International Journal of
Law, Language & Discourse
Volume 4.2 2014

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Volume 4.2 2014 ISSN 1839 8308

International Journal of
Law, Language & Discourse

Chief Editor

Le Cheng

International Journal of Law, Language & Discourse

Volume 4.2
December 2014

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The International Journal of Law, Language & Discourse is an affiliated journal of Multicultural Association of Law and Language.

The International Journal of Law, Language & Discourse is a print of English Language Education Journals.

The International Journal of Law, Language & Discourse is an interdisciplinary and cross-cultural peer-reviewed scholarly journal, integrating academic areas of law, linguistics, discourse analysis, psychology and sociology, presenting articles related to legal issues, review of cases, comments and opinions on legal cases and serving as a practical resource for lawyers, judges, legislators, applied linguists, discourse analysts and those academics who teach the future legal generations.

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Published by the International Journal of Law, Language & Discourse Press

Australia, Hong Kong and Hangzhou

http://www.ijlld.com

ISSN 1839 8308

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A Study of the Frame of Legal Language

Pi-chan Hu

Abstract: Why is there always a wide gap between ordinary language and legal language? Do legal professionals and laymen think differently? In this study, we employed categorization theories such as frame semantics, checklist theory and prototype theory to establish the frame of legal language (legal frame) and the frame of ordinary language (layman frame). We found that the construction of the legal frame is made up of elements in a rigid connection and all the elements are necessary and sufficient. By contrast, the construction of the layman frame is composed of elements in a loose connection and not every element is necessary or sufficient. The difference between the rigidity of the legal frame and the looseness of the layman frame is what leads to the gap between ordinary language and legal language. The very difference in frames of language gives rise to the difference of categorization in the mind of ordinary people and legal professionals.

Keywords: legal language; categorization; frame semantics; checklist theory; prototype theory

1 Introduction

As is known to most people, there is always a gap between ordinary language and legal language. What's the difference in the semantic framework of laymen as well as that of legal professionals in interpreting legal language? How do people come up with the meaning of words? How do they conceptualize the category of a word or a term? To answer these questions, we would like to employ

linguistic approaches such as frame semantics, checklist theory, and prototype theory to investigate the meaning of words. All of these theories are mainly used in the study of categorization, the utmost essential concern of cognitive linguistics (Lakoff 2008; Langacker 1990; Taylor 2004).

Interpretation has always been one of the major issues in the study of legal language (Cheng & Cheng 2012; Hutton 2009; Solan 2010). As most of the disputes over the interpretation of legal expressions or terms are problems of categorizing, it is necessary here to introduce the concept and the theory of categorization. Generally speaking, the process in which ideas and objects are recognized, differentiated and understood is termed categorization. Ideally, a category illuminates a relationship between the subjects and objects of knowledge (Hey 2001). Categorization is fundamental in language, prediction, inference, decision making and in all kinds of interaction with the environment (Lakoff 2008; Langacker 1990; Taylor 2004). Whenever we reason about kinds of things—chairs, nations, illnesses, emotions, any kind of thing at all—we are employing categories (Lakoff 2008: 139).

People need to categorize objects and events in their worlds (Kövecses 2006). Most categorizing is done automatically and unconsciously, and if we become aware of it at all, it is mostly in problematic cases (Lakoff 2008). A large proportion of our categories are not categories of tangible things but categories of abstract entities such as events, actions, emotions, spatial and temporal relationships, and social relationships. Broadly speaking, in the field of law, every judicial judgment is a process of embodying categorization—whether the evidence is valid, whether the constituent elements are satisfied, and most important of all, whether the actor is guilty or not guilty.

1.1 Frame Semantics

Fillmore is the discoverer of “frame semantics,” a theory that

associates linguistic semantics with encyclopaedic knowledge (Fillmore 1982, 1994, 2003). The basic idea is that one cannot understand the meaning of a single word without access to all the essential knowledge that relates to that word. One of Fillmore's favorite examples is the set of verbs *buy, sell, charge, pay, cost,* and *spend*. For example, one would not be able to understand the word "*sell*" without knowing anything about the situation of commercial transfer, which also involves, among other things, a seller, a buyer, goods, money, the relation between the money and the goods, the relations between the seller and the goods and the money, the relation between the buyer and the goods and the money and so on (Croft and Cruse 2004).

Frames are constructs which were originally developed by researchers in the field of artificial intelligence. The constructs made it possible to represent in computer memory those aspects of world knowledge which appear to be involved in the natural processing of texts. According to de Beaugrande and Dressler (1981: 90), frames constitute "global patterns" of "common sense knowledge about some central concept," such that the lexical item denoting the concept typically evokes the whole frame. In essence, frames are static configurations of knowledge.

Frames are based on recurring experiences. Therefore, the commercial transaction frame is based on recurring experiences of commercial transaction. Words not only highlight individual concepts, but also specify a certain perspective in which the frame is viewed. For example, "*sell*" views the situation from the perspective of the seller and "*buy*" from the perspective of the buyer. This, according to Fillmore, explains the observed asymmetries in many lexical relations (Fillmore 1982, 1994, 2003).

According to Fillmore (1982, 1994, 2003), frame semantics has the following three characteristics:

1.1.1 Frames do not have a clear boundary

The domain of a frame can be based on the individual's life experience, intellectual degree, cultural background, and understanding of the world, thus making it impossible to tell its size, its internal factors and its clear distinction from other frames.

1.1.2 Frames have universality and individuality

Universality is the common sense of what features a word is supposed to have for most people and the individuality is the unique understanding among individuals. For example, the knowledge of the cycle of a week and the system of five-day work base is what it takes for one to understand the word *weekend*. And for most people, *weekend* is a time for rest, while for those who work at the restaurants, hotels, or scenic attractions, *weekend* may be a time when they work hardest, which is due to their occupational background (Taylor 2004; Lakoff 2008). The difference in meaning between rest and work for different people is called individuality, which is also termed perspectivization by Dirven et al. (1982) or the windowing of attention by Talmy (2000). Perspecivization refers to the phenomenon that different uses of a word whose semantic structure is rather complex tend to highlight components of frame-based knowledge (Verhagen 2010).

In the Criminal Code, a term in different articles may have slightly different meanings. Let's take the term *xie-puo* (脅迫, 'intimidate or threat') for example. Some articles with the term are given as shown in Table 1.

Table 1　Articles with the term *threat*

Article	Content
Article 142	（妨害投票自由罪） 以強暴**脅迫**或其他非法之方法，妨害他人自由行使法定之政治上選舉或其他投票權者，處五年以下有期徒刑。 A person who by violence, **threats**, or other illegal means interferes with another in the free exercises of his right to vote at a political election duly authorized by law or in the free exercise of his other voting right shall be punished with imprisonment for not more than five years.
Article 152	（妨害合法集會罪） 以強暴**脅迫**或詐術，阻止或擾亂合法之集會者，處二年以下有期徒刑。 A person who by violence, **threats**, or fraud interferes with or disturbs a lawful assembly shall be punished with imprisonment for not less than two years.
Article 328	（普通強盜罪） 意圖為自己或第三人不法之所有，以強暴、**脅迫**、藥劑、催眠術或他法，**至使不能抗拒**，而取他人之物或使其交付者，為強盜罪，處五年以上有期徒刑。 A person who uses force, **threats**, drugs, hypnosis, or other means to **render resistance impossible** and to take away a personal property of another or cause him to deliver it over with intent illegally to appropriate it for himself or for a third person commits robbery and shall be punished with imprisonment for not less than five years.

The term *xie-puo* in Articles 142 and 152 can be verbal and as long as it makes the victim feel frightened, it is counted as *xie-puo*. On the

other hand, *xie-puo* in Article 328 must be made not only to frighten others but also to be so strong as to *render resistance impossible*. In other words, these *xie-puo's* are different in their manners and extents. Among them, *xie-puo* in Article 328 is the most intense one in severity and degree. The similarity in the meaning of the term *xie-puo* can be seen as universality and the different meaning individuality.

1.1.3 Frames are multidimensional

A word or a concept can be understood by many dimensions. This can be seen from the frame of *mother* (Lakoff 2008: 74), shown as in example (1).

(1) *A mother is a woman who*
- *(a) has sexual relations with the father*
- *(b) falls pregnant*
- *(c) gives birth*
- *(d) devotes much of her time to nurturing and raising the child for the following decade or so*
- *(e) remains all the while married to the father*

Clearly, such a frame is highly idealized, in that the frame abstracts away from its many untypical instantiations. For example, some mothers, for whatever reasons, do not have the marriage relationship with the father. And in the case of children given for adoption, there is a split between the genetic and birth dimensions on the one hand and the nurturance dimension on the other. In addition, for some of the working mothers, the actual job of nurturing may be taken over by a nanny or a grandparent. It is against the background of the idealized scenario that we characterize a prototypical mother. Adoptive mothers,

surrogate mothers, stepmothers, unmarried mothers, widowed mothers, uncaring mothers, perhaps even working mothers, are more marginal members of the category (Lakoff 2008: 74). It's not necessary for a member of a category to satisfy every dimension of the frame.

Overall, frames are configurations of culture-based, conventionalized knowledge. Most importantly, the knowledge encapsulated in a frame is knowledge which is shared, or which is believed to be shared, by at least some segment of a speech community. In principle, any scrap of knowledge, however peculiar it may be, can get absorbed into a frame, so long as the association is shared by a sufficient number of people (Taylor 2004). In the following section, we will see the differences between the frames of legal language and ordinary language.

1.2 Checklist theory

The traditional view of category membership can date back as early as the years of Aristotle who judged categories as something like containers where category membership is defined through a set of necessary and sufficient features (Taylor 2004; Aitchison 2003).

The overall assumption is that there exists, somewhere, a basis meaning for each word, which individuals should strive to attain. We can label this the "fixed meaning" assumption, which may be referred to as a "checklist theory (Fillmore 1975)." In brief, this theory suggests that for each word we have an internal list of essential characteristics, and we label something as *cat*, *square*, or *cow* only if it possesses the "criterial attributes," which we subconsciously check off one by one. This "checklist" theory is intuitively satisfying to some people, perhaps because it is fairly familiar, as many dictionaries implicitly work on a checklist principle (Taylor 2004). However, checklist theory also involves a number of problems. A major problem with checklist theory is deciding which attributes go on to the list, since only a very few words have a straightforward set of necessary

conditions, though occasionally officials can decree that words have fixed meanings within a particular context (Aitchison 2003). In addition, there appears to be no clear way to draw a dividing line between essential and non-essential characteristics.

Does this mean that the fixed meaning assumption has to be abandoned if, in practice, it is impossible to fix the meaning for most words? The answer is probably no since precision is the major goal of legal language and a fixed meaning will be necessary to the pursuit. As a matter of fact, a well-known philosophical viewpoint is that words do indeed have a fixed, correct meaning, but that only a few experts know it (Putnam 1975; Aitchison 2003). Ordinary people must consult these experts if they need to know about the essential nature of something. In the field of law, judges, prosecutors and lawyers are these experts. And it is very unlikely to do away with the "checklist," as from the legal point of view, it is necessary to have a so-called objective and universal standard for prosecutors and judges to operate with in order to be impartial and to secure the supreme principle of the law that everybody be treated equally by the law. The adoption of a checklist is thought to be a means to facilitate the pursuit of precision and to reduce the problem of vagueness since the standard for judging a case will be universal for every individual.

1.3 Prototype theory

Since the 1970s, cognitive psychologists and linguists have been investigating the nature and structure of classificatory systems. These researchers claim that the classical approach is no longer tenable (Rosch 1975, 1983; Jackendoff 1983, 1996; Croft 1990; Langacker 1987, 1999). They reject the view that a category is defined exclusively by its essential properties. Nor do they accept the idea that all members of a category have equal status. Rather there are prototypes. The concept of "prototype" has engendered an alternative theory bearing its name. According to prototype theory, some entities

are judged as better exemplars of category than others. Thus, *wrens* and *robins* are considered to be prototypical "birds," but *chickens*, *penguins* and *ostriches*, being of larger size, flightless and non-arboreal, are regarded as poorer representatives of this category (Aitchison 2003). Hence, a prototypical bird is small, is a nest-builder, sings, flies and is neither a raptor nor a fowl. A well-known picture illustrating this feature is shown as Figure 1 (Aitchison 2003: 58).

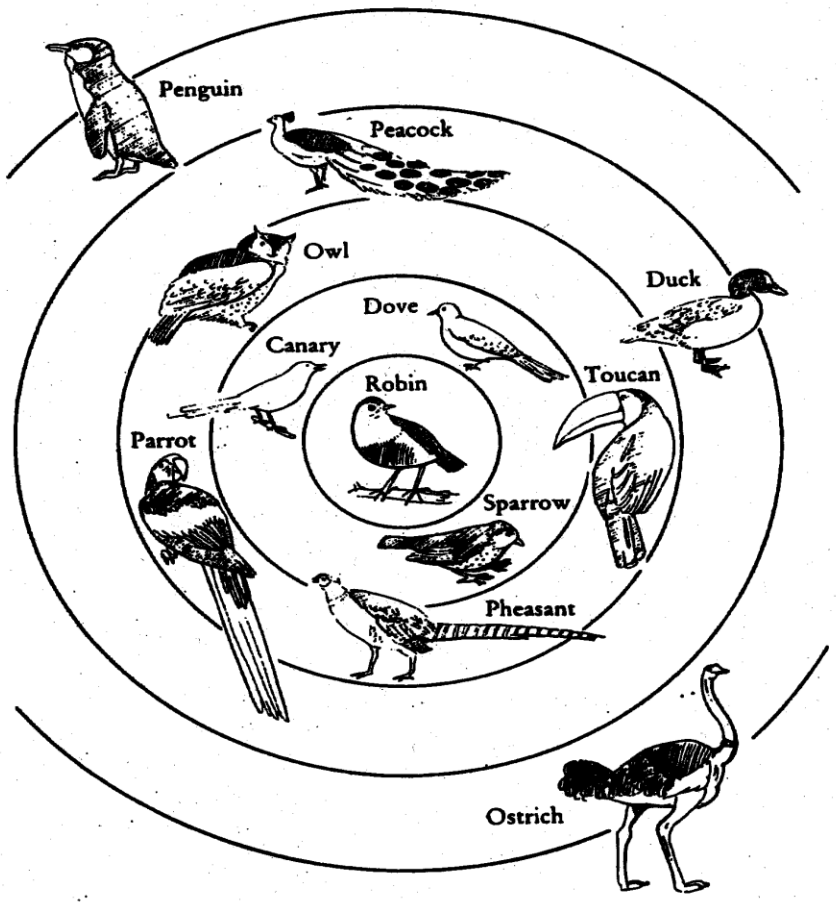

Figure 1 Birdiness rankings

In fact, the prototypical bird has some of the very properties that

would be designated as accidental within the classical perspective. Eleanor Rosch, a cognitive psychologist noted for her pioneering work in prototype theory, has investigated the structure of various categories, including that of *bird* (Rosch 1985). In an endeavor to validate the psychological reality of prototypes, she asked subjects to rate the degree to which an entity was a good exemplar of a category and she found a high degree of consistency between their responses. Furthermore, in experiments testing reaction time, it took subjects less time to verify that a robin is a bird than to confirm that a duck is one (Taylor 2004).

Prototype theory tries to answer the question which principles are responsible for assigning a certain entity to a certain category and is useful, then, for explaining how people deal with untypical examples of a category. Unlike checklist theory, prototype theory argues that category membership is not assigned according to a list of necessary and sufficient features but by a cluster of attributes of the most representative members. Meaning is always dynamic and flexible and never static as it is in a dictionary (Taylor 2004; Cruse 2004).

To summarize, Rosch's work suggests that when people categorize common objects, they do not expect them all to be on an equal footing. They seem to have some idea of the characteristics of an ideal exemplar, in Rosch's words, a "prototype." And they probably decide on the extent to which something else is a member of the same category by matching it against the features of the prototype (Taylor 2004; Cruse 2004). It does not have to match exactly. It just has to be sufficiently similar, though not necessarily visually similar.

Prototype theory proves the existence of the unclear boundary of a category and the fact that there are the prototypical area (good examples) and the peripheral area (bad examples) in every category. This very fact shows that the problem of interpretation over the meaning of a legal term is bound to occur and can hardly be eliminated even with extremely cautious construction of legal texts.

2. Cases

2.1 *Public insult*

In this and the following sections, we are going to investigate several cases to see how frame semantics, checklist theory and prototype theory function in interpreting legal language. To illustrate this, we will employ two offenses—*public insult* and *forcible molestation* for discussion. We will introduce the cases first and do the discussions in later sections.

In the Criminal code, Article 309 is the offense of *public insult*, given as example (2).

(2) 第 309 條 （公然侮辱罪）

I. 公然侮辱人者，處拘役或三百元以下罰金。

Article 309 (public insult)

I. A person who publicly insults another shall be punished with detention or a fine of not more than three hundred *yuan*.[1]

Table 2 presents some cases concerning the offense of *public insult*. We will focus our discussion on cases 1, 6, and 7.

Table 2 Cases concerning the offense of *public insult*
(G: guilty, NG: not guilty)

Case	No.	Content	Verdict
1	91,zih[2],749	我怎麼知道妳是不是**大陸妹**? How would I know whether you are a **China girl**?!	not guilty
2	96,yi[3],985	爛人、不要臉、怎麼有你這麼爛	guilty

[1] *Yuan* is the currency used in Taiwan.
[2] *Zih* refers to a criminal complaint filed by a citizen rather than a prosecutor.
[3] *Yi* refers to a summary court case.

		的人 Bitch! Shameless! What a bastard!	
3	96,jian[4],1919	幹你娘、哭爸、看三小 (台語) Fuck you! Shit!	guilty
4	96,yi,449	幹你娘、幹、幹 (台語) Fuck you! Fuck! Fuck!	guilty
5	96,jian,1589	不要臉的女人 Shameless woman.	guilty
6	96,yi,796	你這麼愛錢，不如去『**賺**』(台語) If you love money so much, why don't you go **earn** it.[5] 依你的年紀，我看也賺沒 (台語) I don't think you can **earn** any money at your age.	not guilty
7	NA[6]	**機車妹** **a nuisance**	guilty

Among the cases listed in Table 2, case 1: *da-lu-mei* (大陸妹, 'China girl') and case 6: *zhuan* (賺, 'earn/prostituting') and case 7: *ji-che-mei* (機車妹, 'a nuisance') were reported by the media, but none of them aroused much discussion or criticism from the common public, nor the legal field. That is to say, people do not seem to have a tense feeling toward whether these expressions are defamatory or not. The discussion of these cases will be presented in later section.

2.2 Forcible molestation

On the other hand, we will cite other cases that aroused an intense reaction from the common public for contrast. They are the cases with

[4] *Jian* refers to a summary court case.
[5] The word *zhuan* (賺, earn) in Taiwanese has the idiosyncratic meaning of *prostituting*.
[6] This case number was withheld from the public as one minor was involved.

regard to *qiang-zhi wei-xie* (強制猥褻, 'forcible molestation'). The first one is case (89,yi,1266; 89,shang[7],3561; 91,taifei[8],168) which occurred in 2000. The fact of the case is that one evening a guy ran into a convenience store, forcibly held the clerk—a 15-year-old girl into his arms and kissed her on the cheek for 2 minutes. This case will be termed as the *forcible kissing case* (強吻案) hereafter. Another case (96,su,25, Zhang-hwa District) which occurred in 2005 is that on a lingerie auction a guy contacted a woman on her breasts for ten seconds. This case will be termed as the *breast case* (襲胸案) hereafter. The actors of the two cases were charged with the offense of *forcible molestation*, coded as Article 224 and given as example (3).

(3) a. 第 224 條 （強制猥褻罪）
對於男女以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。
Article 224 (forcible molestation)
A person who commits an **obscene** act against a male or female person against their will through the use of violence, threats, intimidation, or hypnosis shall be punished with imprisonment of not less than six months but not more than five years.

In both cases, the actors were found not guilty of the offense of *qiang-zhi wei-xie* (強制猥褻, 'forcible molestation') but instead the actor of the *forcbile kissing case* (強吻案) was punished with Article 302—the offense of coercion (強制罪, given below as example (4)).

(4) 第 304 條 （強制罪）
I. 以強暴、脅迫使人行無義務之事或妨害人行使權利

[7] *Shang* refers to a High Court case.
[8] *Taifei* refers to an unusual appeal to the Supreme Court.

者，處三年以下有期徒刑、拘役或三百元以下罰金。

Article 304　(coercion)

I. A person who by violence or threats causes another to do a thing which he has no obligation to do or who prevents another from doing a thing that he has the right to do shall be punished with imprisonment for not more than three years, detention, or a fine or not more than three hundred *yuan*.

Both rulings provoked an overwhelming criticism and antipathy from the public and that was why the two cases became high-profiled. Posterior to these two cases, several similar cases have also drawn the public's attention owing to the result of their rulings.

At this point, we cannot but wonder why those cases concerning *public insult* (the cases of *da-lu-mei* (大陸妹, 'China girl'), *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'a nuisance') aroused a lukewarm reaction from the common public whereas the *forcible kissing case* and the *breast case* provoked an overwhelming reaction. What is it that has caused the two extreme reactions from the common public toward the rulings of these cases? In the following section, we will explore the meaning of *insult* and *obscene* in detail.

2.3 Discussion of Cases and Surveys

Throughout the Criminal Code, there is no definition concerning *insult*. Yet the standard for judging *insult*—using derogatory language in spoken or written form or an act that is defamatory enough to embarrass and demean someone in public—is commonly accepted among legal professionals—judges as well as jurists (Huang 2012, Lin 2008, Chang 2007). The problem of this definition is that words such as *derogatory*, *defamatory*, *embarrass* and *demean* are as vague as *insult*. How is it possible for judges to be objective and universal in making judgments of all the expressions in each individual case?

According to Rosch (1975, 1988), the pioneer of prototype theory, it is common for people to have various rankings for members in the peripheral area of a category. Therefore, a plausible explanation is that the cases of *da-lu-mei* (大陸妹, 'China girl'), *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') belong to the peripheral area of the category of "*public insult*" in the mind of ordinary people, i.e. ordinary language. Nevertheless, it takes more evidence to prove this inference.

With a view to detecting what part of the category, the prototypical area or the peripheral area, those disputed expressions in the cases of *public insult* and the acts in the cases of *forcible molestation*, belong to in the mind of the people, we conducted a survey. The original questionnaires are attached as Appendix A and Appendix B. The survey was carried out with three groups of subjects: group one was made up of 40 college senior students, who were of a variety of majors such as Applied English, Tourism, Risk Management, and Information Science. Their age ranges from 21 to 25. Group two was composed of 40 clerks in an accounting firm, and group three comprised forty university clerks. The education background of group two and three ranges from college degree to master degree and their ages range from 25 to 46. None of the subjects had a background in law. The subjects were asked to rate how good an example of the category—the category of *public insult* and the category of *obscene*—each member was on a seven-point-scale: rating something as "1" meant that they considered it an excellent example; "4" indicated a moderate fit'; whereas "7" suggested that it was a very poor example, and probably should not be in the category at all. The order of the list was varied for different subjects to ensure that the order of presentation did not bias the results. The results were surprisingly consistent. Agreement was particularly high for the items rated as very good examples of the category among groups and individual subjects as well. The result of the survey regarding *public*

insult is shown as in Table 3.

Table 3 The result of the survey regarding *public insult*

Item	Score	Ranking
fuck (幹你娘)	1.00	1
shameless (不要臉)	1.27	2
son of a bitch (王八蛋)	1.33	3
a brute animal (畜生)	1.37	4
bitch (賤貨)	1.54	5
less than pigs or dogs (豬狗不如)	2.11	6
scurrilous (下流)	2.45	7
pervert (變態)	2.59	8
idiot (白癡)	3.12.	9
retarded (智障)	3.26	10
mentally handicapped (腦殘)	3.45	11
non-cultured (沒教養)	3.59	12
a very ugly person (醜八怪)	3.70	13
an irritating pig (豬八戒)	4.14	14
rascal (流氓)	4.59	15
Go to hell. (去死好了)	5.12	16
sissy (娘娘腔)	5.58	17
If you love money so much, why don't you go "earn" it? (那麼愛錢，不會去賺 (台語))	**6.12**	**18**
China girl (大陸妹)	**6.28**	**19**
nuisance (機車妹)	**6.32**	**20**

From the result of the survey, the high scores and high rankings show that terms such as *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') are regarded

as bad examples (members) of the category of *insult*. The result indeed confirms our inference—the three expressions belong to the peripheral area of the category of *insult*. Compared with top ranking expressions such as "fuck," "shameless," and "son of a bitch", *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') seem to be a lot less derogatory. Since prototype theory suggests that people tend to have lukewarm feelings toward peripheral members, it explicates why they react indifferently to these three expressions. As to their distribution in the category of legal language, we can only infer from the rulings of the cases since it is technically and practically impossible to conduct a survey with judges. Because *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') were considered non-derogatory, we infer it to belong to the peripheral area and *ji-che-mei* (機車妹, 'nuisance') was considered derogatory since the actor was found guilty so we infer it to belong to the prototypical area. The summary of these relationships for the category of *public insult* can be illustrated by Figure 2. The boundaries of the prototypical area and the peripheral area are shown in dotting lines because they are fuzzy.

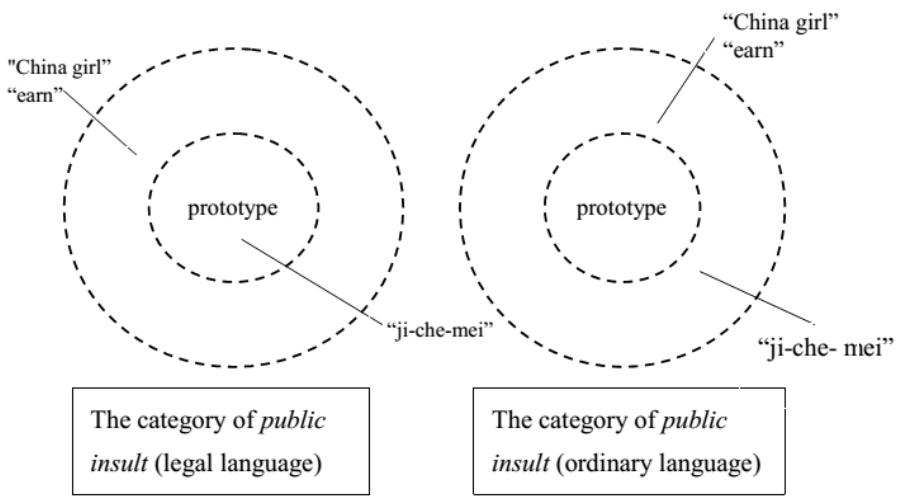

Figure 2 The category of *public insult* in ordinary language and legal

language

Next, we will investigate the meaning of *obscene*. Judging from the intense reaction of the common public toward the rulings, acts such as "*kissing someone on the cheek for 2 minutes*" or "*touching someone's breast for ten seconds*" are likely to fall in the prototypical area of the category of *obscene* in the mind of ordinary people, i.e. ordinary language. Let's take a look at the result of the survey regarding *obscene*, which is shown as in Table 4.

Table 4 The result of the survey regarding *obscene*

Item	Score	Ranking
touch one's private parts (e.g. pudendum) (摸私處)	1.00	1
touch one's buttock (摸屁股)	1.33	2
touch one's breasts (摸胸部)	**1.38**	**3**
tongue-kiss (舌吻)	1.42	4
kiss one's mouth (親嘴)	1.58	5
pinch one's ass (捏屁股)	1.61	6
hold someone and kiss his/her face (抱住親臉)	**1.70**	**7**
touch one's thigh (摸大腿)	2.11	8
kiss one's face (親臉)	2.26	9
pat one's thigh (拍大腿)	2.77	10
kiss one's hand (親手)	4.12	11
kiss one's hair (親頭髮)	4.32	12
touch one's face(摸臉)	4.86	13
touch one's ear (摸耳朵)	5.12	14
touch one's shank (摸小腿)	5.36	15
touch one's back (摸背)	5.48	16
touch one's hair (摸頭髮)	5.95	17

touch one's hand (摸手)	6.11	18
touch one's shoulder (搭肩膀)	6.23	19
pat one's back (拍背)	6.35	20

Following Rosch's pattern in the experiment with the category of bird (1975, 1983), we can define any item with a score below 3 as prototypical members. Then from the result of the survey, the low scores show that acts such as "*kissing someone on the cheek for 2 minutes*" or "*touching someone's breast for ten seconds*," as predicted, are regarded as good examples (members) of the category of *obscene* and fall in the prototypical areas. The high rankings of top three items show that body parts such as private parts, buttocks or breasts are taboo areas which cannot be touched without permission in any way. In addition, the way the act is conducted also matters the scores. Generally, *kissing* is more serious than *touching* as can be seen from the different scores of *kissing one's face* (score 2.26) and *touching one's face* (score 4.86). Therefore, body parts and the manner of contacting are what matters in the judging of the subjects.

On the other hand, as to the category of *obscene* in legal language, judging from the rulings, these acts are likely to either exist in the peripheral area or not belong to the category of *obscene* at all. The summary of these relationships for the category of *obscene* can be illustrated by Figure 3.

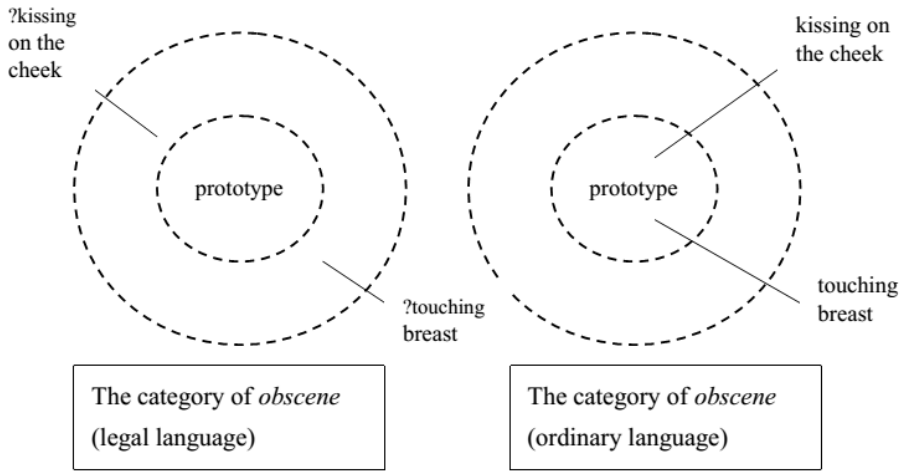

Figure 3 The category of *obscene* in ordinary language and legal language

According to Rosch (1983), people have no problem identifying prototypical members, but why can't judges identify them? Most linguistic theories claim that people are strongly influenced by prototypes (Cruse 1986; Lakoff 2008; Croft 1990; Jakendoff 1996; Taylor 2004). The rulings with regard to the two *obscenity* cases (the *forcible kissing case* and the *breast case*) give people the same effect as announcing that, in prototypical term, a *robin* is not a *bird*! What's the problem with the judges' categorization? In the following discussion, we will try to establish the frame of *obscene* in legal language.

3 The construction of the frame of legal language

Before embarking on constructing the frame of legal language, let's examine the meaning of *obscene* in detail. Throughout the Criminal Code, the term *obscene* appears in twenty articles. Generally speaking, these *obscene's* can be classified into three types (Lou 2003), given as examples (5) to (7).

Type 1: articles 224, 231, 232, 233

(5) a. 第 224 條 （強制猥褻罪）

對於男女以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。

Article 224 (forcible molestation)

A person who commits an **obscene** act against a male or female person against their will through the use of violence, threats, intimidation, or hypnosis shall be punished with imprisonment of not less than six months but not more than five years.

b. 第 231 條 （圖利使人為性交或猥褻罪）

意圖使男女與他人為性交或**猥褻**之行為，而引誘、容留或媒介以營利者，處五年以下有期徒刑，得併科十萬元以下罰金。以詐術犯之者，亦同。

Article 231

A person who for the purpose of gain induces, retains a male or female to have sexual intercourse or make an **obscene** act with a third person shall be punished with imprisonment of not more than five years and, in addition thereto, a fine of not more than one hundred thousand *yuan*.

Type 2 article 234

(6) a. 第 234 條 （公然猥褻罪）

I. 意圖供人觀覽，公然為**猥褻**之行為者，處一年以下有期徒刑、拘役或三千元以下罰金。

Article 234

I. A person who publicly commits an **obscene** act for exhibition shall be punished with imprisonment for less than one year, detention; and, in addition thereto, a fine of not more than three thousand *yuan* may be imposed.

Type 3 article 235

(7) a. 第 235 條 （散布、販賣猥褻物品及製造持有罪）

I. 散布、播送或販賣**猥褻**之文字、圖畫、聲音、影像或其他物品，或公然陳列，或以他法供人觀覽、聽聞者，處二年以下有期徒刑、拘役 或科或併科三萬元以下罰金。

Article 235

I. A person who distributes, sells, publicly displays, or by other means shows to another person an **obscene** writing, picture, or any other object shall be punished with imprisonment for not more than two years, detention, in lieu thereof, or in addition thereto, a fine of thirty thousand *yuan*.

There are three reasons why these *obscene's* vary from each other. First, from the perspective of the taxonomy of the Criminal Code, these *obscene's* are codified in different chapters, meaning that the legal interest each article is trying to protect is different. Article 224 (*forcible molestation*) is listed in Chapter 16—the chapter of offenses of *obstruction of individual sexual autonomy* (妨害性自主罪) while Article 234 (*public obscenity*) is listed in Chapter 16-1—the chapter of offenses of *social morals and decency* (妨害風化罪). The legal interest of type one is individual sexual autonomy, type two is social ethics, and type three is ethics in publications respectively. Second, from the viewpoint of frame semantics, as is illustrated by the example of the term *xie-puo* (脅迫, 'intimidate or threat') in section 1.1.2, there is individuality in the frame of every word or every concept. These *obscene's* are different on account of so-called contextual dependence. According to Lin (2003) and Wagner & Cacciaguidi-Fahy (2006, 2008), the same legal term does not necessarily convey exactly the same legal concept in different contexts. The *obscene's* of type two and type three do not have to involve

stimulating others' sexual desire or satisfying the actor's sexual desire as the *obscene* of type one does. Third, as far as seriousness of infringement is concerned, the *obscene* of type one is the most serious, the *obscene* of type two is intermediate and the *obscene* of type three is the least serious one. In fact, with the change of the times and social development, in recent years nearly nothing in publications has been found to be *obscene*, as can be seen from the rulings of such cases as 96,jian-shang[9],329 (Taipei District Court), 96,jian-shang,423 (Tainan District Court), and 96,yi,1624 (Tainan District Court). All of these cases are concerned with Article 235—*obscenity in publications*. Even though the publications in these cases involved anal sex, sex between humans and animals, or sex between same or different genders, none of the defendants is found guilty (Kao 2008). The rulings of these cases have worsen the interpretation problem of the legal term *obscene*. The common public is worried that nothing is *obscene* by the standard of law.

In the following discussion, the main concern will be focused on the first type of *obscene*. The most commonly accepted definition, given as example (8), of the term *obscene* in the field of the Criminal Law, legal practitioners in particular, is made by the resolution of the Criminal Court meeting of the Supreme Court in 1928:

(8) 猥褻的定義係指「在客觀上足以誘起他人性慾，在主觀上足以滿足自己性慾之行為」：
An act is considered *obscene* if it:
(i) arouses others' sexual desire objectively;
(ii) satisfies the actor's sexual desire subjectively.

In the definition, there are two elements for the term obscene: an objective element and a subjective element. And it takes judges'

[9] *Jian-shang* refers to an appealed case of the Summary Court.

interpretation to tell whether or not each element is met when the definition is applied in real cases.

With regard to the *kissing case*, the judges held that, "*Kissing is a common social practice of international etiquettes; therefore, it is impossible for kissing to be obscene*." This opinion came under fire and stimulated a lot of seminars and journal papers (Lou 2002; Hsu 2002; Lin 2003; Chang 2003) to discuss what "*kissing*" means and what an ideal definition of *obscene* should be. Besides, the court also interpreted that "Since the victim was under extreme fear, it was impossible that her sexual desire was stimulated." Here the judges interpreted the word *ta-ren* (他人, 'others') in the definition, shown as example (8), as the victim. Following this interpretation, nearly no case can be established because in most, if not all, of the cases, the victims are always under extreme fear. Since these two opinions only appeared in the ruling judgment of the District Court, we'll leave them out of our discussion.

Two other opinions—the actors did not rub his own sexual organs against the victim's body and the duration of the two acts "*kissing on the cheek*" or "*touching on the breast*" is not long enough to arouse one's sexual desire or to satisfy the actor's sexual desire—appeared in the ruling judgments of every level of the court—the District Court, the High Court, and the Supreme Court. In other words, the judges think that only when the actor rubs his own sexual organs against the victim's body and when the duration of a sex-related act exceeds a certain length of time can the actor get satisfaction from the act, and in turn can the act be counted as *obscene* by the law. The two opinions appear in most of the ruling judgments concerning the offenses of *forcible molestation*, which are arrived at through the interpretation of the judges.

But again another problem arises—exactly how long does it take to arouse one's sexual desire and to satisfy the actor's sexual desire? Three minutes, ten minutes, or much longer? There has never

been an answer in any ruling judgment of any court at any level.

In the Criminal Law, the establishment of an offense lies in whether or not all the criminal constituent elements are met (Fletcher 1998). When judges are making rulings, they are checking off each and every element of an offense, which is like the items in a checklist. As is mentioned in section 1.2, the researchers of checklist theory claim that there is a fixed meaning for every word or every concept. From the perspective of the Criminal Law, judges have to make sure all the criminal constituent elements are met before they find an actor guilty. Now let's try to explore the elements of the offense of *forcible molestation*.

Following the principle of the Criminal Law, legal interest, the context (the underlined bold part) of Article 224 (repeated here as example (9)), and the definition made by the Criminal Court in 1928 (given as example (8)), we can get all the constituent elements for the offense of *forcible molestation*. These elements form a checklist, presented as example (10).

(9) a. 第　224　條　（強制猥褻罪）

對於男女**以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法**，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。

Article 224　(forcible molestation)

A person who commits an **obscene** act against a male or female person **against their will through the use of violence, threats, intimidation, or hypnosis** shall be punished with imprisonment of not less than six months but not more than five years.

(10) the elements of the offense of *forcible obscenity*

(a) there is an act

(b) the act is committed through the use of violence, threats,

intimidation, hypnosis, or any other means against the victim's will

(c) the act arouses others' sexual desire

(d) the act satisfies the actor's sexual desire

From example (10), we can see the judges think that elements c and d were missing in those disputed cases and that is why the defendants were found not guilty of the offense charged.

When judges are checking off each element in the list, they are undergoing the process of categorizing. As is mentioned in section 1.1.3 a frame is multidimensional. Example (1) shows that the frame of *mother* has the genetic dimension, the marital dimension, the nurturance dimension and so on. In the real world it is not necessary for a female adult to meet every dimension in order to be a *mother*. Nevertheless, in the field of law, every dimension is necessary and sufficient for a legal frame to be constructed. Every element in the checklist presents a dimension of the frame. To a judge, there are a number of dimensions he or she needs to take into consideration, the factual dimension (what are the facts?), the evidential dimension (is there enough evidence?), the legal dimension (which rule should he apply to a case?), the social dimension (does the interpretation he makes reflect the social condition?), and so on. Judges are not allowed to have too much discretion; they are trained to be objective, neutral and therefore just and are required to put aside their own preference or prejudice. The employment of a checklist will be conducive for the judges to apply the same standard to every individual case.

From the perspective of frame semantics, the frame of a word or a concept can be influenced by external factors and internal factors (Fillmore 1982, 1994, 2003). For legal language, external factors can be legal system, legal principles, culture and environment (Huang 2007). For example, law is treated very differently in Civil Law countries and Common Law countries. In the former, codes are the

most important base for application of law while in the latter precedential cases are what count most in the judicial system. In addition, from the standpoint of culture, *obscene* can have an extremely distinct standard in some countries. In some Muslim countries, a girl can get killed by her own family members, mostly her father or brother(s), if she dishonors her family, e.g. unveiling herself in public, which is considered extremely *obscene* and shameful in their culture (Zhong 2002). On the other hand, the internal factors can be composed of the criminal constituent elements (Huang 2007), shown as example (10). Following the pattern Huang designed for legal language, we can illustrate the combination of the internal factors and the external factors that constructs the frame of legal language, given as Figure 4.

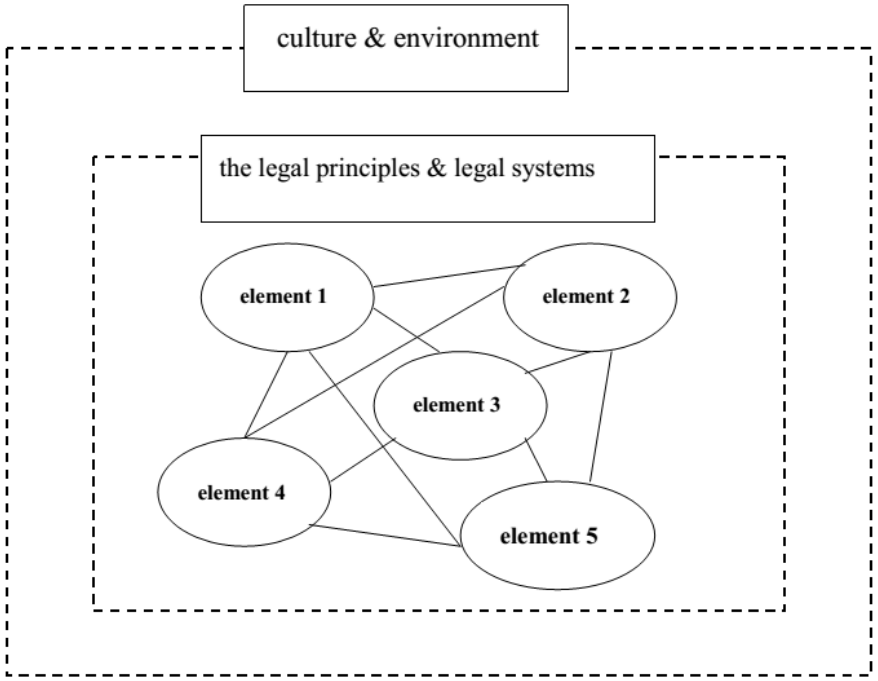

Figure 4 The frame of *obscene* in legal language

The dotting lines of the external factors show that the boundaries are

fuzzy, and the interwoven lines among the internal elements show the rigidity in their relationship among each other. Moreover, every element is necessary and sufficient just as the item in a checklist and the number of the elements is fixed.

Though the frame of ordinary language is not the main objective of this research, we can still get a rough picture of it with the discussion mentioned above. In the survey for *obscene*, we asked the subjects to define *obscene* briefly, which is an optional question. Among all the subjects, we got twenty-two responses, shown as example (11). As we can see, some of the responses are the same and the number in the parenthesis refers to the number of the response. In all of the responses, *something that undermines social morality and decency* is the most common.

(11) a. something that undermines social morality and decency (8)
b. something that is scurrilous (5)
c. something that is disgusting (4)
d. something that is repulsive (3)
e. something that is filthy (2)

As is mentioned in section 1.1, the frame of a word can be influenced by one's life experience, intellectual background, culture and understanding of the world (environment), which function as external factors in constructing the frame. Example (11) is filled with abstract words such as *social morality, decency, scurrilous, disgusting,* and *repulsive.* In fact, these words are also very vague. When ordinary people are judging whether an act is *obscene* or not, they are categorizing it instinctively and unconsciously, and there is no such thing as a precise checklist for them to match. Therefore, as long as one or several elements in their mind are met, they find it enough to call it *obscene*. Cognitively, there are far too many factors influencing

their thinking (Aitchison 1994; Ungerer and Schmid 1996; Croft and Cruse 2004), so it is highly impossible to find the exact internal elements in the mind of ordinary people. In fact, the elements vary from person to person. Similarly, the combination of the internal factors and the external factors constructs the frame of ordinary language, given as Figure 5.

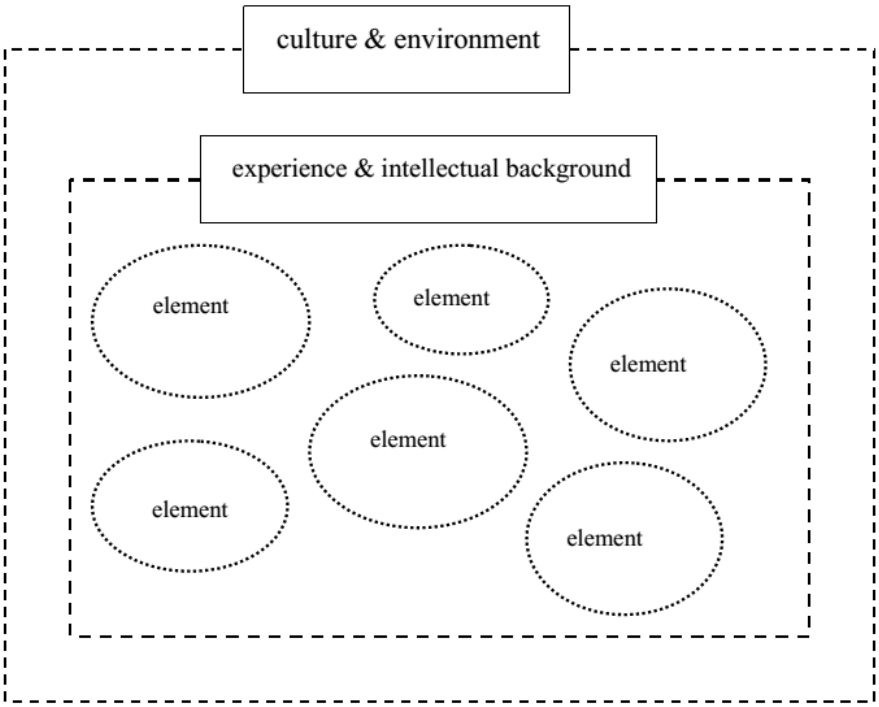

Figure 5 The frame of ordinary language

Compared with the frame of legal language, which is highly rigid, the construction of the frame of ordinary language appears fairly loose. The dotting boundary of each element shows that none of them is necessary or sufficient in the frame and there is no connection between each element either. Besides, the number of the elements is indeterminate.

In summary, the construction of the legal frame (the frame of legal language) is made up of elements in a rigid connection and all the elements are necessary and sufficient. On the other hand, the

construction of the layman frame (the frame of ordinary language) is composed of elements in a loose connection and not every element is necessary or sufficient. The difference between the rigidity of the legal frame and the looseness of the layman frame is what leads to the gap between ordinary language and legal language. The very difference in frames of language gives rise to the difference of categorization in the mind of ordinary people and legal professionals.

In judging a criminal case, ordinary people tend to look at the case from the perspective of the victim since psychologically people tend to identify themselves with the victims (Roesch et al, 1999). On the other hand, prosecutors or judges, bound to their roles as justice defenders, tend to view a case from the perspective of the facts and the law (Hsu 2002, Lou 2002, Huang 2012). The phenomenon of perspectivization, mentioned previously in section 1.1.2, makes the meaning of *obscene* doomed to be different in the mind of ordinary people and the judges. Fillmore illustrated this with the notion *innocent* (Fillmore 1982, 2003). To ordinary people, *innocent* refers to the fact that the defendant did not commit the crime in question. By contrast, in legal language, *innocent* refers to the fact that the defendant has not been declared guilty by the court as a result of legal action within the criminal justice system. This disparity is responsible for frequent misunderstandings in the use of legal terms.

4 A Better Definition?

After the occurrence of the *forcible kissing case* (強吻案) and the *breast case* (襲胸案), several other similar cases took place subsequently. For example, one of the cases is that some unemployed worker contacted a woman's private parts at a lavatory. Another case is that a man tongue-kissed his 13-year-old stepdaughter for 6 seconds. And none of the defendants was found guilty. Obviously, a good or even better definition with clarity is pressing and necessary (Harris & Hutton 2007).

As is mentioned earlier, a great number of seminars and journal papers have been held and written to try to come up with exactly what *obscene* means. Many of the jurists hold the opinion that the legal interest behind Article 224 is *individual sexual autonomy*, so as long as the infringing sex-related act is conducted without the consent of the victim, i.e. against the victim's sexual autonomy, then the act should be counted as *obscene* (Gan & Xie 2006).

Since among the elements listed in example (10), the two elements—the act has *to arouse one's sexual desire* and *to satisfy the actor's sexual desire* cause most of the disputes, it is necessary to examine the definition of *obscene* again. First, let's take a look at the definition of *obscenity* in *Black's Law Dictionary* (2005: 493).

(12) *Obscenity*:

a. The quality or state of being morally abhorrent or socially taboo, esp. as a result of referring to or depicting sexual or excretory functions.

b. Something (such as an expression or act) that has this quality.

The dictionary definition does not seem to correspond much with the definition made by our Supreme Court (given above as example (8)). In fact, terms in the definition such as *morally abhorrent* or *socially taboo* are even vaguer than the term *obscene*. There can be many problems when the definition is applied in real cases. On account of different legal systems, it is possible that the concept *obscene* is constructed on different frames in American Criminal Law and Taiwan's Criminal Law, as is mentioned previously that a lot of factors including culture and legal system can influence the frame.

The interpretation of most legal terms changes over time. If the definition of *obscene* is so controversial, why hasn't it been adjusted

or why hasn't it evolved with the times? Next, let's examine some definitions proposed by legal scholars and the Grand Justices.

(13) 猥褻的標準應視「被害人是否因為行為人的舉動而受到性自主權與身體控制權的侵害」而定。

The judgment of *obscenity* depends on "whether the victim's sexual autonomy or body control is infringed by the actor's act." (Lou 2002)

(14) a. 猥褻係指「基於性滿足的傾向，不受許可的碰觸他人的身體」。

Obscenity refers to the act "that a person contacts someone else's body out of the tendency of sexual satisfaction without the consent of the person being contacted."

b. 行為人「基於性慾的飢渴而發動攻擊，即是猥褻，無須性慾獲得滿足，更無須被攻擊者的性慾受到激惹。」

The act the actor commits out of his or her own sexual desire is *obscene*. It's not necessary for the actor's sexual desire to be satisfied or the victim's sexual desire to be stimulated. (Lin 2003)

(15) 猥褻行為碰觸的範圍應限定於「身體的私密部位」避免以高道德化的標準作為處罰依據。

The range of the body contact in an *obscene* act should be restricted to "**private body parts"** in order to avoid using a high moral standard as a basis for punishment. (Chang 2003)

In the Judicial Yuan (JY) interpretation No. 613,[10] the Grand Justices wrote:

> *刑法第二百三十五條規定所稱猥褻之資訊、物品，其中「**猥褻**」雖屬評價性之不確定法律概念，然所謂猥褻，指客觀上足以刺激或滿足性慾，其內容可與性器官、性行為及性文化之描繪與論述聯結，且須以引起普通一般人羞恥或厭惡感而侵害性的道德感情，有礙於社會風化者為限（本院釋字第四〇七號解釋參照），其意義並非一般人難以理解，且為受規範者所得預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。*
>
> ***Although the term "obscene" as used in the context of obscene material or objects** in Article 235 of the Criminal Code **is an indeterminate concept of law,** it should be limited to **something that, by objective standards, can stimulate or satisfy a prurient interest**, **whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures, and that may generate among average people a feeling of shame or distaste**, thereby **offending their sense of sexual morality and undermining social decency** (See J.Y. Interpretation No. 407). Since the meaning of the term is not incomprehensible to the general public or to those who are subject to regulation, and may be made clear through judicial review, there should be no violation of the principle of clarity and definiteness of law.*

Based on the JY interpretation No. 613, the constituent elements of *obscene* can be roughly illustrated as the following four points:

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[10] Source: http://www.judicial.gov.tw/CONSTITUTIONALCOURT/EN/p03_01.asp?expno=613 (access date: July 7, 2013)

(16) a.「客觀上足以刺激或滿足性慾」、
something that, by objective standards, can stimulate or satisfy a prurient interest;
b.「其內容可與性器官、性行為及性文化之描繪與論述連結」、
whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures;
c.「須引起普通一般人羞恥感或厭惡感而侵害性的性道德感情」、
something that may generate among average people a feeling of shame or distaste;
d.「有礙於社會風化」。
something that offending their sense of sexual morality and undermining social decency

In the JY interpretation No. 407,[11] the Grand Justices wrote:

> ……又有關***風化之觀念，常隨社會發展、風俗變異而有所不同，主管機關所為釋示，自不能一成不變***，應基於尊重憲法保障人民言論出版自由之本旨，兼顧善良風俗及青少年身心健康之維護，隨時檢討改進。至於個別案件是否已達猥褻程度，法官於審判時應就具體案情，依其獨立確信之判斷，認定事實，適用法律，不受行政機關函釋之拘束，乃屬當然。
> …… *In addition,* ***cultural ethics often vary subject to social development and changing customs. Any rulings of the agency in charge must be flexible rather than rigid, and should be improved and adjusted from time to time****, in light of both the true intent of the Constitution to safeguard freedom of speech and*

[11] Source: http://www.judicial.gov.tw/CONSTITUTIONALCOURT/EN/p03_01.asp?expno=407 (access date: Aug 10, 2013)

> *press, and the government's interest in maintaining a moral social fabric and the welfare of children and youth. As to determining whether in any individual cases the definition of obscenity has been met, it goes without saying that the judge shall make his decision in light of concrete factual situations, pursuant to his independent judgment, in both fact-finding and law application, without being bound by the interpretive ruling of the executive branch.*

Even though the JY interpretation No. 613 is made to respond to the question of the definition concerning *obscene material or object* (Article 235), but most of it is still closely related to the term *obscene*. The key point here is that the interpretation of the judges with regard to *obscene* in every individual case has to be flexible rather than fixed.

We can see that all the definitions given by jurists and the Grand Justices are filled with such words as *social morality, social decency* or *cultural ethics* which are highly diversified and full of vagueness. Although jurists and the Grand Justices cannot give us a succinct or precise definition of *obscene,* one thing for sure is that the concept of *obscene* must vary with social development and changing customs. And the judges must be flexible in their application of the offense concerning *obscene* in order to adjust with the shift of the times without being bound by the interpretive ruling of the executive branch.

With regard to the definition of *obscene*, Tiersma wrote the following comment:

> *Other notoriously flexible or vague terms are words like* ***obscene*** *or* ***indecent****. Many governments around the world claim the power to ban* ***obscene*** *or* ***indecent*** *materials or acts. But what exactly is* ***obscene****? Justice Stewart of the Supreme Court*

> *admitted that he could not define it intelligibly, but claimed that "I know it when I see it."*[12] *At best, people might agree on a vague (and somewhat circular) definition of these terms, something along the lines of "offensive to one's standards of decency." Yet people differ dramatically on what those standards of decency are and how to apply them to any particular situation.* (Tiersma 1999: 80)

The comment indicated that the definition of obscene has beset legal professionals in America as well and we cannot but lament that language is in principle an inadequate tool for the task which law sets for it.

As is pointed by Zheng (2002) and Huang (2012), those acts in the *kissing case*, the *breast case*, the *tongue-kissing case* are indeed *obscene* but they are *morally obscene*, not *legally obscene*. For a criminal rule to be smoothly enforced, there must be some sort of threshold to set the range of punishment, or else it will criminalize people beyond what the legislature intends. The distinction between *morally obscene* and *legally obscene* is a matter of degree, a problem of gradual vagueness, whose result leads to categorical vagueness. To compensate the problem of vagueness, judges makes interpretation with conditions such as *long duration of the act*, *the rubbing of the actor's sexual organs against the victim's body* or *the fondling of the actor all over the victim's body* to enhance the definition made by the Supreme Court. In the Criminal Law, *morality* has never been a good threshold because it is so vague and hard to find a universally-acceptable standard for everybody. In fact, some jurists would love to remove most of the morality-related offenses from the Criminal Code and put them in other disciplines of law such as the Civil Law (Huang 1999a; 1999b; 2005).

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[12] *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964 (Stewart, J., concurring).

From the sections discussed previously, we can see that people simply cannot come up with a better definition of *obscene*. The diversified definitions mentioned above are simply not sustainable for the legal system to operate. As a result, jurists and legal practitioners (including the judges, the prosecutors and the lawyers) cannot but compromise on an outdated definition. Somewhat ironic, isn't it? As Aristotle wrote in his work, "It is the easiest of things to demolish a definition, while to establish one is the hardest (*Topica*, 7.6. $155^{a}15$)," this explains why the definition of *obscene* is not expressly stated in the Criminal Law and why a resolution made by the Supreme Court more than eighty years ago is still in effect and binding today.

6 Conclusion

The previous discussions designate that discrepancy in the result of categorization between ordinary people and legal professionals is due to the phenomenon that the language in their minds is constructed on different frames, illustrated by the discussion of *obscene* in section 3 and shown as Figures 4 and 5. Whether the reasoning made by the judges in each case sounds convincing to the common public or not, the fuzziness in language and the complexity in language frames render it harder or impossible to achieve total agreement in legal language.

Even though legal professionals have endeavored to pursue precision in legal language, the argument over the interpretation of those disputed words or terms has shown us the imperfection or insufficiency of language. Unfortunately, language is the major instrument we can employ to embody abstract legal concepts. As Frankfurter pointed out, "Words are clumsy tools. And it is very easy to cut one's fingers with them, and they need the closest attention in handling; but they are the only tools we have, and imagination itself cannot work without them (Frankfurter 1947: 546)."

If legal frame and layman frame are meant to vary, then judges

have to be utmost vigilant when they are applying definitions or making interpretations to real cases. Moreover, the power granted to them by the state requires them to be extremely cautious. One thing for them to start with is to do away with outdated definitions and inappropriate or unreasonable interpretations. Undeniably, even though judges are expected to evaluate a case like Lady Justice,[13] they are, just like ordinary people, more or less influenced by their own subjectivity. Perhaps researchers should endeavor to find ways to help reduce discrepancy among judges to the minimum.

Just as Fillmore (2003: 284) claimed, "The law has its own sort of semantic principles even though the checklist approach has gone mad in some legal field." Overall, not every ruling provokes criticism among the public so we may well say that legal language has achieved an effective compromise between prototype theory and checklist theory in the form of various principles of statutory interpretation (Fillmore 2003; Solan 2010). Whether the definition or interpretation used for any legal term is appropriate or not, one thing cannot be denied is that the approach of checklist theory in the legal field—a fixed meaning for a legal term—is a necessary evil and reduces the problem of arguments over legal concepts to a certain extent and facilitates the pursuit of fairness and neutrality.

All we have established here is that everyone more or less agrees that there are clear cases and unclear cases of the application of linguistic expressions in the legal field. Although the very great theoretical differences over the nature of clarity have not been resolved, and it is unclear how much is clear, we can still learn some important lessons and one of them is that judges and jurists should be modest in making claims of justice.

[13] Lady Justice is often depicted wearing a blindfold. This is done in order to indicate that justice is (or should be) meted out objectively, without fear or favor, regardless of the identity, power, or weakness: blind justice and blind impartiality. http://www.commonlaw.com/Justice.html (access date: Sep. 10, 2012)

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Bionote

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Appendix A The questionnaire of the survey regarding *public insult*

下列用語均為辱罵他人之用語，請用 1 分至 7 分為其評分，1 分表示該用語為非常侮辱之字眼，4 分則為侮辱程度中等，7 分表示侮辱程度很弱或不侮辱。

The following expressions are derogatory terms. Please rate each expression on a seven-point-scale: "1" means that the expression is extremely derogatory; "4" indicates the expression is moderately derogatory; whereas "7" suggests the expression is slightly or not derogatory at all.

Item	Score
an irritating pig (豬八戒)	
idiot (白癡)	

bitch (賤貨)	
less than pigs or dogs (豬狗不如)	
scurrilous (下流)	
pervert (變態)	
fuck (幹你娘)	
shameless (不要臉)	
son of a bitch (王八蛋)	
a brute animal (畜生)	
a very ugly person (醜八怪)	
If you love money so much, why don't you go "earn" it? (那麼愛錢，不會去賺 (台語))	
rascal (流氓)	
nuisance (機車妹)	
retarded (智障)	
mentally handicapped (腦殘)	
non-cultured (沒教養)	
China girl (大陸妹)	
Go to hell. (去死好了)	
sissy (娘娘腔)	

Appendix B The questionnaire of the survey regarding *obscene*

如果某人違反他人意願，對他人為下列行為，請用 1 分至 7 分評斷其行為猥褻之程度，1 分表示該行為非常猥褻，4 分則為猥褻程度中等，7 分表示猥褻程度很弱或不猥褻。

If a person does the following act to another person against his or her will, please rate each act on a seven-point-scale: "1" means that the act is extremely obscene; "4" indicates the act is moderately obscene;

whereas “7” suggests the act is slightly or not obscene at all.

Item	Score
touch one’s ear (摸耳朵)	
hold and kiss one’s face(抱住親臉)	
touch one’s thigh (摸大腿)	
kiss one’s face (親臉)	
pat one’s thigh (拍大腿)	
touch one’s buttock (摸屁股)	
touch one’s breasts (摸胸部)	
tongue-kiss (舌吻)	
kiss one’s mouth (親嘴)	
pinch one’s ass (捏屁股)	
touch one’s shank (摸小腿)	
touch one’s back (摸背)	
touch one’s hair (摸頭髮)	
touch one’s private parts (pudendum) (摸私處)	
kiss one’s hand (親手)	
kiss one’s hair (親頭髮)	
touch one’s face(摸臉)	
touch one’s hand (摸手)	
touch one’s shoulder (搭肩膀)	
pat one’s back (拍背)	

* 請定義何謂猥褻（答或不答皆可）。
Please define *obscene*(猥褻). (optional)

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The Construction of Identities in the Criminal Courtroom: Criminals, Victims and Crimes as Construed in Scottish Judges' Sentencing Statements

Janet Cotterill

1 Introduction

Within the courtroom context, there are a number of key individuals who conduct the majority of the interaction. These include the obvious participants: judge, lawyers, (barristers and solicitors in the UK), witnesses, defendants, interpreters and jurors. Added to these are the peripheral participants: court ushers, attendants, security officials, court reporters and so on. Finally, there are a number of 'unofficial' individuals present in the courtroom, comprising members of the public gallery, who may be relatives or friends of the victim/witness/defendant as well as journalists attending the trial to report on its progress, outcome and any ensuing dramas. The majority of these 'peripheral' participants are present in a non-verbal context; in other words, they do not contribute to the discourse of the court and their contributions, if any, are not recorded in the court record. It is important to note that these participants are divided into two significantly different categories, both in terms of legal training and power to engage verbally during the trial, although these do not necessarily correspond. These differences are hierarchical and are summarised in Table 1 below:

Table 1 Relations between the level of legal training/seniority of courtroom participants and their level of interactional rights

Level of legal training/seniority	Level of interactional rights (ranked from highest to lowest)
judge barristers solicitors interpreters jurors	judge barristers solicitors expert witnesses witnesses/defendants during examination-in-chief witnesses/defendants during cross-examination interpreters jurors

There are a number of interesting aspects to this hierarchical depiction. Firstly, the judge, barristers and solicitors are listed in the same sequence in both groups; in other words, their interactional potential is commensurate with their legal training and seniority. The second group of interactants, the *lay* people involved in the trial (witnesses/ defendants/ jurors), have both the least amount of legal training and the fewest interactional opportunities. Even within the category of witness, there are some significant differences since witnesses during examination-in-chief will have greater opportunities to speak than when they are more tightly controlled during cross-examination.

It is significant that jurors are included in both categories since their level of legal training, i.e. none or very little, is crucial to their role. Their status as non-legal laypeople is what determines their right to function as jurors, although as the diagram indicates, their interactional status during the trial is very low, almost non-existent, except for their right to send written questions to the judge if a point of clarification requested.

Not only is identity representation significant depending upon who the interactants are, but also the phase of the trial concerned is also highly significant (see Table 2):

Table 2 Breakdown of trial phases, their interactional status and participants

Trial phase	Interactional status	Participants
opening statements	monologic	barrister/lawyer
witness direct examination	dialogic	barrister/lawyer plus witness/defendant
witness cross-examination	dialogic	barrister/lawyer plus witness/defendant
closing statements	monologic	barrister/lawyer
summing up	monologic	judge
jury instructions	monologic	judge
judgement/verdict	dialogic	judge/chairperson of jury
victim impact statements	monologic	victims' families/friends
sentencing	*monologic*	*judge*

In this article, I will concentrate on a single phase of the trial, and a single participant: the sentencing statements produced by the judge at the

very end of the trial. This follows the jury's verdict, and any victim impact statements provided by families or friends. As will be discussed below, all of the trial participants detailed above represent the audience for this statement. In many respects the sentencing statement is arguably the most significant phase of the trial since it carries the most legal weight and has the greatest impact on the defendant(s) involved. It is here that the respective identities of the trial participants are definitively outlined following their construction in direct and cross-examination. The adjudication of the judge provides the definitive construction of identity for the victim, perpetrator and witnesses, as adjudicated by the judge.

The data examined were drawn from sentencing statements produced by judges in Scotland during the period Sept 2011 to July 2012. The corpus comprises 75 statements (approximately 35,000 words[1]) produced by judges in Scottish High Courts, with offences ranging from murder, rape and assault to possession and supply of drugs, theft, mugging and domestic violence. The data present a relevant and recent representation of the ways in which crime, criminals and victims are construed by judges in the current Scottish legal system. The data were analysed using different corpus analysis methods, including *collocate* and *concordance* work, combined with more general qualitative discourse analysis methods, all within the broad framework of the analysis of the notion of appraisal (specifically the category of 'judgement' and social sanction) within systemic functional linguistics. (Martin & White 2005; Martin 2000). These concepts will be exemplified below.

2 Definitions of Concepts

2.1 The Judge's Sentencing Statement

After weighing up all the evidence in the case, heard from both examination-in-chief and cross-examination, the judge in each instance is given time to consider his guilty verdict, any aggravating or mitigating circumstances, as well as opinions put forward in victim impact statements (this last category of statements is the subject of Cotterill, *in preparation*). Having done so, the judge will formulate a sentencing statement which not only expresses the determination of the length of sentence, if any, to be served, but also sums up the nature of the crime and its participants, both victim(s) and perpetrator(s). As a discourse event, this is therefore highly significant. Not only is it the final 'on record' piece of speech produced in the court, but it is also the main

[1] 34,911 to be precise.

piece of 'news' which is generally reported by the press. The representation and identity of both victim and perpetrator is therefore crucial.

2.2 The Duality of the Judge's Identity and Role at Trial

The most obvious function of the trial court judge is to act as the legal adjudicator in terms of general court discipline and during the sentencing phase of an ultimately guilty defendant's trial. This is the primary and clearest function and identity of the trial judge. However, despite the fact that he is operating within the tight boundaries of The Law, codified over centuries of writing and rewriting, there still remains some considerable discretion within this framework.

It is vital during the witness examination phase of jury trials that the judge remains ostensibly neutral, representing The Court and by extension The People (this is even explicitly acknowledged in US trials where the trial is referred to as *The People* v XX). In Goffman's (1981) terms, it is crucial that the judge retains this air of 'objectivity' towards the evidence, since within British legal contexts, the defendant is said to be 'innocent until proven guilty'. As Jackson (1995: 78) observes, 'the judge engages in a variety of speech behaviours in the course of the trial designed both to communicate particular messages and rulings, *and to signify, above all, the presence of an objective, neutral adjudicatory body*' (my emphasis).

This is also of crucial importance during the summing up, an element relatively rare in other adversarial legal systems around the world, but obligatory within UK jurisdictions. The summing up is the stage of the trial where the judge provides the jury with a summary of the evidence from both sides. As I (Cotterill 2003), Phillips (1998), Solan (2003), and most recently, in the England and Wales context, Heffer (2007) have shown, this is in fact by no means neutral in its orientation, but must remain free of at least overtly evaluative language. This restriction is, however, removed once the jury has returned a guilty verdict. This is not only indicated by the evaluative and often emotive language produced by the judge, but also by the witness impact statements which follow a guilty verdict, a fairly recent inclusion in criminal trials in the UK.

Hitherto, it has not been possible for lawyers to refer to the defendant's previous criminal record (if any). There is a UK act from 1898 which rarely allows information about the defendant's similar convictions to be disclosed to the jury, known as 'similar fact evidence'. The current UK government plans to extend this type of evidence, to mean that lawyers are permitted in certain circumstances to disclose the

fact that the defendant may have previous convictions within the same criminal charge category. However, this legislation proposal is controversial, with opponents such as the human rights group Liberty stating that:

> There's no doubt that revealing previous convictions significantly influences and alters the minds of jurors. We already have in place means to bring forward evidence of previous convictions if there is a stark comparison between earlier cases and current prosecutions. If the opening of a prosecution case is simply a run-through of all the bad things a person has done, the chances of successfully defending that person are greatly diminished[2].
> (Statement by Mark Littlewood, campaigns director of Liberty, Aug 6, 2012)

Although during the course of the trial the judge is required to appear neutral and dispassionate, following on from a guilty verdict, s/he is freed from the constraints of apparent neutrality. As Heffer states, one of the jobs to be carried out by the judge is not only to pass sentence on the defendant (surely one of the more powerful speech acts in existence, particularly in the US and other countries where this sentence may even include the death penalty), but also to 'justify the coming sentence in terms of the court's "responsibility to see that people are deterred from that sort of behaviour"'. Heffer's (2005) analysis of England and Wales data found that this justification tends to follow a narrative structure, 'with a series of conduct premises leading to a sentencing conclusion' (Heffer, 2005: 90). This follows on from the adjudication of the jury. As Heffer continues:

> The jury is making a double judgement with a guilty verdict: 'they are not just making a decision about the facts in the case, they are also implying two moral judgements about the defendant: that he is dishonest and he pleaded not guilty, and that he is morally reprehensible, since he has been found guilty of a crime. (Heffer, 2005: 131)

De Carvalho Figueiredo (2002), in discussing sentencing in rape trials, refers to the judge as having as a 'pedagogical role' during this phase. She invokes a Foucauldian aspect to the sentencing statement, reminding

[2] http://www.dailymail.co.uk/news/article-89556/Previous-convictions-law-changed.html#ixzz22lxVq3aC

us that sentencing in court replaced the 18th-century tradition of public floggings and even hangings in public arenas. This method of 'justice' is still carried out in some countries around the world. Thus, the discursive practices of judges can be interpreted as:

> tools in a complex pedagogy of behaviour constructed and realised through legal discourse, a pedagogy which aims to supervise, discipline, educate and control the way men andwomen behave socially and sexually. (De Carvalho Figueiredo 2002: 262)

Both Matoesian (1993, 2001) in the American context and Ehrlich (2001) in the Canadian, discuss the role of the jury trial system in North America in 'educating' the public about appropriate and inappropriate attitudes towards sex, sexual crime and the resulting criminal trial process. De Carvalho Figueiredo (2002) describes this duality as 'two forms of penality at work: *the penality of the law* – legal rules, the opposition of 'legal' and 'illegal' acts and so on etc – and *the penality of the norm*. As we will see below, this has been codified within systemic functional linguistics as *appraisal theory*, and specifically, the subcategory of (appropriately enough) 'judgement'.

During the sentencing phase, the judge has the opportunity to become evaluative and explicitly judgemental. Judges not only attend to the direct trial participants, but also to the additional addressee of the 'man at-large', advising him of the right moral path to take. In Bakhtinian terms, the sentencing speech is highly heteroglossic, or multiply voiced (Vice 1998: 18). Just within the courtroom itself, there are multiple audiences for this element of the trial, as outlined above. I discuss some of these multiple audiences in Cotterill (2003).

The sentencing statement is particularly interesting in terms of identity construction and multiple audience design. Firstly, this is one of the few occasions when the judge will address the defendant directly. In addition to the defendant, in a crime where there is a victim present in the courtroom, the judge must also attend to this secondary but not secondarily significant addressee. If the victim is not present (for example in a murder case), the family of the victim is often in court for the verdict and sentencing of the guilty defendant, and may have just provided a victim impact statement (see Cotterill *forthcoming*). The jury are also part of this phase, since it is here that the judge will typically thank the jury for their service and for their deliberation. Of course, the assembled public gallery, including any press reporters present, will also be included as implicit non-legal audience members. Finally, there is a potential (at this time external) further audience - the appeal courts - if

the guilty defendant decides to appeal the conviction or the length of the sentence. Bell's (1991, 1997) concept of *audience design* is of course significant in this context, since the judge will need to try to attend to all of these actual and potential, past, present and future addressees in his sentencing statement.

This article shows how the judge conceptualises both him/herself and the trial participants, and also often iterates a 'social deterrent' element in his/her sentencing statement. It also discusses the extent to which he/she will evaluate and describe the behaviour of the defendant and the nature of the crime and represent this as morally reprehensible.

2.3 The Law of Sentencing

The law surrounding the actual sentencing is of course largely standardised and formulaic. The (in this case Scottish) Sentencing Council[3] describes the speech act of sentencing thus:

> An offender is sentenced after he or she has either:
>
> - pleaded guilty to a criminal offence; or
> - been found guilty of a criminal offence following a trial.
>
> The judge or magistrate will decide the appropriate sentence for the offence committed by taking into account a number of different factors including the facts of the case, the maximum penalty and any sentencing guidelines.

These guidelines, of course, constrain the type and amount of the sentence imposed upon a guilty defendant or defendants. These are provided in the recent Criminal Justice and Licensing (Scotland) Act 2010.[4] According to the act:

> Sentencing guidelines may in particular relate to—
> (a) the principles and purposes of sentencing,
> (b) sentencing levels,
> (c) the particular types of sentence that are appropriate for particular types of offence or offender,
> (d) the circumstances in which the guidelines may be departed from.

However, there is considerable leeway on the part of the judge in determining the precise nature of the sentence handed out to the

[3] http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/17305/Responses

[4] http://www.legislation.gov.uk/asp/2010/13/part/1/crossheading/the-scottish-sentencing-council/enacted

perpetrator of the crime. The guidance on sentencing for rape presented below, for example, provides an illustration of the range of sentencing options open to the judge, dependent on the nature of the crime:

Type/nature of activity: Repeated rape of same victim over a course of time or rape involving multiple victims

- Starting points: 15 years custody
- Sentencing ranges: 13 - 19 years custody

Type/nature of activity: Rape accompanied by any one of the following: abduction or detention; offender aware that he is suffering from a sexually transmitted infection; more than one offender acting together; abuse of trust; offence motivated by prejudice (race, religion, sexual orientation, physical disability); sustained attack

- Starting points: 13 years custody if the victim is under 13
  Sentencing ranges: 11 - 17 years custody
- Starting points: 10 years custody if the victim is a child aged 13 or over but under 16
  Sentencing ranges: 8 - 13 years custody
- Starting points: 8 years custody if the victim is 16 or over
  Sentencing ranges: 6 - 11 years custody

Type/nature of activity: Single offence of rape by single offender

- Starting points: 10 years custody if the victim is under 13
  Sentencing ranges: 8 - 13 years custody
- Starting points: 8 years custody if the victim is 13 or over but under 16
  Sentencing ranges: 6 - 11 years custody
- Starting points: 5 years custody if the victim is 16 or over
  Sentencing ranges: 4 - 8 years custody

In addition to these complex criteria, the judge may also take into consideration, in line with *R v Millberry [2003] 2 Cr.App.R.(S) 31*:

- The degree of harm to the victim
- The level of culpability of the offender
- The level of risk proposed by the offender to society

In a somewhat controversial statement, the Crown Prosecution Service (CPS) instructs judges that "while rape will always be a most serious offence, its gravity will depend very much upon the circumstances of the particular case".

2.4 The Language of Sentencing

As I have shown, the judge has considerable discretion in determining the precise nature of the sentence given. However, the issue of significance to this article is not the *legal* flexibility, but rather the *linguistic* latitude available to the judge during the sentencing phase in talking about the crime, its victim(s) and its perpetrator(s). Judges are given very little guidance about the actual language to be used during the sentencing statement, apart from being told that 'once the sentence has been decided it must be stated in open court. The court must also explain, *in ordinary language*, the reasons for the sentence and the effect of the sentence on the offender (Scottish Sentencing Council website). Guidance on precisely what 'ordinary language' means in practice is not provided (see Tiersma, 1999 and Heffer, 2007 *inter alia*) for details of the differences between legal and lay language.

In his book on trial narratives, Heffer (2005: 89-90) describes the role of the judge in his sentencing remarks, as being to

> pull together the threads of the prosecution's narrative and legal constructions, but also extend both the scope of that narrative and the scope of the law by fitting the defendant's individual conduct within a more moral sanction against certain behaviour in society.

Heffer concludes that the judge in sentencing 'brings the case back to an everyday "narrative" understanding of the world: behaviour is described subjectively and strongly' (2005: 90). This is an element strongly expressed by The Judiciary of Scotland in their mission statement: 'In cases where there is public interest or where the sentence may be complicated or controversial, the judge may decide to make the sentencing statement more widely available' (Judiciary of Scotland website: Sentencing Statements).

The current article draws on and extends the work of Heffer (2007). Heffer applies the appraisal model across the trial context, explaining and exemplifying the ways in which the behaviour of defendants is judged in court. In this article, as noted above, I focus solely on the sentencing phase of the trial using Scottish data and extending the model presented to include corpus linguistic work on collocations and concordances related to the Scottish sentencing statements.

3 Theoretical frameworks

3.1 Systemic Functional Linguistics: Appraisal, Judgement and Social Sanction

Within systemic functional linguistics, the mode of analysis named *appraisal* is highly appropriate to this type of legal discourse. Within the system of appraisal, the notion of *judgement* (a linguistic, rather than a legal term in this instance) expressing social endorsement or otherwise of human behaviour is an ideal model to apply to the data. I will briefly summarise this aspect of appraisal.

As an extension to Halliday's (1994) model of systemic functional linguistics (SFL), a number of Australian linguists developed a model of what they termed APPRAISAL (White 1998, Martin 2000). White (1998) refers to this system as "The Language of Attitude, Arguability and Interpersonal Positioning[5]". Whilst the majority of the work on appraisal has dealt with journalistic, educational and medical texts, it is an obvious extension of the work to apply it to the legal context done by Heffer (2007), analysing trial data from England and Wales. Thus, under the category of judgement, behaviour may be assessed as moral or immoral, as laudable or deplorable (in the sub-category of social *esteem*), as legal or illegal, as socially acceptable or unacceptable (clearly in the category of social *sanction*), were the consequences are not simply disapproval and disagreement but the breaking of ratified laws within the respective country and legal system.

The appraisal system comprises three essential elements: Attitude, Affect and JUDGEMENT. White (1998) [6] describes *judgement* as 'encompass[ing] meanings which serve to evaluate human behaviour positively and negatively by reference to a set of institutionalised norms'. Clearly in this context, the institutional norms which constrain that evaluation are those of the (in this case Scottish) legal system, as White (1998), codified and clearly documented in case law. In the construction of identities in court However as discussed above, the discretion given to the judge in applying this law and particularly in expressing opinions which go above and beyond the basic legal sanction applied at sentencing is the focus of attention here.

Within the system of appraisal, judgement may assess behaviour 'as moral or immoral, as legal or illegal, as socially acceptable or unacceptable, as laudable or deplorable, as normal or abnormal and so

[5] From http://www.grammatics.com/appraisal/ p1

[6] From *An introductory tour through appraisal theory 11*, available at http://www.grammatics.com/appraisal/appraisaloutline/framed/AppraisalOutline-10.htm

on' (White, 1998)[7]. In this instance, the sentencing phase of the trial, whilst ostensibly and largely focusing on the legality or illegality of the charge faced by the defendant, also contains a strong element of judgement in its sense of immorality and social unacceptability. This may be expressed across the span of language choices, hence:

1. adverbials - *justly, fairly, virtuously, honestly, pluckily, indefatigably, cleverly, stupidly, eccentrically*
2. attributes and epithets - *a corrupt politician, that was dishonest, don't be cruel, she's very brave, he's indefatigable, a skilful performer, truly eccentric behaviour*
3. nominals - *a brutal tyrant, a cheat and a liar, a hero, a genius, a maverick*
4. verbs - *to cheat, to deceive, to sin, to lust after, to chicken out, to triumph*

(White 1998)[8]

Martin (2000: 154) outlined two principal subcategories of judgement:

> social *esteem*, comprising: *normality* (usuality), *capacity* (ability)and *tenacity* (inclination)
> and
> social *sanction* (the area of most obvious applicability to this study), comprising:
> *veracity* (probability/truth) – is this person honest?
> *propriety* (obligation/ethics) – is this person ethical?

Martin (2000: 155-159) expresses this as 'the norms about how people should/shouldn't behave'. The judge in the courtroom, particularly during the sentencing phase of the trial, is surely the ultimate expression of this phenomenon. Clearly by the time the trial reaches sentencing, following a guilty verdict from the jury, these two questions have been effectively answered in the negative, since the individual(s) concerned have been convicted of the relevant crime(s) as defined by Scottish law.

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[7] From *An introductory tour through appraisal theory 6*, available at http://www.grammatics.com/appraisal/appraisaloutline/framed/AppraisalOutline-05.htm

[8] *An introductory tour through appraisal theory*, available at http://www.grammatics.com/appraisal/AppraisalOutline/Unframed/AppraisalOutline.htm

3.2 Corpus Linguistics[9]

Employing the tools of corpus linguistics allows the analyst to process a large amount of data (in this case some 35,000 words) by using specific search terms along with word frequency lists, collocations and concordances.

The notion of *collocation* was famously described by Firth (1957: 11) as "know[ing] a word by the company it keeps", and refers to the co-text surrounding a particular term, or words which commonly occur alongside it. The theory of collocation was developed extensively by Sinclair (1991) and many others and gives us a useful lens through which to analyse the lexis used by the judge. So, for example, not only might an act be described using its legal title, so 'murder', 'burglary' or 'assault', but also may be described as a 'despicable crime'. Through the use of evaluative descriptors such as these the judge is expressing clearly his/her ideology and social sanction assessment of the crime.

By extending the analysis of collocates to include concordance lines, it is possible to gain an overview of the data in a way not possible without corpus linguistic methodology. In addition to this, the concept of semantic prosody is also significant (Louw 1993; Cotterill 2001), applied to the adversarial courtroom setting. The systemic judgement categories described above (social sanction/veracity and social sanction/propriety) may of course be expressed either positively or negatively, hence given an indication of prosody. Given that this corpus consists of judges 'sentencing statements to guilty defendants, it might reasonably be expected that the majority of the lexical items used would be negative in terms of their semantic prosody'.

3.3 Necessary, Sufficient and Optional Components of the Judicial Sentencing Statement

It is useful, before analysing the data in detail, to first provide a sample sentencing statement taken from the corpus, both for those not familiar with the Scottish legal system, and, in research terms, to provide an example of a generically archetypal statement (if such a thing exists). Although it is very difficult to talk of the sentencing statement in terms of a specific generic structure, the majority of statements contain two essential elements. As well as summarising the nature of the crime, its participants (victim, perpetrator and any eyewitnesses) and the effect of the crime on the victim, all of which are presented in narrative form, the judge must also produce the speech act of denominating the actual

[9] For this analysis I am using Laurence Anthony's *Antconc* program, v 3.3.5w (beta). This is freely downloadable at: http://www.antlab.sci.waseda.ac.jp/antconc_index.html

sentence length. These are both clearly accomplished by the judge in the example below:

Case heading with defendant's name	HMA[10] v RITA HEYSTER
Summary of court details, name of judge, sentence imposed, offence charged	At the High Court in Edinburgh Lord Brailsford sentenced Rita Heyster to four years and six months imprisonment after she was found guilty of attempting to defeat the ends of justice[11] in relation to the death of Carol Jarvis.
Preamble	On sentencing Lord Brailsford made the following statement in court:
Summary of the trial, significantly the details of the charge and justification for that charge. This could be seen as a form of 'orientation'.	You were found guilty by a jury after a lengthy trial of attempting to defeat the ends of justice by repeatedly failing to notify the police of the death of Carol Jarvis, concealing the body of Carol Jarvis and thereafter attempting to flee from the scene of these matters. This conduct did have a practical, and pernicious, result in that the delay in discovering the body of Carol Jarvis caused deterioration in the condition of the body of that unfortunate lady and prevented ascertainment of the cause of her death. I have no doubt, having heard the evidence in the case, that the delay also occasioned acute distress to the children of Mrs Jarvis who were unaware of her whereabouts during this time.
Matching of the evidence to the criteria of the charge and assessment of where the guilty verdict sits on the scale of sentencing options available to the judge	This conduct plainly constitutes an attempt to defeat the ends of justice at the higher end of the scale of gravity of offences of this sort.

[10] In the High Court in Scotland, HMA refers to Her Majesty's Advocate. Note that the sentence is presented here have not been optimised, since they are on the public record.

[11] Referred to as 'perverting the course of justice' in the England and Wales legal system

The judge goes through aggravating and mitigating factors, all of which have led him to determine the appropriate sentence. Another form of 'evaluation'.	As is made clear from the social enquiry report you do not accept your involvement in this offence, despite the verdict of the jury. In mitigation I accept that you were of previous good character. I also accept that this conduct, and the relationship you had with Harry Jarvis, has caused you loss of contact with your own family and, it would seem, the loss of your home. I also accept that you were probably vulnerable when you met Harry Jarvis, that he was devious and manipulative, and that you were unduly and harmfully influenced by him. I also acknowledge, and accept the mitigatory value, of the fact that you have been assessed as of low risk of causing harm to others in the future.
And the final 'coda'- what does it all mean for the defendant in terms of sentence? Note also that the verbalisation of the sentence is a speech act with a profound impact for all parties concerned, most of all the convicted defendant.	I take all these factors into account in passing sentence of four years and six months imprisonment, backdated to the 13 July 2011.

There is however a third, albeit optional, element to sentencing statement, whereby the judge uses it not only to admonish the individual defendant or defendants before the court, but extends this commentary to the wider society at large, as we have indicated. This third highly subjective and evaluative element is the primary focus of this article and will be exemplified using data extracts from the corpus. Thus the identities of the participants in the trial are not restricted to those attending court, but are held up as examples to society at large. The identities constructed during the trial and subject to the scrutiny of the media sometimes even results in a kind of criminal shorthand being constructed.

An example of this is the 2008 trials of John Darwin and his wife Anne (*R v. Darwin*). The case concerned the disappearance and claimed death of John Darwin in an elaborate insurance scam. Anne Darwin claimed that her husband had gone missing whilst out canoeing. He reappeared in 2007, following a change in the Panamanian law (where he had been hiding out), faking a case of memory loss. The couple were found guilty and imprisoned for between six years and three months and six years and six months. From that day on, the case has been referred to as 'The Canoe Man' case, and a Google search for this term brings up nine of the first 10 hits talking of the case, a powerful and long lasting image in the minds of readers.

4 Results and Discussion

It is of course not practical in an article of this length to explore the data fully. However the use of corpus linguistics does provide us with an overview of the data and elucidates some of its more salient aspects. In order to do this, I will present and discuss a series of results from mining the corpus using a range of different lexical tools, beginning with the word frequency list, which has been edited for ease of reading by removing function words. Although this only provides a basic overview of the data, it nevertheless gives indications of the general orientation of the judges' statements overall and is a useful starting point.

4.1 Word Frequency in Judicial Statements

Most predictably, many of the most frequent non-function words which occur in the corpus relate to the court, the trial, the crime, etc. Thus an edited version of the first 100 or so lexical words which are thrown up by the analysis is as follows (Table 3):

Table 3 Most frequent lexical words

#Word Types[12]: 3346

#Word Tokens: 34160

Ranking	Tokens	Lexical Item
18	254	sentence
20	247	years
31	170	court
33	138	guilty
36	126	period
37	123	imprisonment

[12] 'type' refers to the number of different individual word forms; 'token' refers to the number of occurrences of that word in the text analysed.

38	113	months
40	110	charge
41	105	case
56	73	lord
57	72	high
58	69	circumstances
61	67	following
62	67	life
64	66	imposed
66	65	order
67	64	sentenced
69	63	account
70	62	pled
71	61	punishment
73	60	offence
76	58	plea
77	58	sentencing
78	57	serious
80	55	risk
81	54	driving
82	54	impose
85	51	convicted
90	50	statement
93	49	prison
97	46	custodial
98	46	fact
101	45	charges
103	45	murder
104	45	report
106	44	death

Studying these results, there is nothing particularly unexpected or out of the ordinary in this list. They are simply words which relate to the functioning of the court, the trial which preceded the sentencing, the crime committed and details of the sentencing itself. However, also included in the word list are a series of more subjective, evaluative and judgemental terms (Table 4):

Table 4 Subjective, evaluative and judgmental lexical words

Rank	Tokens	Lexical Item
213	21	dangerous
421	10	abuse
439	10	gravity
459	10	tragic
469	9	excessive
496	9	sustained
499	9	violent
500	9	vulnerable
570	7	danger
614	7	seriousness
643	6	devastating
734	5	brutal
751	5	depraved
757	5	distress
782	5	inadequate
846	5	terrible
897	4	despicable
1013	4	retribution
1042	4	terrifying
1057	4	wrong
1084	3	appalling
1172	3	extreme
1192	3	grossly
1198	3	horrific
1247	3	notorious
1329	3	subjected
1330	3	suffering
1345	3	troubling
1356	3	volatile
1389	2	anguish
1513	2	defiance
1519	2	deplorable
1623	2	harassed
1624	2	hatred
1630	2	hostility
1633	2	humiliation
1646	2	inflicted
1660	2	irresponsible
1727	2	mutilated
1806	2	recklessness
1824	2	remitted
1825	2	remorseless
1827	2	repeated
1861	2	seriously
1862	2	severity
1863	2	shameless
1923	2	unacceptability
1924	2	unacceptable
1930	2	unsuitable
1932	2	unwilling
1947	2	wicked
1949	2	wilful
1961	1	abhorrence
1969	1	abused
2012	1	aggressive
2040	1	antagonism
2074	1	astonishing
2081	1	awful
2111	1	bigoted
2131	1	brazen
2151	1	callous
2152	1	callousness
2153	1	calmness
2160	1	carelessness
2184	1	chilling
2232	1	connivance
2275	1	cruelly
2283	1	cynical
2284	1	cynically
2287	1	dangerously
2309	1	degradation
2310	1	degrading
2330	1	destroyed
2331	1	destruction
2336	1	devastation
2339	1	deviant
2362	1	disgusting
2363	1	disorderly

2369	1	disregard
2371	1	distraught
2372	1	distressing
2447	1	exploited
2502	1	frenzied
2503	1	frenzy
2507	1	frightening
2583	1	horrifying
2584	1	horror
2595	1	immature
2619	1	indignity
2623	1	inexcusable
2636	1	insidious
2654	1	intimidated
2655	1	intimidation
2659	1	invidious
2707	1	lewd
2711	1	libidinous
2738	1	manipulated
2743	1	massive
2753	1	merciless
2795	1	neglecting
2796	1	negligent
2832	1	outrage
2833	1	outrageous
2840	1	overwhelming
2912	1	preyed
2913	1	preying
2932	1	profoundly
2982	1	recklessly
3053	1	sadly
3062	1	scourge
3073	1	selfish
3074	1	selfishness
3087	1	shocking
3131	1	staggering
3134	1	startling
3151	1	subjecting
3169	1	surprising
3178	1	suspicious
3210	1	threatening
3233	1	troubled
3248	1	uncontrolled
3269	1	unscrupulous
3293	1	vicious
3329	1	wilfully
3343	1	wrongly

Although these terms occur far less frequently than those relating to the court and the trial process, taken as a whole, there are nevertheless multiple occurrences of this type of lexical item. Moreover, they are highly significant given their status as judgements of 'social sanction', one of the two components of judgement in systemic functional linguistics (the other being social esteem). Added to this, their evaluative load and negative semantic prosody makes the judge's sentencing statement anything but neutral in orientation. It seems from this word list that virtually 'anything goes' when the judge is given free rein to describe the criminal or the nature of the crime committed, and notable statements by judges are often thought to be newsworthy and appear across the media. These expressions of negative social sanction are particularly valuable as soundbites for the media, insofar as they present a definitive representation of the personality and behaviour and therefore identity of each of the participants in the respective crime. Since the majority of the population have not attended the trial, the only way in which they are given access to the identity construction of victim and perpetrator is through published reports from court, most of which compromise a summary presented and constructed by the judge.

In order to explore these relatively raw and decontextualised data in closer detail, we need to expand these descriptors, which come as White (1998) described in journalistic texts across the spectrum of forms - nominal, adjectival, adverbial. We need to expand the data and explore collocates, concordances and larger stretches of judicial discourse. I will aim to explore these issues in turn in the remaining sections of this article.

4.2 Collocates and Concordances of Criminal Activity

If we adopt a corpus linguistic approach to the data, and use concordancing software, we can begin to see patterns of co-occurring lexical items surrounding key terms. This type of analysis is extremely useful since it provides an overview of the key identificatory features of the discourse, as well as the overall orientation of the statement in terms of its key words in a word frequency list. This may be achieved by looking at each time the name of the defendant, for example, is mentioned and the co-occurring text surrounding it, in terms of social sanction.

In this article however, I will focus on the names of the crimes themselves and the co-occurring text describing those crimes which serves to construct a definitive description by the judge at the crucial part of the trial, the sentencing statement. It is here that the identities of all of the participants in the crime have been adjudicated by the judge and are presented to the court and more widely to society in general. These include the generic terms 'crime', 'offence', 'assault' and 'attack', as well as the more specific terms, such as 'murder', 'rape' and 'robbery'. For the purposes of this article, I

will limit the discussion here to an illustrative generic term 'assault', which occurs a total of 24 times in the data.

4.3 Judgement on 'assault'

Figure 1 below provides the concordance lines obtained from the data around the node 'assault':

1 of dishonesty, but ***you have three convictions*** for **assault** and I also note that you have no convictio
2 bitual. You have been convicted on indictment for **assault** to ***severe injury no fewer than three times***
3 ray Neilson after he pled guilty to one charge of **assault** and robbery and one charge of assault and
4 e charge of assault and robbery and one charge of **assault** and attempted robbery. On sentencing Lord
5 2 ***you were sentenced*** to 4 months imprisonment for **assault** to ***injury***. ***On 1 May 2007*** you were sentence
6 re sentenced in the High Court for ***two charges*** of **assault** and attempted robbery to 6 years imprisonm
7 ine months in prison after she pled guilty to the **assault** of Derek MacLeod on the 22 June 2011 at Wa
8 ssaulting Derek MacLeod to his ***severe injury***. The **assault** consisted of your ***striking him four times***
9 ated with no more than steristrips so in fact the **assault** was not as serious as at first blush it mi
10 lbeit ***the most serious*** of these, a conviction for **assault** to ***severe injury*** in the High Court which r
11 g a ***prolonged incident, to insult, intimidate*** and **assault** the young man who was so frightened by wha
12 lp him. ***Not satisfied with*** encouraging O'Neill to **assault** the deceased as a ***further attempt*** to intim
13 ve pleaded guilty to a ***serious*** charge because the **assault** on Christopher Knox ***was aggravated by*** the
14 er Knox and you ***minimised your involvement*** in the **assault**. In addition you ***showed no hint of remorse***
15 charge of murder, but murder requires proof of an **assault** with the intention to kill or an assault w
16 of of an assault with the intention to kill or an **assault** with such ***wicked recklessness*** as to be the
17 ncludes convictions (albeit at summary level) for **assault** to ***severe injury*** and assault. From the oth
18 t summary level) for assault to ***severe injury*** and **assault**. From the other information made available

19 ey, to a less serious but ***still extremely violent*** **assault** on Pauline Wright, who appears to have don
20 lat occupied by Mr Crichton and Miss Wright. The **assault** consisted of ***grabbing*** Miss Wright by the h
21 n the sheriff court for charges which include the **assault** of a police officer. In these circumstanc
22 ns, and having regard to the circumstances of the **assault**, I have concluded that ***there is no alternative***
23 mitted participating in an ***unprovoked and serious*** **assault** and ***must be punished accordingly***. There ar
24 to note that you have ***recently been convicted*** of **assault** to injury and are awaiting sentence. On t

This concordance list reveals some fascinating ways in which judges express the social unacceptability of the convicted crime, as they are contained in the co-text surrounding the term. Firstly, and perhaps most expectedly, we find many examples in the form of adjectival phrases, some of which already emerged in isolation in the word frequency list discussed above. The severity of the assault may be expressed by such *adjectival* means as:

extremely violent (line 19)
unprovoked and serious (line 23)
prolonged (line 11)
resulting in 'serious injury' (lines 2, 10, 17)
with such wicked recklessness (line 16)

or by the choice of a *verbal process* used to describe the assault, as in the victim being '*struck* four times ' (line 8) or '*grabbed*' (line 20). All of these examples illustrate the aim of the judge to communicate the level of violence involved, as well as its inherent unacceptability through its negative semantic prosody.

The behaviour or attitude of the convicted defendant following the assault is also evaluated in the data:

not satisfied with (line 12)
minimised your involvement (line 14)
showed no hint of remorse (line 14)

The unacceptability is also expressed by a further category of social sanction where the judge refers to The Law and the sentencing obligations presented to him. Thus, we find:

there is no alternative (line 22)
must be punished accordingly (line 23)
aggravated by (line 13)

One fascinating aspect which emerges from the concordancing of the data is that the evaluation and expression of social sanction communicated by the judge occur not only in these *qualitative* terms, in other words relating to aspects such as the severity or consequences of the assault, but are also expressed via more *quantitative* terms. This is achieved by either making reference to co-existing charges which were faced by the defendant, or, more commonly, to previous convictions for similar offences (as discussed above, which are still rare during the trial). This is extremely common in the data and occurs in several different forms including:

you have *three convictions* for assault (line 1)

… *habitual*. You have been convicted on indictment for assault to severe injury *no fewer than three times* (line 2)

he pled guilty to *one charge of assault and robbery and one charge of assault and* … (line 3)

… *one charge of assault and robbery and one charge of assault and attempted robbery*. (line 4)

… *In 2002 you were sentenced to 4 months imprisonment for assault to injury. On 1 May 2007 you were sentenced*… (line 5)
and so on.

4.4 The Discourse of Judicial Identity

As a final illustration of both personal and public social sanction as a significant feature of judicial representation of criminal identity in sentencing statements, I will present a more detailed analysis of a single text drawn from the corpus, representative of this heteroglossic phenomenon. The transcript is presented below. The principal terms of appraisal, evaluation and, in systemic terms, judgement have been highlighted.

HMA v AISEA VUETIMAIDUBOU YARANAMUA

At the High Court in Aberdeen Lord Uist sentenced Aisea Yaranamua to seven years in prison after he was found guilty of attempted rape.

On sentencing Lord Uist made the following statement in court:

"You were convicted by the jury of having committed the crime of attempted rape of a woman in her own home in Helensburgh on 5 November 2010. You saw her in a pub in the course of the evening, targeted her, followed her home, forced your way into her house, pushed her into a bedroom where you attacked her by removing her clothing and subjecting her to sexual indignity and humiliation before attempting to have intercourse with her. The reason why you did not succeed in having intercourse with her was that the police arrived in response to her 999 call for help made when she had gone to the bathroom in the course of the incident. This was a determined, brazen and shameless crime which amounted to a terrifying ordeal for your victim, as was clear from the recording of the telephone call which she made to the police. As a result of what you did to her she sustained multiple bruises and abrasions and was left in a state of great distress.

You are now 35 years of age. I shall for present purposes ignore your one minor road traffic conviction and treat you as a first offender. I have considered the terms of the social enquiry report and all that has been said on your behalf in mitigation, but I cannot do other than view your conviction as one of great gravity calling for heavy punishment. This court must do all in its power to protect women from sexual attack by imposing sentences which deter such crimes. It is a most serious aggravation of this outrageous crime that your victim was attacked in her own home after you had followed her there and obtained entry to it.

The sentence which I impose is 7 years imprisonment from 12 December 2011".

The lexical items which expressed negative social sanction concerning the crime, and hence, to a greater or lesser degree of the perpetrator and any other participants, occur frequently throughout the statement. The defendant's behaviour is categorised verbally with him *targeting, forcing, pushing* and *attacking* her (lines 6/7) before subjecting her to *indignity and humiliation*. Thus, both the behaviour of the defendant and its effect on the victim are both clearly identified. She is further portrayed as suffering *a terrifying ordeal* (line in 11) leaving her with injuries and in a state *of great distress* (lines 13/14). It is made clear in the judge's sentencing statement that the behaviour of the victim is beyond reproach, and that of the defendant, now perpetrator, is identified as determined, brazen and shameless (line 11).

The fact that the judge is able to use such terms as those highlighted above shows that, as White 1998 concurs in a media context:

> The fact that the "Mum-to-be" story above is considered the objective reflects the commonly held view (in the media) that there is some fixed reality which can be observed and recorded without bias. (White 1998: 3)

The very fact of their being at least two conflicting versions of events through prosecution and defence accounts, and differing presentations of the identities of victim and perpetrator through character witnesses' testimony means that there are at least two diametrically opposed constructed identities in court. One of the judge's predominant roles is to adjudicate between these differing versions and decide which is more convincing and hence which identities he/she finds more persuasive in the case. His/her final judgement is presented in the sentencing statement at the end of trial.

There is no doubt that the judge in this case, which involved the attempted rape of a woman in her own home, is scathing of the behaviour of the convicted defendant, an engineer in the Royal Navy.[13] Quite unusually in the corpus, this judge does not convey a sense of the good character of the *victim* in this crime, although this did (and typically does) occur during the trial itself through the use of numerous character witnesses.

However, he does represent the behaviour of the *defendant* on multiple occasions. He refers to the way in which the victim was 'targeted' (line 7), conveying premeditation and planning on the part of the defendant. The judge refers to how he 'forced' his way into her house (also line 7), and 'pushed' her into a bedroom (line 8) before 'attacking' the victim, and (lines 8 and 23), carrying out the attempted rape. The fact that this attack was

[13] Available online at : http://www.bbc.co.uk/news/uk-scotland-glasgow-west-16651171

carried out in the victim's home is considered 'a most serious aggravation of this outrageous crime' (lines 22-23).

The offence itself is described as 'a determined, brazen and shameless crime' (lines 12 to 13) and 'outrageous' (line 22). The assault itself was preceded by the defendant 'subjecting her to sexual indignity and humiliation' (line 9). The effect of the offence on the victim is also conveyed. The judge refers to the 'terrifying ordeal' (line 13) faced by the victim, as well as describing her injuries as 'multiple bruises and abrasions' (line 15), leaving her in 'a state of great distress' (lines 15-16).

Although the judge is prepared to 'ignore' a previous road traffic offence, he nevertheless treats the crime as 'one of great gravity calling for heavy punishment' (line 20). The judge ends with a clear expression of the moral reprehensibility and unacceptability of the crime in a broader societal sense. He states that it is the responsibility, even obligation, of the judge and the court in sentencing, as representative of the wider community (The People), to 'do all in its power to protect women from sexual attack by imposing sentences which deter such crimes' (lines 21-22). The judge ends by sentencing the defendant to a period of 7 years' detention.

Thus, in a relatively short statement of only 378 words, the judge manages to convey a clear and overwhelming sense that this crime is completely unacceptable and must be punished by a significant custodial sentence, and also includes a note of public deterrent. This analysis illustrates the concentration of appraisal within the judge's sentencing statement.

The verdict in this case was widely reported in the media in January 2012, including on the BBC News website.[8] Interestingly, roughly one third of the report quotes the judge's comments directly, including those relating to the wider social deterrent of the conviction and sentence handed down to the guilty defendant.

5 Conclusions and Further Research Potential

This article has clearly illustrated the extent to which judges are highly evaluative in their sentencing statements. They are critical of a guilty defendant's character, typically contrasting the identity of the guilty defendant to that of the innocent victim. Moreover, trial judges' assessments of crime are typically severe and go beyond the simple expression of their circumstances of occurrence. Finally, judges frequently include a component of broader social sanction within their statements, which express the deterrent aspect of the conviction and resultant sentence. Thus, the identity of the perpetrator, and to a lesser degree the victim, is constructed within the context of the wider community, and an expression of deterrence is very

often included in the sentencing statement as the judge comments on the perpetrator's behaviour in a broader social context.

Anecdotally, and interestingly, there is no real evidence from an analysis of statements in the corpus that an initial guilty plea results in more lenient treatment by the judge in terms of appraisal of the defendant's behaviour. There are still present a large number of expressions of negative social sanction, even if a guilty plea may be reflected in the final sentence. There is perhaps more attention paid to mitigating circumstances, lack or presence of previous convictions and assessment of the defendant's character by witnesses and references presented in court, and the resulting sentence is sometimes reduced as a result. However, there is very little difference in the amount or nature of appraisal of the criminal behaviour concerned. Judges are still keen to comment on the personal and social unacceptability of the conduct resulting in the criminal charge and conviction.

One aspect of judicial subjective evaluation, which it has not been possible to explore within this article, is the fascinating phenomenon of the non-verbal behaviour of judges, both during witness examination and the judicial phase discussed here. The extent to which sociolinguistic variables such as the age and gender of both judge and defendant influence these representations would also represent another potentially fruitful area of inquiry. All of these features go to construct the identity of the various participants in court for the jury, who adjudicate the case. Identities are created by first impressions (defendants almost always wear a shirt and tie for their appearance in the dock) as well as by verbal means. Of course the identities of the principal legal participants are clearly indicated from the outset, with their distinctive appearances, usually consisting of gown and wig (although this is under review and does not happen in cases involving children, where normal clothing is typically worn).

As Jackson (1995: 425) observed of a notorious British child murder case in the mid-90s, 'the victim's parents spoke of the conduct of the trial by Mr Justice Morland in terms which suggested the latter's successful communication of his sympathy, sensitivity and concern'. A further source of research focus would therefore be to examine the judges' interaction with lawyers during the trial. As McEwan (2003: 94) concurs, 'the relationship between judge and advocate … may colour the final outcome'.

In conclusion, this article has illustrated some of the subjective and evaluative ways in which judges are able to communicate within their sentencing statements the social unacceptability of the crimes and criminals which pass before them in court. The identities of all the individuals present in the courtroom have to be constructed linguistically and para-linguistically. The jury who, by their nature, must be naive participants in this process, are persuaded or dissuaded not only by the testimony given but also by the

guidance of the judge, who has the final word, not only on the law of the case, but also the construction of the identities of its participants.

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Bionote

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Language Policy/Planning and Linguistic Rights in Sweden

Béatrice Cabau

Abstract: As a result of immigration in recent decades and the long presence of national minorities, Sweden can be defined as a multilingual society. Numerous official documents related to language issues (government reports and bills) have recognized this linguistic diversity within Swedish society. But this recognition provoked a debate in which one of the main concerns was the possible codification of Swedish as the official language of the country in light of the encroachment of English in several domains. This debate was exacerbated with the official recognition of five minority languages in 2000. In 2009, Sweden introduced a Language Act establishing the position and status of Swedish as the "principal" but not de jure official language of the country. The same year, the Swedish Government passed the Act on National Minorities and National Minority Languages, which strengthened the rights of national minorities. This Act also contains provisions about the right to use minority languages in administrative authorities and courts. This paper will analyse the impact of these recent legislative texts on the status and use of Swedish, national minority languages and English. It will investigate complaints and criticisms related to use of language and linguistic rights addressed to the Ombudsman for Justice and the Ombudsman for Equality. It will highlight the impact of Swedish societal concerns on language issues in terms of the enhancement of linguistic rights for national minority language speakers as well as the use of Swedish in and outside the core domain.

Keywords: Sweden; national language policy; Swedish; minority languages; English

1 Introduction

Before considering engaging language issues in the legal arena, Sweden first acknowledged multilingualism as a societal pattern of the country in various official documents (e.g. Regeringens

proposition 1998/99:143; Statens Offentliga Utredningar 2002)[1]. The country recognized five minority languages in 1999, and after a long debate, finally adopted an official language policy in 2005. This was followed some years later by language legislation, with the 2009 Language Act establishing Swedish as the principal language of Sweden. The purpose was to reassert the importance of the national language in the face of the overwhelming presence and privileged position of English in several domains of Swedish society.

This article will first present the development of a language policy and planning in Sweden leading to the adoption of the official status of Swedish and national minority languages. It will then investigate linguistic issues in Sweden by analysing various cases reported to the Ombudsman for Justice (Justitieombudsman, hereafter JO) and the Ombudsman for Equality (Diskrimineringsombudsman, hereafter DO) as for the use of languages other than Swedish (English and national minorities) in different societal spheres (government offices, business/trade and higher education). The main purpose here is to analyse the development of linguistic rights in Sweden as well as the impact of the newly implemented language legislation.

2 Theoretical framework

Until a few decades ago, the multilingual profile of European nations was mainly characterized by the presence of the majority language co-existing with national/regional minority languages. This multilingual setting was then intensified by the presence of immigrant languages together with the increasing importance of English within various domains, which is seen as "challenges for both the law and the courts" (Ervo & Rasia 2012: 64). If the democratization of education, the globalization of communications and the growing importance of linguistic diversity around the world incited some States and public authorities to intervene (Turi 2012: 3), the internationalization of higher education and European Union policy aiming at enhancing linguistic diversity also raised new questions in the field of language policy and planning and linguistic rights (Cabau 2011; 2014). Notably, we can observe in recent years "a noticeable, real trend, a progressive development of respect and embracing of diversity" (De Varennes 2009: 24) at the European

[1] The *Regeringens proposition* is a government bill (hereafter abbreviated as Prop.). The following numbers refer to the year of publication, then the number of the study and, where applicable, the page number. The same reference system applies for the Swedish Government Official Reports Series SOU (Statens Offentliga Utredningar or SOU).

level. The legal intervention of States in the field of languages indicates that the globalization of communications gained such an importance "that it has to be controlled by promoting and protecting, according to circumstances, national, regional and local languages and identities, in other words the linguistic and cultural diversity of our world. In this respect, linguistic law is the realm of 'linguistic regionalisation'" (Turi 2012: 16-17).

The coexistence of several languages within a country often leads to a "dominant-dominated relationship" between linguistic majorities and minorities. The main objective of linguistic legislation is to provide a solution to arising conflicts and inequalities by determining and establishing the status and use of the languages in presence (Turi 2012: 2). Linguistic rights are related to status planning, which concerns issues related to how and where a language is used (Cooper 1989). In the field of language policy and planning, status is seen as "the perceived relative value of a named language, usually related to social utility, which encompasses its so-called market value as a mode of communication, as well as […] a society's linguistic culture" (Ricento 2006: 5). Status planning aims at determining the standing and role of competing languages through "deliberate efforts to influence the allocation of functions among a community's languages" (Cooper 1989: 99).

The official recognition of minority languages is mainly viewed as a basic linguistic human right deriving from general human rights standards, among which non-discrimination is an essential component (De Varennes 2009). While the process of state legitimation is regarded as an important first step in raising the status of a minority language, it has its limitations as regards its actual use, spread, revival and development. This is the reason why May (2012) points out to the necessity of institutionalization of the national minority languages (hereafter NMLs) in civil society, i.e. "the process by which the language comes to be accepted, or 'taken for granted' in a wide range of social, cultural and linguistic domains or contexts, both formal and informal" (May 2012: 6). Hence, the state intervention in language issues resulting in the adoption of an official language policy and language legislation paves the way to a more interdisciplinary and transdisciplinary approach: language scholars in language policy and planning who are traditionally trained in sociolinguistics or applied linguistics have to consider issues related to politics, administration and law for their research investigation (Spolsky 2005: 36). At the same time, education is one of the most, if

not the most, important domains for linguistic rights and language policy (Spolsky 2004: 46; Turi 2012: 5).

In Sweden as in other European countries, linguistic rights for minorities' members are mainly viewed through the prisms of legal equality, protection and anti-discrimination measures (Ervo & Rasia 2012). At the same time, the encroachment of English in several spheres of the society prompted a debate about the status of the national language, Swedish. This is the reason why Swedish authorities had to accept the need to consider linguistic issues from a legal standpoint.

3 Swedish national language policy

3.1 The status of Swedish

Until a few years back, no official document stipulated that Swedish was the national or official language of Sweden. Similarly, there was no direct regulation stating that Swedish was the language to be used in administration and courts. This can be explained by the fact that it has long appeared evident that the common language in the country was Swedish. This belief was sustained by the fact that all legislative documents were and are written in Swedish (SOU 2002: 27, 457). Nevertheless, the recognition of five minority languages in 1999, combined with the overwhelming position of English in various domains of the Swedish society (education, media, business, technology…; Cabau 2011), has led some Swedes to express the need for status planning, since Swedish is not the *de jure* official language of Sweden – whereas it has this status in Finland (Ervo & Rasia 2012) and the European Union (Sweden became an EU member in 1995)[2]. Already in 1998 the Swedish Language Council stressed the need to confirm the status of Swedish by law in its action programme for the Swedish language (Swedish Language Council 1998) commissioned by the government. The Committee on the Swedish Language appointed by Parliament revised the Swedish Language Council document and published in 2002 its report, *Speech: Draft Action Programme for the Swedish Language* (SOU 2002). The most controversial issue was to introduce a special act establishing the status of Swedish as Sweden's principal language to counteract the encroaching presence of English (Cabau 2011). In 2003, the government established a working party to prepare a language policy proposal to be presented to Parliament. In late 2005, the government

[2] For a more in-depth analysis of the Swedish language policy, see Cabau (2011).

finally submitted a bill to implement a new language policy (Prop. 2005/06: 2). The national objectives are that:

> *Swedish is to be the principal language in Sweden;*
> *Swedish is to be a complete language, serving and uniting society;*
> *Public Swedish is to be cultivated, simple and comprehensible;*
> *Everyone is to have a right to language: to develop and learn Swedish, to develop and use their own mother tongue and national minority language and to have the opportunity to learn foreign languages.*

The terminological choice – "main language" instead of "official language" – may be seen as the fear to undermine the newly acquired official recognition of the five minority languages (it is interesting to note here that the Swedish Language Council changed its name into the Language Council in 2006). The Social Democrats rejected establishing Swedish as the official language for two main reasons: it would have been discriminating towards those whose mother tongue is not Swedish; the law would have no normative effect on the Swedish language and no provisions were made in case of non-compliance (Prop. 2005/2006: 2:16). The argument of discrimination provoked some surprise and incomprehension, since it was not even supported by the Discrimination Ombudsman, who in fact favoured a law introducing Swedish as an official language (Cabau 2011).

But the 2005 bill didn't put an end to the debate opposing the Social Democrats and the centre/right parties. In 2007, the newly elected centre-right coalition government appointed a committee of inquiry to draft a proposal for a language act to govern the status of the Swedish language. The committee submitted its report 'Safeguard Languages' (SOU 2008: 26) on which was based the Language Act (Ministry of Culture 2009) introduced on 1 July 2009. The main provisions of the Language Act are as follows:

> *The purpose of the Act is to specify the position and usage of the Swedish language and other languages in Swedish society. The Act is also intended to protect the Swedish language and language diversity in Sweden, and the individual's access to language.*
> *If another act or ordinance contains a provision that diverges from this Act, that provision applies.*
> *Swedish is the principal language in Sweden.*

> *As principal language, Swedish is the common language in society that everyone resident in Sweden is to have access to and that is to be usable in all areas of society.*
> *The public sector has a particular responsibility for the use and development of Swedish.* […]
> *The language of the courts, administrative authorities and other bodies that perform tasks in the public sector is Swedish.* (Ministry of Culture 2009)

The Language Act is a framework law, which sets out the principles, objectives, guidelines and basic rules. It refers to the obligations/responsibilities of the society, i.e. public authorities are to be responsible for the individual's access to language, with no mention of rights of the individuals. The Language Act's requirements are the main rules to be applied as long as there are no exceptions in the law or any other regulation. Hence, it is of the utmost importance for the public authorities to give a clear signal that Swedish is the society's common language (Prop. 2009b). It entails that it is the responsibility of the public authorities to ensure the use and development of the Swedish language, i.e. to secure that Swedish is used in place of other languages as possible with regard to the activity domain and that steps should be taken to prevent the Swedish language from losing ground in all the areas covered by the public sector. The question of the vitality of the Swedish language is definitely a recurrent concern in official texts and language legislation. Whereas no reference is made to any legal sanctions, the JO or the Chancellor of Justice may intervene (Språkrådet 2011), as exemplified later.

3.2 Status of national minority languages and linguistic rights for their speakers

Sweden has a population of nearly 9.5 million, among whom 20% are from foreign backgrounds (Statistiska Centralbyrå 2014). Linguistic and cultural diversity is also represented by national minorities (henceforth NMs). The Roma minority of Sweden is estimated to be 40,000; the Sami, 15,000-20,000; and the Finnish-speaking minority, 240,000-250,000. In addition, there are 75,000 speakers of Meänkieli (a language related to Finnish spoken in the Tornedal district in northern Sweden) and 4,000 Yiddish speakers (SOU 2008: 26).

From the 1990s, the NM representatives and particularly the Finnish minority have been supporting the idea of official recognition of their languages (Cabau 2014). In 1998/99, the government passed

a bill entitled *National Minorities in Sweden* (Prop. 1998/99: 143), which recognized five minority languages, namely Sami, Meänkieli, Finnish, Yiddish and Romani. Sami, Meänkieli and Finnish were identified as regional languages given their long historical presence in the country, and Yiddish and Romani as non-territorial minority languages. Hence, the provisions of the *European Charter for Regional or Minority Languages* (ratified by Sweden in 2000), which grant certain rights to support for cultural development (Art. 12) as well as rights to use minority languages in courts (Art. 9), with the government (Art. 10), and in the media (Art. 11), do not apply to Yiddish or Romani. This distinction entailed restricted rights for Yiddish and Romani, hence an unequal status among NMs. It is important to mention that Finnish was already recognized as a domestic language in 1994 (Regeringen 1994).

In 2009, a new Act on National Minorities and National Minority Languages (Swedish Code of Statutes 2009:724, hereafter Minority Act) was introduced. It contains directions regarding NMs, NMLs, administrative areas and the right to use minority languages in administration and courts already introduced with the ratification of the *Framework Convention and the Minority Language Charter* of the Council of Europe in 2000. It replaced the previous legislation on the right to use Sami, Finnish and Meänkieli (Regeringen 1999a, 1999b). The 2009 Minority Act directly refers to the principles of the Language Act, which clearly reiterated the official status of the NMLs (section 7), suggesting the government intention to raise the status of these languages (Ekberg 2011: 88). Notably, the Language Act mentions, "the public sector has a particular responsibility to protect and promote the national minority languages" (Ministry of Culture 2009). It seems that this statement is to be linked with the new Discrimination Act adopted 2008, whose purpose is to prevent discrimination and to promote equal rights and opportunities regardless of sex, transgender identity, ethnicity, religion, disability, sexual orientation or age. The term ethnicity refers to national or ethnic descent, skin colour, and belonging to a national minority (Öst 2012: 8). It is also not a coincidence that since 1 January 2011, the Sami people are specifically mentioned in the Instrument of Government (Riksdagen 2012; Chapter 1, Section 2, paragraph 6 of the Instrument of Government).

The Minority Act expands the geographical areas in which the Finnish and Sami languages can be used in contacts with the administrative authorities. The administrative area for Finnish was expanded to an additional 18 municipalities on top of the 5 existing

ones in the Norrbotten county in the north of the country and the administrative area for Sami was expanded to an additional 13 municipalities on top of the 4 existing ones. The administrative area for Meänkieli was not expanded, and still consisted of 5 municipalities. It is worth mentioning that the new municipalities included in the administrative area for Finnish are all located outside northern Sweden, in four different counties (Stockholm, Uppsala, Södermanland, and Västmanland) in the middle and southeast of the country. The Minority Act also enables any Swedish municipality to opt to become part of any of the administrative regions for Finnish, Meänkieli or Sami. This means that the geographic territories of the minority language administrative regions are not fixed, which "ensures a high degree of adaptability of the minority language regulations to the needs of changing societies and communities" (Öst 2012: 50).

Individuals have the right to use Finnish, Meänkieli or Sami in their dealings with administrative authorities if their case can be handled by personnel proficient in the language. They are entitled to use their languages in oral and written contacts with administrative authorities (the ombudsmen of the Parliament, the Chancellor of Justice, the Social Insurance Office, the National Tax Board and the Office of the Ombudsman against Ethnic Discrimination) where the matter entirely or partially corresponds to the minority languages' administrative area. Administrative authorities are obligated to provide an oral response in the same language and if requested, provide written translation of decisions and justifications. The authorities may determine a specific time and place where the service is provided in minority languages. It is important to stress that the Minority Act didn't extend the right to use Finnish or Sami before the courts to be applicable in the whole of the new administrative regions. Another point: the Swedish parliament didn't support the project to extend minority language protection for Finnish-speakers on an individual basis (and not on a geographical basis) to give the right to all speakers to use Finnish wherever in the country they found themselves (Öst 2012).

Sections 13-16 of the Minority Act state that a party or a representative of that party is entitled to use Sami, Finnish or Meänkieli in dealings with certain courts of law. The right to use minority languages includes *inter alia* the right to submit documents and written evidence in the minority language, a right to have relevant documents orally translated into that language, and a right to speak this language at oral court hearings (Regeringskansliet 2012:

35). Statutes relating to NMs and NMLs have been translated into the NML concerned. These translations are available on the Government's website. In addition, the website contains information on the right to use minority languages in court. Such information is also provided on the website of the Swedish Courts (Committee on the Elimination of Racial Discrimination 2012).

4 The impact of the new language legislation

4.1 Language policy in higher education

For several years now, the overwhelming importance of English in the domain of higher education (HE) has raised the concern of many Swedish scholars (Cabau 2011). In the 2005 bill, the use of English is presented as a *sine qua non* condition for enabling Sweden to participate actively and continue to assert its position in international research co-operation. Moreover, the necessity of pursuing academic courses in English at all levels in order to attract more foreign students is emphasised (Prop. 2005/06: 2: 45-48). Currently, nine out of ten Ph.D. dissertations are written in English (Cabau 2011). Vague terminology is found in the official language policy document with the introduction of a new requirement, the writing of a "full summary" in Swedish ''to safeguard Swedish terminology and keep the Swedish language alive'' (Prop. 2005/06: 2:45:47). Cabau (2007) underlined the lack of definition of what is to be considered as a "full summary". Since no indication of scale or criterion is provided, we are here confronted with vagueness, a category of semantic indeterminacy in legal texts. Interestingly, vagueness is defined as "a prototypical example of convergence between the interests of linguists and lawyers" (Engberg & Heller 2008: 149).

Considering the preservation and even reinforcement of the status of English in HE in the 2005 official language policy, it is not surprising that the first decision that the JO had to reach regarding the 2009 Language Act (Justitieombudsman 2009) was indeed related to the academic arena. In 2007, a plaintiff reported to the Ombudsman after her two research grant applications were rejected on the grounds that her application was not written in English. In fact, the panel members were told not to consider applications written in Swedish. The rationale was expressed as follows: the background of the language requirement was that it was impossible to meet the objective of quality set by the government if the applications were only to be assessed by researchers who understand Swedish. The other argument was that the panels were composed to encompass the

broadest scope of scientific research. Hence, if some panel members couldn't participate in the assessment process, it put in question the purpose of the panels' profile. The research institution highlighted the difficulty to accurately translate such applications from Swedish to English.

The JO expressed the view that Swedish organisations that provide funding for research had no right to require potential recipients to write their applications in English. His arguments were that since there was no specific regulation for HE in the Language Act, its rules and principles should serve as the basis to assess the compliance of language use in HE. However, the use of English was acceptable if necessary and objectively justified, for example in the case of research grant applications sent to panel members who do not speak Swedish. The result was the classification of the administration of HE – but not research and teaching – as one of the core domains where the Language Act was applicable, i.e. public services, according to the principle that it "should always be possible to communicate with Swedish authorities in Swedish". With such a statement, the ombudsman refers to the individual's rights. In fact, the government specifies that the newly introduced legislation should be applied in a flexible way, recognising the HE arena as a special domain. This is the reason why it proposes to modify the Higher Education Ordinance to make possible the use of a language other than Swedish in research and higher education (Prop. 2008/09: 153; 16; 30).

Hence, contrary to the government's point of view, the Ombudsman viewed research and [higher] education as evident illustrations of antagonistic interests between internationalization [of HE] and the protection of the Swedish language: the origin of the introduction of the Language Act was precisely related to the various concerns about the future of the Swedish language, such as domain losses and capacity losses in the teaching/learning process (SOU 2002). At the same time, the requirement to use Swedish may represent a handicap in international academic exchange. Finally, the Ombudsman rightly concluded that the legislators might have underestimated the weight of legal guidance on how conflicts between the new language policy rules and the needs of research could be solved (Justitieombudsman 2009).

4.2 English in Swedish government offices

In Sweden, politicians in the government and parliament spheres use English rather often at their work place. Moreover, some public authorities have only an English name (e.g. Invest in Sweden Agency, Stockholm Environment Institute). Nevertheless, the Swedish Language Council supported the principle of the use of Swedish in administration, since Swedish was to be "society bearing" (SOU 2002: 27, 123). All state and communal authorities should hence have Swedish names and use Swedish as a tool of communication, and email addresses should be in Swedish.

The Language Defence Network *Språkförsvaret*, a politically independent network working to strengthen the Swedish language in Sweden and Finland, made a complaint to criticise the government practice of using English email addresses only, for example, registrator@primeminister.ministry.se (Justitieombudsman 2010a). According to the plaintiff, it was against the 2009 Language Act, since this creates difficulties for individuals and authorities' employees whose mother tongue is Swedish and who represent the majority of email senders to the government offices. The administration head of the government offices replied that the email addresses were registered in 1994 and at that time, it was not possible to use some letters of the Swedish alphabet (å, ä and ö), hence the use of English email addresses. This form of email addresses was also viewed as facilitating international contacts. Moreover, the Language Act came into force on 1 July 2009, the same date that Sweden presided at the Council of Ministers of the European Union. It was thus not considered appropriate in the current presidency to make any changes in Government Offices email addresses. The plaintiff rejected this justification by stating that other Nordic countries solved similar problems they had with letters of their alphabet without using English email addresses. *Språkförsvaret* representatives also pointed out that it was possible to have Swedish and English email addresses in a parallel way for the same recipient.

The Language Act doesn't ban authorities from having email addresses in foreign languages. Nevertheless, according to the JO, the interest to use another language outside the core domain must always be weighed against the public responsibility for the Swedish language use and development. This responsibility must be dependent *inter alia* from the role and position of authority. Exemptions from the Language Act's requirements must be justified on objective grounds and not go beyond what is necessary in a particular case. Although an

email address worded in English can be difficult for those who do not speak English and want to communicate with an agency, the difficulty should not prevent the individual from using Swedish in their dealings with authorities. Whereas the justification given by the administration head of the government offices according which the use of another language may seem convenient or rational, the JO considered it as not sufficiently grounded, and the use of email addresses in English only at Government Offices was deemed not compatible with the Language Act. While the JO recognizes that international contacts in Government Offices' activities can be facilitated by the use of email addresses in English, he also uses the plaintiff's argument according to which the majority of email senders to the government offices are Swedish nationals. Considering "the unique position" of Government Offices in the Swedish state and society, the use of English-language email addresses is not consistent with the specific responsibilities imposed on the State authorities for the use and development of the Swedish language. To some extent, the use of English could appear as contradictory to the government's statement, i.e. the important role entrusted to public authorities to give a clear signal that Swedish is the common language in society. Finally, the Swedish government adopted Swedish email addresses in 2012, but it is still possible to address emails using the English email address, which are still the primary address for the Foreign Office Department and foreign missions.

It is interesting to note that before the introduction of the Language Act, the JO had already criticized another government office for its use of English (Justitieombudsman 2007). During an inspection at the design and trademark department of the Swedish Patent and Registration Office (*Patent- och registreringsverket* or PRV) in 2006, it appeared that, in some cases, decisions related to international trademark registration were written in English. Representatives of PRV indicated that in cases where the applicant does not have Swedish as his/her native language, decisions are written in English as a service action towards the applicant. At that time, there was no provision stating the compulsory use of Swedish at public authorities. However, the existing rules in the Constitution (Riksdagen 2012a) and the Fundamental Law on Freedom of Expression (Riksdagen 2012b) about the public attendance of acts and hearings entailed the obligation for public authorities and courts to use Swedish. The JO also pointed out that the interpretation system indirectly incorporates the idea that Swedish is the language used in

practice. Hence, official documents such as trademark registrations should be written in Swedish and be translated in English if needed.

4.3 English in the business/trade field

Three complaints were presented to the JO against the commune of Stockholm in 2010 (Justitieombudsman 2010a, 2010b, 2010c). The commune was accused for its widespread use of English, and more precisely for the adoption of several English appellations such as 'Stockholm - The Capital of Scandinavia' to greet visitors on all transport links heading into the city, 'Stockholm Business Region' for the Stockholm Economic Development Agency (*Stockholms Näringslivskontor*), 'Stockholm Visitors Board' by the Tourism Office as well as the designation of a Stockholm area, *Globenområdet*, as 'Stockholm Entertainment District'. According to all three complaints, Stockholm commune was not respecting the Language Act when using these appellations in English.

In these three cases, the JO considered that it is possible to discern two distinct points of reference in the Language Act provisions on the status of Swedish. The first point is that Swedish is what can be termed as the language for public administration and should hence be used in the core domain. This rule is mandatory, meaning that no other language can be used. The core domain covers procedures and acts that are of particular importance in the public sector, such as the policy making process, court proceedings, judgments, minutes, resolutions, regulations, reports and other documents of a similar nature. The second point is that Swedish as the principal language should be used in all domains of society. Outside the core area the regulation is intended to be flexible. The general rule is that Swedish should be used, but the provisions of the Language Act don't include a general prohibition for the public to use languages other than Swedish outside the core domain. In the pre-draft document, the government mentioned the need for action to protect Swedish as the main language, but this need may shift between different sectors of society. It is therefore not possible that the Act clearly stipulates what the responsibility of protecting the Swedish language implies (Prop. 2009). Authorities and other public bodies, where the need for action may be, should however, ponder about their activities and identify how they can live up to the responsibility to protect Swedish as the main language (Justitieombudsman 2010a, 2010b, 2010c).

According to the JO, the reported complaints fall outside the core domain and are hence subject to different assessments. Against

this background and taking into account that it was not the legislature's ambition to regulate in detail the authorities' use of language, the Ombudsman considered that there were no sufficient grounds to criticize Stockholm municipality for the use of English expressions. If no action was to be taken, the municipality of Stockholm was to receive a reminder that the Language Act requires the special responsibility of the public for the use and development of Swedish. The same arguments and decisions were reached in three other cases. A complaint was made by the Language Defence Network against the Swedish Civil Aviation Administration's use of the English appellation "airport" instead of "flygplats" in Swedish (Justitie Ombudsman 2010d). Another complaint was made by an individual against the decision of the commune of Jonköping to also use the English term "airport" instead of the Swedish one (Justitie Ombudsman 2010e). Finally, the municipality of Kristianstad was criticized for the adoption of an English expression, "Spirit of food", as trademark (Justitie Ombudsman 2010f). These three cases were also dismissed by the JO.

The above-mentioned cases point to a differentiation of state intervention, where the (ideological) principle of decision-making process at the local level intervenes. It means that communal decisions related to the business-oriented promotion of Swedish regions are not considered as part of the core domain. Moreover, these cases illustrate the importance given to the international image of Sweden in the trade/business domains *vs.* the importance of social cohesion advocated through the use of Swedish. It is important to mention here that Swedish industrial companies became internationalised – or dependent on other countries – at an early stage and thus became multinational. This was presented as a strong incentive for internationalising higher education, which explains the hegemony of English in this domain, as presented earlier (Cabau 2011, 54).

4.4 The impact of the new language legislation for minority languages

With the 2009 Minority Act, the number of communes in the administrative area for Sami drastically increased (from 4 to 17), and after the introduction of the Language Act in 2009, two more communes successfully applied to be part of this area (Krokom in May 2010 and Dorotea in January 2012, respectively in the centre and northern part of Sweden). The same applies for the Torne Valley Finnish area: whereas the Minority Act did not increase the number

of communes (5) included in the Meänkieli administrative area, a sixth commune (Kalix in February 2011) was integrated. But it seems that it is the Finnish community that has a stronger demand for the recognition of linguistic rights: whereas 23 communes were part of the administrative area for Finnish after the Minority Act, there are now 48.

Most of the complaints related to minority language rights are addressed to the Ombudsman for Equality (DO) and concern failings related to Sami linguistic rights, such as shortcomings in mother tongue teaching in pre-school and school (Öst 2012), as well as a lack of information in the Sami language when dealing with authorities (Pikkarainen & Brodin 2008). For example, the municipality of Vetlanda was accused of discrimination by the DO, since two Finnish Roma children were denied the right to mother tongue instruction in Finnish and Romani on the grounds that there was "no suitable teacher" to provide such instruction (Diskrimineringsombudsman 2009). The case was finally dismissed by the district court (Eksjö Tingsrätt 2010). Once again, it seems that the decision-making power at the communal level prevails, even if public education is part of the core domain.

The Swedish government is aware of the fact that minorities only use to a limited extent their language in contact with authorities and courts (Prop. 2008/09:158, 171ff), and stated "the actual increase in the use of minority languages in dealings with both authorities and courts has been limited. The decisive obstacles […] lie in the attitudes and values attaching to use of language in contacts between officials of the authorities and the language user. Linguistic, psychological and socioeconomic factors have meant that individuals have chosen to use Swedish in contacts with the authorities" (Regeringskansliet 2007: 36). Possible reasons behind this fact could be "deficient information about the legislation or deficient skill in minority languages by the staff. But individuals may also hesitate to use their language in contact with the authorities due to linguistic factors, such as lack of administrative terms, inability to express oneself in written communication in the minority language, or fear that the authority person will not understand" (Ekberg 2011: 90).

In October 2013, the Swedish Parliament approved a Government Bill entitled 'Tolkning och översättning i brottmål' (*Interpretation and Translation in Criminal Proceedings*) (Government Bill 2012/13: 132) introducing more stringent rules in the Swedish Code of Judicial Proceedings for the provision of interpretation at court meetings or police hearings when the person

suspected or accused of a criminal offence does not have a good command of Swedish. This amendment means that courts and criminal investigation authorities are also obliged to translate certain documents in criminal proceedings. The new rules also include the NMLs and apply to all courts in the country. The amendment aims at implementing the European Parliament and Council Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (Council of Europe 2013: 44-45). The Minority Act has, however, not been amended so that the right to use Sami in courts has been extended to the entire administrative area only. The assessment was that an extension outside the administrative area would mean an increase in costs and practical difficulties, whereas this option would only be used to a limited extent. For these reasons, it was concluded that it was more important to strengthen Sami within areas of society other than the court system (Council of Europe 2013).

Nevertheless, Swedish authorities are concerned over complaints about ethnic discrimination, among which failings related to Sami linguistic rights are recurrent (Pikkarainen & Brodin 2008:16). The lack of action on the part of government and municipal authorities makes the Sami feel they are "a nuisance", and their claims of linguistic rights are often confronted with "ignorance, prejudice and negative conceptions" (Pikkarainen & Brodin 2008:29). For example, the Krokom municipality became part of the administrative district for the Sami languages, as a result of a complaint from a Sami village for inadequate dialogue between the Sami and the municipality. Nevertheless, we can ponder whether the growing interest in minority language issues and activities will be accompanied with a higher number of complaints about language rights. In fact, we can already observe a growing demand in kindergarten, compulsory schools and elderly care service in NMLs. It also seems that municipalities reply positively to complaints against social services not offering services in Finnish, Meänkieli or Sami speakers to national minorities' members (Öst 2012). Most Swedish municipalities have implemented some form of surveys of the needs of each minority language in the areas of preschool, elder care, information, case management, etc. The surveys are providing understandably different results in the different municipalities, but generally they point to an increased demand for preschool activities and elderly care, but demand is low in terms of case management and other communications with the local authority (Länsstyrelsen i Stockholms län och Sametinget 2013: 9). Nevertheless, representatives of NMs addressed a letter to the Advisory Committee

of the Framework Convention and the Expert Committee of the European Charter in which they report "the continued negative development and lack of initiatives in Sweden" in the implementation of minority rights (Peura, Jokirinne, Hjorth, Törmä, Partapuoli, Szajderman-Rytz 2014). They complain among others about the minimalistic interpretation and hence, the need for clarification of the Minority Act stating that if requested "the municipal authority shall offer a child whose parents or guardians so request a place in the pre-school activity where the whole or *a part* of the activity is carried out in Finnish, Meänkieli or Sami as appropriate" and "The municipal authority shall offer a person who so requests the possibility of receiving the whole *or a part* of the service and care which is offered within the framework of the care of the elderly by staff who have a command of Finnish, Meänkieli or Sami".

It seems then that the Language Act together with the Minority Act sent a strong signal to territorial minorities as the Swedish government's intent to enhance their linguistic rights. And the minorities have used this positive development to present further requests in that domain.

5 Concluding remarks

Whereas Swedish decision-makers have long been reluctant to legislate language issues, the ratification of the *Framework Convention for the Protection of National Minorities* and the *European Charter for Regional or Minority Languages* paved the way to the official recognition of the five NMLs in 2000 and the 2009 Act on National Minorities and National Minority Languages. This led NM representatives to require more extensive measures for the protection and preservation of their languages. In some parts of the country, we can observe a linguistic revitalization. Nevertheless, implementation problems and complaints are regularly reported by NM representatives, particularly from the Sami and Finnish minorities. Various reports point to non-respect of linguistic rights, not the least in the field of education, and more precisely as for mother tongue instruction for national minority pupils. Hence, we may consider that there is still a long way to go to achieve operational institutionalization of NMLs in Sweden.

The 2009 Language Act may be regarded as the recognition of a problematic situation and the reply to recurrent concerns about the position of Swedish and English in Sweden. External pressure is also to be found here as for the use of Swedish *vs*. English under the form of economic/business interests, which are considered as not

belonging to the core domain. Furthermore, the observation of the application of the Language Act in different spheres highlights the specificity of higher education as a domain. In fact, it appears as a hybrid domain combining public interests with obligation of the use of Swedish in the administrative sphere together with international interests (in teaching and research) enhancing the importance of English. This hybridity was not found in other domains, such as the governmental sphere or the trade/business sphere, where the clear cut was observed as for the use of Swedish and English. This means that the 2009 Language Act asserting Swedish as the principal language of the country will have little impact on the overwhelming importance of English in the field of research and teaching as well as in the business sector. In these fields, English represents a market value as a mode of communication and is an integral part of Swedish linguistic culture. The Swedish experience hence highlights the difficult position of enhancing linguistic diversity and fighting against discrimination while trying to preserve social cohesion through the use of a common language.

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Achieving Credibility in Quasi-Judicial Discourse: A Genre Analysis Approach to the Report of the Commission of Enquiry into Post-election Violence in Kenya

Daniel Ochieng Orwenjo

Abstract: This paper assesses the strategies used to achieve credibility in written judicial discourse by analysing the Report of the Commission of Inquiry into Post-election Violence in Kenya. It is argued that Commission of Inquiry Reports, as texts, essentially constitute distinctive genres with particular defining characteristics. One such characteristic which sets them apart from other related genres-other types of reports-is the fact that Commission of Inquiry Reports have an inherent credibility and acceptability test since the authors would expect the stakeholders and other people that the report touches on to believe, accept, adopt, and implement its findings. Genres are conceived of as texts constituting particular conventions of content (such as themes or settings) and/or form (including structure and style) which are shared by the texts which are regarded as belonging to them. The paper concludes that the report of the commission adopts certain linguistic and formal strategies in an effort to achieve credibility but fails in this endeavour due to certain extraneous factors.

Keywords: Commission of Inquiry; Genre Analysis; Kenya

1 Introduction

Violence has been a part and parcel of Kenya's electoral processes since the restoration of multi party politics in 1991. However, the violence that shook Kenya after the 2007 general elections was unprecedented. It was by far the most deadly and the most destructive violence ever experienced in Kenya. Also, unlike previous cycles of election related violence, much of it followed, rather than preceded elections. The 2007-2008 post-election violence was also more widespread than in the past. It affected all but 2 provinces, led to more than 1,500 deaths and was felt in both urban and rural parts of the country. Previously violence around election periods concentrated in a smaller number of districts mainly in Rift Valley, Western, and Coast Provinces.

This paper analyses the report of the Commission of Inquiry into Post Election Violence, henceforth referred to as the Waki Report (named after the commission chairman), by examining the strategies that were used by the writers of the report to make it more acceptable and credible to the appointing

authority, the people of Kenya, stakeholders, and the world at large. The paper adopts a genre analysis approach to its treatment of the report by putting forward the argument that such reports essentially constitute distinct and specific genres. Due to the circumstances that led to it, the scope of its mandate, the legal and constitutional significance of its findings, the historical nature of the disputed elections that led to the creation of the commission that produced it, and the unprecedented international attention that the proceedings of the commission attracted, the Waki report has arguably the highest need for credibility and general acceptance in comparison to other previous such reports in Kenya, some of which were never even made public. It is from such a premise that the present paper examines how the Waki report set out to satisfy such a high credibility requirement.

The most recent study of Kenya's judicial discourse that readily comes to mind is that by Obiero Ogone (Ogone & Orwenjo 2008). The study is similar to the present one in the sense that if also focus on a commission of inquiry, namely the Goldernberg Commission of Inquiry of 2003. The study is, however, different from the present work due to its focus on the analysis of the rhetoric that characterised the proceedings of the commission and how such rhetoric inherently puts the cross-examinee at a disadvantaged position with regard to the manner the evidence is adduced and how such evidence determines the final report of the commission. Secondly the present study departs from that of Ogone by focusing on the product rather than the process of deliberations of a commission of inquiry. Ogone puts the type of discourse that takes place during the proceedings of a commission of inquiry under the label of "judicial discourse" but fails to state what such a discourse entails. This serious omission leaves readers not yet familiar with legal or judicial discourse guessing on their own what it could entail.

2 Analytical Framework: Credibility, Ethos and Metadiscourse

Credibility can be defined as believability. Scholars of credibility use two points to help clarify the construct of credibility. The first groups (Fogg & Tseng 1999) describe credibility as a perceived quality; it does not reside in an object, a person, or a piece of information. Therefore, according to Petty and Cacciopo (1981) and Self (1996), in discussing the credibility of any report or document, one is always discussing the perception of credibility. Second, other scholars (Gatignon & Robertson 1991; Buller & Burgon, J. K 1996) agree that credibility perception results from evaluating multiple dimensions simultaneously. Most researchers have identified "trustworthiness" and "expertise" as the key components of credibility. Trustworthiness is defined as a quality of being well-intentioned, truthful, and unbiased. Rhetoricians in ancient Greece used the term *ethos* to describe this concept. The expertise dimension of credibility refers to the perceived

knowledge and skill of the source. From a linguistic standpoint, the concept that explains credibility is metadiscourse. The term has been used by several discourse analysts (Vande Kopple, 1985; Crismore, Markannen & Steffensen, 1993; Hyland 1998a) as a way of understanding language in use, representing a writer's or speaker's attempts to guide a receiver's perception of a text. Hyland (2005) borrows the Greek rhetorical concept *ethos* to explain credibility within the broader linguistic concept of metadiscourse. Taking into account that metadiscourse is concerned with the purposes of the speakers and writers because it allows them to project their interests, opinions and evaluations into a text, it can be argued that it pursues persuasive objectives aimed at enhancing the credibility and acceptability of a text. It therefore has convergence points with rhetoric, the art of persuasion from which the concept of *ethos i*s derived.

Ethos deals with the character of the speaker and his or her credibility. According to Hyland (2005), the aspects of metadiscourse that contribute to credibility in a company are boosters, engagement markers, hedges, self mentions and evidentials. Boosters are lexical items such as *clearly, obviously* and *demonstrate,* which allow writers to close down alternatives, head off conflicting views and express their certainty in what they say. Hyland (1999) notes that boosters suggest that the writer acknowledges potentially diverse positions but has chosen to narrow this diversity rather than enlarge it with a single confident voice.

Engagement markers are devices that overtly address readers, either to focus their attention or include them as discourse participants (Hyland 2005). They acknowledge the need to adequately meet reader's expectations of inclusion and disciplinary solidarity, addressing them as participant's in argument with reader pronouns (*you, your, inclusive we*), interjections (*by the way, you may notice*), imperatives (*see, note*) and questions. Hedges are devices such as *possible, might, perhaps* and *about* which indicate the writer's decision to recognize alternative voices and viewpoints and so withhold complete commitment to a proposition (Hyland, 2005). They emphasize the subjectivity of a position by allowing information to be presented as an opinion rather than a fact and therefore open that position to negotiation.

Self-mentions indicate the extent of explicit author presence in the text measured by the frequency of first-person pronouns and possessive adjectives (*I, me, mine, exclusive we, our, ours)*. Evidentials are metalinguistic representations of an idea from another source which guide the reader's interpretation and establish an authorial command of the subject (Hyland, 2005). The function performed by evidentials is "to indicate the source of textual information which originates outside the text" (Hyland 1998: 443).

3 Defining Genres and Genre Theory

The word *genre* comes from Latin word, *genus*, meaning 'kind' or 'class'. The term has been widely used in rhetoric, literary theory, media theory, and more recently linguistics, to refer to a distinctive *type* of text. Robert Allen notes that 'for most of its 2,000 years, genre study has been primarily nominological in approach and typological in function. That is to say, it has taken as its principal task the division of the world of literature into types and the naming of those types - much as the botanist divides the realm of flora into varieties of plants' (Allen 1989: 44). There is often considerable theoretical disagreement about the definition of specific genres. 'A genre is ultimately an abstract conception rather than something that exists empirically in the world', notes Jane Feuer (1992: 144). Carolyn Miller, on her part, suggests that 'the number of genres in any society... depends on the complexity and diversity of society' (Miller 1984, in Freedman & Medway 1994: 36). Swale (1990: 54), on the other hand, has argued that "how we define a genre depends on our purposes; the adequacy of our definition in terms of social science at least must surely be related to the light that the exploration sheds on the phenomenon". And yet, Gunther Kress defines a genre as 'a kind of text that derives its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes' (Kress 1988: 183). This minefield that is the definition of the term "genre" has undoubtedly spilled into the theoretical realm of genre and genre analysis. Stam (2004: 14) seems to acknowledge this when he remarks:

> A number of perennial doubts plague genre theory. Are genres really 'out there' in the world, or are they merely the constructions of analysts? Is there a finite taxonomy of genres or are they in principle infinite? Are genres timeless Platonic essences or ephemeral, time-bound entities? Are genres culture-bound or transcultural? ... Should genre analysis be descriptive or proscriptive? (Stam 2000: 14)

As might be expected, such theoretical landmines have not done much to dissuade scholars from theorising on genres. In fact the effect has been to provide motivation for scholars to postulate theories and counter theories regarding genre and genre analysis. Two main theoretical orientations have emerged: Contemporary theorists tend to describe genres in terms of 'family resemblances' among texts (a notion derived from the philosopher Wittgenstein) rather than definitionally (Swales 1990: 49). An individual text within a genre rarely if ever has all of the characteristic features of the genre (Fowler 1989: 215). The family resemblance approaches involves the theorist illustrating similarities between some of the texts within a genre. However, the family resemblance approach has been criticized on the basis that 'no choice of a text for illustrative purposes is innocent' (David Lodge, cited in

Swales 1990: 50), and that such theories can make any text seem to resemble any other one (Swales 1990: 51).

In addition to the definitional and family resemblance approach, there is another contemporary approach to describing genres which is based on the psycholinguistic concept of prototypicality. According to this approach, some texts would be widely regarded as being more typical members of a genre than others. In this approach certain features would 'identify the extent to which an exemplar is prototypical of a particular genre' (Swales 1990: 52). Genres can therefore be seen as 'fuzzy' categories which cannot be defined by necessary and sufficient conditions. The prototypical approach to genres lacks in theoretical depth since it fails to clearly establish the criteria for determining what constitutes a "prototype", to which others should be compared. Failure to clearly define genres in this way makes it difficult to classify texts as belonging to a genre or to identify new genres based on texts encountered.

The other main theoretical orientation to genre and genre analysis has been the interpretive approach to genre analysis. Foremost among the interpretivisits is Gunther Kress, who defines a genre as 'a kind of text that derives its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes' (Kress 1988: 183). An interpretative emphasis on genre as opposed to individual texts can help to remind us of the social nature of the production and interpretation of texts. In relation to film, many modern commentators refer to the commercial and industrial significance of genres. Denis McQuail argues that:

> The genre may be considered as a practical device for helping any mass medium to produce consistently and efficiently and to relate its production to the expectations of its customers. Since it is also a practical device for enabling individual media users to plan their choices, it can be considered as a mechanism for ordering the relations between the two main parties to mass communication. (McQuail 1987: 200)

The present study adopted a middle ground; borrowing certain aspects which were deemed relevant for the present study from the two camps. Thus Commission of Inquiry Reports are conceived of as both representative of other related quasi-legal reports and documents, which together are considered to constitute a single family, and prototypical members of such a family. Such reports will also be considered to be deriving their forms from the structure of the judicial event that leads to them-that is the commission of inquiry-with its attendant participants and purposes. Thus, in looking at the Waki Report, this paper seeks to determine how its contents, form, and language are reflective of the judicial event which created it, including the

participants, the purposes and goals, and the social significance of such an event. Secondly the report will be analysed with a view to determining the extent to which it adheres to the structural, linguistic, and pragmatic features of the genre family to which it belongs. These will then be related to the credibility of the Waki report by examining how such features which make it representative of a given genre were exploited by its authors to make it achieve credibility.

4 Commission of Inquiry Reports as Genres

One of the main arguments of the present contribution is hinged on the premise that commission of inquiry reports are constitutive of specific genres and having other related genres, both of which have specific defining characteristics. Yet, on what basis are we to make this assumption? What defines commission of inquiry reports as specific genres? And what are the other related genres? Within the theoretical frameworks adopted in this paper, that is the interpretive and the family resemblance approaches to the study of genres, an attempt is made here to argue out the fact that commission of inquiry reports, such as the Waki report, are constitutive of genres.

As mentioned previously, an interpretive approach argues that specific genres derive its form from the structure of a (frequently repeated) social occasion, with its characteristic participants and their purposes. Therefore, it seeks to establish the occasions and participants that uniquely lead to the production of a text, and the structure of the text so produced. On the basis of these three parameters, the text is then assigned to a specific genre. The other theoretical model adopted in this study, the family resemblance approach, seeks to assign texts to particular genres based on perceived resemblances that it has with other texts within the genre family. In sketching out the generic niche of commission of inquiry reports, these two theoretical approaches to genre are combined to produce a unified framework within which the defining generic characteristics of such reports. Accordingly, the formal characteristics of commission of inquiry reports will be, on the basis of the interpretive approach, first established. These will then form the basis of demarcation and assignment of commission of inquiry reports constitutive of specific genres.

As texts, commissions of inquiry reports have certain distinctive characteristics which set them apart from other related documents. Other texts that are related to commission of inquiry reports include task-force reports, reports by fact-finding missions and general organisational and government policy reports. Among the characteristics that commission of inquiry reports share with other reports is the nature of their authorship, all such reports being products of collective authorship by a group of persons, normally answerable to an appointing authority or institution, and arriving at the content of the report after lengthy deliberations. Commission of inquiry

reports being quasi-judicial, differ in one aspect of authorship, namely that one part of the participants in the processes of its authorship are normally witnesses or people under some sort of suspicion.

One other common feature shared by commission of inquiry reports is the fact that such reports may or may not be made public, depending on the nature of the appointing authority of its authors, the sensitivity or otherwise of the subject matter it deals with, the nature and scope of its mandate, and the nature and implications of its findings. Finally, most reports, including commission of inquiry reports, usually anticipate some form of action arising from its findings and recommendations. Whether the report is acted on is, however, normally dependent on the goodwill of the appointing authority and the implications of its implementations. Most reports have definite structures, being divided into various sections on the basis of some logical necessity and depending on the contents therein. As genres, there are however certain common divisions that are likely to be found in all reports: an introduction giving the background and the mandate of the commission which authored the report, a section on the methods used to gather information, findings, recommendations, and in most cases a series of appendices. With respect to commission of inquiry reports, given the fact that they are products of quasi-judicial bodies which, in many countries like Kenya, operate under an act of parliament or some sort of legislation, the introduction is almost always likely to contain a clause indicating where the commission draws its legal mandate and the date and the announcement of the commission. In case of Kenya, the announcement would normally be in a Kenya Gazette supplement.

Commission of inquiry reports, however, have certain defining and distinctive characteristics that set them apart from other reports and therefore justifying the position that they are, indeed, constitutive of genres in their own right. In terms of authorship, as has been mentioned earlier, commission of inquiry reports are unique by the fact that the process which leads to their being authored involves persons who give evidence under oath. Some of these persons are usually people under investigation who are, in fact, the subject of the inquiry, while other witnesses are normally called to throw more light on the issues under investigation. A commission of inquiry also has investigators who are charged with finding out the truths and facts under investigation and summoning various witnesses to come and testify before the commission and assisting counsels whose role is to advise on the interpretation of the commission's terms of reference and on the appropriate procedures for the conduct of the inquiry, and to ensure that all the evidence is brought before the Commission and that the proceedings are conducted in a fair and balanced manner. These aspects regarding the membership of the commission and the participation of such membership in crafting the report cut out commission of inquiry reports as a distinct genre.

Commission of inquire reports are also unique as genres by the fact that a very high capital is often placed on their acceptability, not only by the appointing authority of the commission, but also by the general public and other stakeholders. This is due to the fact that unlike other reports, commissions of inquiry are normally formed to investigate issues of intense public interest and the resultant reports normally attract greater public scrutiny and attention. Secondly, as has been pointed out earlier, the recommendations of a commission of inquiry report are always expected to attract some implementation of sorts. Whether that implementation takes place and the form it takes depends largely on how credible and acceptable to the stakeholders involved. In Kenya for instance numerous significant commission of inquiry reports such as the Akiumi Commission and the Goldenberg Commission have never been put in the public domain, let alone implemented. Although the reason for non-implementation of the recommendations of commission of or the refusal to make public the findings contain in such reports is never explicitly stated, it is normally understood that political expediency, especially in cases where far reaching political decisions have to be made with equally far-reaching implications, is normally the underlying cause. When the contents of a commission of inquiry report are not made public or are not implemented, the reason is almost always an issue of credibility and acceptability- that what is contained therein is not deemed credible or acceptable enough by the powers that be.

One last characteristic of these reports, that makes them constitute distinctive genres, has got to do with their history-the circumstances that make their authorship necessary. Unlike many other types of reports, commission of inquiry reports are unique in terms of how they come into being. Organisational and other policy reports are usually not investigative in the legal sense of the word; on the contrary they are mainly explorative, meant seek ways of improving certain aspects of the organisation or the body concerned or to seek possible ways of tackling a problem at hand. On the other hand, commission of inquiry reports are normally options of last resort, in cases where proper judicial procedures are precluded due to a dearth of incriminating facts. The very fact that a commission of inquiry is formed to look into a subject matter implies that there are no enough facts about the issue at hand to warrant prosecution, so that the authorities concerned can study the report of the commission with a view to finding out if there is sufficient evidence to warrant prosecution of certain individuals. Indeed, as with the Waki and other commission of inquiry reports one of the major recommendations is normally that certain persons should face prosecution. Thus, commission of inquiry reports, as genres, are both products of a quasi-judicial process and raw products of a judicial process proper. The quasi-judicial process is set in motion due to lack of facts upon which a judicial one

should be commenced and the commission of inquiry report acts as a bridge between the two. This makes such reports largely transitory in nature.

5 Commissions of Inquiry as Quasi-Judicial Bodies

A quasi-judicial body is an entity which has powers and procedures resembling those of a court of law or judge, and which is obligated to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Such actions are able to remedy a situation or impose legal penalties, and may affect the legal rights, duties or privileges of specific parties. The Waki Commission met all these defining criteria for quasi-judicial bodies just as it enjoyed quasi-judicial powers. A quasi-judicial power refers to the power vested in the commissions established by law, administrative officers, or bodies to determine the rights of those who appear before it. A quasi-judicial power has been described as the power or duty to investigate and to draw conclusions from such investigations. In Perdue, Brackett, Flores, Utt & Burns v. Linebarger, Goggan, Blair, Sampson & Meeks, L.L.P., 291 S.W.3d 448 (Tex. App. 2009), the court observed that "Texas courts have recognized six powers relevant to the determination of whether a body possesses quasi-judicial power: (1) the power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) the power to enforce decisions or impose penalties." Once again, it is paramount to note that the Waki Commission qualified as a quasi-judicial body as per the decision of the Texas court.

Two other points about quasi-judicial authorities need mentioning: Typically, quasi-judicial bodies can make a decision that then becomes legally binding, unless appealed. At the point where an appeal takes place, the case often moves into a traditional court system. The judge, in such cases, may not be in the role of the assessing the facts of the case in particular, but rather simply be charged with determining whether the quasi-judicial entity made a decision it had the authority to make, and was within the confines of the law and any administrative rules. Secondly, quasi judicial bodies all have some specific mandate and the nature and extent of their powers depends on the nature of their mandate. Generally, such bodies will be under the supervision of courts only when their actions are taken in excess of their jurisdiction, or violate rules of natural justice or are taken in bad faith and which bad faith must be demonstrable. Their mandate and the scope of their actions will thus vary based on the task ahead of them. Thus, some quasi-judicial bodies may be inquisitorial while others may be adversarial in nature.

6 Background to the Commission of Inquiry

A commission of inquiry is a quasi-judicial body established to inquire into matters of major public importance to the government of the day. In Kenya, commissions of inquiry operate under the Commissions of Inquiry Act (Chapter 102, Laws of Kenya). The Act sets out the legal requirements under which all commissions must act. In particular any commission must act within its terms of reference and ensure that its processes are within the law. The Commission of Inquiry into Post-election Violence in Kenya, henceforth CIPEV was set up by, the President of the Republic of Kenya, H.E. Mwai Kibaki through a Kenya Gazette Notice No.4473 vol. cx-no.4., and was a product of negotiations in the Kenya National Dialogue and Reconciliation process, established under the auspices of the African Union (AU) to begin a process of dialogue and reconciliation following the stalemate, chaos and ethnic killings which rocked Kenya following the disputed 2007 general elections. The Kenya National Dialogue and Reconciliation process was spearheaded by an AU appointed Panel of Eminent African Personalities lead by former UN Secretary General Dr Koffi Annan, other members being former Tanzanian President Mr Benjamin Mkapa and former South African and Mozambiquean First Lady; Graca Machel. Other members of the Kenya National Dialogue and Reconciliation committee were appointed by the two feuding Kenyan political parties namely Orange Democratic Movement (ODM) and the Party of National Unity (PNU). The negotiators agreed on the parameters of the Commission on March 4, 2008. Although CIPEV is established by presidential appointment, it is independent.

CIPEV's terms of reference were published by His Excellency President Mwai Kibaki in the Kenya Gazette on May 23, 2008. The life span of the Commission was three months after which the Commission's final report was to be submitted to the President and to the Panel of Eminent African Personalities. Due to the enormity of its work and the wider scope of its mandate the Commission was granted only a 30 day extension, published in the Gazette Notice no. 7288 Vol. CX – no. 67 dated 12th August 2008. Subsequently, the Commission received another two week extension for the purpose of preparing this report through Gazette Notice No. 8661 in Vol CX – 74 dated 12th September 2008. As per its terms of reference, CIPEV was set up to investigate the facts and circumstances related to the post-election violence in Kenya and investigate the actions or omissions of state security agencies. CIPEV was also expected to make recommendations to prevent a repetition of electoral violence in the future, measures to bring those responsible for violent acts to justice and eradicate impunity and measures to promote national reconciliation in Kenya. CIPEV was also supposed recommend other legal, political and administrative measures to address the issues of violence CIPEV and, where appropriate, make recommendations to the Truth Justice and Reconciliation Committee.

CIPEV had three members of the Commission: Philip Waki (Chair, Judge of Appeal, Kenya), Gavin McFadyen (Member, New Zealand) and Pascal Kambale (Member, Democratic Republic of the Congo). The Secretary to the Commission was George Kegoro (Kenya) and CIPEV's Counsel Assisting was David Shikomera Majanja (Kenya). All were sworn in by the Chief Justice of Kenya on June 3, 2008. The Chair was proposed by the National Dialogue and Reconciliation negotiating team. The two international members were identified by the Panel of Eminent African Personalities following consultations with the Kenya Dialogue and Reconciliation negotiation team. The Panel consulted with various international organisations whose areas of expertise cover the issues dealt with by the Commission.

The Commission was funded by the Government of Kenya and from the Trust Fund for the Kenya National Dialogue and Reconciliation which received contributions from Norway, United Kingdom, Sweden, Denmark, France, USA, Finland and the European Union. The Fund was managed by the United Nations Development Programme (UNDP), and administered on the basis of regular UN guidelines. The Government of Kenya has provided offices on the first floor of the Kenyatta International Conference Centre in Nairobi. The Commission may, from time to time, decide to conduct its inquiries from other locations.

CIPEV received views from members of the public with relevant information by oral testimony and/or in written form. CIPEV also held the inquiry in public, but also held private hearings in order to instil confidence in the people appearing before the Commission or to allay their fears of reprisals. Further the Commission had the discretion to determine when private hearings shall take place. It used official reports of previous investigations and carried out on its own investigations, or asked to be carried out, studies, investigations, or research in relevant areas. CIPEV also had the power to require co-operation from public offices and relevant institutions. The Commission being a quasi-judicial body did not have powers to prosecute. It would, however, recommend measures to bring persons responsible for criminal acts to justice.

7 Summary of the Waki Report

The 529 page report is very detailed with regard to its findings on the causes of post-election mayhem in Kenya and recommendations on how such violence can be avoided in future. Such recommendations touch on a wide range of issues that include institutional, legal, policy and constitutional. In this section, only a summary key recommendations is given to prepare the reader for and contextualise the analysis and discussion that is to follow.

Regarding the root cause of the violence and killings, the report pointed accusing fingers at past historical political and economic injustices, and the

exploitation and marginalisation perpetrated and perpetuated by successive regimes which were viewed by other Kenyans as favouring specific ethnic groups in terms of access and distribution of national resources and opportunities. The report observed that:

> The widespread belief that the presidency brings advantages for the President's ethnic group makes communities willing to exert violence to attain and keep power. Inequalities and economic marginalization, often viewed in ethnogeographic terms, were also very much at play in the post-election violence in places like the slum areas of Nairobi. (8)

On the extent, nature, and scale of the violence and killings, the commission also faulted the conduct of state security agencies, noting that they failed institutionally to anticipate, prepare for, and contain the violence. It further noted that "often individual members of the state security agencies were also guilty of acts of violence and gross violations of the human rights of the citizens" (8). Still on this subject the report also states that:

> One of the main findings of the Commission's investigations is that the postelection violence was spontaneous in some geographic areas and a result of planning and organization in other areas, often with the involvement of politicians and business leaders. Some areas witnessed a combination of the two forms of violence, where what started as a spontaneous violent reaction to the perceived rigging of elections later evolved into well organized and coordinated attacks on members of ethnic groups associated with the incumbent president or the PNU party. This happened where there was an expectation that violence was inevitable whatever the results of the elections.

The report notes that the violence and killings took an ethnic dimension, with attackers capitalising on deep rooted ethnic animosity and mistrust among Kenya's major ethnic communities:

> These were systematic attack on Kenyans based on their ethnicity and their political leanings. Attackers organized along ethnic lines, assembled considerable logistical means and travelled long distances to burn houses, maim, kill and sexually assault their occupants because these were of particular ethnic groups and political persuasion. Guilty by association was the guiding force behind deadly "revenge" attacks, with victims being identified not for what they did but or their ethnic association to other perpetrators. (510)

The report concludes by making recommendations for a host of legal, institutional, electoral and constitutional reforms with the most notable ones being the complete overhaul of the Electoral Commission of Kenya (ECK) and the establishment of an independent international war crimes tribunal to try the alleged perpetrators and financers of the violence.

8 Methodology

A document analysis of the entire 529 page Waki Report was conducted with a view to finding out the strategies used by the authors of the report and the commissioners to make it credible, and, therefore, acceptable to the general public and the appointing authority. More specifically, the content of Waki Report was analysed with a view to determining how its contents, form, and language are reflective of the judicial event which created it, including the participants, the purposes and goals, and the social significance of such an event. Secondly the analysis sought to establish the extent to which the Waki Report adheres to the structural, linguistic, and pragmatic features of the genre family to which it belongs. The Waki report was also examined with a view to finding out how such features which make it representative of a given genre were exploited by its authors to make it achieve credibility.

9 Results and Discussion

The analysis revealed that the Waki Report adopts certain strategies aimed at giving it a high degree of credibility and acceptability. These include structural and formal properties of the report which makes it acceptable, even at the face value, as a commission of inquiry report. As pointed out earlier, it is imperative that a report such as the Waki Report should be able to be recognised as being what it actually is, a commission of enquiry report, even at the face value, for it to gain credibility and acceptability. To this end, the report adopted a specific format that makes it easily identifiable as a member of the generic family to which it belongs-that of commission of inquiry reports.

9.1 Credibility Strategies

Overall, the analysis revealed that the report and its authors used structural strategies, ethos, and meta-discourse devices to achieve credibility and acceptability. Each of these devices is discussed in greater detail below.

9.1.1 Structural Strategies

For the Waki Report to be credible as a commission of inquiry report, and for it to be regarded as one, it is important that first and foremost, it should look like and easily be recognisable as one. The authors of the report sought to achieve credibility by adopting a structure that is consistent with and easily recognisable as not only that of a report, but a quasi-judicial report such as a

commission of inquiry report. This ensured that the Waki report, based on its structure and outlook, can easily be recognised as being what it actually is: a commission of inquiry report. To begin with, the document is logically divided into independent yet quite cohesive parts which are typical of reports in general and which gives it a recognisable logically structure normally identified with reports. To begin with, the Waki report has a list of acronyms, where all the acronyms used in the report are explained and defined. This is followed by an "executive summary" of the whole report, giving its most salient features is given. From this point onwards, the report is logically divided into logical sections each addressing a specific aspect of the findings of the commission in tandem with its mandate. Part ONE (1-20) is an introductory section outlining the background and the legal status of the commission, part TWO (21-76) traces the historical roots of the 2008 post elections violence and the attendant historical injustices. The section on FINDINGS (77-235) forms the bulk of the report and presents the findings of the commission with regard to the various aspects of its mandate and the specific causes of the mayhem. This chapter also contains the recommendations of the commission in relation to its findings. At the end comes a list of 8 appendices touching on various aspects of the report.

This structure, in which the report is divided into several sections, makes it easily recognisable and acceptable as a commission of enquiry report. This is because of the similarity of this structure to other members of this genre. This similarity is clearly seen, for instance in the appendices which are mainly legal and police documents relating to the post election violence. The logical division of the report into various chapters, sub-chapters and appendices which contain specific details regarding the post-election violence in Kenya makes the report credible and readily acceptable as being what it is- a quasi-judicial report on the post election violence in Kenya. It is worth noting that physical structure alone would not lend credibility to a report addressing a serious issue as the post-election violence in Kenya, or indeed, any other report worth its salt. What would matter most in judging the credibility and thereby, in objective terms, determining its acceptability is inevitably its contents. Yet, the physical presentation is not entirely peripheral to credibility and acceptability since if such a report were to be considered not to be representative of the genre then even the entire contents would risk being considered incredible and therefore unacceptable, even the content which could have otherwise been judged credible.

9.1.2 Ethos

As mentioned earlier, *Ethos* deals with the character of the speaker and his or her credibility. From a rhetorical explanation, it is possible for authors; in this case, the Commission of Inquiry into Post Election Violence (CIPEV) to have credibility prior to their text being read or partly related to their

reputation and expertise but must re-establish it during the course of the discourse itself. Relating the rhetorical concept to metadiscourse, Hyland (2005) explains that metadiscourse projects the personal appeals of *ethos* when it refers to the writer's authority and competence. It is therefore a means by which the commission of inquiry could project themselves into their writing to present a competent, trustworthy and authoritative persona.

The authors of the Waki Report went to great detail to exploit ethos as a strategy for achieving credibility and acceptability. To begin with, the commissioners were people perceived to be of the highest integrity, competence, and reputation. The chairman, Justcice Philip Waki is a Judge of the Kenya's Court of Appeal, the highest court in the land. In 2003 Justice Philip Waki, then a judge was suspended on judges of corruption and abuse of office alongside a dozen of other judges, in what the then Justice Minister referred to as "a radical surgery on the judiciary". These judges were given the option of resigning from the bench and getting they full dues and benefits, or facing a judicial tribunal and if found guilty being sacked summarily without any benefits which for most of them, amounted to over 25 years of service. Justice Philip Waki was one of the only six judges to opt for the risky option of facing a tribunal. He was finally cleared of all the charges levelled against him after almost 2 years before the tribunal and consequently promoted to the Court of Appeal. Two outstanding and well polished lawyers were appointed as assisting counsels to the commission. Thus, at the time of his appointment to head the CIPEV, he had a high moral standing in the country as a judge who had proved his clean track record. The other two members of the commission were foreign judges from New Zealand and Congo and had the confidence of Kenyans on account of their perceived impartiality.

By exploiting their character, credibility, authority, and competence, not only the commissioners themselves but also the appointing authorities were keen to exploit the persuasiveness of ethos to achieve the desired credibility and acceptability of the Waki Report and the process that created it. The intention here is to make the general public accept the report as credible by merely accepting the credibility of the commissioners. In this way, the credibility and acceptability of the three commissioners and the assisting counsels would be transferred to the Waki Report. Reading the introductory chapter of the report, one can easily detect a deliberate effort by its authors to enhance its credibility by touting the experience, impartiality, and the international character of its staff. Commenting on the commission's investigators and the process of recruiting them, the report, for instance, says:

> To ensure the independence of its investigators, the Commission advertised locally and internationally for these positions. For the same reason, the Commission decided that the head of its team of

> investigators should be an international rather than a local. The Commission recruited a Canadian, Robert Grinstead, for this post. Later, the Commission also recruited an international consultant, Dr. Suzanne Mueller, a political scientist. (13)

As can be seen above, there is a deliberate effort to foreground the international nature of these investigators and the professional qualifications. This can also be said about the special investigators charged with investigating rape and other sexual crimes committed against women by the police and other armed militias during the period of violence. This is what the report had to say about the two special investigators:

> In addition, the Commission also recognized the need for specialists who could investigate sexual violence. This was an important part of the post election violence and something the Commission wanted to probe comprehensively as an integral part of its mandate. The Commission, therefore, recruited two female investigators to examine sexual violence: one international, Ms. Melinda Rix of New Zealand, and another Ms. Gladys Mwariri, a Kenyan. (13)

It is clear from the above description that the report emphasises on the blend of local and international in its selection of special investigators. The idea is to show that whereas the international investigator would bring expertise and impartiality, the local one would provide the much needed expert local knowledge, ensuring a firm grasp of the local dynamics. Just as is the case with the three general investigators, the special investigators on sexual violence were selected in such a way that they provide checks and balances on each other; thus we have a blend of local knowledge, independence, and professional expertise combined.

But ethos as a credibility strategy was not exploited only by highlighting the positive qualities, qualifications, values and integrity of those recruited. On the contrary, this was also effectively exploited by a deliberate highlighting of those who would otherwise have been part of the commission's activities, but were not hired or consulted due to a perceived stain on their character or an inherent aspect of their nature that would effectively render them unreliable and partial. The most outstanding among these was the police force. The force was seen as party to the violence since they were responsible to more than half the deaths and in some parts of the country, newspaper reports indicated that all the deaths and cases of sexual violence were as a result of their high handed and overzealous reaction as they pounced on unarmed demonstrators with unrestrained force. The Waki Report, consequently, states that it was agreed that because part of the

Commission's mandate was to investigate the role and conduct of the security forces in the post election violence, none of their serving members would be eligible to apply for positions with the Commission". This is a deliberate effort by the commission to assure the public that it only engaged people or agencies that could not compromise its impartiality and professionalism. All this was aimed at making their final product-the report-credible and acceptable.

9.1.3 Meta-discourse Strategies

A reading of the Waki Report reveals that its authors made effective use of a number of meta-discourse strategies in a bid to achieve credibility and acceptability of the document. These are briefly discussed and exemplified below.

9.1.3.1 Boosters

As mentioned earlier, boosters allow writers to close down alternatives, head off conflicting views and express their certainty in what they say. Boosters suggest that the writer acknowledges potentially diverse positions but has chosen to narrow this diversity rather than enlarge it with a single confident voice. They allow writers to express certainty in what they say and to mark involvement with the topic and solidarity with readers. While they restrict opportunities for alternative voices, they also often stress shared information and group membership as people tend to get behind those ideas which have a good chance of being accepted (Hayland 2000). In the Waki Report, boosters were mainly used to channel the information and guide the reader to a certain desired line of thinking within which the information is desired to be interpreted. These are exemplified below:

> The evidence the Commission has gathered so far is not, in ***our assessment***, sufficient to meet the threshold of proof required for criminal matters in this country: that it be *"beyond reasonable doubt"*. It may even fall short of the proof required for international crimes against humanity. (41)

In the above example the booster used is "in our assessment" indicated in bold italics. This phrase allows writers of the Waki Report to close down alternatives and head off conflicting views so that they can express their certainty in what they say-that the evidence presented before the commission does not meet the minimum threshold of truth required for a criminal prosecution, and could therefore be used only as a basis for further investigations. In doing this they, in effect, acknowledge potentially diverse positions, but choose to narrow this diversity rather than enlarge it with a single confident voice. The purpose of the booster here is to enhance the

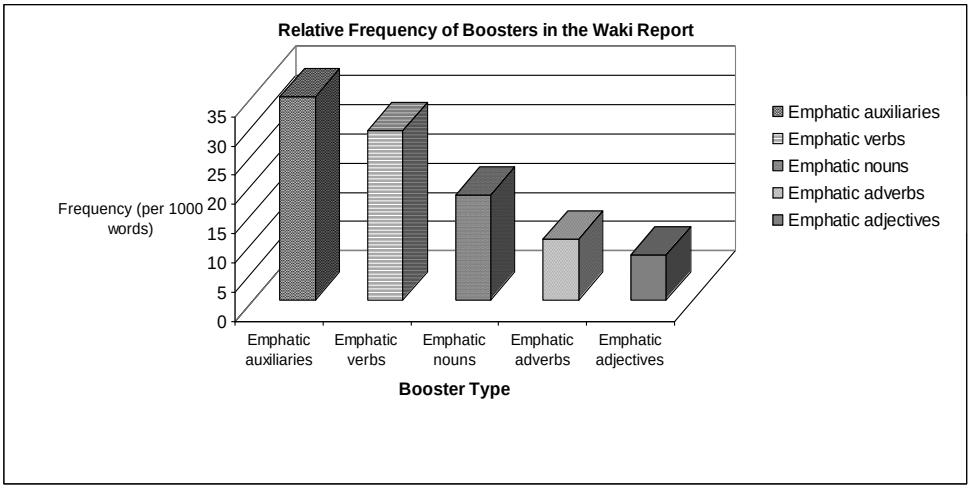
credibility of the report by anticipating and consequently warding off criticisms that may be levelled against the report and the commission for not out rightly recommending prosecution of suspected perpetrators.
Another example of a booster used in the report is with regard to how the commission came to the decision of not making the names of the alleged perpetrators and financers of the post-election violence, but rather to hand the names in a sealed enveloped to the chief mediator Dr Koffi Anan. The report uses a booster, the word "carefully" to qualify their decision and to emphasise the fact that their decision was not arbitrary.

> The Commission has ***carefully weighed*** the choices available to it and has decided against publishing the names of alleged perpetrators in its report. Instead, these names will be placed in a sealed envelope, together with its supporting evidence. (53)

The booster in this case seeks support for the decision and dissuades dissenters thereby bringing acceptability and credibility to the whole document. The authors of the report seem to be warning the reader and the general public that every decision they made was "carefully weighed" and considered and that any opposition or reservations to it should equally be carefully weighed. The last example of a booster used in the report is given in the following extract:

> We ***believe*** the recommendations of this Commission are capable of implementation and monitoring and that where there is failure to implement, accountability and responsibility can be assigned to a specific person or institution. (237)

In the example above, the booster "believe" seeks to suppress alternatives, presenting the proposition that the recommendations of the commission are capable of being implemented, with conviction while marking involvement, solidarity and engagement with the readers. In this usage of a booster, just like in the previous two cases, the authors of the report anticipate possible responses from the public but close down alternatives, head off conflicting views and express their certainty in what they say. This helps the authors in instilling confidence and trust in the public domain on the report and thereby making it credible and acceptable. In the figure below, the relative frequencies of the different types of boosters used in the report are indicated.



9.1.3.2 Hedges

Hedges, in contrast to boosters are devices such as *possible, might, perhaps* and *about* which indicate the writer's decision to recognize alternative voices and viewpoints and so withhold complete commitment to a proposition. They emphasize the subjectivity of a position by allowing information to be presented as an opinion rather than a fact and therefore open that position to negotiation. By means of hedges, the authors of the report therefore, strategically "tone down" (Lewin, 2005) their commitment to the proposition in order to comply with expectations of the reader and the general public, and thus gain credibility and acceptability of their report.

Hedges are devices which withhold complete commitment to a proposition, allowing information to be presented as an opinion rather than fact (Hyland 1998a). They imply that a claim is based on plausible reasoning rather than certain knowledge and so both indicate the degree of confidence it might be wise to attribute to a claim while allowing writers to open a discursive space for readers to dispute interpretations. The commanding, confident figure is not always the appropriate one. There are certain situations that demand that information is presented with caution, especially when the subject is as delicate and as potentially explosive as that of the Waki Report. Hedges are the most appropriate metadiscursive devices to capture such situations. In a report, the use of hedges indicates the author's decision to recognize alternative voices and viewpoints from that of other stakeholders and consequently withhold complete commitment to a proposition. Information is therefore presented as an opinion rather than a fact especially when dealing with sensitive issues or those with legal implications. Below are some excerpts from the Waki Report which illustrate how hedges were used to make the report more credible and acceptable:

> Apart from the lack of anticipation of what might follow, the testimony by the D.C. for Uasin Gishu and the OCPD for Eldoret ***suggests*** that they neither followed upon local intelligence not information they knew about. Had they taken the initiative to do so, they ***might*** have pre-empted some of the post-election violence which was experienced. (121)

In the above extract, the interactional marker *suggests* enables the authors of the report to present their argument (that they neither followed upon local intelligence not information they knew about) as an opinion rather than a fact. This enables them to achieve more credibility and acceptability for the report. The same can be said of the use of might in the sentence that follows in which the idea that "some of the post-election violence which was experienced" could have been pre-empted is presented as a viewpoint and not a fact. In these two examples, therefore, the people with opposing views are therefore somewhat persuaded that the report has not completely ignored the possibility that divergent positions on the issues raised would exist, leading to greater acceptability and credibility. In the example below, the report yet again utilises a hedge as a device for accommodating possible conflicting views, while commenting on a statement given by one of the witnesses before it.

> This statement ***suggests*** that local administration in Koibatek was not able to maintain level of political neutrality during the campaign period, a proposition similarly observed by district administration and recorded in the Minutes of the DSIC on 19 February 2008 which noted that some chiefs were partisan. (103)

Other examples of a hedge used widely in the report were adverbs such the one in the excerpt below:

> Commission investigators obtained information that one police officer (from the Rift Valley Province) was responsible for fatally shooting citizens, ***said to be*** at least five and ***possibly*** more, during the unrest following the election at the end of 2007. (408)

In the above excerpt, the use of the phrase "said to be" hedges the evidence that "one police officer (from the Rift Valley Province) was responsible for fatally shooting citizens at least five citizens" such that it provides for the possibility that there exists other opinions or facts about the evidence. It is, consequently, not presented in absolute terms, leaving room for the possibility of contradicting information or evidence. The use of the second hedge, "possibly" reinforces this perspective. These two hedges have the collective effect of making the report more credible and acceptable even to

those who might have had opposing views on some of its contents. Yet another example of hedging is evidenced here below:

> In the time available, details as to the degree and effects of injury were not made available to the Commission. ***It is possible*** that while some of the injuries ***may have been*** slight, a number of them were serious, **possibly** life changing experiences. (411)

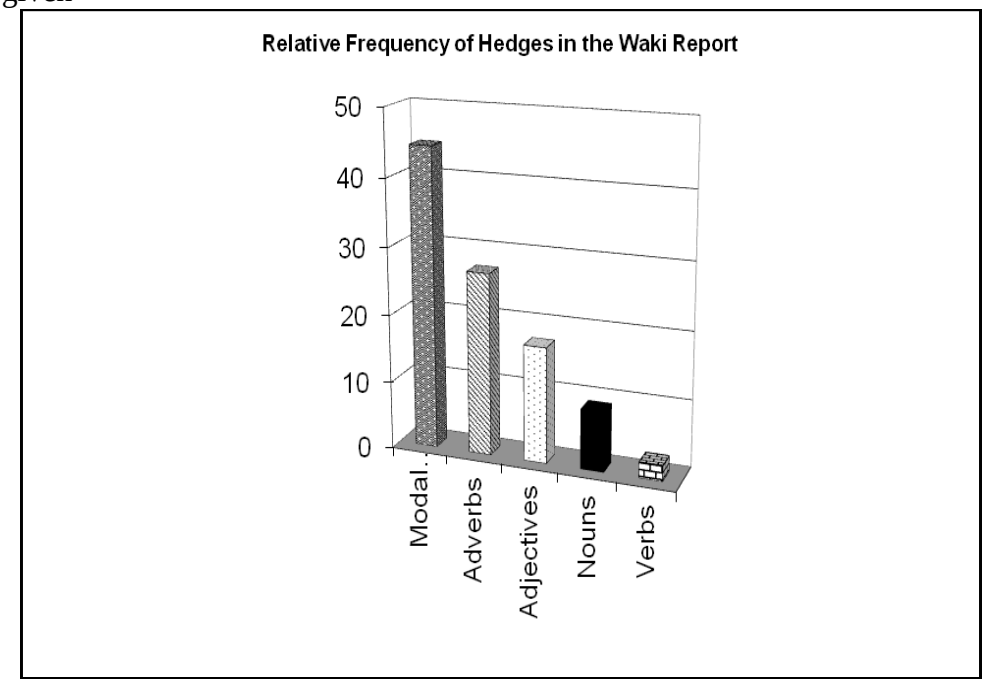
In the above example, the authors of the Waki Report do not want to commit themselves as to the nature and degree of the injuries of the victims of PEV victims. As they clearly explain in this excerpt, they were only provided with the information that there were injuries, but without an indication as to the nature and extent. They rightly point out that the time available for them to complete their work could not enable them to go into such details. Yet they remain cognisant to the fact a report of this nature would seem shallow and inadequate if the details of the nature and extent of the injuries were to be omitted completely. In order to cushion the report, and by extension, themselves from criticism, the writers employ a hedging strategy as shown above. This hedging enables them achieve credibility and ethical appeal among readers who would have others question a report on post election mayhem and violence, which does not mention the nature and extent of injuries of the victims. The example above also brings to light one critical generic property of commission of enquiry reports: that such reports are texts that result from a highly time constrained process such that unlike other genre, they rarely have the ample time to probe into everything as they ought to have. This is because commissions of inquiry, by their very nature, are time-bound entities which operate within a specified time frame. It is therefore, more often than not, the case that reports emanating from such commission usually present only the pertinent information and may not go down to the finer details.

In the example below, the Waki Report uses the hedges "seems" and "possible" when talking about the sensitive issue of preparedness of the security organs to deal with the post poll violence. The matter is considered a highly sensitive one given that it touches on the government agencies, and that the commission was also appointed by the same government. Yet, the commission was also well aware of the possible discrediting of the report by anti government agencies and NGOs who believed that the government was not well prepared to deal with the post poll chaos. In order to strike a balance, the commission therefore decided to hedge its statements relating to the preparedness of the state security agencies. As it is in the example below, they have neither said that such agencies were prepared, nor have they said that they were not. In this way, the commission sought to gain acceptability and credibility across the various divides.

Of all the State Security Agencies the NSIS was, ***it seems***, with the ***possible exception*** of the Military, best prepared. (361)

In the final example given below, the report makes use of hedging in order to make predictive statements which they clearly could not have proof of. The report would like to link the increased HIV/AIDS prevalence to the massive rape cases that occurred during the PEV, but since they do not have objective scientific proof to link the two, and thereby risking credibility loss, the report resorts to hedging in an effort to gain acceptability and credibility.

Even when victims told perpetrators (whether members of the security forces, gangs or individuals) that they were HIV positive, perpetrators chose to rape. This is ***likely*** to result in an increase in HIV AIDs in Kenya (360). In figure below, the relative frequencies of hedges used in the Waki Report is given



As can be seen in the figure above, almost half the hedges were modal auxiliaries followed by adverbs and adjectives in that order. Nouns and verbs contributed the least in terms of hedging strategies used.

9.1.3.3 Engagement Markers

Engagement Markers are the expressions that personalize the relationship between the writer and the reader. They are one of the components of 'interactional metadiscourse' and their role is to establish a bond between writers and their readers. As a sub-category of 'Interactional Metadiscourse',

they are not independent stylistic devices which authors can vary at will but are integral to the context in which they occur and are intimately linked to the norms and expectations of particular cultural and professional communities (Hyland 1998: 438). Thus engagement markers are devices that overtly address readers, either to focus their attention or include them as discourse participants (Hyland 2005). They acknowledge the need to adequately meet reader's expectations of inclusion and disciplinary solidarity, addressing them as participant's in argument with reader pronouns (*you, your, inclusive we*), interjections (*by the way, you may notice*), imperatives (*see, note*) and questions. Very few instances of engagement markers were identified in the Waki Report. Even then, these mainly instances of were restricted to only the inclusive "we". This is illustrated in the following examples:

> Curiously, we note that at the time the Attorney General made a request to the Commissioner of Police to investigate the persons named in the Akiwumi Report, the Department of Criminal Investigations was directly under the Office of the President. It follows, and ***we*** can safely conclude, that it was indeed very difficult for the officers working directly under the same President who had made strong reservations about the report, to come to a different view from the President's. The Attorney General himself candidly accepted this reality. (273)

In the example above, the authors of the Waki report use the inclusive "we" as a way of engaging the reader and making him or her identify with the sentiments expressed in this segment. In doing this the purpose of using the inclusive pronoun is to make the reader part of the decision to conclude that it was difficult for officers working and the president to have different views. The net effect is that by using the engagement marker, what should have been a mere conjecture is given credibility and believability due to the involvement of the reader. The next example below is yet another illustration of the strategy of exploiting the pronominal selection to achieve credibility and believability:

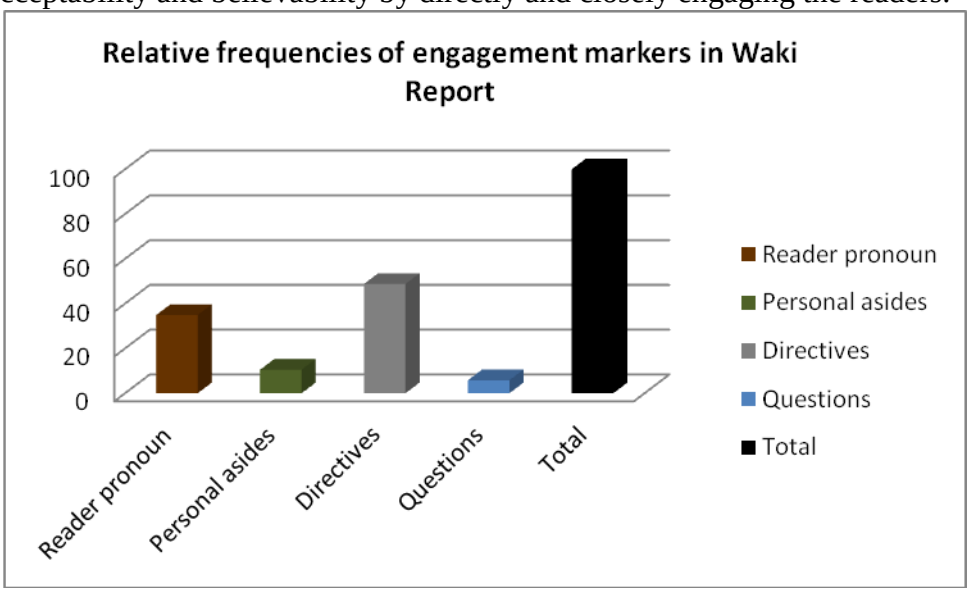
> A Kalenjin religious leader dismissed the theory and instead accused political leaders who come up and use the ethnic background and the unity they found to instil violence, and suggested that to end the cycles of violence ***we*** have to break that. (396)

Just like in the first example above, in this example, the inclusive pronoun is used as a strategy to lure the reader and to make him or her part of ideas being espoused here (in this case, that the cycle of violence in Kenyan elections should be broken. This is very critical for credibility and believability in the sense that the public, who are the consumers of the report,

have to be part and parcel of an effort to end the cycle of violence. Making them part of the resolve through the use of the inclusive "we" is a way of committing them to the report and thereby making the report credible. Finally, in the example below, we again see the reader being engaged through pronominal selection. The report points to a piece of evidence which is in conflict with the considered opinion and conclusion of the commission. For the reader to accept such a position, the report engages the reader through the use of the inclusive first person plural pronoun. It should be noted that this last example is a unique case whereby pronominal selection is not merely used to sway the reader along and make the report credible, but also to dissuade the reader from adopting other positions which are in conflict to that adopted by the report.

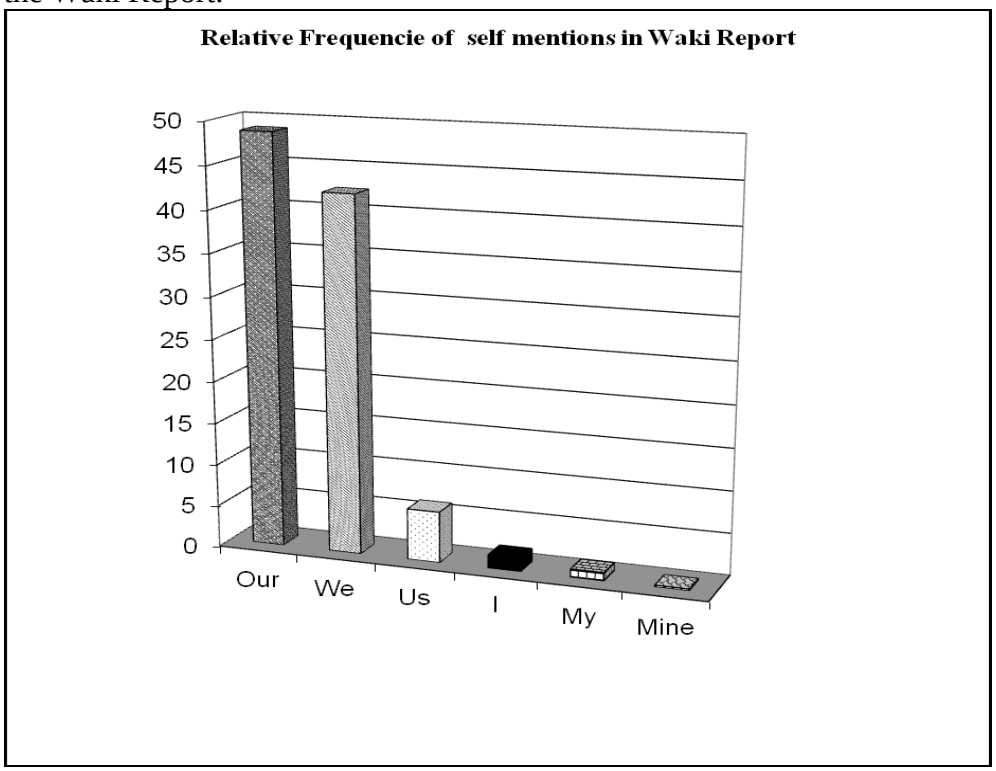
> Mr. Mohamed Salim the DC for Molo informed the Commission that hostilities began on September 25th 2007, though as ***we*** shall see later, violence had already been reported as early as 2006 (167)

The figure below indicates the relative frequencies of engagement markers in the Waki Report. It can be noted from the figure below that reader pronouns and directives were the most frequently used as compared to personal asides and questions. This implies that the writers of the report were bent on engaging their readers as they drafted their report. Intensity of use of reader pronouns and directives indicate a strong desire to achieve credibility, acceptability and believability by directly and closely engaging the readers.



9.1.3.4 Self Mentions

Self mention refers to the use of first person pronouns and possessive adjectives to present information (Hyland 2001). Self mentions refer to the degree of explicit author presence in a text. Presenting a discoursal self is central to the writing process (Ivanic 1998), and we cannot avoid projecting an impression of ourselves and how we stand in relation to our arguments, discipline, and readers. The use of self mentions helps to build personal ethos of competence and authority about the information presented in the report. The presence or absence of explicit author reference is a conscious choice by writers to adopt a particular stance and disciplinary-situated authorial identity. The following are some of the examples of self mentions that were used in the Waki Report.



9.1.3.5 Evidentials

Hayland (1998: 443) defines evidentials as linguistic devices used "to indicate the source of textual information which originates outside the text". As such, they are metalinguisic representations of ideas from another source which guide the reader's interpretation and establish authorial command of the subject matter. Broadly speaking, evidentiality, therefore, is the indication of the nature of evidence for a given statement; that is, whether evidence exists for the statement and/or what kind of evidence exists.

Aikhenvald (2004), provides a typology of evidentials by giving two broad types of evidential marking: indirectivity marking (“type I”) and evidential marking (“type II”). The first type (*indirectivity*) indicates whether evidence exists for a given statement, but does not specify what kind of evidence. The second type (*evidentiality proper*) specifies the kind of evidence (such as whether the evidence is visual, reported, or inferred). These are briefly discussed below:

Indirectivity (also known as inferentiality) contrasts direct information (reported directly) and indirect information (reported indirectly, focusing on its reception by the speaker/recipient). Unlike the other evidential "type II" systems, indirectivity marking does not indicate information about the source of knowledge: it is irrelevant whether the information results from hearsay, inference, or perception.

The other broad type of evidentiality systems (“type II”) specifies the nature of the evidence supporting a statement. The type II evidentials can further subdivided into various subcategories:

a) A *witness* evidential indicates that the information source was obtained through direct observation by the speaker. Usually this is from visual observation (*eyewitness*), but some languages also mark information directly heard with information directly seen. A witness evidential is usually contrasted with a *nonwitness* evidential which indicates that the information was not witnessed personally but was obtained through a secondhand source or was inferred by the speaker.
b) A *secondhand* evidential is used to mark any information that was not personally observed or experienced by the speaker. This may include inferences or reported information. This type of evidential may be contrasted with an evidential that indicates any other kind of source. A few languages distinguish between secondhand and third hand information sources.
c) *Sensory* evidentials can often be divided into different types. Some languages mark *visual* evidence differently from *nonvisual* evidence that is heard, smelled, or felt. The Kashaya language, for instance, has a separate *auditory* evidential.
d) An *inferential* evidential indicates information was not personally experienced but was inferred from indirect evidence. Some languages have different types of inferential evidentials. Some of the inferentials found indicate:

    i. information inferred by direct physical evidence,
    ii. information inferred by general knowledge,
    iii. information inferred/assumed because of speaker's experience with similar situations,

iv. past deferred realization.

In many cases, different inferential evidentials also indicate epistemic modality, such as uncertainty or probability. For example, one evidential may indicate that the information is inferred but of uncertain validity, while another indicates that the information is inferred but unlikely to be true.

e) *Reportative* evidentials indicate that the information was reported to the speaker by another person. A few languages distinguish between *hearsay* evidentials and *quotative* evidentials. Hearsay indicates reported information that may or may not be accurate. A quotative indicates the information is accurate and not open to interpretation (i.e., is a direct quotation).

The present study paid attention to all these types of evidentials in as far as they were manifested in the Waki Report. In the following paragraphs, some of the above types of evidentials are exemplified:

Witness evidentials accounted for 56.8% of the total number of evidentials in the Waki Report. This means that more than half of the total of evidentials used in the report were of the witness type. In the first example below, the commission seeks to directly assert its credibility and consequently appeal to the reader's believability explicitly stating that their understanding of the nature of the violence was "enhanced by the submission by the Law Society of Kenya, South Rift Branch". This is important in terms of credibility and believability because the Law Society of Kenya is a neutral professional body that commands international respect and recognition. Their submissions to the commission would, therefore, be taken to be very credible and unbiased, hence believable. The commission, indeed, makes a direct reference to this appeal to credibility by mentioning that "The information provided by the Law Society is, therefore, highly credible as it materially corroborates the evidence from hospital sources which the Commission generally considers to be credible"

> The understanding by the Commission of the nature of violence that took place in Kericho district was greatly enhanced by the submission by the Law Society of Kenya, South Rift Branch, for which the Commission is grateful. ***Through its Secretary, Gideon Mutai, the Society submitted to the Commission the depositions made under oath of forty two different witnesses***, testifying to incidents of violence in the district, which either involved them personally, members of their families, persons known to them, or occurrences which they had ***personally witnessed***. The first issue to be addressed is the credibility of the information provided by the Law Society. Out of the 39 cases of

> shooting that the evidence dealt with, it indicated that 23 people were shot dead while the rest sustained severe injuries whose consequences varied greatly. The Commission compared the list of the deceased persons provided by the Law Society and confirmed that these are already part of the list of deceased persons in Kericho which was provided by the MOH for the area, Dr. Ambrose Rotich. The information provided by the Law Society is, therefore, ***highly credible*** as it materially corroborates the evidence from hospital sources which the Commission generally considers to be ***credible***. (231)

In the next example, the commission quotes verbatim a witness statement. The witness here narrates what she "saw" and "heard" during one specific instance of violence in Eldoret where 32 people were burnt to death in a church where they had sought refuge. The witness here makes use of sensory evidentials by constantly asserting that she saw or heard what she was narrating to the commission. By quoting the witness verbatim in their report, the commission exploits witness evidential to appeal to credibility and believability.

> "On the 1st of January 2008 at around 10 a.m., ***I heard*** people yelling that some raiders were coming. ***I saw*** smoke coming from some houses in our village and the houses were burning. Everyone in the village started running away to the church (KAG). My mother who was 90 years old was with me at the time. I decided to take my mother into the church for safety. After a few minutes, ***I saw*** more raiders coming towards the church….We thought the raiders would not attack the church. Many people were being pushed into the church by the raiders. The raiders threw some mattress into the roof of the church and threw more into the church. They were also pouring fuel (petrol) onto the mattresses. All of a sudden ***I saw*** fire break out. I took my mother toward to [the] main door to get her outside, but there were many others scrambling toward the door as well. We both fell onto the floor. I wanted to save my mother from the burning church, but one of the raiders prevented me. ***I saw*** the fire had reached where my mother was. ***I heard*** her cry for help as the fire burnt her, but I could not help." (219)

A similar example of a witness evidential which also contains within it a series of sensory evidentials is given below:

> Another ***witness*** rendered yet another heart wrenching tale as follows: "Some Nandi were running after people on the road. I ran away with my children. I ***saw*** a man being killed by cutting with a panga and hit by clubs when I was running. I fell near a seasonal river in Kipkendui

> primary school while running away. My last born child fell a distance away from my arm, was hurt, and was crying. Some people were running after me and when I fell, two men caught me. They tore my panties and they both raped me in turns." (231)

In the above example, the commission exploits a meta-discursive comment before quoting the witness verbatim. In this comment they seek to set it out clearly that the information that is to follow is from a witness. In this way, the commission seeks to achieve credibility for the information that is narrated by such a witness, and overall credibility of the entire report.

As has been previously mentioned, witness evidentials accounted fro more than half the of the evidentials used in the Waki Report. This is hardly surprising given the nature of the report in terms of its contents and the intended communicative purposes. Being a product of a quasi-judicial process, the report has to rely heavily on witness statements, just like other products judicial processes. It would thus be acceptable to argue that by conforming to the generic content of other discourses within the broader genre of judicial reports, the commission sought to make their report credible, believable and ultimately acceptable.

Second hand evidentials were the second highest in number, accounting for 22.8% of the total. The following are some of the examples of this type of evidentials that were found in the Waki Report:

> For instance, in Kisauni, tension was ***reported*** to be very high with the youths contemplating to hold a public protest on 29th December 2007 against the delay by ECK in releasing the presidential poll result. (235)

In the above example, the report makes it clear that the tensions referred to were "reported" as opposed to instances where they were witnesses as has been previously discussed under the witness evidentials above. In doing this, the drafters of the report seek to achieve ethical credibility for the information they are giving by admitting that it is of a second hand nature. The next example also seeks to achieve credibility and believability in this way:

> The main highway to Nairobi was blocked at Mikindani and the OCPD ***reported*** that riots also broke out in Chaani, Bokole, Magongo Mwisho and Miritini. In the meantime, the whole of Likoni was engulfed in violence. (237)

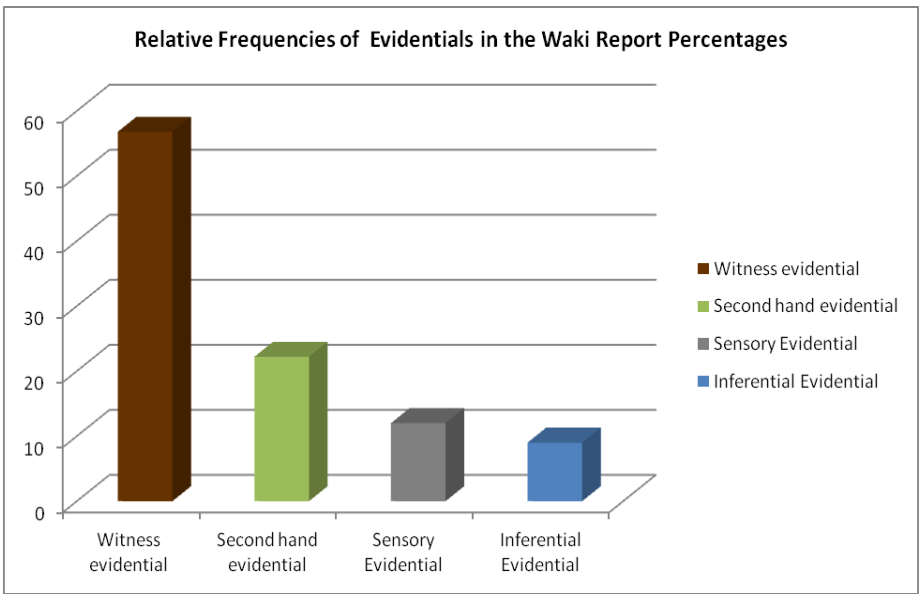
The sensory evidentials found in the Waki Report were of the auditory and visual type. The examples given below illustrate the two types:

> The Commission however made a brief visit to Kakamega town on 9th August 2008 and toured the town where it ***saw*** properties that had been destroyed and damaged during the PEV. (309)

In the example, the report exploits the visual sensory evidential "saw" to back up their assessment of the extent of violence in Kakamega. It is informative to note that apart from asserting that they actually saw the extent of violence that was witnessed in the town, they actually provide a date when this happened. The use of a sensory evidential makes the informing provided in the report to be highly credible, reliable and therefore very believable. In the next example, the commission uses the auditory sensory evidential by reporting what they heard about the violent relations between the neighbouring Kisii and Kalenjin communities.

> The Commission ***heard*** that this was not the first time that the Kipsigis had violently asserted their territorial claim against the Kisii. (151)

The above example also resembles a witness evidential, only differing in the sense that the writers do not explicitly state that the source was a witness before them. Accordingly, it has the same evidential value as a witness evidential, meaning that its credibility and acceptability is as equally high. Finally, we give a few examples of the inferential evidentials that were found in the report



10 Concluding Marks

The present study has tried to establish how the authors of the Waki Report (in this case the commission) used, among other strategies, some of the metadiscursive devices mentioned, to achieve acceptability and credibility. Hyland (1998: 437) gives the following characterization of metadiscourse:

> Based on a view of writing as a social and communicative engagement between writer and reader, metadiscourse focuses our attention on the way writers project themselves into their work to signal their communicative intentions. It is a central pragmatic construct that allows us to see how writers seek to influence readers' understanding of both the text and their attitude towards its content and the audience.

According to Jensen (2009), Hyland's (1998) analytical framework is based on Crismore, Markkanen, and Steffensen (1993), and distinguishes between the interactive and the interactional dimension of interaction (Hyland 2005: 49): The interactive dimension concerns ''the writer's awareness of a participating audience and the ways he or she seeks to accommodate its probable knowledge, interests, rhetorical expectations and processing abilities." The interactional dimension concerns ''the ways writers conduct interaction by intruding and commenting on their message. The writer's goal here is to make his or her views explicit and to involve readers by allowing them to respond to the unfolding text." And, further, Hyland (2005: 49) argues that the interactional dimension concerns ''the writer's expression of a textual 'voice', or community-recognized personality, and includes the ways he or she conveys judgments and overtly aligns him- or herself with readers." According to Hyland (1998: 438), ''Metadiscourse is recognised as an important means of facilitating communication, supporting a writer's position and building a relationship with an audience."

My primary focus has been on Hyland's interactive and interactional dimensions of the Waki report in order to demonstrate the extent to which it reveals how the report involves the readers, seeks support for its position (and thereby achieving credibility and acceptability). The analysis of the Waki Report has shown that appointers of the commission, in putting it up, were gravely aware of the potential and serious credibility issues that could heavily constrain the acceptability and believability of their final report. Being a product of a quasi-judicial process, the commission was also gravely aware of the inherent limitations of their mandate and possible scope of execution of their recommendations. Consequently, the commission decide to use various meta-discursive and structural strategies to claim credibility and acceptability. Such meta-discursive strategies were both interactive and interactional in nature and succeeded in actively engaging the readers of the report to seek their acceptance and believability of the report.

It has also emerged that the report has exploited an eclectic approach to achieve credibility and acceptability. Apart from exploiting the meta-discursive strategies as discussed above, the report has also made use of the generic properties of commission of inquiry reports to achieve credibility and acceptability. In doing this, the report has conformed to the generic structure and the linguistic properties of a quasi-judicial commission of inquiry report such that the report is readily and easily recognisable as belonging to such a genre even on the face value, hence gaining acceptability. Additionally, the report has also exploited ethos as a credibility strategy. This has been done by projecting the personal appeals of *ethos* when by referring to their authority, credibility and competence. Consequently, by projecting their personal ethos, the writers of the Waki report sought to extend these to the work of their hands; namely the report itself.

This study has demonstrated that commission of inquiry reports, are constitutive of genres. Accordingly, they have unique properties in terms of structure content and purpose which sets them apart fro other types of reports. being quasi judicial in nature, their generic characteristics are reflective of the inherent limitations of quasi-judicial bodies and their products.

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Bionote

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Heikki E.S. Mattila, Comparative Legal Linguistics - Language of Law, Latin and Modern Lingua Francas, 2nd edition, Ashgate, Farnham, 2013.

Emma Patrignani

On the interest of different perspectives on law

Contemporary interdisciplinary academic movements have the highly inspiring capacity to propose new perspectives on typical disciplinary objects of study. Light is shed from new angles, thus interrupting the restrictive and constraining function of discipline as a principle of control, allowing features previously considered as subaltern to gain importance. Along these lines, law is profitably analysed from the point of view of the language used to express it. This viewpoint, adopted in the book under review here, is both instructive and thought provoking. Not only it allows the emergence of the cultural background, but also yields historical understanding. The ambitious undertaking of Mattila's seminal book is twofold: to tackle the law through language and to study the language as an inherent constituent of law. More specifically, the study of language as a cognitive model for *comparative* law proves particularly useful. The legal linguist makes use of comparative law in order to understand the system of concepts standing in the background of legal terms, and conversely the comparative lawyer needs notions of linguistics and of theory of translation, since every comparative legal study is based on an act of translation. Moreover, language and comparative law share the difficult task of enabling communication, of filling the unbridgeable gap between different laws expressed in different languages. The recently established discipline of Comparative Legal Linguistics has surely a compelling and appealing project to fulfil.

General Information and Overview of the Content

Heikki E.S. Mattila is a Finnish lawyer and Professor Emeritus of Legal Linguistics at the University of Lapland, Finland, and is also Docent of Comparative Law at the University of Helsinki. This second English edition is a fully revised and an enlarged version of the first one, appeared in 2006. Beside an entirely novel chapter on Legal Spanish, the references are thoroughly updated, new examples are added, and information concerning recent developments in the discipline is integrated in corresponding theoretical chapters. The

improved publication of this work confirms its position as *the* fundamental book in legal linguistics, unmissable reference for everyone interested in the field.

In the first part, the author introduces the concepts of legal language, "a functional variant of natural language" (p.1), and of legal linguistics, a discipline that "examines the development, characteristics, and usage of legal language […] in the light of observations made by linguistics" (p.11). Through a presentation of the scope of concern, a reconstruction of the story of the discipline and the designation of some points of interest, this part sets the general framework of *jurilinguistique* (as legal linguistics is called in the French version of the volume, cfr. Heikki E.S. Mattila, Jurilinguistique Comparée - Langage du droit, latin et langues modernes, French text by Jean-Claude Gémar, Éditions Yvon Blais, Cowansville 2012).

Part two develops a fundamental study of legal language as a language for special purposes (LSP). In chapter 2, concerning the functions of legal language, Mattila identifies the achievement of justice as the most spectacular one, and very optimistically equates it with the production of legal effects through language (formalized or not) as acknowledged in speech act theory. The second analysed purpose of legal language is the transmission of legal messages: language allows the law to exist. By lending the law its very existence, language at the same time constrains the law's subsistence to the structural limits of communication. In this section the author explores the very material restraints that may cause interference in legal interaction. In the third place, the linguistic devices that enhance the authority of the law are detailed. The jurist is used to thinking about authority as an inherent characteristic of law, without further specification required. Mattila succeeds at showing how language participates in affirming and reinforcing legal authority. For example, easily memorisable legal formulations, rituals that express the sacred character of law, phrases expressing the humility of those seeking justice and respectful body language are all linguistic contributions to the reinforcement of the authority of the law. Later the author tackles the question of the linguistic policy - the legal rules on the use of language - and presents as an example the Finnish official bilingualism and the historical reasons thereof. Lastly the cultural task of legal language is examined through the cases of Greek and Norwegian bilingualisms. The histories of these two countries bear witness to how the language of the law forms part of the general linguistic culture. In both cases the two variants of the legal language

convey different values or display more closeness to a certain part of the respective national histories. Interestingly, they provide two different examples of coexistence, namely highly pitched, as is the case between Demotic and Katharevusa Greek, or rather peaceful, as could be described the relation between *nynorsk* and *bokmål* Norwegian.

Chapter 3 examines the special characteristics of legal language in comparison with ordinary language, such as its striving for accuracy and precision, its abstract and hypothetical character, its impersonality and attempted neutrality. Examples are drawn from multitudinous languages. Legal orders are conceived by Mattila as having a systemic character, and the relations between elements which form the bigger structure as detectable through a linguistic study and in particular through the study of references. The author displays his strong practical orientation when exposing the problems that referencing may cause, as well as when analysing the structure of legal text, and when considering the advantages and disadvantages of abbreviations. The concluding part of the chapter focuses on the obscurity of legal language and on the possible strategies to overcome it, as campaigned by the Plain English Movement and, at the European level, the Clear Writing Campaign.

Legal terminology is scrutinized in chapter 4, where, after a somewhat simplified and unquestioning outline of legal families (pp. 138-139), the author introduces definitional tools. He distinguishes between *concept*, "mental representation of an object" (p.140[1]) and *term*, "technical designation of a concept" (p.141[2]), and identifies the former as an object of study of legal science, and the latter as the primary object of research of legal linguistics (p.15). The chapter also expatiates on polysemy, synonymy, and on the formation of legal terms, offering as examples an intriguing illustration of the lexical borrowing from Dutch in Indonesia and an introduction to the challenges of multilingualism faced by the European Union, such as the issue of producing terminological equivalents.

The third part of the book contains a presentation of the major

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[1] Another definition can be found in Heikki E.S. MATTILA, *Legal Vocabulary*, in: Lawrence M. SOLAN, Peter M. TIERSMA (eds.), The Oxford Handbook of Language and Law, Oxford, Oxford University Press, 2012, pp. 27 – 28, where he defined *concepts* as "abstract figures created by the human mind, that is entities formed by features which are peculiar to a matter or thing".

[2] See also the definition of *term* proposed in Heikki E.S. MATTILA, *Legal Vocabulary*, *op. cit*., note 1, *ibid.*. :"external […] linguistic expression of a concept belonging to the notional system of a specialized language".

legal languages. The history of the main European legal systems is told through the history of their legal languages. This perspective is both captivating and informative, and language proves to be a very well suited pretext to re-examine the evolution of major European legal systems and their circulation. For instance, the history of legal Latin turns out to be a reconstruction of the development of European legal epistemology and of the relation between civil and canon law. The heritage of Latin in modern legal languages makes the common roots evident, but proves also the different influences: A comparative survey revealed that the content of Anglo-American legal Latin dictionaries is three-quarters different to those of continental Europe (p.193-195). The structure of the following chapters, concerning legal German, legal French, legal Spanish and legal English is similar. They all start with a historical overview, followed by a presentation the salient characteristics of each legal language - constantly supported by various linguistic evidence, such as telling words and excerpts of original texts-, and end with an assessment of the various languages' position in the contemporary world. The reader gets acquainted with the lexical richness and abstract character of legal German (*Verordnungsfolgenabschätzung,* which has now been split up, cfr. p. 222), with the style of French judicial decisions (*attendu que* and *considérant que*, p.259), with the "cultural revolution" entailed in the structure of *Las Siete Partidas* (see excerpt, p.277-278). Prominence is given to the dynamic aspect and the continuous variations of the languages studied. Reciprocal receptions and influences intertwine legal languages in highly complex patterns, as is well illustrated by the history of legal English: Latin, dominant during the eleventh and twelfth centuries, was then ousted by French, that in turn was used to draft the Statute of Pleading of 1362 which proscribed that judges were to use English, while court minutes could still be prepared in Latin (pp. 306-313). For a long time the legal profession in Britain has been trilingual, and the continuous interaction of those languages clearly left traces in the contemporary vocabulary of English law. Beside the links between languages, Mattila also stresses the ramification and (dis)homogeneity of each language due to its use in different national legal systems and at international scale.

The book closes with relatively short conclusions on lexical comprehension and research needs. The issues of rivalry for international predominance, of influence and borrowings are sketched, and the main problems of legal translation are addressed. Jurilinguistic research, understood as a combination of legal-

institutional and linguistic analysis, is regarded as the way to attempt to overcome misunderstandings and to perfect the theory of legal translation.

The final alphabetical and systematic bibliographies provide possibly the most thorough collection of titles appeared on the subject, proving once more the encyclopaedic character of this volume.

Commenting considerations

This book deserves certainly to be held in high esteem, being a seminal work in the by now established discipline of legal linguistic. It manages the hard task of being general and introductive, therefore suited for undergraduate students, and at the same time it provides a large quantity of information that may be of interest for more specialized scholars too.

Nonetheless, the reader should be warned of the risks of being bewildered by the data overload, and of closing the book having become more cultivated and informed, but not wiser. One is sometimes left with the impression that the remarkable amount of notions gathered is not always processed, elaborated and interpreted. The very pragmatic attitude of the author does not leave much space for inductive analysis on the basis of the extended knowledge presented. On the whole, this book does not focus much on theoretical aspects of the subject matter, and the author neither explicitly places his conception of legal language within the broad and complex discipline of linguistics, nor within the much disputed field of comparative law. Still, throughout the text it emerges from between the lines that the author shares a certain conception of the interrelatedness of law, language and culture (see, for example, the references to legal translation at p. 16 and p. 359, or the parts on Finnish, Greek and Norwegian bilingualism) and of the connection existing between the technical surface level and deeper epistemic level of legal language.

What this book certainly provides is substantial material to the cause of interdisciplinarity, proposing a substantially new way of writing about law: the cultivated author moves elegantly between legal histories, legal cultures, legal languages. With such an enriched understanding of legal contexts, he abundantly demonstrates the interest of the linguistic perspective on law.

Bionote

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