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Simplification and Easification of Legislative Provisions

The Way Forward

Abstract

This analysis takes into consideration the challenge of writing legislative provisions. Legislative expressions must be clear, precise, and unambiguous, on the one hand, and all-inclusive, on the other. A clever balance between the two is the essence of the craftsmanship of normative texts. The nature and extent of specification of legal scope, moreover, represents one of the most difficult tasks in legislative drafting. Based on the hypothesis that linguistics can provide drafters with a method for assessing the effectiveness of the legislator's provisions, this study demonstrates that drafters often miss the focus of the policy concepts that they aim to communicate, and discusses the latest techniques to successfully achieve the desired conceptual focus.

Keywords: *linguistic analysis, drafting techniques, legislative expressions, simplification, easification*

Legal English originates from different sources that have influenced its style. Historically speaking, legal English has evolved over the three-century period between the 1470s (the setting up of the first printing press in England) and the 1770s (the American Declaration of Independence). Unsurprisingly, its terminology and style are still in the form they had reached by the early years of the 19th century. Traditional legal language has been increasingly challenged in all major English-speaking countries, and this questioning has brought about important changes in the length and layout of legal documents, and many of these changes have been stimulated by the Plain Language Movement of the latter decades of the 20th century.[1] Despite these important transformations, legal language has remained

[1] Particularly relevant was the rise in the 1960s of Western consumer movements which were concerned with empowering laymen so they could defend their rights against private companies and government bodies. Isolated attempts had been made during the first half of

largely frozen in time.

Legal English is made up of several genres (i.e., law reports, prescriptive legal texts, international treaties, contracts of sale, spoken exchanges in a court, etc.) each with its own specific, though often related, characteristics. The main lexico-grammatical features of legal writing are usually characterised as follows: inclusion of archaic words and foreign expressions especially from Latin and French; frequent repetition of fixed syntactic structures; long and convoluted sentences with intricate patterns of coordination and subordination; a highly impersonal style of writing and a tendency towards nominalization.[2] Written legal texts do not necessarily contain all the features mentioned above, though many of them do, and the compound effect often makes deciphering them extremely difficult without specific training (Williams 2023; 2004). Indeed, at times, certain types of legal writing present features that render texts so peculiar that they are incomprehensible to anyone except legal experts. Describing legal English as "mysterious in form and expression," Butt (2013, 1-2) argues that,

> Some infelicities of expression, some overlooked nuances, some grammatical slips, can be forgiven. Lawyers are only human, and in day-to-day practice of law they face an overwhelming weight of words. What cannot be forgiven, however, is the legal profession's systematic mangling of the English language, perpetrated in the name of tradition and precision.

As a matter of fact, there are inherent factors that make it difficult to convey the intentions of the legislator and ensure there are no ambiguities in the words and expressions chosen by the legislative drafter (Stefanou 2011). Complex societies make increasing political demands to produce legislation quickly and efficiently, whereas the lack of effective consultations between policy makers and drafters certainly affect the language used and the underlying function of the text. On the occasion of the Sir William Dale Memorial Lecture for 2005, Geoffrey Bowman (2006, 3) said, "It is not the drafter's job to make up the policy, and that it should not be his job," though actually "it is part of his job to offer workable solutions when possible." In this regard, a few considerations of eminent scholars in the field of law and language shed some meaningful light on the complex relationship between legislation and drafting:

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the 20th century, for example in the United States, to introduce measures to make legal English less convoluted. Across the Atlantic, in Liverpool, the plain English campaign started in 1979 and by the mid-1980s it was already possible to speak of a 'Plain Language Movement' operating in all major English-speaking countries, including Canada, Australia, New Zealand, and, by the early 1990s, in South Africa.

[2] Oxford English Dictionary defines nominalization "a type of word formation in which a verb or an adjective or other part of a speech is used as or transformed into a noun."

- The operation of legislation can only be fully understood in terms of its context or sites of engagement (Scollon 2001). If an instrumental position is taken, the background can be seen to include recognition of a problem, determination of objectives, and the choice of means for their achievement (van Dijk 2007; 2005; Fairclough 2003);
- There are inherent difficulties in the drafting of legislation. Legislation is the product of a dialogue between the actors of the drafting process (politicians, legal, and drafting experts), the discipline involved in the process (politics, substantive law, legislative drafting), and the language used by the experts in their own discipline (policy, law, and drafting) (Xanthaki 2014);
- The implementation of legislation can be enormously affected by various filtering agents, i.e., rule enforcers, rule interpreters, and the population to whom the legislation is directed (Stefanou 2011). They can constrain, adapt and modify the intentions and policies that may have motivated the passage of legislation in the first place (Barnes 2006);
- If the lawmaker or someone else wishes to test how the law in question has been drafted and the extent to which the goals of legislation have been met, the investigation will benefit from the adoption of a broadly scientific approach (Tiersma and Solan 2012; Galdia 2009; Solan 2005).

The need to produce better legislation cannot be met without the contribution help of other disciplines such as Linguistics, with profitable cooperation between linguists and legislative drafters and a careful analysis of several aspects of the drafting process, and the application of linguistic tools when formulating legal provisions that aim to be communicatively effective (Williams 2023; Engberg 2013; Xanthaki and Pennisi 2012).

1. Legislative drafting: conventions and constraints

Legislative drafting is a very complex task, given that the formulation of legal norms is conditioned by the different cultural, linguistic and legal environments that inform them. In the case of common law systems, their adversarial nature is reflected in the drafters' stylistic choices featuring very long sentences traditionally consisting of three (or more) main clauses, each modified by many subordinate clauses (Gotti 2011).

The need for provisions to be all-inclusive, precise, and clear (Bhatia 2004; 1993; Tiersma 1999; Campbell 1996) results in an increase in sentence length, the great number of inserted parts, detailed terminological explanations, and the use of past-participle clauses to state

clearly the source of the qualification of a term. For instance, the intention to cover as many specific cases and interpretations as possible is evident in the number of definitions and explanations normally present, combined with the explicit indication of the limits of applicability of the norm. Reference, for instance, is typically facilitated by simple prepositions or complex prepositional phrases such as *under, in accordance with*, *according to.*

(1) (7) An accreditation *under* this section, unless it is previously withdrawn or ceases to have effect *in accordance with* subsection (8), shall remain in force for such period as may be specified in the accreditation; but it may be renewed at any time with effect from the time when it would otherwise expire.

(8) An accreditation *under* this section shall cease to have effect […] (Policy Reform Act 2000).[3] (emphasis mine)

Common law legislation is usually associated with particular emphasis on explicit textual schematization (Driedger 1982) with recurrent alternative/complementary options and punctuation organized in such a way as to make the provisions more semantically transparent.[4] The number of relative clauses inserted to minimize ambiguity and misunderstandings is at the origin of the considerable sentence length of legislative provisions, each of them supported also by specifications to clarify the meaning.[5]

(2) (10A) It is a defence for a person ("the defendant") charged with an offence of doing anything which, under section 3(1A) or (1B) or 4(1A), cannot be done except in pursuance of a licence or a third party agreement to prove—

(a) that the defendant was acting under the direction of another, and
(b) that the defendant believed on reasonable grounds—

(i) *that the other person was at the material time the person responsible under a licence, a person designated by virtue of section 17(2)(b) of this Act as a person to whom*

[3] www.legislation.gov.uk/ukpga/2002/30/part/4/chapter/1. All websites last visited on 09/03/2024.
[4] In many jurisdictions, *or* is commonly taken to mean the same as *and*. Solan gives the following example taken from a New York State provision: "Generally, the words *or* and *and* in a statute may be construed as interchangeable when necessary to effectuate legislative intent" (1993, 45).
[5] Increased length often implies more complex relations between a noun and a word, or group of words, that describes a noun phrase or limits its meaning in some way, and is placed after it (i.e. postmodifiers).

> *a licence applied, a person to whom a third party agreement applied, or a person to whom directions had been given under section 24(5A) to (5D)*, and
>
> (ii) that the defendant was authorised by virtue of the licence, third party agreement or directions to do the thing in question (Human Fertilisation and Embryology Act 2008).[6]

This need contrasts with the high potential for ambiguity which arises from nominal attributes and other words, especially an adjective or a noun that is placed before a noun, and describes (or limits) its meaning in some way (i.e., premodifiers).[7] This is the case of "every person *claiming compensation from*" that might be interpreted as "every person who *claims compensation from*" and "every person who *has claimed compensation from*." As a result, the frequent use of adverbials *hereto, herein, hereof* and *thereto*, a practice that Bhatia (1987) defines textual-mapping, is prompted by the quest for precision and is reflected in the frequent references to other parts of the text itself that specify the textual element being referred to ("Under the conditions described *herein* [...];" "[...] the rights and freedoms defined in the Convention and the Protocols *thereto*.").

Another important aspect worth mentioning is the recurrent use of expressions, or linguistic units, that link two other constituents together and have a function similar to that of a conjunction (i.e. copulas, conjunctive adverbs)[8] such as *and, or, but, whereas, in case*. This technique makes meaning more transparent through inclusion in the surface form of minimal units of language. These units of language, in linguistics called lexemes, possess a semantic interpretation and indicate their particular illocutionary force (i.e., statement, command, directive).[9]

> (3) (2) A service falls within this paragraph *if* it is a service in relation to which all of the following conditions are satisfied—
>
> (a) it is intended for reception *only within* a particular area *or* locality;
> (b) its provision meets, *or* would meet, the needs of the area *or* locality where it is received;
> (c) its provision is *or* would be likely to broaden the range of television programmes available for viewing by persons living *or* working in that area *or* locality; *and*

[6] www.legislation.gov.uk/ukpga/2008/22/section/29.
[7] Oxford English Dictionary.
[8] Glossary of Linguistic Terms at https://glossary.sil.org/bibliography/l.
[9] glossary.sil.org/term/illocutionary-act.

> (d) its provision is *or* would be likely to increase the number *and* range of the programmes about that area *or* locality that are available for such viewing, *or* to increase the number of programmes made in that area *or* locality that would be so available (The Local Digital Television Programme Services Order 2012).[10]

Apart from words/expressions that have flexible meanings, and indefinite adjectives that might be purposefully used because they are particularly gradable and vague,[11] indeterminacy of interpretation may also be caused by the use of certain modality markers, due to their polysemy, as in the case of *shall* which has become extremely rare in legislative provisions.

> (4) Arrears payable in cases of non-compliance;
> […]
> "Where any additional remuneration is paid to the worker under this section in relation to the pay reference period but subsection (1) above has not ceased to apply in relation to him, the amounts described in subsections (2) and (4) above *shall be regarded* as reduced by the amount of that remuneration" (Employment Act 2008).[12]

As observed by eminent scholars in this field, though, the use of *should* rather than *shall* (in example 4, substituting "*shall* be regarded" with "*should* be regarded") could be construed as conveying a weaker degree of the obligation expressed (as if some sort of advice were implied by the text), and might allow greater discretionality of interpretation and application on the part of the final reader (Garzone 2013). Overall, an adequate use of modals (*should, will, must, may, might,* etc.) needs to be based on a careful consideration of the relation between linguistic semantic values and the social pragmatic setting of the legal provisions (Gotti and Dossena 2001).

Particularly in the last few decades, the Plain Language Movement has strongly influenced legislation in common law systems, as can be seen in the formulation of norms and regulations instructing legislative drafters how to adopt simpler and clearer writing.[13] An increasing number of guidelines for better legislative drafting has been provided with the purpose of achieving a greater degree of clarity and consistency, and these have been very influential in introducing significant innovations in law-making with a consequent improvement in the

[10] www.legislation.gov.uk/uksi/2012/292/article/3/made.
[11] *Substantial, satisfactory, negligent, unconscionable,* and *reasonable* are example of indefinite adjectives with borderline indefiniteness (Fjeld 2001).
[12] Employment Act 2008 (legislation.gov.uk).
[13] For example, some Offices of Parliamentary Counsel of various English-speaking countries (e.g. Australia, New Zealand, Scotland) specify in their websites that their drafters adopt Plain Language techniques.

quality of legislation. Thanks to criteria such as a smaller number of words per sentence, the extensive use of simple and compound sentences, and the adoption of a common lexis to name just a few, laws have become more accessible to laypeople. The adoption of these practices, though, is not in itself a guarantee of a completely successful result.

2. Legislative provisions in context

Legislative drafters deal with an unlimited universe of human behaviour, in the sense that it is impossible to predict exactly what may happen in the real world (Bhatia 2021). Law-making embraces the whole process ranging from the conceptualization of legislation up until its very implementation, whereas legislative drafting is limited only to the drafting process. This does not mean to say that drafting is completely foreign to the legislative process. In fact, the drafting process is part of the legislative process, which in turn is part of the policy process (Stefanou 2011).

At this point, it becomes crucial to consider the context of a legal document, and/or the legislative discourse, in order to shed light upon ambiguous and obscure provisions. In linguistics, discourse means the construction and organization of the segments of language above and below the sentence.[14] The meaning is always beyond the sentence (Fairclough 2003; 1995; 1989; van Dijk 1997; 1985; Fowler et al. 1979). The elements of grammar, lexis, and phonology play a fundamental role, but they are reconsidered as a part of a multilayered cognitive, social, and cultural phenomenon (Wodak and Meyer 2001; Langacker 1991; Fairclough 1989). Legislative drafting represents an example of specialized discourse, where the propositions of specialized information, or knowledge of the actors participating in the legislative process, is translated into meanings. Specialized knowledge, such as academic, scholarly, scientific, technical, and other kinds of knowledge which require specialized education or training, is a type of group knowledge. It is acquired, shared, and used among members of various kinds of scholarly or other specialized communities. These specialized communities are defined not only by their specialized knowledge, but also by their specialized social practices, including their specialized discourse and communication, as well as by a complex network of organizations and institutions such as universities, laboratories, and associations. There seems to be a straightforward relation between specialized knowledge and

[14] Oxford English Dictionary defines discourse analysis "a method of analysing the structure of texts or utterances longer than one sentence, taking into account both their linguistic content and their sociolinguistic context; analysis performed using this method."

specialized discourse if the latter is merely defined as the verbal expression of the former (Gotti 2011; van Dijk 2007; Haspelmath et al. 2005).

When talking about specialized discourse with public implications, two forms or versions are recognizable: one version aimed at the community of specialists, and the other aimed at ordinary people. The two forms are different in terms of the communicative purposes, depth of specificity, and the accessibility of meaning (Bhatia 2010). In order to make the specialist versions easier for processing and interpreting, Bhatia (2021, 2014) proposes the easification of legislative provisions via certain linguistic resources in order to make the provisions clearer, more precise, and unambiguous, though keeping them all-inclusive and transparent. As explained elsewhere (Pennisi 2016; Xanthaki and Pennisi 2016), the term easification is not synonymous with simplification. In fact, a simplified version of legislative provisions has the purpose of informing the general public about new or existing legislation, and the consequent legal implications in terms of specific topic(s) or issue(s). Although it does not preserve the all-inclusiveness and imperative nature of legislative provisions, indeed a simplified version guarantees that the basic meaning is easily understood by the final addressees (i.e., laypeople).

The next Sections will consider some examples of more recent legislation (2000-2020, for a total amount of 45,907,521 tokens) from the international context and from primary UK legislation, where the latest simplification and easification techniques are tested from the point of view of the theories developed in the field of specialized languages and linguistics.

2.1 Simplification technique

A simplified version of legislative provisions does not substitute the original text. The main function of a simplified text is to provide an explanation, summary, and information about the main principles of the legislative text, particularly when the addressees are not experts in law, or when they belong to specific categories of people who might not be able to easily grasp the meaning conveyed by legal texts (i.e., the elderly, young people, etc.). This is the case of *A simplified version of selected articles from the European Convention on Human Rights and its protocols* analyzed elsewhere (Xanthaki and Pennisi 2016); it was prepared by the European Directorate of Communication and its function is described on the very first page of document:[15]

[15] www.echr.coe.int/Documents/Convention_ENG.pdf.

(5) Please note that this simplified version is included for educational purposes only and takes its inspiration from the simplified version of the Universal Declaration of Human Rights produced by Amnesty International and others. The only texts which have legal basis are to be found in the official published versions of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols.[16]

A recent example worthy of attention is the document entitled *A simplified version of the United Nations Convention on the Rights of the Child* provided by the UNICEF Australia, and renamed as "An international agreement for child rights."[17]

(6) Thirty years ago, world leaders made a historic commitment to the world's children by adopting the United Nations Convention on the Rights of the Child – an international agreement on childhood. It's become the most widely ratified human rights treaty in history and has helped transform children's lives around the world. Learn more about the Convention on the Rights of the Child with our simplified guide.

As in the case of *A simplified version of selected articles from the European Convention on Human Rights and its protocols*, the simplified version of *The United Nations Convention on the Rights of the Child* has informative and instructive purposes, and provides essential information on the topic of the rights of the child. A comparative analysis between *The United Nations Convention on the Rights of the Child* (hereafter, Original Text—OT) and *A simplified version of the United Nations Convention on the Rights of the Child* (hereafter, Simplified Version–SV) reveals interesting insights into the linguistic and textual specificities of both versions. The OT is made up of a *Preamble* and fifty-four articles sequentially grouped in numerical order and divided into Part I (Art.1 Art.41), Part II (Art.42 – Art.45), and Part III (Art. 46 – Art. 54), with Art.54 certifying its enactment by the "the undersigned plenipotentiaries."

The preamble is extraordinarily long (584 words). It defines, in general terms, the purposes and considerations that led the parties to sign the Convention and consists of a sequence of secondary clauses that commence with words such as *Considering*, *Recognizing*, *Recalling*, *Mindful*, and *Bearing in mind*. The linguistic analysis reveals that the Convention has a clear lexico-grammatical structure, with a *case description* placed after the main sentence. This is particularly evident in Art.13 of the OT. Here, the case description placed after the main provisionary clause is textually organized in the form of sections and subsections:

[16] www.echr.coe.int/Documents/Simplified_Conv_ENG.pdf.
[17] www.unicef.org.au/our-work/information-for-children/un-convention-on-the-rights-of-the-child.

(7) Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

The OT shows an extensive use of textual-mapping devices breaking down each section into subsections and sub-subsections (ranging from one to seven sub-subsections) as in the extract below:

(8) Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;
(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child,

> in particular, taking into account his or her age or situation, his or her parents or legal guardians;
> (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
> (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
> (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
> (vii) To have his or her privacy fully respected at all stages of the proceedings.

On the other hand, the strategic use of linguistic elements and textual strategies in the SV makes the reading more accessible to all potential readers. The text consists of one page, and the general format looks like a poster with a Title Section (*A Simplified Version of The United Nations Convention on The Rights of The Child*), two pictures (one on the top-left side, and the other on the bottom-right side) showing children of different racial groups, the UNICEF logo (on the bottom-left side), and three columns of information each divided into sections containing the first forty-two articles of the Convention, as shown in Figure 1 below.[18]

A reader easily identifies each section of the SV at first glance. The textual analysis reveals that this is accomplished with a clear definition of each section through the use of different boxes, bold text, and whitespace that ensure the section headings stand out. In terms of the textual structure, the SV presents a shortened description of the first forty-two articles of the original text, and incorporates the subsequent twelve of the fifty-four articles present in the OT in a sentence placed at the end of the third column, immediately after Article 42:

> The Convention on the Rights of the Child has 54 articles in all. Articles 43-54 are about how adults and governments should work together to make sure that all children get all their rights. Go to www.unicef.org/crc. to read all the articles.

[18] Figure 1 has been adapted from the *Simplified Version of the United Nations Convention on the Rights of the Child* pdf, available at https://assets-us-01.kc-usercontent.com/99f113b4-e5f7-00d2-23c0-c83ca2e4cfa2/fc21b0e1-2a6c-43e7-84f9-7c6d88dcc18b/unicef-simplified-convention-child-rights.pdf. For the purpose of the present study, colours and pictures were not considered.

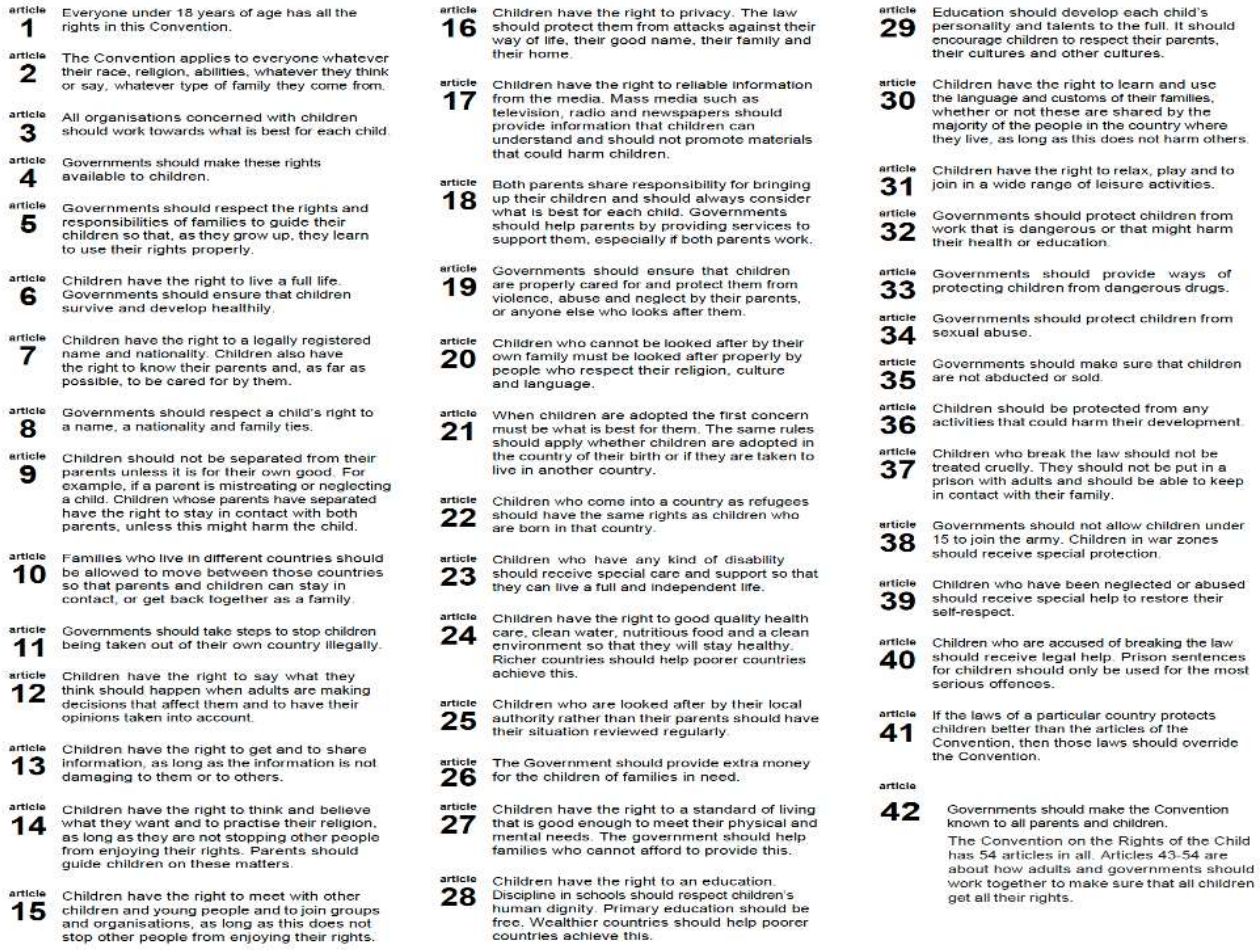

Fig. 1: A Simplified Version of The United Nations Convention on The Rights of The Child

Although the format is quite unusual, the linguistic and textual analysis of the SV reveals that there is no loss of the intended meaning. This is achieved by removing unnecessary specialized vocabulary, cross-referencing, overused textual mapping, and multiple negative phrasing, as shown in the following examples that compare both the original and the simplified versions of Article 2.

(9a) Article 2 (OT)

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status,

activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

(9b) Article 2 (SV)
The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.

The analysis demonstrates that Art. 2 of SV has:

- Significantly reduced the number of words (from 105 words in OT, to 23 words);
- Has removed the subsections;
- Has no references to the States Parties who "shall respect and ensure the rights set forth in the present Convention," pointing directly at the Convention that "applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from."

In this regard, it is worth mentioning that the expression *State Parties* is never used and has been replaced by the word *government(s)* apparently for immediate comprehension. Furthermore, the modals *shall* (103 occurrences) and *should* (6 occurrences) in the original text have been replaced by the modals *should* (44 times), *can* (1 occurrence), and *cannot* (1 occurrence), confirming the tendency of advocates of plain language in legal English to reject modality markers which are typically polysemous.
The lexico-grammatical, textual, and visual analysis reveals that the simplification technique is particularly effective when the legislator's intention is to explain and inform about a normative act/statement, and is addressed to a large and potentially uneducated audience. In general, SV is meant to be an account of the authoritative version, clearly stating the main legislative intentions and the implications for personal and public actions.

2.2 Easification technique

The elements of every legislative expression were clearly identified by Coode in the middle of the 19th century, when he wrote that:

> The expression of every law essentially consists of, 1st, the description of the legal Subject; 2dly, the enunciation of the legal Action. To these, when the law is not of universal application, are to be added, 3dly, the description of the Case to which the legal action is confined; and, 4thly, the Conditions on performance of which the legal action operates (1848, 4).

According to traditional legal drafting, sentences in common law legislative texts generally take a direct or indirect form of the legal reasoning formula: if A (*case*), then B (*legal subject*) shall be/shall do C (*legal action*) (Driedger 1982; Crystal and Davy 1969). Whenever possible, the structure of a rule should be *case* + *condition* + *sub-condition* + *legal subject* + *legal action*.[19]

Scholars working in this field (Langton 2005; Fung and Watson-Brown 1994) recommend that *legal subjects* be highlighted with an active voice verb in the first principal clause, the *action rule* be placed after *(pre-)conditions* and *case descriptors*, main clauses be expressed in the active voice, everything that comes after this main verb be an expression of the *legal action* of the section/subsection, and the *legal subject(s)* or *action(s)* be identified by the *cases, pre-conditions*, or *conditions*. In the case of legislative provisions, it is even more important to recognize the nature of legal reasoning, viz., the communicative purpose, the intended audience, and the linguistic features of the text itself (Geeraerts 1995; Bhatia 1993; 1987; Crystal and Davy 1969).

Poorly drafted provisions constitute a problem for the entire community. Courts may struggle to interpret and apply them, and lawyers find it difficult to base any advice upon them with any degree of certainty. Hence, needless to say, citizens will be confused about how to conform to them. (Galdia 2009). Indeed, it is the syntactic complexity that makes cognitive processing almost impossible for uninitiated non-specialist readers. Cognitive structuring is a term that linguists (Bhatia 2014; Langton 2005) use to indicate a practical tool for revealing potential language or comprehension problems present in the text and the nature of an adequate legal drafting rule. Rather than attempting to isolate syntax from the rest of language in a syntactic component governed by principles and elements specific to that component, the attention is focused on the relation of language structure to extra language items outside language. Cognitive structures, therefore, are the basic mental processes people use to make information meaningful. Other names for cognitive structures include mental structures, mental tools, and patterns of thought (Goddard 2009; Gardner 2004; Dewey 1997). One of the important assumptions shared by scholars, though, is that meaning is so central to language that it must be the primary focus of study. In this view, linguistic forms are closely linked to the semantic

[19] Langton (2005) distinguishes legal rules in *action rules* (duties, obligations and rights, prohibitions, powers and penalties), *stipulation rules* (how and when they are applied), *definition rules* (applied to the whole or part of the Act), and *qualification rules* (i) preparatory (i.e., when the rule applies); (ii) operational (i.e., how the rule applies); (iii) referential (i.e., other sections of the same Act or other Acts that are strictly linked thereto).

structures they are supposed to express, and the semantic structures of all meaningful linguistic units are the main concern of any linguistic investigation (Talmy 2017; Chafe 2008; Lakoff and Johnson 1998).

Clarifying cognitive structure is one of the most efficient easification strategies. Cognitive structuring, as Bhatia writes,

> serves a number of related purposes, such as facilitating the cognitive and syntactic processing of long sentences with multiple qualifications inserted at various points often adding excessive information load at various points in the syntactic arrangements of legislative provisions (2014, 10).

Thanks to easification strategies, it should be possible to: recognize the legislative intention; reduce information load at specific syntactic points; decrease the occurrence of syntactic discontinuities; and, choose referential links wherever needed. The extract below (example 10) is an example of the easification process:

(10) Criminal Appeal (Northern Ireland) Act 1980, Section 13
If the ground, or one of the grounds, for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand, but the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him guilty), the Court—

(a) shall substitute for the finding of not guilty on the ground of insanity a verdict of guilty of that offence; and
(b) subject to subsection (3) below, shall have the like powers of punishing or otherwise dealing with the appellant and all other powers as the court of trial would have had if the jury had returned that verdict.[20]

It is a relatively simple provision, but serves well as an interesting example of recent UK legislative provisions bearing a series of difficulties. To begin with, it is interesting to notice what the note *Changes to Legislation* states about the changes and effects as yet to be applied to Section 13: "Criminal Appeal (Northern Ireland) Act 1980, Section 13 is up to date with all changes known to be in force on or before 07 February 2021."[21] In order to make it easier for the readers to process the meaning of the provision reported in example 10, some of the

[20] www.legislation.gov.uk/ukpga/1980/47/section/13.
[21] www.legislation.gov.uk/ukpga/1980/47/section/13.

difficulties can be removed, as in the following alternative version produced by adapting Bhatia's (2021, 2014) vertical diagramming (Table 1) to our purposes:

Cognitive mapping of *Criminal Appeal (Northern Ireland) Act 1980, Section 13*

Main provision			Subsidiary Provision / Qualification
Stipulation rule	*If the ground*	*or one of the grounds* (binomial expressions)	Preparatory
//		*for allowing to appeal*	//
//	*is that the finding of the jury as to the insanity of the accused ought not to stand*		
		but the Court of Appeal is of opinion he was guilty of an offence	//
//	*the proper verdict would have been that he was guilty of an offence*	*(whether the offence charged or any other offence of which the jury could have found him guilty)* (multinomial expressions)	//
Action rule	*the Court a) shall substitute a verdict of guilty of that offence*	*on the ground of insanity*	Referential
	b) shall have the like powers of punishing	*or otherwise dealing with the appellant and all other powers* (multinomial expressions)	Preparatory
		as the court of trial would have had if the jury had returned that verdict	Stipulation + Referential

Tab. 1: Cognitive Mapping adapted from Bhatia (2021; 2014)

Thanks to easification, the main provision in example 11 will now be:

(11) If the ground for allowing the appeal (stipulation rule + qualification: preparatory) is that the finding of the jury as to the insanity of the accused ought not to stand, but the Court of Appeal is of opinion that the proper verdict would have been that he was guilty of an offence (stipulation rule + condition), the Court—

a) shall substitute a verdict of guilty of that offence on the ground of insanity (action rule + referential); and

b) shall have the like powers of punishing as the court of trial would have had if the jury had returned that verdict (action rule + stipulation /condition).

And the subsidiary provisions/qualifications will be the following:

(12) or one of the grounds / (whether the offence charged or any other offence of which the jury could have found him guilty) / or otherwise dealing with the appellant and all other powers.

Indeed, there is a potential ambiguity as to whether the phrase "any other offence of which the jury could have found *him* guilty" refers to "any other offence of which the jury could have found *any person* guilty." The way the clauses are structured seems to suggest that the phrase refers to the "accused party." As the example shows, the easification technique does not modify, nor does it rewrite the content of the provisions, but rather clarifies and makes content more accessible.

More recent legislation has resolved some of the problems mentioned earlier (example 10), as shown in the extracts given below (example 13) taken from the *Children (Leaving Care) Act 2000*, UK Public General Acts 2000 c. 35 Section 4:[22]

(13) 4 Advice and assistance for certain children and young persons aged 16 or over.
(1) For section *24 of the 1989 Act* (advice and assistance for certain children), substitute the following sections—
[…]

24A Advice and assistance.
(1) The relevant authority shall consider whether the conditions in subsection (2) are satisfied in relation to a person qualifying for advice and assistance.

(2) The conditions are that—

(a) he needs help of a kind which they can give under this section or section 24B; and
(b) in the case of a person who was not being looked after by any local authority, they are satisfied that the person by whom he was being looked after does not have the necessary facilities for advising or befriending him.

[22] www.legislation.gov.uk/ukpga/2000/35/section/4.

(3) If the conditions are satisfied—

(a) they shall advise and befriend him if he was being looked after by a local authority or was accommodated by or on behalf of a voluntary organisation; and
(b) in any other case they may do so.

(4) Where as a result of this section a local authority are under a duty, or are empowered, to advise and befriend a person, they may also give him assistance.

(5) The assistance may be in kind or, in exceptional circumstances, in cash.

(6) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section or section 24B as they apply in relation to assistance given under that section.

There are a number of interesting aspects in this section 4 (*Advice and assistance for certain children and young persons aged 16 or over*):

- The section has *a title*, which indicates what this provision is about;
- It displays a rather clear cognitive structure, with no lengthy initial *case description*;
- The new definitions that substitute those provided by the 1989 Act (advice and assistance for certain children) are textually mapped in the form of two sub-subsections listed as (a) and (b) for ease of processing;
- It makes use of textual-mapping devices and breaks down sections into different sub-subsections;
- There are few complex multinomials and nominalizations;
- There are syntactic discontinuities and subsection (b) ends with a clarification of crucial technical terms.

Whereas most sections are generally easier to process and understand, the following extracts taken from the same *Children (Leaving Care) Act 2000* are among the most complex legislative provisions:

(14) Children (Leaving Care) Act 2000
Section 4. Advice and assistance for certain children and young persons aged 16 or over.

(1) For section 24 of the 1989 Act (advice and assistance for certain children), substitute the following sections—
"24 Persons qualifying for advice and assistance."
[…]

(4) In the case of a person qualifying for advice and assistance by virtue of subsection (2)(a), it is the duty of the local authority which last looked after him to take such steps as they think appropriate to contact him at such times as they think appropriate with a view to discharging their functions under sections 24A and 24B.

(5) In each of sections 24A and 24B, the local authority under the duty or having the power mentioned there ("the relevant authority") is—

(a) in the case of a person qualifying for advice and assistance by virtue of subsection (2)(a), the local authority which last looked after him; or
(b) in the case of any other person qualifying for advice and assistance, the local authority within whose area the person is (if he has asked for help of a kind which can be given under section 24A or 24B).

If we look at subsections 4 (59 words) and 5 (87 words) (example 14), the sentences appear to be a classic example of conventional legislative provision with its quite standard opening *case description* (which accounts for 28 words in subsection 4, and 36 in subsection 5) of the legislative sentence. Then we have what in legal terminology is known as *legal action* "it is the duty of the local authority to take such steps" (subsection 4) and "In each of sections 24A and 24B, the local authority under the duty is […]." Both of the sentences have binomial or multinomial expressions, such as … *for advice and assistance*… (Subsection 4), *or having the power mentioned there…,* and *or (b) in the case of any other person qualifying for advice and assistance*… (Subsection 5). In terms of the cognitive structuring of the text, another interesting device present in example 14 is what linguists often call syntactic discontinuities, of which a good example is the use of *as they think appropriate to contact him…, as they think appropriate*…as two almost identical qualifications intervening in the syntactic unity of the multinomial "with a view to discharging their functions under sections 24A and 24B" in Subsection 4, and "*by virtue of subsection (2)(a)… if he has asked for help of a kind which can be given under section 24A or 24B* in Subsection 5." These are typical examples of the use of multinomials to make the legislative provision all-inclusive in terms of adequate specification of complex contingencies. These multinomials have been highlighted in the following extracts (example 15):

(15) Children (Leaving Care) Act 2000
Section 4. Advice and assistance for certain children and young persons aged 16 or over.

(1) For section 24 of the 1989 Act (advice and assistance for certain children), substitute the following sections—
"24Persons qualifying for advice and assistance."
[…]

(4) In the case of a person qualifying for advice and assistance by virtue of subsection (2)(a), it is the duty of the local authority *which last looked after him* to take such steps *as they think appropriate to contact him* at such times *as they think appropriate with a view to discharging their functions under sections 24A and 24B*.

(5) In each of sections 24A and 24B, the local authority under the duty *or having the power mentioned there* ("the relevant authority") is—

(a) in the case of a person qualifying for advice and assistance *by virtue of subsection (2)(a), the local authority which last looked after him*; or
(b) *in the case of any other person qualifying for advice and assistance*, the local authority within whose area the person is (*if he has asked for help of a kind which can be given under section 24A or 24B).*

Easification technique aims to make the text clearer, not simpler. Example 16 illustrates how the application of easification to Art. 24(a) of *Children (Leaving Care) Act 2000* resolves some problems mentioned earlier:

(16) Children (Leaving Care) Act 2000
Section 4. Advice and assistance for certain children and young persons aged 16 or over.

(1) For section 24 of the 1989 Act (advice and assistance for certain children), substitute the following sections—"24Persons qualifying for advice and assistance."
[…]

(4) It is the duty of the local authority, which last looked after *a person qualifying for advice and assistance* by virtue of subsection (2)(a),

(i) to take such steps as they think appropriate to contact a *person qualifying for advice and assistance* by virtue of subsection (2)(a);
(ii) as they think appropriate at such times *with a view to discharging their functions under sections 24A and 24B*.

THEN,

(5) In each of sections 24A and 24B, the local authority (under the duty or "the relevant authority") is—

(a) the local authority which last looked after him, *in the case of a person qualifying for advice and assistance by virtue of subsection (2)(a)*, or
(b) the local authority within whose area the person is (*if he has asked for help of a kind which can be given under section 24A or 24B*), *in the case of any other person qualifying for advice and assistance*.

By regrouping ideas and using bullet points to create one legal subject and one case descriptor, and by substituting *him* with *a person qualifying for advice and assistance* (example 16 "(4) It is the duty…") the problem with the confusing use of *him* is solved without significantly changing the scope or content of the original text. By regrouping ideas and inserting a *Then* clause to reflect the underlying legal reasoning and nature of the legal rules (example 16 "(5) In each of sections…"), the problem of the interpretation of *he/him* is solved.

3. Conclusions

This paper has provided an account of how legislative provisions are structured, and has confirmed that legal texts, and particularly legislative provisions, cannot be considered in an isolated way, separate from their communicative context(s). In particular, the analysis has shown that linguistics can come to the aid of legislation by: (i) investigating how meaning and text-functions evolve in the process of text production; (ii) highlighting in a clear manner the main objectives of the legislative texts produced; and (iii) assessing whether the meaning and text functions match the original intentions of the legislators. The investigation of more recent international and UK primary legislation has shown interesting improvements in the degree of clarity and consistency. Thanks to criteria recommended by Plain Language advocates and the guidelines for better legislative drafting updated constantly by common law jurisdictions—such as the reduction in the number of words per sentence and the adoption of common lexis—laws have become more accessible to laypeople. Yet, as the analysis has revealed, there is still room for improvement. Both simplification and easification techniques can improve the legislative provisions linguistically and textually, depending on the fundamental communicative purpose and the context in which the legislation will be implemented. Future research might consider how and to which degree the legislative provisions reflect the intention of the policy makers, and help legislative drafters to improve the drafting quality at various levels.

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Works cited

Barnes, Jeffrey. "The Continuing Debate about 'Plain Language' Legislation: A Law Reform Conundrum." *Statute Law Review* 2.2 (2006): 83-132.

Bhatia, Vijay K. *Analysing Genre: Language Use in Professional Settings*. London: Longman, 1993.

---."Drafting Legislative Provisions: Challenges and Opportunities." *Commonwealth Association of Legislative Counsel/Loophole* (2010): 5-15.

---."Legal Writing: Specificity." *The Routledge Handbook of Forensic Linguistics*. Edited by Malcolm Coulthard and Alison Johnson. London: Routledge, 2021. 37-50.

---."Linguistic and Socio-pragmatic Considerations in Legislative Drafting." *Legislative Drafting and Linguistics* 2.2 (2014): 169-183.

---. "Textual-mapping in British Legislative Writing." *World Englishes* 1 (1987): 1-10.

---. *Worlds of Written Discourse*. London: Continuum, 2004.

Bowman, Geoffrey. "The Art of Legislative Drafting." *Amicus Curiae* 64 (2006): 2-9.

Butt, Peter. *Modern Legal Drafting: A Guide to Using Clearer Language*. Cambridge: Cambridge University Press, 2013.

Campbell, Lisbeth. "Drafting Styles: Fuzzy or Fussy?". *Murdoch University Electronic Journal of Law* 3.2 (1996): 17.

Chafe, Wallace. "Aspects of Discourse Analysis." *Brno Studies in English* 34 (2008): 23-37.

Coode, George. *On the Legislative Expressions or the Language of Written Law*. Philadelphia: T. & J.W. Johnson, 1848.

Crystal, David and Derek Davy. *Investigating English Style*. London: Routledge, 1969.

Dewey, John. *How We Think*. New York: Dover Publications Mineola, 1997.

Driedger, Elemer A. *A Manual of Instructions for Legislative and Legal Writing*. Ottawa: Minister of Supply and Services Canada, 1982.

Engberg, Jan. "Legal Linguistics as a Mutual Arena for Cooperation: Recent Developments in the Field of Applied Linguistics and Law." *AILA Review* 26 (2013): 24-41.

Fairclough, Norman. *Analysing Discourse: Textual Analysis for Social Research*. London: Routledge, 2003.

---. *Language and Power*. Harlow: Longman, 1989.

---. *The Critical Study of Language*. London: Longman, 1995.

Fjeld, Ruth V. "Interpretation of Indefinite Adjectives in Legislative Language." *Languages for Special Purposes: Perspectives for the New Millennium*. Edited by Felix Mayer. Tübingen: Narr, 2001. 643-650.

Fowler, Roger, et. al. *Language and Control*. London: Routledge and Kegan Paul, 1979.

Fung, Spring Y.C. and Anthony Watson-Brown. *The Template: A Guide for the Analysis of Complex Legislation*. University of London: Institute of Advanced Legal Studies, 1994.

Galdia, Marcus. *Legal Linguistics*. Frankfurt: Peter Lang, 2009.

Gardner, Howard. *Changing Minds: The Art and Science of Changing Our Own and Other People's Minds*. Boston: Harvard Business School Press, 2004.

Garzone, Giuliana. "Variation in the Use of Modality in Legislative Texts: Focus on Shall." *Journal of Pragmatics* 57 (2013): 68-81.

Geeraerts, Dirk. "Cognitive Linguistics." *Handbook of Pragmatics.* Edited by Jef Verschueren et al. Amsterdam: John Benjamins, 1995. 111-116.

Goddard, Murray J. "The Impact of Human Intuition in Psychology." *Review of General Psychology* 13.2 (2009): 167-174.

Gotti, Maurizio. *Investigating Specialized Discourse*. Bern: Peter Lang, 2011.

Gotti, Maurizio and Marina Dossena. *Modality in Specialized Texts*. Bern: Peter Lang, 2001.

Haspelmath, Martin, et al. *The World Atlas of Language Structures*. Oxford: Oxford University Press, 2005.

Lakoff, George and Mark Johnson. *Philosophy in the Flesh: The Embodied Mind and its Challenge to Western Thought*. New York: Basic Books, 1998.

Langacker, Ronald W. *Foundations of Cognitive Grammar*. Vol.2: *Descriptive Application*. Stanford: Stanford University Press, 1991.

Langton, Nicola M. "Cleaning Up the Act: Using Plain English in Legislation." *Clarity* 54 (2005): 28-32.

Pennisi, Giulia A. "Legislative Provisions in Context: A Linguistic Approach." *Statute Law Review* 2.37 (2016): 101-115.

Scollon, Ron. "Action and Text: Towards an Integrated Understanding of the Place of Text in Social (Inter)action, Mediated Discourse Analysis and the Problem of Social Action."

Methods of Critical Discourse Analysis. Edited by Ruth Wodak and Michael Meyer. London: SAGE Publications, 2001. 139-195.

Solan, Lawrence M. "Private Language, Public Laws: The Central Role of Legislative Intent in Statutory Interpretation." *Georgetown Law Journal* 93.2 (2005): 427-486.

---. "The Language of Judges." Chicago: The University of Chicago Press, 1993.

Stefanou, Constantin. "Legislative Drafting as a Form of Communication." *Quality of Legislation Principles and Instruments.* Edited by Luzius Mader and Marta Tavares de Almeida. Nomos: Baden-Baden, 2011. 308-320.

Talmy, Leonard. *The Targeting System of Language*. Cambridge: The MIT Press, 2017.

Tiersma, Peter. *Legal Language*. Chicago: Chicago University Press, 1999.

Tiersma, Peter and Lawrence M. Solan. *Oxford Handbook of Language and Law*. Oxford: Oxford University Press, 2012.

van Dijk, Teun A. "Contextual Knowledge Management in Discourse Production: A CDA Perspective." *A New Agenda in (Critical) Discourse Analysis.* Edited by Ruth Wodak and Paul Chilton. Amsterdam: John Benjamins, 2005. 71-100.

---. *Discourse Studies*. London: Sage, 2007.

---. *Discourse Studies: A Multidisciplinary Introduction*. London: Sage, 1997.

---. *Handbook of Discourse Analysis*. London: Academic Press, 1985.

Xanthaki, Helen. *Drafting Legislation: Art and Technology of Rules for Regulation*. Oxford: Hart Publishing, 2014.

Xanthaki, Helen and Giulia A. Pennisi. "Crossing the Borders between Legislative Drafting and Linguistics: Linguists to the Aid of Legislative Drafters." *Explorations in Language and Law*: *Approaches and Perspectives*. Edited by Girolamo Tessuto. Aprilia: Novalogos, 2012. 83-109.

---. "Legislative Drafting e Linguaggio: Ipotesi di Semplificazione del Testo Normativo." *Studi Parlamentari e di Politica Costituzionale* 185/186 (2016): 41-71.

Williams, Christopher. "Legal English and Plain language: an Introduction." *ESP Across Culture* (2004): 111-124.

---. *The Impact of Plain Language on Legal English in the United Kingdom*. New York: Routledge, 2023.

Wodak, Ruth and Michael Meyer. *Methods of Critical Discourse Analysis*. London: Sage, 2001.