositional phrase which is the modifier of the noun phrase. For example, in line 2 ‘*any error in a previous return or remittance*’, the regulated item is no longer every error as denoted by ‘*any error*’. Instead, it is delimited by means of the use of the prepositional phrase to one or every error that occurred in a previous return or remittance. Similarly, the regulated item in line 4 is no longer ‘any power’ but is delimited by the prepositional phrase to only those powers ‘*mentioned in subsection (1)*’.

Phraseologies containing *any/under* (Figure 4) are also similar to those of *any/in*.



1 subsection (2). (4) The Authority may exercise **any**  
 power **under** this Ordinance that an inspector m  
 2 apply in relation to the approval of **any**  
 revision **under** this subsection as they apply i  
 3 the reasons for making the determination; and **any**  
 order made **under** section 223 in relation to th  
 4 not affect such refusal so far as it is based on **any**  
 additional ground **under** section 8(1)(b).  
 5 as the Insurance Authority may determine. (6) **Any**  
 proceedings commenced **under** an Ordinance repea  
 6 or as a member of a tribunal appointed **under any**  
 of the provisions referred to in paragraphs (a)  
 7 a claim to be made which is barred **under any**  
 enactment or rule of law. Unified Exchange  
 8 nce of a corporation is revoked or suspended **under any**  
 provision of this Ordinance; and the Commissio  
 9 any other condition imposed **under** or pursuant to **any**  
 provision of this Ordinance. Subject to  
 10 liabilities **under** subsection (1) in respect of **any**  
 outstanding non- collateralized warrants issue

Figure 4: Sample concordance lines of *any/under* from the HKOC

The positional variation of the collocational framework *any/under* also exhibits two main patterns: *any + noun phrase + prepositional phrase with under*, and *any + noun phrase + verb in past participle + prepositional phrase with under*. In line 1, ‘*any power*’ seems to suggest that the authority can exercise whatever power(s) it cares to invoke; however, it can be seen that this is not the intended meaning. The co-selection of *any* with *under* in this collocational framework necessarily qualifies the extent of the powers of the authority embodied in the ordinance, by expressing the meaning that only the powers detailed ‘*under this Ordinance*’ can be exercised. This qualification with respect to *any* is invariably found in the other instances of *any/under* (lines 2-4). Interestingly, when the positional sequence is reversed, i.e., *under/any*, the same qualifying function is

observed. In lines 6-10, we see that *under*, again, refers the reader to an ordinance, or provisions of an ordinance, and *any* is thereby limited in its scope.

These two examples of *any/in* and *any/under* demonstrate that this type of phraseology in the sequence of *any* + *preposition* typically expresses a meaning which delimits the all-encompassing property of *any*. This, again, reflects the nature of legislative legal texts which need to make explicit who or what is being regulated (or is responsible for the regulating) in order to encompass all of the persons and entities involved and, at the same time, set out the parameters where applicable.

### 5.3 *any* + *conjunction*

Instances of this type of phraseology, *any* + *conjunction*, share the same function which is for the conjunction to provide the link to extend or expand upon the persons or entity co-selected with *any*. The first example is *any/or* in Figure 5.

1 a claim to be made which is barred under **any**  
enactment **or** rule of law. Unified Exchange  
2 other misconduct in connection with- dealing in **any**  
securities **or** futures contract **or** trading in **an**  
3 the circumstances in which records compiled in **any**  
specified form **or** manner, **or** documents **or**  
4 in relation to a registered institution, means **any**  
money- received **or** held by **or** on behalf of the  
5 of a supply PART VI MISCELLANEOUS **Any**  
person who wastes **or** misuses, **or** causes **or**  
6 relation to the contravention)- the person **or** **any**  
of his associated persons shall not exercise **an**  
7 as it considers appropriate. A notice **or** **any**  
other matter published under subsection (7) is  
8 may require a copy of **any** such register, **or** **any**  
9 part of it, on payment of \$2, **or** such less sum  
other person; and (c) shall not suffer **or** permit **any**  
other person to have access to **any** record **or**  
10 of a review; threatens, insults **or** causes **any**  
loss to be suffered by **any** person who has

Figure 5: Sample concordance lines of *any/or* from the HKOC

In Figure 5, lines 1-5 show that the two words *any* and *or* are typically non-contiguous in the positional variant *any/or*. The intervening words in these instances include nouns or noun phrases (lines 1-3), *noun + verb* (line 4), and *noun + relativiser + verb* (line 5). In lines 1-3, *or* is followed by another noun or noun phrase. The same pattern is found in lines 2-3 where *or* is followed by a noun or noun phrase, and then another *or* which is also followed by a noun. This *or + noun* pattern can be repeated more than once in some instances (see, for example, line 3). The verb ‘*received*’ in line 4 is a modifier to the head noun ‘*money*’ following *any*. In this instance, *or* is not followed by other nouns but by modifiers to the head noun ‘*money*’. In line 5, ‘*Any person who wastes*’ is followed by *or* and the verb *misuses*, and this *or + verb* pattern is found elsewhere.

The co-selection of *any + or* is mostly used when a number of items or actions needed to be listed in the ordinances. This indicates that *any + or* has the function of expanding and extending the all-encompassing sense of *any* to the other items listed in order to include all the conceivable possibilities and alternatives that might be covered by the ordinance.

Another example of this type of phraseology is *any/and* (Figure 6).

1 transfer contract. (iv) The property is not subject  
to **any** mortgage **and** any other encumbrances. (v)  
2 Gazette on September 21, 2001. To the extent  
that **any** Property **and** Liabilities of the Merging  
3 the Company who has any interests or short positions  
in **any** shares **and** underlying shares in, and deb

4 may authorize in writing any public officer to  
 exercise **any** powers **and** perform any duties conferred  
 5 o support voice recording interface for connection  
 of **any** extension line circuits to analogue **and**  
 6 mption; "premises" means any building or structure  
 or **any** part thereof **and** any place- (a) in which  
 7 the recognized investor compensation company by which  
**any** financial statements **and** other documents  
 8 event communication means any communication,  
 including **any** announcement, disclosure **and** statement,  
 9 stion is a corporation incorporated in Hong Kong  
 but **any** of the information, particulars **and** docu  
 10 Added 29 of 2002 s. 2) "premises"  
 includes **any** place **and** a part of premises or a place;

Figure 6: Sample concordance lines of *any* + *and* from the HKOC

Again, we see patterns and functions similar to those found with *any/or*. It seems that the writers of ordinances must make sure that every eventuality and every possible interpretation is covered. An example of this is found in line 10: "*premises*" includes **any** place **and** a part of premises **or** a place. Here the ordinance defines what is meant by 'premises' and it is clearly not deemed sufficient simply to say "*premises*" includes **any** place" in a legislative legal text. The writers co-select both *and* and *or* to extend the definition to "*a part of premises*" and "*a part of a place*", and so avoid future legal disputes.

#### 5.4 Self-collocation *any* + *any*

Another example is when *any* self-collocates; in other words, the writers co-select *any* + *any*. The concordance in Figure 7 shows a cross-section of instances from the HKOC.

1 note, statement of account or receipt (or **any**  
 copy of **any** such document) required to be

2 of the chairman of the appeal board, take **any**  
 3 part in **any** deliberation or determination of  
 4 the conference as he considers appropriate. At **any**  
 5 time after **any** proceedings have been institut  
 6 the Commission if, in the course of performing **any**  
 7 function under **any** such provisions, he is  
 8 by whatever name called; document includes **any**  
 9 register and books, **any** tape recording and **an**  
 10 for which it is licensed and to **any** business of **any** of  
 11 its associated entities, in which case **any**  
 12 amends or revokes **any** condition or imposes **any** new  
 13 condition under subsection (7), the  
 14 to regulation 38, **any** person who contravenes **any**  
 15 provisions of regulation 4, 5, 6, 7, 8, 9, 10  
 16 (b)- where there is **any** requirement in this or **any**  
 17 other Ordinance for notice in writing in res  
 18 action in respect of **any** relevant securities in **any**  
 19 case where- it or an associate of its has, i

Figure 7: Sample concordance lines of *any* + *any* from the HKOC

In the sample lines in Figure 7, four patterns are identified: (1) *any* + *noun* + *preposition* + *any* + *noun* (seven instances, lines 1-4, 6, 9-10), for example, ‘*any function under any such provisions*’ (line 4), (2) *any* + *noun phrases* + *any* + *noun* (line 5), (3) *verb* + *any* + *noun* + *conjunction* + *verb* + *any* + *noun* (line 7), and (4) *any* + *noun* + *relativiser* + *verb* + *any* + *noun* (line 8). In pattern (1) and pattern (4), the first instance of *any* modifies the head noun; the second *any* is embedded in the modifying element. While the modifying phrase (prepositional phrase in pattern (1) and relative clause in pattern (4)) seem to delimit the possibilities of the items being regulated, the use of *any* opens up the possibilities. Thus the instance of *any* in line 4, for example, expresses the meaning of every function that is applicable to every such provision. Patterns (2) and (3) are used to list the alternatives and possibilities and so function to extend or expand.

## 5.5 *any + modal verb*

In our analysis, *any + modal verb* is another frequent phraseology in the HKOC. Such phraseologies include *any + may* and *any + shall* (see Figures 8 and 9).

1 authorities and discretions so delegated, conform to  
**any** regulations that **may** from time to time  
2 cation of officers and directors, except to the extent  
**any** such provision **may** be held by the cour  
3 granting the listing of, and permission to deal in,  
**any** new Shares which **may** fall to be allott  
4 promptly copied to the Company. 2.4 Subject only to  
**any** authorization which **may** be given pursu  
5 repayable on demand and which, without prejudice to  
**any** rights the Selling Shareholder **may** hav  
6 do under section 35(2). (3) The appeal board **may** make  
**any** order it thinks fit with regard to the  
7 d any person authorized by him in writing, **may** enter  
**any** leased land to comply with a requireme  
8 Water Authority. (2) The Water Authority **may** specify  
**any** forms required for the purposes of t  
9 nd fittings (1) The Water Authority **may** require  
**any** pipe or fitting, before it is instal  
10 tions under this Ordinance, the Authority **may** serve on  
**any** registered person, owner of a gas

Figure 8: Sample concordance lines of *any + may* from the HKOC

1 is section the value of any assets and the amount of  
**any** liabilities **shall** be determined in acco  
2 is section the value of any assets and the amount of  
**any** liabilities **shall** be determined in acco  
3 all make a final report to the Financial Secretary.  
**Any** such report **shall** be made within such t  
4 ction (5), the value of any assets and the amount of  
**any** liabilities **shall** be determined in acco  
5 on applies the value of any assets and the amount of  
**any** liabilities **shall** be determined in  
6 REQUIREMENTS FOR VAPORISERS No person **shall** use  
**any** vaporiser to vaporise liquefied petrole  
7 mended 57 of 1999 s. 3) (3) The tribunal **shall** hear  
**any** evidence which the Water Authority or  
8 corroded. (Enacted 1990) (1) No person **shall** make  
**any** alteration to any premises which would  
9 (3) Except in an emergency, the company **shall** not use  
**any** place other than its stations for the p  
10 ed 1990) (1) No person **shall** make any alteration to  
**any** premises which would affect a gas fitti

Figure 9: Sample concordance lines of *any +shall* from the HKOC

In the above concordance lines, we see that *any + modal verb* frames either the action regulated or the regulating source. The positional variations are also found to impact the meanings. In the case of *any/may*, the modal verb *may* tends to express different meanings in different positional variations. In the positional variant *any ... may*, *may* typically denotes epistemic modality, i.e. expressing possibility, in most of the instances; for example, ... *any new Shares which may fall to be allotted ...* When the two words occur in the sequence *may ... any*, *may* mostly conveys a deontic modal meaning which is expressing permission in the majority of the instances; for example, ...*The Water Authority may require any pipe or fitting ...* When *shall* precedes *any*, there is often a colligational pattern consisting of a negative structure which is not often found in the other positional variation; for example, *No person shall make any alteration ...* and ... *the company shall not use any place other than ....*

## 5.6 Comparing the HKOC and the BNC

By way of a summary, Table 3 compares the frequencies of the examples discussed in this paper in the HKOC and the BNC. It should be noted that the frequencies include only those of the positional variation *any* followed by the co-selected word. The other positional variations are not discussed because they do not share the same meanings and functions described. Only the cases involving *any/may* and *any/shall* include both positional variations. Table 3: Frequencies of *any*-based phraseologies in the HKOC and the BNC

Phraseology	Frequency (%) in the Hong Kong Ordinances Corpus	Frequency (%) in the British National Corpus	Ratio
any/person	520 (0.0992%)	1,100 (0.0011%)	90:1
any/premises	60 (0.0114%)	120 (0.0001%)	114:1
any/in	680 (0.1297%)	1,760 (0.0018%)	72:1
any/under	480 (0.0916%)	400 (0.0004%)	229:1
any/or	780 (0.1488%)	2,780 (0.0029%)	51:1
any/and	120 (0.0229%)	320 (0.0003%)	76:1
any/may*	460 (0.0878%)	3000 (0.0031%)	28:1
any/shall*	580 (0.1107%)	1,100 (0.0011%)	101:1
any/any	440 (0.0839%)	1,520 (0.0016%)	52:1

\* Includes both positional variations for *any/may* and *any/shall*

All of the phraseologies in Table 3 have a far higher frequency in the HKOC than in the BNC. They are between 28 to 229 times more frequent in the HKOC, and so the use of these phraseologies containing *any* is significantly higher in legislative legal texts than in general English. Even those phraseologies which contain common grammatical words, such as *any/in* and



*any/under*, have more instances in the HKOC than in the BNC. As discussed, these higher frequencies can be explained by the functions they perform which are necessary features of legislative legal texts. It is, therefore, possible to make the case that these phraseologies are ordinance-specific, and thus contribute to the aboutness (Phillips, 1989) of these ordinances and, in some cases to the specific legal register, engineering or financial services, they are related to.

## **6. Conclusion**

The widening and strengthening meaning (Kadmon and Landman, 1993) conveyed by *any*, in combination with the use of *any* to denote "each thing or person of a particular type, about each member of a group, or about each part of something" (Sinclair et al., 1992: 57), is of greater necessity in the ordinances than in general English and other specialised corpora such as those used in Biber et al.'s (1999) grammar. The requirement to cover all possible persons, entities and scenarios makes *any* a much used determiner in legislative legal texts. We have also seen how through the co-selections made with *any* its scope may be elaborated, extended or expanded, or delimited. Again, these functions which set the boundaries and scope of the ordinances are essential features of such texts.

The methodology used in this study has implications for future studies of legal texts. By adopting a more inclusive definition of phraseology with an emphasis on including phraseological variation (Cheng, et al., 2009), and using a corpus-driven approach to finding legal-text-specific phraseology, it is hoped that

such studies could be extended to better uncover the linguistic representations of linguistic reality in legal texts. In addition, the approach, methodology and procedure exemplified in this paper can be extended to other profession- and register- specific corpora to explore the phraseology they contain, thus contributing to our larger project that aims to describe the phraseological patterns specific to genres and specialised corpora (see, for example, Cheng, 2009; Greaves and Warren, 2007).

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**Title**

Youth Justice Conferencing: Ceremonial redress

**Authors**

J. R. Martin and M. Zappavigna

**Abstract**

New South Wales Youth Justice Conferencing is a form of diversionary justice involving young offenders in a carefully structured meeting, ideally with their victim, a mediator, support persons, the arresting police officer and a police liaison officer (and a translator and an ethnic community liaison officer as required). During the course of our research we have been struck by the relative absence of the passion play of remorse, apology and forgiveness expected by conference designers and celebrated by its proponents. At the same time, both offenders and victims report relatively high rates of satisfaction with conferences. In this paper we address this puzzle, asking what it is that makes conferences a worthwhile experience for participants, and ultimately for the justice system. In doing so we focus on conferences as a form of ritual redress, drawing on recent work in anthropology (Lewis) and semiotics (Tann) on ceremony, iconography and affiliation.

## **1. Youth Justice Conferencing**

We all know and feel the difference between passing exams and the graduation ceremony, between winning a race and the medal presentation, between falling in love and marriage, between a casual prayer and a religious service, between birth and baptism, and between dying and the funeral. In this paper we explore this kind of difference in the context of young offenders in New South Wales, Australia – in this case the difference between getting caught by the police and a formal legal process dealing with that offence.

In particular we will focus on one form of diversionary justice, Youth Justice Conferencing, which has been designed to deal with less serious offences committed by young persons who are not yet 18 years of age. Youth Justice Conferencing (hereafter YJC) is one level of a scaled response to offending behaviour, involving a warning (delivered by police at the scene of the offence), a caution (delivered by police in an appointment at the police station), conferencing (our focus here) and court (involving sentencing, with the possibility of juvenile detention). Either the police or a magistrate can recommend a conference, which involves bringing the Young Person (hereafter YP) face to face with the Victim (or Victim's representative) in the presence of a specially trained Convenor, the Arresting Officer and a Youth Liaison Officer (hereafter YLO). Both the YP and the Victim can have support people present, and conferences are attended by an Ethnic Community Liaison Officer (hereafter ECLO) and/or Translator as appropriate. Conferences are held in a



room normally deployed for other purposes, such as a meeting room in a Police Citizens Youth Club (as exemplified in Fig. 1 below).



Fig. 1: A conference involving two YPs (from the left, YP2, YP2's support person, Convenor, Arresting Officer, YP1, YP1's support person, YLO, Victim's support person and Victim pictured)

From a linguistic perspective a YJC is a designed macro-genre (Martin & Rose 2008), within the general encompassing framework of restorative rather than retributive justice. In our observations, NSW YJCs unfold through a series of elemental genres, as outlined in Fig. 2 below. They begin with Mandate step, welcoming participants and legally constituting proceedings with reference to the NSW Young Offender's Act (1997). Then in the Testimony step, the

YP, who has to have admitted his offence, recounts what happened – and the Victim has an opportunity to respond. Following this, in the Rejoinder, other parties present have an opportunity to speak; it is here that, ideally, the YP apologises for the offending behaviour. Although not envisioned by conference designers, we have noted that it is very common for a YLO to caution the YP about future behaviour, in a manner we suspect relates closely to what might take place during a formal caution at the police station (which YLOs are in fact trained to deliver). The next step involves the brokering and ratification of an Outcome Plan, generally involving some form of community service by the YP by way of reparation. The conference then closes with a Reintegration step, comprising a formal closing and informal gathering of those involved, with refreshments provided.



Fig. 2: Macro-generic structure of a NSW Youth Justice Conference

## 2. Small target persona

In our previous work (much of it compiled in Martin 2012) we have explored the ‘small target’ persona typically enacted by YPs in YJCs. Text 1, from the Testimony step in the macro-genre, illustrates a performance of this kind – with the Convenor having to extract an account of what happened from a reluctantly compliant YP. Because of the controlling role of the Convenor and its necessity in the macro-genre, we refer to this member of the story genre family as a ‘commissioned recount’. The offence here has to do with the YP throwing a shopping trolley onto railway property near a train line.

[Text 1<sup>19</sup>]

**Convenor:** Alright, we're going to start with YP. And basically YP, your going to, um, tell us all exactly what happened on that night. So, I need you to start from before you even got there, when you met your mates, what was going through your head, why you actually...

**YP:** (I can't remember) that much.

**Convenor:** OK, well whatever you can remember will be great.

**YP:** (I don't know. I was) going to there, to the place... (few drinks).

**Convenor:** So you met your mates...

**YP:** Yeah, met my mates there. |

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<sup>19</sup> At a few points in this text the audio is unclear; this transcript is thus a minimally idealized account of what we were able to hear (with unclear wordings in parentheses).

**Convenor:** And what did you do when you met your mates.

**YP:** Had a few drinks.

**Convenor:** And how old are you?

**YP:** Sixteen.

**Convenor:** Right. OK.

**YP:** And (then, yeah) I - I don't know, I nearly had a fight with one of my mates. And then, yeah, so I was angry so I threw the trolley and then I was about to leave when, I don't know, ten, twenty people jumped out of the bushes, over the fence and so yeah, I don't know, I was up the street and I got dragged back and my mates got bashed by them. So yeah, that's pretty much what I remember.

As far as these 'commissioned recounts' are concerned we observed that significant details (such as the below legal drinking age of the YP above) have to be elicited by the Convenor (who knows what has happened from the police report). And unlike personal recounts, which have an ongoing prosody of evaluation (Martin & Rose 2008), these YP recounts were typically ideationally focused; virtually all evaluation is introduced by the Convenor, with the YP responding a word or phrase at a time. This recurrent pattern of extracted evaluation is illustrated in Text 2 below (from another conference in relation to a stolen mobile phone).

[Text 2]

**Convenor:** And what did dad say when he got here?

**YP:** He (was) just asking why am I here?

And the police told him.

**Convenor** : And was he happy? Did he say anything to you?

**YP**: Don't go anywhere.

**Convenor**: As is when you get home you've got to stay home? Do you think your father was disappointed in you?

**YP**: Yep.

...

**Convenor**: Do you think you deserved the lecture? Why did you deserve the lecture?

**YP**: Because I did something wrong.

...

**Convenor**: Do you think that mum and dad were disappointed in you?

Were you disappointed in yourself? Or Not? Or you don't care?

**YP**: Yeah.

**Convenor**: Yeah or you don't care?

**YP**: Disappointed in myself.

In our observations the reluctantly forthcoming 'small target' persona enacted by YPs was not restricted to the Testimony step. Rather it characterised the conference as a whole, which was surprising to us as linguists. Our surprise was based on the descriptions of conferences offered by conference designers and advocates, who make reference for example to 'the regular tangible, visible progression through clearly marked stages of tension, anger, shame, remorse, apology, forgiveness, relief and cooperation' (Moore & O'Connell 1994: 70) or 'an avalanche of shame, after which the individual is likely to express remorse' (Nathanson 1997: 25). We were thus puzzled by the relative absence of sustained

emotional language in the conferences. Why didn't the young person cry? Why was the apology often prompted by the Convenor rather than fervently offered by a visibly contrite offender? Where was the 'passion play' we had expected? The conferences we observed seemed in general fairly procedural. At the same time, the social significance of these proceedings was apparent (see examples below) and we were also aware of research suggesting that participants, including both the YPs and Victims, reported high rates of satisfaction with the process (Hayes & Daly 2003; Palk, Hayes & Prenzler 1998; Strang, Barnes, Braithwaite & Sherman 1999; Trimboli 2000).

This led us to wonder whether proponents and critics had been looking in the wrong place to interpret the restorative power of conferences. Instead of considering conferences from a personal and psychological perspective as 'passion plays' dependent on outpouring emotion, we turned to a social semiotic perspective – following up a long-standing tradition of work in anthropology and performance studies on ritual (inspired by Turner 1967) and also drawing on recent work in functional linguistics on iconisation (Martin & Stenglin 2007; Martin 2010). We began to ask in what sense YJCs could be interpreted as a rite of passage (van Gennep 1960) or redressive action as part of social drama (Turner 1982). Particularly intriguing for us were Turner's notions of liminality (the transition phase of a rite of passage) and *communitas* (the sense of sharing and intimacy amongst persons experiencing liminality). Turner's ideas have been significantly developed by Lewis (2008, in press), who proposes treating special

events as ritual, ritual-like or not ritual according to a range of criteria (importance, social consensus, mode of participation, past orientation and encompassment). For further discussion of these social science perspectives see Zappavigna et al (in press); here we will concentrate on the complementary social semiotic work, basically asking how it is that ritual and ritual-like special events engender ceremonial power – in our case how YJCs engender a form of restorative justice.

### **3. Iconisation**

The key concept we have been developing in SFL influenced social semiotics as far as ceremonial impact is concerned is iconisation (Martin 2010). In general terms iconisation refers to the process whereby the everyday meaning of an event or an entity is backgrounded and its emotional significance to members of a group is foregrounded. Technically speaking, in SFL terms, ideational meaning is discharged and interpersonal meaning is charged. This is a familiar process in language, which we all recognise in relation to idioms and metaphors. An idiom such as *cool as a cucumber* for example invokes someone's imperturbable character, and doesn't normally call to mind the salad vegetable; similarly if we describe the toilet paper in a lavatory as hidden in its cover and *peeping through its slit*, we are commenting on the prophylactic character of the householder, not the toilet paper's sneaky 'peeping Tom' ogling of people in the loo (cf. Martin & White 2005 on lexical metaphor and provoked attitude).



The same iconisation process is at work with interpersonal grammatical metaphors. An indirect speech act like *Would you like to do the washing up now?* is pragmatically a request for a service, not just an inquiry about what you'd like to do; the expected response is compliant action – *OK (I'll do it)*, not an expression of feeling – *No, I'd hate it*. Similarly, with explicitly subjective metaphors of modality<sup>20</sup> (e.g. *I suppose they'll win*), we're mainly assessing the probability of a proposition ('maybe they'll win'), not telling someone about our mental processes of cognition ('what I'm thinking').

Significantly, iconisation is a matter of degree; ideational meaning may be more or less fully discharged, inversely in relation to the interpersonal charge. This enables Sherlock's smug repartee in the following exchange from 'The Great Game' episode of the TV series *Sherlock*; Watson is modalising (*Has it occurred to you...*) – but Sherlock cuts him off by treating the metaphorical modality literally as a question about what Sherlock is thinking.

[Text 3]

Watson: You realize we've only stopped for breath since this thing started. **Has it occurred to you—**  
Sherlock: **Probably.**

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<sup>20</sup> Grammatical analyses deployed in this paper are based on Halliday & Matthiessen 2004.

This forces Watson to repeat his move, in order to table the proposition he is actually trying to negotiate (i.e. the fact that the bomber is playing a game with Sherlock).

[Text 3 continued]

[Watson](#): No, has it occurred to you that the bomber's playing a game with you. The envelope. Breaking into the other flat. The dead kid's shoes. It's all meant for you.

[Sherlock](#): Yes, I know.<sup>21</sup>

Iconised expressions of this kind, including highly iconised items like idioms, can be ideationally recharged, as Caple's work on image nuclear news stories has shown (Caple 2008, 2010, in press). This happens frequently in this news genre as editors select an image which draws attention to ideational meaning that has at some point been discharged from the headline in order to charge the attitudinal meaning of a phrase. For example, the idiom *getting the cold shoulder*, attitudinally charged as 'being rudely brushed off', is recharged ideationally by an image featuring the relevant the body part in Fig. 3<sup>22</sup> below.

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<sup>21</sup> <http://www.planetclaire.org/quotes/sherlock/series-one/the-great-game/>; downloaded 19/2/2013.

<sup>22</sup> Our thanks to Helen Caple for recording this image, drawing it to our attention, theorising how it works and letting us borrow it.

## Getting the cold shoulder



Belarus soldiers in Minsk pour cold water over themselves at a military show during Maslentsa, a Slavic holiday that marks the approach of spring and Lent. Photo: AFP/Walter Drachev

Fig. 3: An image recharging ideational meaning in an idiom

Work on iconisation was initially inspired by Stenglin's work on bonding in museum exhibitions, where bonding is concerned with constructing the attitudinal disposition of visitors in relation to exhibits; its basic function is to align people into groups with shared dispositions. She points out that bonding is realised in part through symbolic icons (flags, logos, colours, memorabilia etc.) which rally visitors around communal ideals. Bonding icons, termed bondicons for short, are explored in a Te Papa museum exhibition in Martin & Stenglin 2007, and in relation to Olympian ideals in Stenglin 2008 (see also Stenglin 2010, 2012; Stenglin & Djonov 2010).

Familiar bondicons for peace, which anchor communities of protest against war, are exemplified in Fig. 4 below. Symbols of this kind illustrate the way in

which values can be materialised as images. But iconisation can also involve people, including well-known embodiments of peaceful protest, such as Ghandi, and of liberation, such as Mandela. Further examples of iconisation would include ceremonies, proverbs, slogans, memorable quotations, flags, team colours, coats of arms, mascots and so on – all of which radiate values for specific communities of people to rally around.

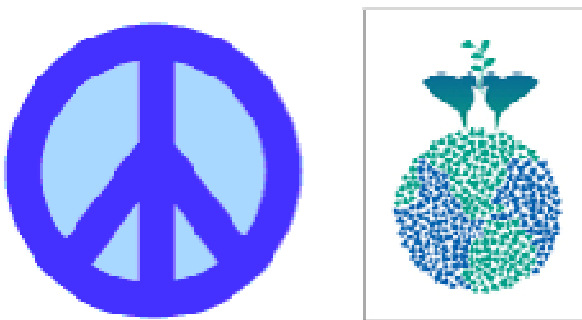


Fig. 4: Well-known bondicons for peace

YJCs are Spartan events when compared with formal court proceedings, in a sense stripped bare of the symbolic regalia iconising the authority of the state (coat of arms, gowns and robes, wigs, gavel, bible, elevated seating, crafted wooden joinery, designer furnishings, legal tomes and so on). This however creates opportunities for iconisation of other kinds. The circle seating arrangement prescribed for conferences itself symbolises the consultative reintegrating processes designers had in mind. In addition, in our data, both the hijab (Muslim head scarf) and police uniform were

leveraged as iconising identities of different kinds (see examples below). And arguably, even the modest, often shabby room, in a Police Citizens Youth Club, relying on minimal resources from the state, is itself a kind of bondicon – its bareness standing against the richly appointed courtroom alternatives which iconise the retributive power of the state (the bare YJC room as an ‘anticon’ if you will).

Consider at this point a phase from a YJC dealing with a YP who has been charged with affray (violent conduct in a public place threatening someone’s safety). The YP is from a Muslim background, and his mother is acting as his support person; an Ethnic Community Liaison Office (ECLO) from the Muslim community is also present. Here, out of apparent frustration that the exchanges aimed at eliciting remorse from the YP may have failed, the ECLO invokes relevant bondicons as a means of getting through to the YP – since they bring to bear the Islamic cultural background that the YP and ECLO share. The first bondicon he introduces is the hijab:

[Text 4]

**ECLO:** Listen, [looking to the convenor] I want to take, with your permission, I want to take a different angle. OK? Mate, what's your mum wearing on her head?

**YP:** Scarf.

**ECLO:** Yeah. OK.

Here the ECLO is presuming that the YP shares his respect for this Islamic symbol, and that it will thus provoke an emotional response that might inspire him to

talk more candidly about his offending behaviour. The next bondicon is the police uniform, which is leveraged here to condemn the YPs behaviour and shame him in front of mother:

[Text 4 extended]

**ECLO:** What a -- where is she now? In the presence of who?

**YP:** Me.

**ECLO:** Who -- who's -- No. Who's sitting here? Who's sitting here right now? Have a look across.

**YP:** Men.

**ECLO:** Have a -- but have a look across. What uniform are they wearing?

**YP:** Police uniform.

**ECLO:** OK.

From these examples we can see that iconisation can play a pivotal role in discourse processes aimed at reintegrating YPs into relevant communities. This makes it important to ask how iconisation works in phases of discourse – in relation to the kinds of iconisation involved, the values iconised and the communities aligned around these values. For this we turned to Tann's work on iconography, which he initially developed in relation to periodically resurgent discourses of Japanese nationalist identity (2010a, 2010b, 2013).

#### **4. Iconography**

Tann's focus is on the way in which belonging is iconised in discourse. To explore this he sets up a

tripartite model comprising the concepts of Gemeinschaft, Doxa and Oracle. Gemeinschaft is concerned with the ways in which discourse construes communities as fellowships that both include and exclude. Doxa attends to the communal values around which fellowships rally – their ‘heart and soul’ if you will. And Oracle deals with the axiologically charged bondicons that radiate the values membering communities.

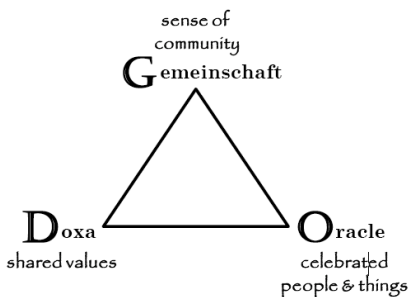


Fig. 5: Tann’s topological perspective on iconography

Tann 2010b effectively illustrates this perspective with respect to Obama’s rise to power in the USA. There a range of discourses construed ‘Americans’ as a distinct fellowship (as opposed to say Iraqis or Chinese), collectivised as ‘we’ and with a homeland ‘in America’, not elsewhere (not in Bush’s ‘axis of evil’ for example) – Gemeinschaft. Bonding this American fellowship were values such as ‘freedom’ and ‘democracy’, and the ‘we can do it if we just try hard enough and believe deeply enough’ mythology immortalised in the campaign adage “yes we can” – Doxa. Campaign posters and TV ads

drew heavily on ‘Obamicons’, including images of the ‘hero’ himself, the multicultural story of his life and the star spangled banner – Oracle. The resources at play here are exemplified in Fig. 6 below.

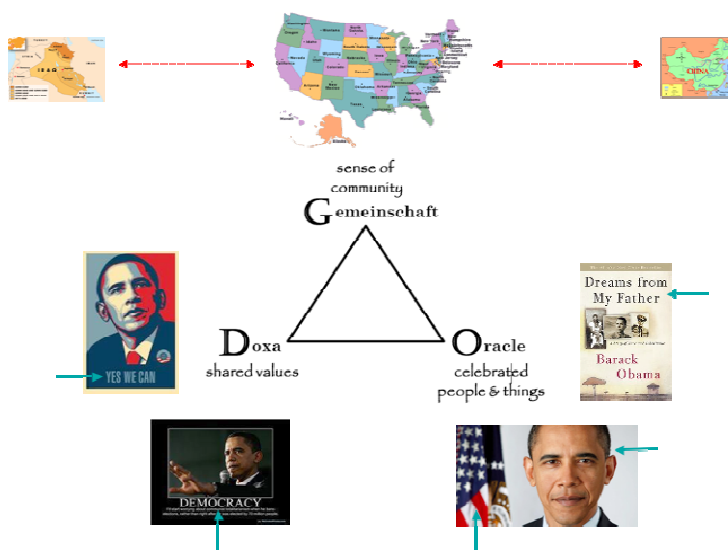


Fig. 6: Obama iconography (based on Tann 2010b)

Tann’s model can of course be applied to communities of different sizes (from nations to family dyads). Systemic functional linguists uninspired by the Obama iconography in Fig. 6 will probably feel more at home on viewing Fig. 7. There SFL is positioned as one functional theory, alongside Role and Reference Grammar (RRG) and Functional Discourse Grammar (FDG); key doxa include its functionalism and relational theory of meaning (‘meaning is choice’) are noted; and instrumental bondicons comprise SFL’s founding ‘guru’



(M A K Halliday), key ‘scripture’ (his *Introduction to Functional Grammar*) and an emblematic ‘artifact’ (the system network – instantiated here as a coffee choice network <sup>23</sup> drawn on a Starbucks’ coffee cup photographed during an SFL pre-conference coursework institute in Lisbon).

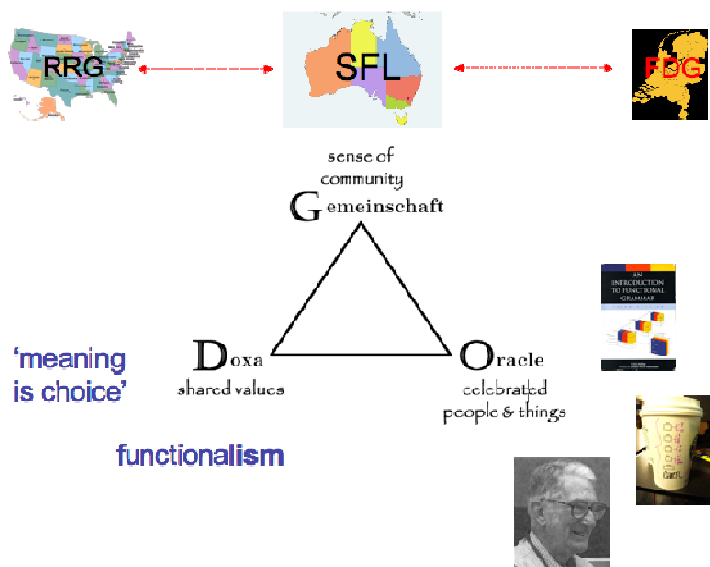


Fig. 7: SFL iconography

In our work on discourse iconography in YJCs we have adopted Tann’s three basic dimensions, although

<sup>23</sup> Note that it is precisely the iconic status of the system network as a rallying SFL artifact that led to the network being drawn, photographed and sent to the lecturer concerned (Martin), who was enraptured and has been canonizing the image ever since.

renaming *Gemeinschaft* as *Communitas* – in part paying homage to Turner’s concern with the intensity of communion experienced by those participating in a rite of passage, and in part with respect to reservations we have about opposing *Gemeinschaft* to *Gesellschaft* (in Tonneis’s 2001 terms) when analysing iconisation. Tann’s Oracle category has been provisionally adjusted<sup>24</sup> to make room for our interest in ceremony. As outlined in Fig. 8 below, it opposes icon to creed, with icons distinguished as heroes (e.g. Obama, Halliday) and relics (e.g. American flag, system network). Creed is divided into rituals (e.g. presidential inauguration, book launch), parables (e.g. generalised exemplary ‘stories’ such as those invoking the Horatio Alger ‘rags to riches’ myth), and scripture (phases of discourse preserved in writing or collective memory, typically sourced, which distil the essence of a particular set of values bonding a community – e.g. the often referenced passages from Halliday, e.g. 1961: 270, on ‘shunting’ in linguistic description or from Firth 1957: 74 on ‘modes of meaning’ analogised to the dispersion of light as a colour spectrum).

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<sup>24</sup> We are currently discussing the best way of mapping these resources with Tann; please do not refer to this provisional classification without permission.

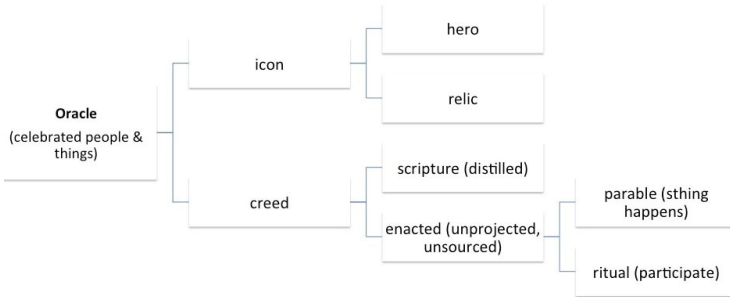


Fig. 8: Iconisation resources in discourse (Oracle)

Let's now consider some examples of discourse iconography at work in our YJC data. The most obvious example of sourced scripture is the New South Wales Young Offender's Act 1997. In the Mandate step of conferences this act is invoked as the relevant encompassing legal framework for the meeting. Its invocation enacts the conference, performatively, as a legal proceeding.

[Text 5]

**Convenor:** ... and the conference has been convened under the Young Offender's Act, OK, and YP has admitted to his offence. Yes?

**YP:** [nods]

In our next example, the Convenor invokes a 'decisive moment' parable by way of impressing on the YP that it is time to turn his life around. The parable is introduced through the expression 'draw a line in the sand', a piece

of distilled creed<sup>25</sup> which names the generalised story line to follow. The story is then unpacked as the sequence of events an ideal YP should be proceeding through. Creed is here enacting ceremonial transition – creating a boundary between an unreformed YP persona and the reintegrated YP persona which the YP is expected to assume.

[Text 6]

**Convenor:** Draw the line in the sand, OK? Have you heard that expression before? You draw a line in the sand. Yesterday was on this side of the line, everything we did, everything we did wrong, decisions we made, are forgotten, and we step over that line to tomorrow, to the future, where we learn to make the right decisions and where we think about what we do before we do it. Yep? So this is it, today's the line in the sand, YP, alright? Tomorrow you move on. You go back to school, you work hard, you get your school certificate, you stay out of trouble, you make yourself proud and you make your family proud, by not getting into trouble. Alright?

The Convenor uses the parable to invite the YP to realign with the *Communitas* at risk, the family ('you make your family proud'), and to assume the attendant shared values of self-respect and pride. This iconised re-integration process is interpreted in relation to *communitas*, *doxa* and the relevant *bondicon* in Fig. 9 below.

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<sup>25</sup> We are treating the expression as oral 'scripture', distilling in collective memory the 'decisive moment' parable, just as the Young Offender's Act distills in writing the conferencing rituals we are exploring here.

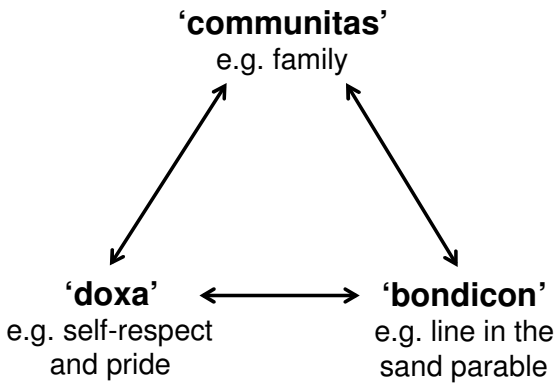


Fig. 9: Re-integration iconography (family, self-respect and pride, line in the sand parable)

A phase of discourse concerned with re-integration into the Muslim community was introduced as Text 4 above, where the ECLO's invocation of the hijab and police uniform bondicons was reviewed. The axiological charge of these iconisation manoeuvres is further intensified as the ECLO re-introduces the icon as “your mum wearing a scarf”, with its attendant iconized religious and cultural meanings in relation to the presence of outsiders (we researchers) at the conference.

[Text 4 extended]

**ECLO:** [pointing to the university researchers] Where are these guys from? They're from a certain place. OK. What's the perception going to be? Think bad of me. What are they going to- when they see your mum wearing a scarf, I'm Muslim background myself. What are they going to think?

**YP:** Bad.

**ECLO:** OK.

These values are even more explicitly inscribed by the ECLO in the following exchange:

[Text 4 extended]

ECLO: You respect your mum?

YP: Yes.

ECLO: No you don't. I'm telling you, brother, you don't respect your mum. Do you understand? You have no respect for your mum.

ECLO: You have no respect for your mum whatsoever, brother. You have no respect for what your mum's got on her head. You have no respect for our community. You have no respect. You tell me, brother, how it's a part of our culture or our religion or our tradition to do things like that. You tell me when.

This iconised re-integration process is interpreted in relation to *communitas* (Muslim community), *doxa* (respect for mother) and the relevant *bondicon* (hijab) in Fig. 10 below.



you get assaulted. Lots of bad things happen. I'm sure ResearcherX and ResearcherY have had things happen to them. So, everybody, usually has had something happen to them, and I hope touch wood you don't ever have anything happen to you. O.K? Because it's not a good – it's not a good feeling, to have something taken away from you, as you could imagine. Can you imagine is someone came into your home, when you weren't there, and just took everything? How would you feel?

The iconisation of an imagined Victim here reinforces a doxa demanding empathy for other citizens and a corresponding logic of obeying the law. These are the values shared by an imagined communitas of ethical citizens.

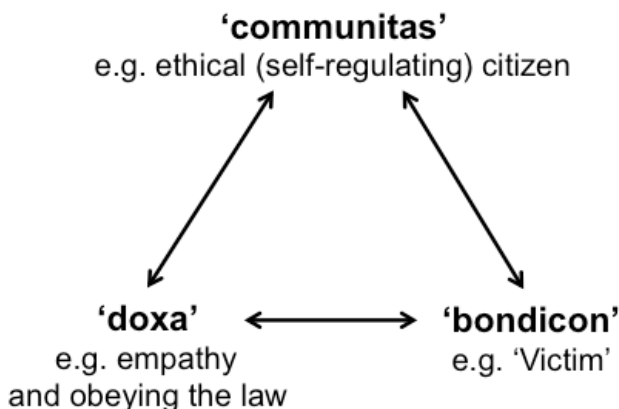


Fig. 11: Re-integration iconography (ethical citizen, empathy and obeying the law, 'Victim')

Perhaps the most iconised Victim that we encountered with our sample was a vision-impaired woman who had



her wallet stolen after chatting with the YP in a shopping centre. The YP's mother explains that she could scarcely believe it when she received the news that her son had stolen from a 'blind lady'.

[Text 8]

Mother: I said "well, what's he done?" and he said "you wouldn't believe it. He's stolen a wallet off a blind lady". And I went "I beg your pardon". And he said it, repeated himself again...

The importance of the subject position of a vision-impaired person in the iconisation processes of this conference is further evidenced by the way the Convenor interrupts the Victim's recount of the offence to allow the members of the conference circle to try on glasses that give the wearer an impression of what it is like to have a comparable vision impairment.

[Text 8 extended]

Convenor: Can I just interrupt you for a minute? Have you got those glasses with you VictimX?

Victim: Oh yes.

Convenor: Can we pass them around? And Support PersonX just open that door just to let a bit of breeze in? Is that OK? Thanks. So these are the actual glasses that that YP put on.

Victim: Yes.

Convenor: I might just pass them around so people can have a look at what your vision's like. Sorry, keep going.

The Convenor also invites this Victim to give a moving personal recount of how she lost her vision:

[Text 8 extended]

Convenor: Do you mind sharing your story about when you lost your sight just so people can get a bit of a background so people realise how hard it's been for you to try and adapt and, you know, live by yourself and things like that.

Victim: Yes- yes, I lost my vision when I turned fifty. And what happened was I had an allergic reaction to a herbal medication I was taking for menopause and the – the reaction caused me to have a bleed in my brain and I had stroke-like symptoms.

In effect what is going on here is that the Victim is being canonized as a hyper-victimised Victim. And she is being super-charged by the Convenor in this way to maximize the impact of the crime and a concomitant feeling of shame in the YP and empathic support persons.

This brings us to the biggest bondicon of all – the figure of the mother<sup>26</sup>, whose flesh and blood sits beside her, across from their Victim, as the offending YP. As we have already seen in relation to Text 4 above, the anguished support person, typically the mother, is an important rhetorical figure in YJCs and there are numerous instances of support persons expressing distress in the conferences in our sample. The most frequent locus of support person tears in conferencing is

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<sup>26</sup> This role may in fact be played a de facto parent, for example an older sister, step-mother or grand-mother.

in the Avouchment step of the macro-genre, where the support person vouches for the YP as a ‘good kid’, though episodes of crying can appear throughout conferences (e.g. background sniffing and dabbing at tears while listening to the Commissioned Recount genre).

In almost every conference in our sample the Convenor repeatedly calls on the YP to reflect on the distress that their offending behavior has caused their mother through direct references to the mother’s affect. Consider for example the probing moves made by Convenors when extending the Commissioned Recount, which are clearly designed to leverage the mother’s negative affect as a catalyst for invoking shame in the YP.

[Text 9]

Convenor: You did. And what about- , um, did you see mum upset? Was mum upset?

[Text 10]

Convenor: So YP, how do you feel about the fact that, you know, mum is still getting upset about this? How does that make you feel?

In examples like these Convenors, YLOs and ECLOs are drawing on the emotional power of someone breaking down as they call on the YPs to observe their mothers pain. This is a powerful rhetorical move that works as an important device in the YP’s passage through the conference as a whole. The maternal tears themselves act as a bondicon – making the mother cry in this way is

thus a 'special' form of crying; the mother (or support person) is positioned by the conference more than sad – her crying is a demonstration to the YPs of the sublimely painful consequences of their behavior, not just to the Victim, but to all concerned.

[Text 11]

Convenor: So YP, how do you feel about the fact that, you know, mum is still getting upset about this? How does that make you feel?

YP: (Sad)

Convenor: Do you feel OK about the fact that mum gets upset?

YP: [shakes head]

Convenor: Nup? How does it make you feel?

YP: Sad.

Convenor: Sad. ... Not good to see mum upset is it?

YP: Mm.

Convenor: Mums don't like getting upset. Trust me. YLO and I will tell you that. When our kids do something wrong, it really hurts us. Deep down, here. OK. Because you think you are doing the right thing for your kids and you're teaching them and educating them and giving them a roof over their head. Remember I spoke to you about that the other day? How lucky you are? And yeah, all - all par - every parent wants is the best for their kid. Don't they, you can imagine that. You've got nieces and nephews, yeah? You don't want them to get into trouble do you? So you can understand how mum's feeling and dad's feeling? Does that make you stop and think about whether or not you may do

something like that again? What does it make you feel?  
What does it make you think?

YP: Think before you do something.

The offending behavior of the YP has obviously brought them into conflict with the doxa of the parent-child dyad. The YPs have broken the value of respecting their mother and have, as far as affiliation is concerned, broken the parent-child bond. Elsewhere (Zappavigna & Martin in press) we argue that there is an oracular carnival at play here, related ultimately to the Mater Dolorosa ('mother of sorrows') iconography so deeply rooted in Christian faith<sup>27</sup> – including scripture, centuries of painting and agnate parables proverbialised in secular life as 'breaking your mother's heart'. The intensely radiating iconography is outlined in Fig. 12.

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<sup>27</sup> And as we saw in relation to Text 4, this mother oriented iconography is not restricted to Christian practice, but is iconised in comparable ways across religions (and cultures) – although not necessarily in such gendered terms, nor restricted to parent/child relations (e.g. a long line of ancestors may be involved).

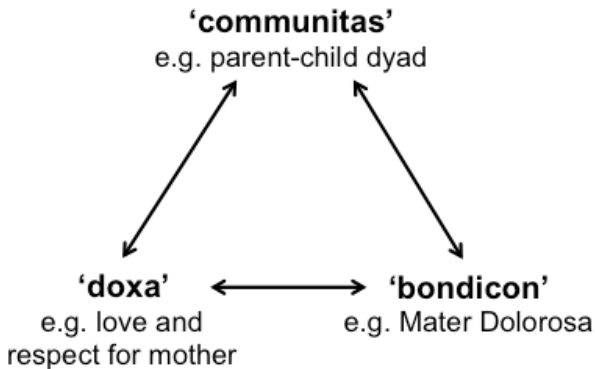


Fig. 12: Re-integration iconography (parent/child, love and respect for mother, 'Mater Dolorosa')

### 5. Ceremonial redress

In this paper we have tried to explore, from a social semiotic perspective, the ceremonial power of YJCs. In Lewis's terms, it is clear they are special events – that participants are carefully prepared for by Convenors and have the opportunity to remember and reflect upon for years to come. For Turner (e.g. 1982 ) the problem of youth crime (and the attendant failure of institutions like the children's court and juvenile detention centres to deter and/or rehabilitate young offenders) is a form of social drama – a breach in the social order that requires redressive action if an eroding schism in the community is to be avoided. He identifies legal-judicial processes and ritual performances as the two most important mechanisms of redress, though clearly these are not mutually exclusive negotiations of meaning. Some elements of ritual have always existed in courtroom proceedings. At the same time, an emergent genre such

as conferencing may be understood as a ritualisation of alternative social processes (police cautions, family counselling, parent/teacher interviews, carer/child admonitions etc.) which function as adjuncts to conventional legal-judicial remedies. Following van Genep (1960), we can read the YJC form of redressive action as a rite of passage, which participants talk about in terms of ‘facing up to the challenge’ of meeting the other participants, and of ‘getting through’ the conference process in order to be able to ‘draw a line in the sand’ and ‘move on’ with their lives.

Our basic point is that instead of attributing the restorative power of conferencing to an outpouring of emotion (a passion play), we need to begin exploring the ceremonial impact of its iconisation processes and possibilities. Compared with court, conferences look at first blush like a legal process stripped bare. Where we might wonder has all the ritual gone? But from a discourse perspective what the designers have in fact done is create an orderly convocation which affords a range of iconizing processes inviting, enacting and hopefully enabling re-integration of the YP into the appropriate ‘communities of concern’ (Braithwaite, 1989). Drawing on SFL work on iconisation (inspired by Stenglin) and on discourse iconography (adapted from Tann), we have provided examples of re-integrative iconisation as they have arisen in our corpus – with a focus on the kind of bondicons deployed, the values they symbolise and the communities they engender. This social semiotic perspective on identity is still in its infancy; but we hope to have shown the value of a focus

on iconisation as far as the redressive potential of the YJC macro-genre is concerned.

We began this paper by reminding readers that they have probably all experienced the difference between everyday activity and ritual – whether this has involved the difference between passing exams and the graduation ceremony, between winning a race and the medal presentation, between falling in love and marriage, between a casual prayer and a religious service, between birth and baptism, between dying and the funeral and so on. But outside of religious life, this difference is not something many of us are used to talking about. We experience it, but the sublime transcendent impact of ceremony is hard to verbalise; and very few of us are gifted enough to compose the song or write the poetry that captures the momentous emotion – the *communitas* in Turner’s terms. Theorising this impact is no easier, as we have found. But as theorists our job is to face up to what we’d rather left unsaid, especially where something as important as restorative justice is concerned – in a world where diversionary processes for offenders continue to be a controversial dimension of redressive action. One important challenge for forensic linguistics is thus to develop an ever- improving secular theory of ceremony which can be drawn on to inform and possibly reform truly re-integrative performances of ritualised redress. We hope to have scattered a few seeds in this direction here.



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