

Foreword

This is a paradigm-establishing book on several counts: it pulls together several strands of modern culturalist, interactivist and discourse-analytic thinking that converge in a conceptualization of court hearing and the resultant “judicial narrative” not as “repositories of objective truths or universal categories” (Introduction), as more traditional legal thinking would have it, but as the (always preliminary) multilayered process of negotiation.

Guided and contextualized by a lucid introductory chapter setting out the theory parentage of the approaches presented, the book presents major processes of how different sources of information (linguistic, contextual, physical contextual) are welded by participants in the process of interactive communication at court into a final narrative based on all the relativities resulting from the integration of genre-relative rules of what can count as what in this particular genre (with integrated complexity reducing subgenres).

The whole genre is seen as a cooperatively evolved complex interactive process that synthesizes the best of modern pragmatic thinking with the common denominator of giving up absolutes and ultimate fixities in exchange for, in a good contextualist stance, frozen relativities as the result of, and with the inherent potential of change by future performances. This basic view is evinced in one way or another by all contributions in the volume, applying a non-modular, non-isolationist, dynamic perspective to all potentially meaning-inducing semiotic elements, from words, via their interaction with rich but genre-constrained context, to semiotic values accorded to physical environments of the court.

In the process some cherished notions that bedevil legal linguistics, like invariant “literal meaning”, die a well-deserved death and lose the prominent place they had in static views of meaning such as is still widely characteristic in discussions of meaning issues in law. And the notion of “context”, often enough called in and chid as an obscure maid-for-all purpose, receives a well-constrained, differentiated interpretation as relative and responsive to entities that are mutually perceived to have interactively evolved at any point in the interaction, prompted either by pre-existing communicative acts or as products of the moment.

A central unifying theoretical matrix concept is the notion of “narrative”, an abstract, non-sequential concept that embodies the results of local interactive meaning formations, that, in the discourse process, are themselves recontextualized and form the basis of a (not: “the”) final “master narrative”. A lie, for all the meaning potential that actants in the court bring with them in the shape of a specific reference history they may have experienced, is never any same such lie after a diachronic interaction history in a specific case, but a novel one-off resultant narrative which originated in this specific case, and only in this specific case.

Obviously, the view espoused in this volume is in head-on collision with views and ideologies of language that permeate large swaths of legal literature dealing with the role of language in the law and “legal language”. It is quite legitimate to argue that such a simplified view can be necessary for “operational” purposes. There is no need to reflect on the theory of newly discovered gravitational waves every time a pen falls down and lands on the floor. Tendentially, however, the legal world is permeated by an ideology of language that claims maximal autonomy of linguistic content, of context-free fixity and adoration of the dictionary, minimizing the contribution of contextually guided meaning construction by non-linguistic information that the communicants bring to bear on their meaning construction. To the extent, however, that the nature of language use in the law is the subject of scientific inquiry, a dynamic, interactive view of meaning-making seems imperative, even though it may create problems for machine-based analysis with their inherent requirement of fixed units.

Equally obvious is the fact that this dynamic interactive process of meaning negotiation is more extensive in more oral-based legal cultures like Common Law than in more written-based Roman Law cultures. This does not mean that it does not take place in a legal culture like Roman Law, but it means that the share of this type of meaning negotiation as an oral event, as part of a basically oral legal culture, is much lower and the share of interpretation of written texts (as discourses) is much higher. Nevertheless, it is an essential part of the origination of meaning in any legal culture that involves an openness of outcome. One of the challenges triggered by this volume is one of translation: how do the pivotal conceptual instruments like genre, narrative, meaning, explicitness, and interactional rules translate into different legal cultures even within the same high-level legal culture? For instance, what counts as and what is permissible as a given interactive move and its linguistic realization will be different even within Polish and German Roman Law cultures, and certainly with the larger culture as rule determinant.

This collection, then, is a prime example of how modern pragmatics and related theories can reconceptualize a complex, hierarchically structured and rule-constrained legal genre in a most explicit and insightful way that is miles away from traditional and current notions of “legal language”.

It is a pleasure and privilege to endorse this volume as a radical stimulant of a high-level theoretical discussion in legal linguistics.

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