

Language and Law in Professional Discourse

Language and Law in Professional Discourse:
Issues and Perspectives

Edited by

Vijay K. Bhatia, Giuliana Garzone, Rita Salvi,
Girolamo Tessuto and Christopher Williams

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P U B L I S H I N G

Language and Law in Professional Discourse: Issues and Perspectives,
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INTRODUCTION

VIJAY K. BHATIA, GIULIANA GARZONE,
RITA SALVI, GIROLAMO TESSUTO
AND CHRISTOPHER WILLIAMS

Language in law has long been the focus of attention from scholars of various persuasions, including legal experts, philosophers, sociologists, and applied linguists, especially discourse and genre analysts. In order to understand how legal professionals participate in their day-to-day activity, it is not enough to focus on language alone, but to study critically how language is used and exploited in everyday professional discourse.

In keeping with the performance of professional activities through language, this edited volume *Language and Law in Professional Practice - Issues and Perspectives* brings together international scholars from within applied linguistics to examine the ways in which the complex and diverse issues of Language and Law play themselves out in discursive and professional genres. Specifically, this volume is the end-product of the 2nd International Conference ‘Law, Language and Professional Practice’ held at the Department of Law of the Seconda Università degli Studi di Napoli (10-12 May 2012), where keynote lectures and several papers revolved around the central theme. As such, the volume is a carefully selected collection of research papers presented by such scholars and reshaped into chapters after a blind-review process. The volume shares its roots with other selected, peer-reviewed papers from the same Conference published in the volume *Language and Law in Academic and Professional Settings - Analyses and Applications* of the *Explorations in Language and Law* international series (Novalogos, 1/2013). Both editorial sites thus encourage a wider overview of the state-of-the-art description of the existing issues of language and law in professional practice debated at the Conference.

The nine chapters in this volume are organised into two Parts addressing topic areas of legal discourse (written and spoken) relevant to professional practice and communication, namely:

- issues related to the construction, use and accessibility of legislative, judicial and web-mediated discourse; and
- those related to authority, power and identity.

Analyses of such issues from professional and other institutional contexts rely on specific perspectives, varied applications, and different methodological procedures necessary to provide a multifaceted overview of the ongoing research. The book therefore offers a variety of interests in undertaking analyses of legal discourse and genre constructed, interpreted and used within the socially-informed framework of Language and Law.

Part One of the book opens with four studies in topic areas where **Construction, use and accessibility of legislative, judicial and web-mediated discourse** are dealt with.

In the first chapter, ‘Facing the *facts*: evaluative patterns in English and Italian judicial language’, STANISŁAW GOŹDŹ-ROSKOWSKI and GIANLUCA PONTRANDOLFO set their analysis in the context of evaluation in legal argumentation in that evaluation reflects the value system(s) espoused by legal systems, cultures, and their respective judicial institutions. Surprisingly, the authors argue, research into evaluation of judicial discourse appears as yet to be in its infancy, especially with regard to contrastive cross-language studies. Against this backdrop, their study begins to address this issue by focusing on the most frequent phraseologies co-occurring with the “N *that*” lexico-grammar pattern, and particularly, the most frequent noun “fact” and its Italian equivalent “fatto”. Supported by substantial bilingual data, their study reports on the evaluative patterns (understood here as combining both attitudinal and modality meanings) in which “fact *that*”/ “fatto *che*” tend to be used in criminal judgments delivered by the US Supreme Court and Italy’s Corte Suprema di Cassazione. The argument is therefore made for both US and Italian judgments to show a clear preference for the use of *fact/fatto* which conveys different types of evaluative meanings. More specifically, *fact that/fatto che*, when used in subject clause-initial position, co-selects negative polarity. As the authors argue, however, polarity is relatively seldom used to convey explicit evaluative (attitudinal) meanings. Instead, both US and Italian judges tend to employ *fact that/fatto che*-related phraseologies for more “covert”, i.e. implicit, evaluation to relate to their outcomes, problems, solutions or conclusions.

In the second chapter, ‘Drafting court judgment in Italy: history, complexity and simplification’, STEFANO ONDELLI presents the results of a research project on court judgments as a genre. The first two stages of his research adopt a qualitative approach and focus on verb tense distribution

to account for the generic structure of Italian court judgments. In doing so, the author offers insights into the historical development of specific verb tense patterns and highlights the need for rationalisation and simplification of the generic product. The third stage also includes quantitative research: four corpora in electronic format are compiled, including the Italian version of texts produced by the Court of Justice of the European Union, the Italian Court of Cassation, the Swiss Federal Court, and the Appeal Court of Canton Ticino. The author uses statistical software to assess differences in terms of lexical richness, lexical density and readability, and to calculate verb tense frequencies and distribution patterns. The author argues that shortcomings of automatic quantitative analysis may be redressed through qualitative surveys and, in addition to highlighting differences in the Italian written in Italy, Switzerland and the EU institutions, data can provide insights and suggestions for more effective drafting techniques.

In chapter three, 'Self-construction of legislative discourse through mashups; a multi-perspective analysis', ANNA FRANCA PLASTINA starts from the premise that non-specialist readers often resort to simplified legislative texts in order to gain an understanding of the underlying obscure, ambiguous and complex discourse. However, this solution inevitably brings changes which may alter the meaning and/or structure of the original text. In her study, therefore, the author proposes a pragmatic alternative to simplification by exploring the potential of multimedia technologies which are now permeating law practice. In the current digital age of *visual jurisprudence*, the author admits, particular technological applications may offer new support to the non-specialist community, whose problem of comprehending legislative discourse still remains largely unsolved. As one specific type of web-based applications, therefore, mashups are considered by the author for their possible functional use as non-linear rhetorical easification devices. For this purpose, three Bills originating in the House of Representatives are selected for their importance in reflecting the law-making process of social issues which directly affect lay-people. In this case, mashed-up texts are generated for the corpus of materials in a specialised mashup dealing with US Bills. These new texts are therefore subjected to qualitative, descriptive and multi-perspective analysis. This analysis sheds light on how different semiotic resources and mashup affordances may contribute significantly to reducing information load, clarifying cognitive structuring, and minimising language complexity in all the multi-perspective spaces of discourse.

The chapter 'Expert to layman communication: legal information and advice on the Internet' by JUDITH TURNBULL closes this section. The author focuses on expert-lay communication and specifically on a British government website, direct.gov.uk, which provides information to lay readers about the law and their rights. As an explanation for her study, the author sets forth beforehand that many people nowadays turn to the Internet for specialised information rather than seeking immediate expert advice. Yet, the syntactic complexity and highly technical vocabulary peculiar to the language of the law is one which accentuates the already asymmetrical nature of the expert-lay relationship. With this in mind, the author investigates the ways and the extent to which legal information on divorce matters is 'translated' into comprehensible language on the website. The author's study draws on a number of approaches, both quantitative and qualitative, though primarily Discourse Analysis and Critical Discourse Analysis, in order to capture the complexity of the communicative event. Findings show that the information conveyed by the website is simplified structurally, lexically and syntactically and therefore made more accessible to its very heterogeneous audience, whilst a personal and informal style appears to narrow the gap between expert and lay people. However, the argument is also made about text simplification tending to reduce the complexity of the information within discourse elements and practice, and therefore to possibly mislead the reader into believing that divorce procedure is much simpler than it actually is.

Part Two of this volume addresses **Issues of Authority, Power and Identity**.

In chapter five, 'Competing discourses of respect in a Young Offenders Institution Education Department', PAOLA BOCALE explores the discourses of respect in a Young Offenders Institution in England. With the aim of developing a deeper understanding of perspectives on respect in custodial education, the author examines self-narratives elicited from a prison officer, a library assistant and a teacher working in the Education Department. From the analysis of the different discourses of respect identified in the narratives, respect emerges as a complex of multilayered and interconnecting phenomena which affect both the personal and social dimension of human life. On a personal level, the author argues, respect involves an acknowledgement of a person's individuality and the possibility of having a personal involvement with that individual. Whereas the civilian staff emphasise that respect involves interaction and mutual understanding, the officer's talk is shaped by an authoritarian discourse not defined by an engagement with individual selves but only with the prison institution. The only possible form of respect emerging from the

point of view of the officer towards the prisoners is respect as obedience, which depends on how prisoners respond to the condition of being incarcerated without fighting the system. The participants' narratives also provide some insights into the social dimension of respect, such as the contextual factors affecting its perception and recognition in a YOI, including the audience and the power relationship existing between the parties.

In chapter six, 'Constructing authority in international investment arbitration: insights from separate opinions at ICSID', RUTH BREEZE moves into the analytical foreground by attending to the growing evidence that arbitration, which was initially conceived of as a more flexible alternative to standard legal procedures such as litigation, is now developing a body of case law of its own. In this context, the author considers the case of the International Centre for the Settlement of Investment Disputes (ICSID), which resolves major disputes that arise between companies and states. The author relies on some evidence that a body of case law is developing within the ICSID itself, and that arbitrators are increasingly referring to previous awards as precedents when they present their arguments and draft the final Award. Thus, her study looks into the evidence from dissenting opinions published alongside the ICSID Award. These opinions contain many references to previous arbitral decisions, from both ICSID and other international courts of arbitration. Discourse analysis of the referencing systems used in the text shows that arbitrators make use of authoritative figures and previous arbitral decisions to underpin and strengthen their own position, and to bring arguments to a close. In short, this study provides some evidence that previous arbitral decisions are increasingly being used in this context much in the way that precedents would be used in common law pleadings or judgments.

In chapter seven, 'A question of training: issues of language and power in formal police investigative interviews', BRONWEN HUGHES and ANTONELLA NAPOLITANO focus on the analysis of questions and answers in advanced suspect interviews for Tier 3 (Specialist Suspect Interviewers) carried out at the Metropolitan Police Crime Academy in the United Kingdom as part of formal police training. The interviews (cognitive PACE evidentiary interviews) are investigated through the Conversation Analysis approach to "institutional talk", with particular attention to the structure of the dyadic, asymmetrical formal interview, the pre-allocation of turns, question typology and third turn receipt markers. After a brief overview of the procedural models which govern interviewing techniques (*Enhanced Cognitive Interview* (ECI), *TEDS* (*tell, explain, describe, show*) framework), the authors begin with an investigation of suspect-initiated

questions among which the authors identify three distinct groups: requests for clarification, polemic enquiries and information-seeking questions. A second section is devoted to the interviewing officer's third turn receipt markers, such as neutral "ok" and formulations with lexical variation. A further section of their study analyses the elicitation/information-seeking questions put forward by the interviewing officers and posits that such officers are not always able to adhere to the *TEDS* framework which encourages open, non-threatening questions, but regularly adopt more traditional "wh" questions, thus narrowing the suspect's scope for response. Finally, the authors illustrate that conversationalisation techniques are recurrently employed throughout the interviews, though such 'democratized' discourse would invariably appear to serve goal-oriented institutional aims.

In chapter eight, 'A respected neutral expert – arbitrator profile in focus', TARJA SALMI-TOLONEN discusses the arbitrator's construction of identity through narratives. The author's premise is that in Europe, as in the rest of the world, arbitration has become more and more common as a mechanism for the settling of commercial disputes. She goes on to state that one attraction arbitration has is that the companies in dispute can choose the arbitrators themselves. The qualities the companies appreciate in arbitrators are their professional qualifications and experience and – more importantly – the personality of the arbitrator. Therefore, arbitrators' identities are focused upon. By looking into arbitrators' interviews, the author examines how a sense of self or an identity is conveyed and indexed, and seeks to identify what their fundamental assumptions and concerns are, what lexicons are used in their tales, and whether their usual way of interacting can be found and whether a common arbitrator profile can be constructed. The author's approach is therefore eclectic, combining narrative analysis, recontextualisation theory and appropriation theory. Findings suggest that both shared and individual qualifications account for three distinct profiles: that of an authority, a healer, and an administrator.

VIEIRA TORRES AMITZA closes Part II with her study 'Role hybridity in professional practice in a hearing in the Special Criminal Court'. The author uses the qualitative approach to interpretive research in order to analyse the interaction data in real speech. In analysing the communicative intent of the speakers in the production of their utterances, the author discusses discourse hybridity in professional contexts where the judge's role emerges from a Hearing in the Special Criminal Court in Brazil. The latter represents a legal setting where criminal contraventions and misdemeanours are tried and punished by an imprisonment not exceeding two years. Specifically, therefore, the author aims: (1) to describe the

hybridity roles played by the judge in a hearing in the Special Criminal Court; (2) to investigate the reasons why certain roles are constructed in this talk-in-interaction; and (3) to identify which roles are deliberately played and which ones are imposed by virtue of the specific institutional mandate in a Criminal Hearing. As a result, the author identifies two main role-sets: professional roles, referring to the accomplishment of the institutional mandate of the Hearing, and pedagogic roles, marked by an orientation to the parties.

As has become increasingly clear throughout this contents overview, the research landscape offered by contributors covers diverse and complex features of legal discourse construction where socially informed aspects of language use are inherently negotiated by professional practices. Such features thus provide the wide scope for the critical study of legal language as a tool for social action, and set up a descriptive and interpretive framework for engaging with representations of legal discourses and genres where authority, power and ideology are established and communicated as part of the socio-cultural contexts of those who use language. Formation of specific discursive practices within professional, institutional and organisational legal frameworks is no less relevant to acknowledge theoretically canvassed areas of hybridity, intertextuality, interdiscursivity and recontextualisation in legal language and discourse. By providing different thematic contents and distinctive arguments, this book will therefore offer both a resource and a stimulus to its readers.

PART I:

**CONSTRUCTION, USE AND ACCESSIBILITY
OF LEGISLATIVE AND (EXTRA) JUDICIAL
DISCOURSE**

CHAPTER ONE

FACING THE *FACTS*: EVALUATIVE PATTERNS IN ENGLISH AND ITALIAN JUDICIAL LANGUAGE¹

STANISLAW GOŹDŹ-ROSZKOWSKI
AND GIANLUCA PONTRANDOLFO

Introduction

Attitudes, value judgements, or assessments represent a crucial aspect of judicial language. Assessing the status of evidence and the applicability of the relevant law requires an ability to discriminate among a number of epistemic distinctions. Apart from making decisions, judges are expected to justify them by referring to a received body of law and observing the principle of neutrality. Judicial activity routinely includes interpreting statutes, various legal documents and earlier court decisions. In the case of appellate courts, a substantial part of judicial argumentation involves expressing agreement or disagreement with decisions given by lower courts, opinions expressed by counsel representing the parties, as well as opinions arrived at by fellow judges from the same bench. Judicial opinions should be free of any overt expressions of personal stance and at the same time judges are under pressure to speak with a definitive voice (Solan 1993: 2). There is little doubt that judicial opinions represent a fascinating area to examine the way(s) in which this professional community employs various linguistic mechanisms to express a range of evaluative functions.

There is a long and rich research tradition of studying the linguistic mechanisms employed by speakers and writers to convey their personal

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

feelings and value judgements. Many different conceptual and theoretical approaches are reflected in a wide range of terminology, including *appraisal* (e.g. Martin / White 2005), *stance* (e.g. Biber 2006), *metadiscourse* (e.g. Hyland / Tse 2004), *modality* (e.g. Palmer 1987), *sentiment* (e.g. Taboada / Grieve 2004), *evaluative*, *attitudinal* or *affective* language (e.g. Ochs 1989), *evidentiality* (e.g. Chafe / Nichols 1986) and *evaluation* (e.g. Hunston 1994, 2011).

Surprisingly, linguistic research into this phenomenon as it applies to legal language is still in its infancy. One strand of legal linguistics research on evaluative meanings is linked to the relationship between testimonial evidence and subjective judgements of witnesses providing such evidence (Heffer 2007). Another line of research concerns the study of legal argumentation (cf. Mazzi 2007, 2010).

More recently, Goźdz-Roszkowski / Pontrandolfo (forthcoming) document the use and functions of frequent evaluative patterns by comparing the “N that” pattern (nouns followed by an appositive *that*-clause) in American and Italian criminal judgments. The study demonstrates the central importance of evaluation for legal argumentation and the crucial link between evaluation and phraseology. More specifically, it applies the new concept of recurrent semantic sequences (Hunston 2008) manifested in the “N *that*” pattern to explore the linguistic construal of evaluation by judges. It is argued that judicial opinions exhibit a significant correlation between the frequent occurrence of abstract nouns belonging to the semantically defined category of “argumentation” (such as *argument*, *assumption*, *fact*, *claim*, etc.) followed by appositive *that*-clauses and co-occurring with linguistically varied items expressing evaluative meaning. These linguistically varied items range from adjectives (e.g. *dubious*, *unavailing*, *compelling*, etc.), and verbs (e.g. *rejected*, *commend*, *disapproved*, etc.), to adverbs (e.g. *inexorably*) and their presence in such a syntactically constrained environment illustrates another claim that evaluation is to a great extent contextual and cumulative, i.e. evaluative meaning is spread across phraseologies rather than attached to individual words. Finally, evaluative meanings are not always immediately conspicuous: a great deal of phraseology with appositive *that*-clause qualifiers patterns shows “latent patterning”, i.e. patterning in language that is not obvious to intuition or to language as it is observed in single texts (Sinclair / Coulthard 1975). Apart from overtly and explicitly evaluative items (nouns like *omission*, *problem*; verbs such as *disagree*, *agree*; adjectives as *illogical*, *logical*, *correct*; adverbs like *wrongly*, *correctly*, etc.), there are a whole range of nouns that pass unnoticed because they are connoted in a less explicit way. There is

nothing intrinsically positive or negative in nouns like *fact*, *argument*, *conclusion*, *view* or *fatto*, *conclusione*, *valutazione*, *tesi*, when viewed in isolation as discrete items, and yet these status nouns are employed by judges in contexts marked by strong positive or negative polarities.

The present study extends the findings provided in Goźdz-Roszkowski and Pontrandolfo (forthcoming) by focusing on the most frequent noun in the “N that” pattern in both American and Italian texts, i.e. “fact *that*”/“fatto *che*” and exploring its role in the construal of epistemic stance in American and Italian judicial language. The importance of *fact* as an epistemic noun is recognised in the literature (e.g. Biber et al. 1999: 648-651). The widespread use of “fact” with *that*-clauses to express epistemic stance across different academic disciplines is also documented in Biber’s corpus-based study of spoken and written university registers (2006: 112). Hunston (2008, 2011) reports the high occurrences of “fact *that*” not only in law, but also in the disciplinary discourses of politics, education, humanities and social sciences. *Fact* seems to differ from other status nouns, such as *assumption* or *hypothesis* because of the more general and abstract difficulty inherent in the nature of facts and reality. As Hunston (2011) points out, propositions can have factual status without actually being referred to as “fact”. Conversely, using the label *fact* does not always correspond to the same “factual” evaluation of a given proposition by a particular discourse community. There is some evidence (coming mostly from the Academic sections of the British National Corpus and discussed in Hunston 2011) that the use of epistemic status of *fact* may vary depending on a given discipline. For example, disciplines belonging to the natural sciences, engineering or medicine contain considerably fewer instances of *fact* to label their propositions than disciplines grouped as humanities, the disciplines of politics, law and education (Hunston 2011). The statistical data might come as a surprise since the natural sciences or engineering are popularly considered as hard sciences with a more direct alignment between proposition and the world than is the case with “soft” sciences such as humanities, law or politics.

The present study aims to document how *fact* tends to be used in the domain of law by the discourse community of judges. It focuses on judgments handed down by the *United States Supreme Court* and Italy’s *Corte Suprema di Cassazione* because of their central importance for the judicial systems in both jurisdictions and their law-making function. The opinions of the Supreme Court judges are considered by legal communities as one of the most striking examples of “living law” or *law in action* to refer to the pioneer paper by the distinguished legal scholar Roscoe Pound (1910), (cf. Cadoppi 1999: 253; Garavelli 2010: 154).

In what follows, the Materials and Method section introduces further clarification of the methodology as well as the composition of the corpus used in our study. In the Results section we provide and discuss the findings of our analysis and in the Conclusions section conclusions and directions envisaged for future research.

Materials and Method

From a methodological point of view, our study is informed by Corpus Linguistics research tradition (cf. Teubert 2005; McEnery / Xiao / Tono 2006) and recent advancements in phraseology (Granger / Meunier 2008; Schulze / Romer 2008). Corpus linguistics methodology is employed by relying on a large and representative collection of electronically-stored judgments given by the Supreme Courts in the United States and Italy. Such corpus material is amenable to standard data-manipulation techniques ranging from the identification of a search word and scrutiny of its immediate linguistic environment (key-word-in-context or concordance lines), through the production of frequency-based word lists to calculating the relative frequency of comparable lexical items in the two sub-corpora. These operations were performed by means of WordSmith Tools (version 5.0), developed by Mike Scott (2008).

The other crucial concept – i.e. phraseology – is understood very broadly as combining and extending the collocational and colligational aspects of co-occurrence in language. In our study, we follow the definition of phraseology proposed recently by Gries:

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

In consequence, what counts as a phraseologism must be based on frequency; it can be a multi-word unit and it should be semantically motivated.

In light of the claim that evaluation is contextual and cumulative, this study draws upon Hunston's (2008: 271) concept of "semantic sequences", namely "recurring sequences of words and phrases that may be very diverse in form and which are therefore more usually characterised as sequences of meaning elements rather than as formal sequences" to identify frequent evaluative patterns in the judgments. We focused on semantic sequences comprising the grammar pattern (Francis et al 1996/1998 in Hunston 2008: 278) "N *that*", where N stands for general

abstract nouns (or head-nouns (Francis 1993)) belonging to the semantic category of “argumentation” followed by appositive *that*-clauses. It is generally accepted (e.g. Halliday / Matthiessen 2004: 637) that nouns in this pattern are indicative of the epistemic status of the proposition expressed in the *that*-clause and that projected *that*-clauses of this kind are important to disciplinary epistemology.

As far as data are concerned, the present study relies on bilingual comparable corpus data consisting of two sub-corpora: American and Italian, each of approximately 500,000 words. The corpus is both domain and genre-specific in that it includes only criminal cases. This restriction was motivated by our intention to concentrate on a coherent and consistent body of case-law in view of the courts’ enormous judicial output. In addition, focusing on a specific legal domain enables the hypothesis of a correlation between a specific field of law (e.g. civil, anti-tort, labour law, etc.) and the type of evaluative patterns involved in these texts to be tested empirically in the near future.

The American sub-corpus data include 51 opinions handed down by the United States Supreme Court totalling 501,024 tokens sampled from the period 1999-2006. The opinions were accessed via FindLaw.com, a well-known legal information web portal. They are part of a large, multi-genre collection known as the *American Law Corpus* (Goźdz-Roszkowski 2011).

The Italian sub-corpus used in this analysis comes from a sub-corpus of the *Corpus of Criminal Judgments* (COSPE; cf. Pontrandolfo 2013: 171-183), named COSPE-Sup. It comprises 134 judgments, all of them delivered by the criminal division of the Italian Supreme Court in the period 2005-2011. It amounts to 502,994 tokens, and it was designed according to two basic criteria: first of all, the subject matter, since all the select judgments deal with criminal cases; secondly, the time span, since it only includes judgments issued between 2005 and 2011. All the judgments were collected from the large case-law section of the online De-Jure database.² As regards the drafting of the judgments, although they are the joint result of the opinions of the five or nine judges making up the Court, they were actually drafted by a single judge, the so-called “reporting judge” (*giudice relatore/estensore*), whose function is to explain the main points of the case.

Despite the differences between the Common Law and Continental Civil Law traditions, the Supreme Courts in both the US and Italy share some similarities with respect to their roles and functions. It is generally

² <http://www.dejure.giuffre.it> [accessed on 12/09/2012].

accepted in legal comparative literature that the United States Supreme Court and Italy's *Corte Suprema di Cassazione* can be deemed directly comparable (cf. Cappelletti et al. 1989: 142).

Results

In this section, we present our corpus findings regarding a particular structure, namely “fact *that*”/“fatto *che*”, which is the most frequent “N *that*” pattern in both sub-corpora, against the backdrop of the appositive *that*-clauses (Francis 1993, 1994; Hunston 2008, 2011).

As mentioned in the previous section, we queried our corpus for the “N *that*” pattern with the aim of looking at the frequency and function of individual nouns in this specific syntactic structure. By looking at the lexical (collocations) and grammatical (colligations) environments in which the head-nouns appeared, we analysed recurring semantic sequences (Hunston 2008; 2011) in judicial discourse, observing the phraseological constraints that characterised some head-nouns³ in relation to positive/neutral or negative polarity.

A thorough discussion of the whole range of head-nouns followed by evaluative co(n)text is beyond the scope of the present chapter (cf. Goźdz-Roszkowski / Pontrandolfo forthcoming for an in-depth analysis of the “N *that*” pattern). As a matter of fact, the focus of our contrastive study is the most frequent and contentious (Hunston 2011: 108) “general” noun, to follow the above-mentioned labels of Francis, namely *fact*. In this way we took up Francis’s challenge of examining appositive *that*-clauses believing that this could profitably lead to “an exploration of the grammar of some of the most frequent noun-heads, of which *fact* and *reason*, for example, promise rich findings” (1993: 155).

First and foremost, we decided to analyse this “N *that*” pattern from a syntactic point of view with the aim of gaining a clearer picture of the phraseological framework in which it operates. To do so, we examined three basic syntactic situations:

a) “fact *that*” as **subject or the clause**;

- (1) *The fact that* [...] has no logical bearing on the analysis

³ In this study, we use the term “head-noun” as a way to refer to the noun to which the appositive clause is attached. The nouns in this construction are usually unspecific and require lexical realisation in its immediate context to be properly understood. We adopted this definition as a criterion our nouns had to meet in order to be considered relevant for the current analysis.

(2) È stato poi ritenuto decisivo *il fatto che* fossero trascorsi tre anni dal fatto.

[*The fact that* three years had passed since the event has been considered crucial]

b) “fact *that*” as **object of the clause**;⁴

(3) The argument is flawed. It ignores *the fact that* only relatively recently have the penalty and guilt phases been conducted separately.

(4) La Corte [...] ha valorizzato *il fatto che* [...]

[The Court [...] enhanced *the fact that* [...]]

c) “fact *that*” **preceded by prepositions** and therefore used as subordinate clauses, such as causal, concessive, final, etc.;

(5) The dictum may be attributable to *the fact that* the cases recognizing a defendant’s evidentiary rights and the prosecution’s duty to prove all elements beyond a reasonable doubt were still decades away.

(6) Siffatta lettura della norma in esame non risulterebbe ostacolata dal *fatto che* essa riproduce parzialmente il testo dell’art. [...]

[This reading of the norm would not be hindered *by the fact that* it partially reproduces the text of Art. [...]]

The quantitative analysis of both sub-corpora revealed interesting similar behaviours in the way the nominal pattern “fact *that*” is used in US and IT criminal judgments, as can be seen in the following chart.

“Fact *that*” is mostly used with recurring prepositions (43% in the US sub-corpus, 57% in the Italian one), a result which is in line with Hunston (2011: 113), who found that the most frequent three-word phrases having “fact *that*” as core of the semantic sequence included a preposition. As far as the American sub-corpus is concerned, the most frequent prepositions are: (*up*)*on/by/despite/notwithstanding/off/from/to/for the fact that*. As for the Italian counterpart, the most common prepositions are: *del [of]/al [to]/dal [from]/nel [in]/sul [on] fatto che*. Frequent prepositions in the corpus are key to an understanding of the fundamental phraseology of the

⁴ We excluded from the analysis cases in which “fact *that*” was embedded into standardised formulae, such as (e.g. for the simple fact that), or cases in which it was used as a “retrospective label” (Francis 1994: 85) (e.g. [...], a fact that it is not in line with). We also excluded the instances where the noun “facts” is the term to describe the section of the judgment (cf. Bhatia 1993: 118-136).

genre (Gledhill 2000: 124), which is why they can be considered “salient items” (Gledhill 2000: 115). Moreover, they play a pivotal role from the syntactic point of view, as they contribute to the construction of different clause-types.

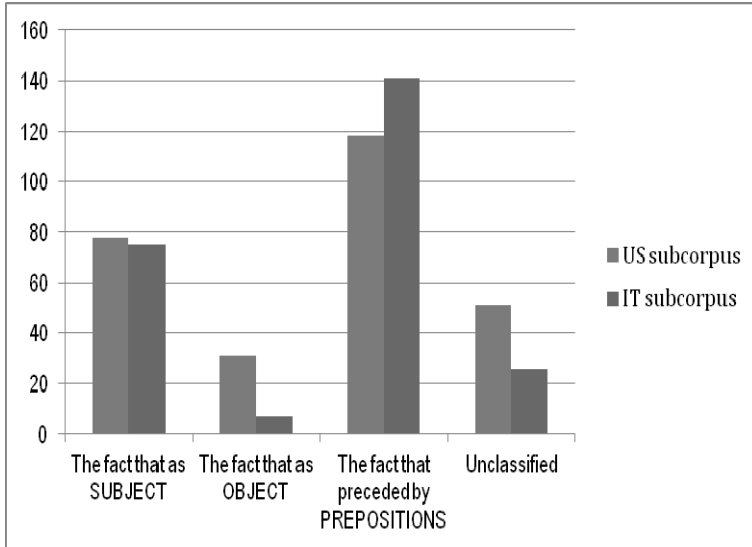


Figure 1-1 “Fact *that*” from a syntactic point of view in the US and IT sub-corpora

“Fact *that*” is also used in a syntactic construction whereby it is the subject (28% in the US sub-corpus and 30% in the IT one) or object (18% in the US sub-corpus, 10% in the Italian one) of the clause. We focus our attention on the former pattern since the latter is not particularly significant for the purposes of the study. We can only notice that it is more frequent in the US sub-corpus, but does not show any distinctive phraseological behaviours.

When used in the first position, as subject of the clause, “fact *that*” co-occurs with negative particles and negativity in general. The same does not necessarily apply when it is the object of the clause.

The following chart shows the semantic polarity of “fact *that*” in the clause-initial position:

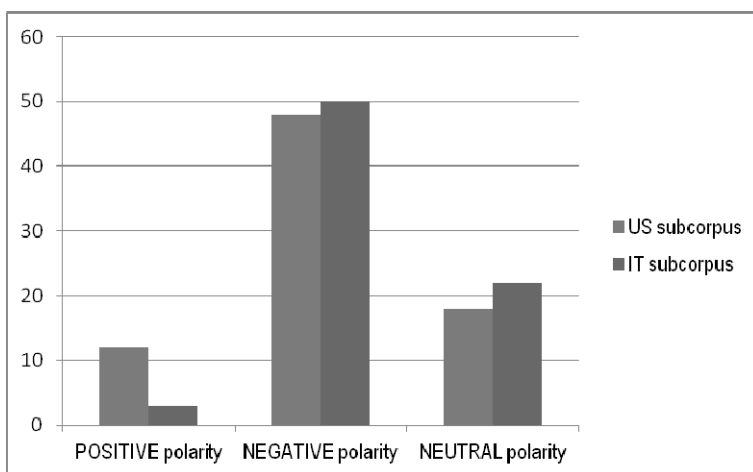


Figure 1-2 Semantic polarities of “fact *that*” in subject position in the US and IT sub-corpora

Both sub-corpora are characterised by negative polarity (US: 62% vs. IT: 67%). Far from being a mere coincidence, there seems to be a consistency in the way evaluative meaning co-occurs with the syntactic positions of our head-noun. It is interesting to note that there are striking similarities in both sub-corpora.

The following tables show the frequent negativity, sometimes explicitly marked, in the US sub-corpus (Table 1-1) as well as in the IT sub-corpus (Table 1-2). The example sentences are truncated to illustrate general co-occurrence trends.

Negativity is mostly phrased through lexico-grammatical devices: the use of the particle *not/non*, and therefore through negative sentences, as well as through evaluative connotative items, namely adverbs (e.g. *little* or *poco/nulla*), verbs (e.g. *invalidate* or *stridere*), adjectives (e.g. *illogical/insufficient* or *scarso/irrelevante*) and nouns (e.g. *problems* or *rilievo*).

The fact that	(surely) <i>does not</i> signify that
	<i>does not</i> mean that
	<i>does not</i> change our view
	<i>does not</i> alter the conclusion/result
	<i>does not</i> necessarily mean
	<i>does not</i> automatically deprive that interpretation of
	<i>does not</i> put it outside the scope of
	<i>does not</i> establish that
	<i>does not</i> overcome the failure
	<i>does not</i> provide basis for
	<i>does not</i> suggest anything
	suggests that there is <i>no</i>
	<i>does not</i> resolve the question
	<i>does not</i> render
	<i>did not</i> make this a difference or dispute of a hypothetical or abstract character.
	<i>was not</i> a sufficient reason
	<i>does not</i> make their claim reviewable
	<i>would not</i> be a rational ground
	<i>would not</i> undermine the public character
	would be <i>invalidating</i> if
	<i>has no</i> logical bearing on the analysis
	says <i>little</i> about
	poses two related <i>problems</i>

Table 1-1 Negative polarity of “fact *that*” in the US sub-corpus (right-hand co(n)text)

Il fatto che [The fact that]	è <i>irrelevante</i> [is <i>unimportant</i>]
	<i>non</i> ha rilievo [is <i>not</i> important]
	<i>poco</i> rileva [has <i>little</i> importance]
	a <i>nulla</i> rileva [<i>nothing</i> proves]
	è <i>privo</i> di rilievo [is <i>not</i> important]
	<i>non</i> ha molto rilievo [has <i>no</i> great importance]
	di <i>scarso</i> rilievo è [has <i>little</i> importance]
	prova <i>poco</i> (proves <i>almost nothing</i>)
	<i>non</i> può, di per sé, giustificare il diniego di [<i>cannot</i> , alone, justify the denial of the benefit]
	<i>non</i> comporta il divieto di [<i>does not</i> imply the prohibition to]
	<i>non</i> era consentito [<i>was not</i> allowed]
	<i>stride</i> con le dichiarazioni degli imputati [<i>clashes</i> with the declarations of the defendants]
	<i>non</i> può essere assimilato a [<i>cannot</i> be likened to]

Table 1-2 Negative polarity of “fact *that*” in the IT sub-corpus (right-hand co(n)text)

It is interesting to note, from a contrastive perspective, that in the Italian sub-corpus quite often positive polarity is expressed via negative particles, as can be seen in the following examples:

(7) [...] *non* poteva portare a valutazione *diversa*
 [...] *cannot* lead to a *different* evaluation]

(8) [...] *non* configura profili di *nullità*
 [...] *does not* set up cases of *nullity*]

(9) [...] *non* significava che *non* andava posto rimedio a tale situazione di palese *illegittimità*.
 [...] *does not* imply that this clearly *illegitimate* situation *did not* have to be settled]

The use of the double negative is one of the most striking features of Italian legalese and one of the targets of the plain language movement (Ittig and *Accademia della Crusca* 2011): the combination of two negative axiological items (*non* + *diversa* in (7), *non* + *nullità* in (8) or *non* + *non* in (9)) affirms the truthfulness of the sentences. In (8), for example, instead of saying “it is valid”, the judge prefers to formulate the sentence in convoluted terms, that is “it is not null”. One of the possible interpretations of this feature is politeness (Kurzon 2001): the judge is preserving the positive face of the addressee, thus mitigating the effect of his/her evaluation.

In the next stage of our research, following Hunston (2011: 113-116), we decided to focus on the sequences where “fact *that*” is preceded by a preposition – the most frequent patterning in our corpus (cf. Figure 1-1). We therefore categorised each single pattern according to seven groups (cf. Table 1-3). Then, in order to have a clearer picture of the evaluative, epistemic patterns in our corpus, we further grouped our semantic sequences containing “fact *that*” into the three broad “motifs” identified by Groom (2007): the “cause” motif (categories 1-2-3), the “orientation” motif (category 4) and the “human response” motif (categories 5-6-7).