Anna Jopek-Bosiacka

LEGAL COMMUNICATION: A CROSS-CULTURAL PERSPECTIVE

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To my parents

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Introduction*

Law, at least positive law, would not exist without language. Legal communication, legal profession and law itself are constituted by, what we call, legal discourse. The same counts for upholding law and resolving disputes, for judgment and adjudication. Law and language have been traditionally treated as two separate areas of expertise and studied from two scientific perspectives: jurisprudence and linguistics. However, law is a highly verbal activity. As a result, both legal theory and legal practice have always been heavily dependent upon the tools of logical-linguistic analyses. Yet, almost no coherent or systematic account of the relationship of law to language has been achieved (*cf*. e.g. Goodrich 1987; Sarkowicz 1995).

Modern jurisprudence has argued for the positivistic view that law is an internally defined 'system' of notional meanings, that it is a technical language univocal in its application. Lawyers and legal theorists, rather than studying the actual development of legal linguistic practice, have asserted formalistic (deductive) models of adjudication (law application) in which language is the system of signs delimited by certain rules. What has been consistently excluded from the ambit of legal studies was the possibility to analyze law in terms of a specific stratification or 'register' of an actually existent language system, and view legal texts in terms of historical products organized according to certain

* The book is partly based on my unpublished doctoral thesis "Legal Discourse as Cross-Cultural Communication" (Jopek-Bosiacka 2003) written under the supervision of Professor Anna Duszak. For many direct and indirect instances of support and encouragement, I am particularly grateful to Prof. Anna Duszak of the University of Warsaw. I would also like here to acknowledge the valuable commentaries provided by two reviewers of my doctoral thesis: Prof. Hubert Izdebski of the University of Warsaw and Prof. Barbara Kryk-Kastovsky of Adam Mickiewicz University. Obviously, I am solely responsible for the final content.

criteria. Despite the common social experience of legal regulation as a profoundly alien linguistic practice, as control by means of an archaic, professionalised, obscure and impenetrable language (see e.g. Mellinkoff 1963; O'Barr 1982), no recognition has been provided of the peculiar and distinctive character of law as a specific social institution, i.e. an institution socio-linguistically defined in terms of speech community and usage.

The traditional agenda of legal 'register' (to use Hallidayan term) was generally dominated by observations and remarks upon the status and concept of the language of the law, its vocabulary and syntax. Particularly the lexis has been of noticeable concern to researchers because of its distinctive features fundamental to the expression of semantic concepts of law in terms of precision and vagueness, specialization of vocabulary and loan, often archaic, words. At the level of grammar, researchers distinguished complexity of syntactic structures, conditionals and conditional reasoning, passivization, nominalization, cohesion, etc. Researchers have also noted the opacity of legislative drafting.

With a few exceptions, the study of pragmatic functions of legal discourse has been for long almost totally neglected. One of the earliest and rare traces of an analysis of the characteristics of legal language/text at the discourse level can be found in Danet (1980). Written legal discourse has been analysed from the perspective of speech act theory, rhetorical and stylistic perspective, or in terms of historical evolution. Some researchers (e.g. Joos 1961; Danet 1980; Kurzon 1984; Trosborg 1995a) characterized written legal discourse predominantly in terms of archaic structures and formulaic expressions and named such style as 'frozen' or 'formal' because, as Anna Trosborg (1995a: 1) puts it, it defies the principles of modern writing. Especially the 'formal' or 'frozen' style seems to account for taking a new approach towards written legal discourse whose development contradicts current trends in linguistic studies. Earlier analyses of the interrelation between law and language show – overtly or covertly – the rhetorical character of language of law.

Most researchers though most frequently use such terms as 'language of law' or 'legal language' in analysing the relationship between language and law, probably for several reasons:

- the prevalence of a traditional structural i.e. formal approach in linguistics, particularly in the description of special purpose texts including legal texts, which lays emphasis on linguistic features;
- the focus on structure rather than use in studies on legal language;
- the prevalence of a traditional i.e. positivist approach in jurisprudence where language and related linguistic interpretation assume a crucial role in legal text analysis.

Numerous developments within linguistics and language-related sciences have recently encouraged the reformulation of the notion of language as discourse. The dominant perspective on language today is that language is

cognitively, socially and culturally anchored behaviour. The new vision encapsulates the development of text as a communicative occurrence, which undermined the distinction between speech and writing and led to the focus on genres and intertextuality. The ongoing developments have triggered changes in how legal communication was approached. New approaches focused on pragmatics of written and oral legal discourse.

Now legal discourse studies entered the territories of pragmatics, text linguistics, discourse studies, and social sciences. This concerns in particular oral discourse. Analyses of oral legal discourse have drifted away from the original philosophical orientation in the traditions of Austin and Searle, from structuralist approach, and from rhetorical stylistics. Two main methodological approaches to the study of oral legal discourse have developed, those of ethnomethodology and conversational analysis on the one hand, and of sociolinguistics and the ethnography of communication, on the other hand. Pragmatics of written legal discourse was hardly investigated. Leading tenets of modern textuality linguistics and discourse analysis in fact led to the redefinition of traditional notions of 'written language of law' *versus* 'spoken legal discourse'.

This study will follow the evolution of the dominant approaches to legal communication, where the language-of-law perspective is being replaced by legal--discourse perspective. It will be argued that the evolving pragmatic approach is capable of accommodating the interactive nature of legal communication in a discursive environment. A revised interdisciplinary framework for describing and explaining the language of law and its social functions will prove its high potential for such an analysis.

As already indicated, the term 'legal discourse' has been chosen as the most appropriate term that allows to grasp this special interrelation between law, its functions, actors and surrounding legal context, on the one hand, and language use, functions of legal texts, and surrounding socio-cultural context, on the other hand. The notion of discourse stands for complex phenomena related to such concepts as 'language', 'communication', 'interaction', 'society' and 'culture'. Thus, its defining seems to be, as in case of such fundamental concepts, onerous but inevitable if we wish to apply to texts an overall approach, namely analyse them in a socio-cultural context of human communication. For the purposes of this work, I will characterize discourse as a communicative event or a form of verbal interaction, and focus on its functional aspects. Crucial in the description of legal discourse is the question where is 'meaning' located: within the text or do language users construct it during the process of its interpretation. Building up on Bakhtin and his followers, I will opt for the notion of (speech) genres that are schematic types of discourse with specific features grounded in the type of context of use, including the participants, their goal(s), the topic, and the function. The notion of 'speech genre' adopted in this study incorporates the phenomenon of 'intertextuality'.

Legal discourse, as any other language usage, is a social action so it must be marked by the specific nature of its (institutional) contextual embedding. In an attempt to recover the social and cultural dimensions of legal semantics and legal textuality, I will employ pragmalinguistic analysis. I will further argue that legal genres are unique forms of communication. I will show that the importance of expert knowledge required both for a thorough analysis of legal communication and for full participation in legal communication calls for an interdisciplinary approach as postulated in the present study.

One of the major paradoxes of contemporary legal culture is the fact that its social practice is founded upon an ideology of consensus and clarity – *Ignorantia iuris nocet* 'we are all commanded to know the law because its ignorance harms' – and yet legal practice and legal language are structured in such a way as to prevent the acquisition of such knowledge by any other than a highly trained elite of specialists in the various domains of legal study. An interdisciplinary approach to legal texts allows us to understand this paradox, as has been emphasized by Peter Goodrich (1987: 7). This is an approach that analyses law as social discourse understood in terms of a dialogue between legal speakers, legal institutions and the various codes, contexts and audiences of the law.

A second major assumption underlying my research is that legal discourse is an instance of cross-cultural communication. It rests on three corollaries:

(a) Law is a system of general and abstract norms that always actualizes in a particular language of the law and legal culture. This means that various national languages and cultures have their own codes and systems of legal communication. In other words, legal discourse is to be analysed within the legal domain where legal languages epitomize the law and legal culture.
(b) Legal discourse operates within, and is part of, a national (ethnic) discourse system. As a result, legal discourse can be treated as one of the varieties that 'construct' national discourses. Alternatively, legal discourse is a sublanguage within a general language system.
(c) Legal subdiscourse(s) within a national legal discourse domain is/are also implicated in a cross-cultural dialogue. This means that there exist different divisions within a given legal discourse, i.e. local subdiscourses or specific legal genres.

Pancontextual perspective on legal communication can be investigated through discursivity at various levels. It shows different scopes of discursivity and indicates two points of view: global and local. The presence of law in various languages and cultures sets the global parameters of legal discourse that may guide our investigation into legal communication as a worldwide phenomenon. Locally, legal discourse varies both within a general language and in a given legal domain. Global and local viewpoints imply at least two perspectives:

communication within a legal discourse community (intra-group communication) and communication between different legal communities, legal systems, and legal cultures (inter-group communication).

An important corollary of cross-cultural view on legal discourse is the recognition of the phenomenon of intertextuality of legal texts, i.e. interdependence of legal texts that refer to each other, not only *within* the community but also *across* communities. What is essential for the understanding of the complex 'language and law' conjunction is, in the cross-cultural context, the notion of legal culture. Considerable attention will be devoted to the evolution of European legal culture.

The methodological framework applied here is that of genre analysis as associated first of all with Swales (1990). Cross-cultural view is understood in this study as discourse-community view which means the focus on the structure of membership within legal discourse community and the forms of discourse (legal genres). The proposed methodology apparatus, Swales' discourse-community view, has been selected for several reasons. First of all, this framework accumulates recent tendencies in linguistics such as cognitivism, pragmatics, text linguistics, and social constructivism. It also allows links to the central concept of a community, a community of professionalized knowledge and special language, and focuses on common goals to be achieved through the use of shared forms of expressions (genres). Swales' notion of discourse community will serve as a point of departure to the methodology that I shall critically assess and ultimately I shall propose a new model of legal discourse analysis that is more applicable to legal communication. I shall highlight its benefits and show its applicability in its new environment. The revised model will incorporate, *interalia*, elements of institutionalised context, in particular, culture as indicated above, power of context, legal genres and legal knowledge. It is a matter of fact that in a globalized world discourses are being built around communities of professional expertise that cross nation-states' borders.

A thorough semantic and pragmatic analysis of legal discourse will be performed in order to provide evidence that legal discourse possesses features that may qualify it as a cross-cultural phenomenon or form of cross-cultural communication. In contrast to conventional assumptions of linguistic studies and traditional jurisprudence, I will argue for a comprehensive, interdisciplinary and intertextual/cross-cultural approach to the legal text conceived in terms of institutional and discoursive processes. In short, it will be the principal objective of this study to evidence the integrated view of legal discourse as cross-cultural discourse.

In particular, the major goal of my research into legal discourse as cross-cultural communication will be to:

a) review the previous linguistic explanatory frameworks of specialized genres (LSP) with particular reference to the legal domain;

b) examine the presence and function of discoursal patterns as manifested in a variety of legal written texts in order to establish characteristic socio-pragmatic and discoursive features that speak in favour of a pragmalinguistic approach to written legal discourse;
c) argue for the applicability of a discourse-approach (a community-bound approach) to legal communication on the basis of theoretical foundation with special focus on:
   – the structure of the legal community in terms of membership,
   – the structure of the textual domain,
   – the concept of legal power as social power,
   – the concept of legal expertise;
d) apply the discourse model to selected Polish data to show the processes of globalization and regionalization, cultural asymmetry and hybrydisation, legal systems and incompatibility of legal codes, in view of Poland's membership of the European Community.

The examination will rest upon legal texts belonging to the group of prescriptive texts, i.e. normative texts such as statutes, codes, constitutions, treaties, international conventions, etc. These are documentary sources of law, i.e. the primary origins from which the law of a particular system derives its authority and coercive force (Šarčević 1997: 11). In the common law countries, the judicial decisions of superior courts (i.e. the statements of law made in the *rationes decidendi* of such decisions) are also recognized as a source of law. Case law, as it is called, developed as a distinct authoritative source by virtue of the rule of precedent which obliges judges to observe the decisions made by judges of higher courts. This development was much less pronounced in the continental civil law systems derived from Roman law. On the other hand, works of legal scholarship have always been more authoritative in these systems (cf. Vanderlinden 1995: 343-351).

The interdisciplinary cross-cultural examination will provide a theoretical basis for a comparative analysis of some English/American and Polish texts. The complicating factor here is context which may eventually lead to the redefinition of profesional expertise. It will be drawn against a background of contemporary world tendencies of globalization, regionalisation, and 'Europeanisation'. The tendencies highlight a new type of context for analysing legal communication.

The present study is divided into three parts. Part I comprises two chapters which are devoted to constructing the notion of legal discourse. In Chapter 1, I discuss the notion of language of law against various backgrounds: historical, linguistic, pragmatic, sociological and legal, providing evidence that it cannot be successfully analyzed without employing an interdisciplinary approach. The evolution of studies on language of law and legal communication in the West and in Poland reveals the special status the language of law is assigned.

In Chapter 2, I outline the methodological apparatus of my work, namely discourse-community view (Swales 1990). After critically reviewing Jakobson's addresser-addressee model of communication, I opt for Swales' approach as it offers a great potential for investigating variety and multiplicity of participant roles in legal communication and their linguistic expression. An attempt is made to reconstruct the structure of legal discourse community against other communities, in particular specialist discourse communities. Current position of translator against recent changes in legislative drafting is also sketched.

Part II of the study presents a comprehensive pragmalinguistic analysis of legal texts at the level of discourse semantics and pragmatics. With this end in view, Chapter 3 outlines the most salient semantic characteristics of legal discourse and groups them into five main categories, namely precision, indeterminacy, specialization, complexity and conservatism. In Chapter 4, I provide many insights into analysis of legal discourse as a context-sensitive phenomenon. Legal discourse treated as authoritarian discourse is analysed in terms of its two basic functions: conative and prescriptive. The former is viewed against the communicative functions of legal texts, the evolution of legal text typologies and the classification of legal texts. The latter is examined, *inter alia*, at the levels of legal modality, rhetorical stylistics, speech acts and performativity. Finally, the intertextuality of legal discourse supplies one of the foundations for investigating the cross-cultural legal context which is undertaken in Part III.

Part III is concerned with a pragmatic analysis of legal discourse within broadly defined cross-cultural context in which discourse is taking place. Chapter 5 outlines the theoretical foundations of a cross-cultural model of legal communication, defining the notion of context and in particular that of legal culture. In Chapter 6, I examine legal discourse in terms of power as vested in the users, the institutional contexts, or the legal word (text). Chapter 6 ends with the presentation of the main principles of and approaches to legal interpretation from the point of view of linguists and lawyers.

Chapter 7 provides European legal context for presenting Polish legal discourse in a comparative perspective. It is my contention that European legal culture is a hybrid culture which I prove by outlining its historical, cultural and legal evolution. Finally, I address the issue of 'Europeanisation' of Polish legal discourse on the example of textual formats of Polish translations of EU secondary legislation. This tendency is contrasted with world processes of globalization, regionalisation, integration and hybrydization.

Recent changes result in recontextualization of legal discourse, now perceived in terms of cross-cultural communication, with its global and local dimensions.

The findings are thereafter summarized in the concluding section.

PART I

SETTING THE LEGAL SCENE

The specific character of legal communication as an instance of special communication is strictly related to the functions law has in society as well as its form of expression, namely language of the law in which legal texts are formulated. Numerous legal theorists and linguists voiced a range of opinions, frequently conflicting ones, as to the status and role of that language. They approached it from two perspectives: linguistic and legal. Irrespective of these differences, the evolution of the language of law in various legal systems supports the proposed hypothesis on its unique nature.

Furthermore, the nature of the legal domain implies difficulties in delimiting the circle of both authorship (text producers or addressers) and audience (text receivers or addressees) admitted to that domain. Thus, the answer to the question dealt with in this study: Who is talking to whom in legal communication? is not easy at all.

The following two Chapters will specifically address the above and related issues.

Chapter 1

Language of law and legal communication

In a very basic sense, law would not exist without language (Danet 1985: 273). The concept and status of the language of law are partly related to the functions of law in society. Law is the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society (Black's Law Dictionary 1999: 889). Law interpreted as the legal system defined above performs at least two primary functions, namely the ordering of human relations and creating new ones, i.e. 'laying down the law', and the restoration of social order (*cf*. Danet, 1980, 1985). With regard to the former, the function of the law is two-fold: *regulative* and *constitutive* (Trosborg, 1995b: 32, 1997a: 19). Law defines relations and determines which deeds are prohibited ('Everything that is not prohibited is permitted'). By means of law, new relations are created where none existed before, for example, marriage relationship. The function of 'restoration of social order' is aimed at maintaining justice in case of conflicts between citizens (*private law*) or between the individual and the state (*public law*).

Naturally, the jurisprudence distinguishes many more functions of law. Functions of law have always been defined in the same way, although by various authors they were labelled differently and their various aspects were emphasized. One of the greatest legal theorists, the creator of the norm not only as an idea and a system, but also as an axiomatic foundation of any rule, Hans Kelsen (1881-1973) viewed the law as an almost ideal instrument of regulating the society and the state (Kelsen 1930, 1934).

Following Kelsen, contemporary authors distinguish functions of law by means of the criterion of the aim that the law represents by itself. The aim of law is, therefore, seen as a postulated *status quo* that is to be obtained by certain

deeds, creation of norms, organizational solutions, etc. (*cf*. Chauvin, Stawecki, Winczorek 2009, 125-126). In such an approach, probably the broadest of all, law functions can be distinguished as follows:

a) stabilization of the existing social, political, economic state of affairs (function of stabilization);
b) dynamization of desired changes in social life that can be achieved through promotion and stimulation of changes in various aspects of society (function of dynamization);
c) protection of certain values, precious from the social perspective (function of protection);
d) organizational function (organization of all the branches of a society and state; provision of institutional background);
e) repressive and educative functions, providing the general and special prevention (as – in fact – a kind of a deterrence discouraging people from infringing the written norm);
f) function of control, as a means of undertaking the permanent control and the supervision of social deeds;
g) distributive function that results from sharing various material and immaterial goods and charges in a society. The basic function in this field remains the regulation of social relations and, according to the cited authors, resolution of conflicts in particular; and
h) settlement of conflicts as a result of the observance and application of law (regulatory function).

The language of the law is conditioned by the law. The various functions of law determine to some extent not only the concept and status of the language of law itself but also its further classifications and subdivisions, types of legal texts, and status of addressers and addressees.

1.1. The concept and the status of the language of law

What is the language of law? This question was approached by both lawyers and linguists. In short, we may start with the preliminary assumption that language of law is the language used by persons qualified to practice law, i.e. lawyers involved in various professional activities, from the drafting of statutes to the drawing up of contracts. Like any professional language used for specific purposes, language of law is also to some extent specific.

The multiplicity of classificatory terms referring to the language(s) of law is enormous. In the Anglo-Saxon theory of law, *the language of the law* has been considered by most researchers (see, e.g. Mellinkoff 1963) a most convenient label for this kind of specialized language. The term was preferred to *legal*

parlance (e.g. Pei 1952: 119), or *legal language* (e.g. Rodell 1939: 181; Flesch 1946: 36; Danet 1980: 463; Klinck 1992: 133) probably for the reason that, as Mellinkoff (1963: 3-4) puts it, *legal* is so frequently used to mean lawful that it might cause confusion. Mellinkoff rejects the usage of *legal lingo* (e.g. Oppenheimer, 1926: 142), *legal jargon* (e.g. Gowers 1948: 6), *legalese* (e.g. Cooper 1953: 16), *legalistic jargon* (e.g. Hunter, 1957: 27), and *argot of the law* (e.g. Mencken 1936: 424) as being too "sweepingly opprobrious and also too narrow" (Mellinkoff 1963: 4). The proliferation of different names, not clearly defined, does not make it any easier to define the phenomenon or to determine the status of the language of the law. In this study, following most researchers, we shall use the term *language of law*, as a superordinate term, to denote language used in all legal contexts. The *language of law* partakes of some of the essence of the diverse characterizations given above.

In fact, Kurzon (1989: 283-284) argues in favour of a twofold division between *language of the law* and *legal language.* The *language of the law* is seen as one part of language related to the legal register, whereas *legal language* refers to all types of languages used in legal contexts apart from *the language of the law*.

In the Polish theory of law, most discussions on the language of law revert to the dichotomy introduced by Bronisław Wróblewski (1948). Adopting a subjective criterion, Wróblewski distinguishes between the language of the law/legal language *(język prawny)* and the lawyers' language (*język prawniczy*)[*]. The language of the law/legal language is defined as the legislator's language, or the language in which normative acts are formulated. The lawyers' language refers to texts of judicial decisions and administrative decisions as well as to the theory of law. The choice of the term implies the type of texts to be analysed. Bronisław Wróblewski strongly emphasized the linguistic dissimilarity between normative texts (construed with the help of the language of law) and non-normative texts (construed with the help of the lawyers' language), thus justifying his distinction of those two types of language (Wróblewski 1948: 54).

Further detailed divisions and subdivisions were proposed, for example, by Zieliński (1999: 50-72), and Gizbert-Studnicki (1986: 33-34). Thus, the language of the law is subdivided into the language of legal provisions and the language of legal norms/rules, and the lawyers' language – the language of lawyers' practice and the language of theory of law. Gizbert-Studnicki (1972: 224) even proposed to jointly label the terms *language of the law* and the *lawyers' language* as *language of the law sensu largo*.

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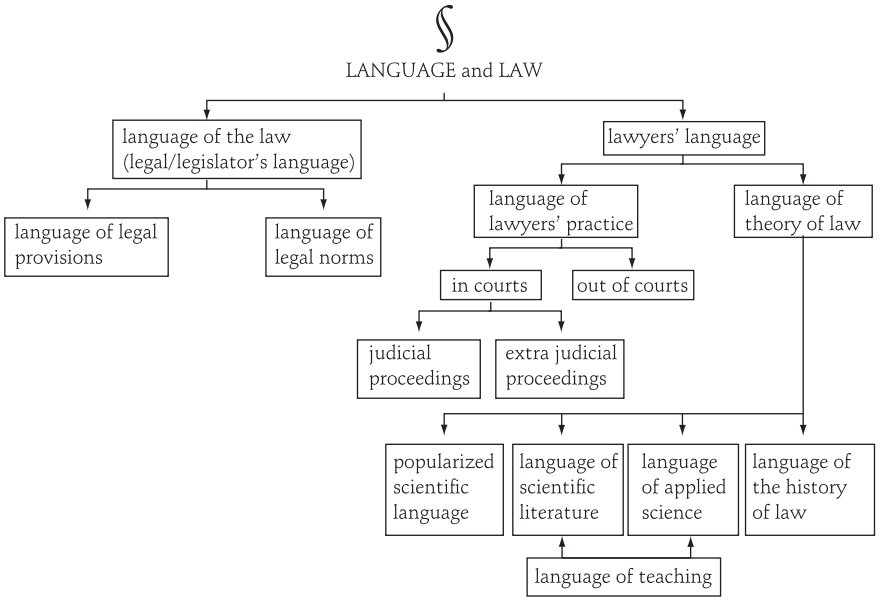
[*] The terms have been translated according to *Słownik prawniczy polsko-angielski (Polish--English Dictionary of Legal Terms),* Polska Akademia Nauk, Instytut Państwa i Prawa, Wrocław: Ossolineum, 1986. B. Kielar (1999: 184), for example, uses the terms *language of the law* and *lawyers' language* to denote *język prawny* and *język prawniczy* respectively.

Maciej Zieliński (1999: 50-72) proposes a multi-level categorization of the concept of the language of law, based on Wróblewski's division, which is shown in Table 1.1.

TABLE 1.1



In addition, Zieliński proposes to distinguish a number of paralegal languages:

a) language of officials and civil servants;
b) languages of particular subsidiary sciences of law and theory of law, such as legal logic, criminology, victimology, criminalistics, forensic medicine, forensic psychiatry, etc.;
c) language of politicians and journalists speaking and writing about law;
d) language of citizens talking and writing about legal issues.

Some researchers believe it is groundless to differentiate between legislator's and lawyers' language, because it is the lawyers who formulate the legislative acts. Also terminological and semantic differences are not distinct enough to create a basis for distinguishing these two variants (Lang 1962: 81). Opałek pointed to similarities and dissimilarities between the language of the law and common/general language (Opałek, Wróblewski 1969; see also Zakrzewski 1964). Ziembiński (1974: 211) observes that Wróblewski's distinction overlooks unwritten sources of law. In minority of one remains the opinion of Stanisław Ehrlich (1955: 383) who negates the existence of the *language of the law* and its divisions and approves of legal terms only.

Stefan Kalinowski and Jerzy Wróblewski (1978: 1-14) approve of B. Wróblewski's division, but believe the semantic criterion, not the subjective one, is the most decisive one, as the semantic characteristics of legislator's language are conditioned by the language's function. The lawyers' language is a metalanguage in relation to the legislator's language as it serves to describe the binding law, i.e. the language of the law (Kalinowski and Wróblewski 1978: 4).

Analogically, J. Wróblewski's entries 'legislator's language' and 'lawyers' language' to the draft version of the *Polish law dictionary* (*Polski słownik prawniczy. Hasła podstawowe (wersja robocza)* 1969: 23-24) reflected the functionality of the language of the law. J. Wróblewski noted though that *legislator's language* is not syntactically different from the common language. Semantically, some expressions are equal to common expressions and some are distinct, which is conditioned by (a) the requirements of precise formulation of legal texts by the legislator, (b) the requirements of uniform formulation of texts belonging to the same branch of law, and (c) the influence of elements of the functional context of a legal norm. The fact that some expressions differ from the common expressions may be explained by the influence of the above-mentioned factors and the postulate of comprehensibility of legal texts by the addressees of legal norms.

The *lawyers' language* differs from the common language in the same respect as the legislator's language does (*Polski słownik prawniczy. Hasła podstawowe (wersja robocza)* 1969: 22-23). However, there are semantic and pragmatic differences between the lawyers' language and the legislator's language. Semantically, the lawyers' language is enriched with words and expressions from the legislator's language and from sources. Pragmatically, the lawyers' language fulfils other functions than the legislators' language. The lawyers' language can be divided into several kinds differing by the words and expressions used: (a) language of bodies applying law (language of legal practice), (b) lawyers' language of science (of theory of law) which can be further diversified depending on the legal discipline, and (c) common lawyers' language (language of non-professionals).

Similar criteria of division between the legislator's language and the lawyers' language have been proposed by Zygmunt Ziembiński in both entries to the draft *Polish law dictionary* (*Polski słownik prawniczy. Hasła podstawowe (wersja robocza)* 1969: 24-25). He characterizes the legislator's language as the prescriptive language mostly based on the Polish general language. The legislator's language differs, however, in terms of specialized vocabulary used and absence of idioms. For example, "A czyni C" ("A does C") should be interpreted as "A powinien czynić C" ("A should do C"). The lawyers' language, according to Ziembiński (1969: 23), is a metalanguage in respect to the legislator's language, since it is descriptive in nature. Therefore, a statement "A should do C" in legislator's language is interpreted as a norm of behaviour,

whereas in lawyers' language such a statement is simply a description of a norm binding in the described legal system.

Bożena Hałas (1995: 39) adds one more functional division of the language of the law. Preserving the traditional names, Hałas (1995: 39-44) proposes the following variants of the language of the law:

a) the legislator's language (*język prawny*) whose function is to give a linguistic expression of legal norms;
b) the lawyers' language (*język prawniczy*) which allows to encode synthetic formulations of the legislators' language, their interpretation and analysis.

The two categories are to some extent homogenous.

c) sociooperative professional language (*socjooperatywny język zawodowy*) whose function is to make the language of the law more economic for the purposes of legal practice. Depending on the legal profession, the language used is more or less subjective. The least subjectivity is observed in judges' and prosecutors' utterances, as their role and linguistic behaviour is perceived as public activity. On the other hand, the attorneys' usage of discourse is most subjective as the primary goal of an attorney/counsel is to convince the court of the correctness of the presented standpoint and, by linguistic means, to reach the requested judge's decision. The sociooperative professional language is the language of many texts related to legal actions, such as speeches of the parties, minutes of trials or court sessions, expert opinions, legal advice;
d) legal jargon (*gwara prawnicza*) that is quite informal, mostly oral, and is used between professionals in informal settings. For example, lay judges are called *apostołowie* (apostles), advocates – green penguins (from the colour of jabot on their gowns, and *postępowanie nakazowe i upominawcze (*proceedings by writ of payment) has been replaced in legal jargon by *nakaz* (writ).

The above contemporary division proposed by Hałas is partly based on B. Wróblewski's classic subjective division, but her division reflects the general change in the research perspective. The area which has been of growing interest in the study of language of law is its analysis in terms of pragmatic functions.

The linguistic diversification of language of law has given rise to the question of how it should be treated: as a separate sublanguage or dialect (O'Barr 1981; Charrow, Crandall and Charrow 1982; Charrow and Crandall 1978; Klinck 1992); a register (Bolinger 1975: 358-363; Gustafsson 1975a, 1975b; Gizbert-Studnicki 1986; Danet 1985; Brodziak 2004); a (stylistic) variety (Kurzon 1986: 58; Hałas 1995; Jadacka 2002; Malinowski 2006: 240); or a technical language (Schauer 1987: 586; Mounin 1979) (compare also detailed discussion of different approaches in Klinck 1992: 133-164 (for English) and Choduń 2007: 31-59 (for

Polish)). Perhaps it is all merely a question of special terminology built-in within the ordinary use of language.

The problem with the above terms is that they are not unequivocal in linguistics. For example, 'varieties', according to the subject matter, are sometimes referred to as 'registers', though this term is applied to different types of linguistic variety by different linguists (Quirk *et al.* 1972: 20). An individual adopts one of the varieties as his or her permanent form of English, note further Quirk *et al.* (1972: 21). With varieties according to subject matter, the same speaker has a repertoire of varieties and habitually switches to the appropriate one as occasion arises. The number of varieties the speaker commands depends crucially upon his or her specific profession, training, range of hobbies, etc. The type of language required by choice of subject matter, involving lexical and grammatical correlates, would be roughly constant against variables (dialect, national standard). Some obvious contingent constraints are however emerging: the use of a specific variety of one class frequently presupposes the use of a specific variety of another. The use of a well-formed legal sentence presupposes an educated variety of English (Quirk *et al.* 1972: 22).

According to Western linguistic tradition, a national language may be divided into two broad types, i.e. general purpose language (LGP) and special purpose language (LSP). It could be argued of course that the concept of 'general' language, which is an abstraction derived from a society's division of knowledge, into general and special, does not exist. There are as many general languages as there are special languages because each group of specialists has a different notion of what constitutes the general knowledge which forms the basis of their subject. The question, however, is whether the latter is a subdivision of the former or *vice versa,* whether they are quite independent of each other, or perhaps the answer is to be found somewhere in between – so the two overlap (Roszkowski 1999: 12).

Irrespective of the existence of various approaches and perspectives, most scholars though consider language of the law a special sublanguage or LSP or *Fachsprache* (cf. Petöfi et al. 1975 with regard to the language of jurisprudence). There exist various approaches concerning special languages or sublanguages.

Lothar Hoffmann (1987) introduced the concept of *sublanguages* meaning "subsystems of the total language system, actualized in the texts of specific spheres of communication". Common language and special language are both subsystems of our *total language system*. They use the same elements and structures of a certain language system. However, they use them in specific ways and with specific frequencies of occurrence, depending on the intention, purpose and the content of the text or discourse. Any language system includes an open-ended repertoire of sublanguages. Most sublanguages are special languages, which belong to a definite subject field. Any special language

> *represents the totality of linguistic means used in a limited sphere of communication on a restricted subject in order to enable cognitive work to be done and mutual information to be conveyed by those acting in the said domain* (Hoffmann 1987: 298).

We may logically assume that special purpose language is a language that can only be understood by those who share a certain amount of factual or field specific knowledge in addition to the generally shared linguistic knowledge. Sager (1993: 96) insists that special languages are the means of linguistic communication necessary to convey specific information among specialists belonging to the same field. The shared language elements are those linguistic units and structures that are generally found in both general and special purpose languages, e.g. words having the same meanings, such as function words, and grammatical structures. These language elements make it possible for laypersons and field specialists to communicate with one another, but the limited number of such shared elements also makes communication difficult, because it is often impossible to express complicated, field specific concepts in ordinary language without losing at least some of the exactness or conciseness usually required in special purpose language. One 'technical' term could be used instead of ten 'ordinary words'.

A significant consequence of regarding special languages as subsystems of national language is the fact that they are subject to linguistic, historical, geographical and other changes, notes Roszkowski (1999: 13). They include both written and spoken texts. There are contemporary special languages as well as old, standard and non-standard. Also, there exist various registers and 'levels' of sublanguages. Finally, special languages can have regional or geographical varieties. Thus, special language represents a broader concept which allows to encompass the phenomenon of legal language. Special language is more than a mere register, a question of style or special terminology. Moreover, it has a culture specific nature. First indications of a cultural influence on discourse structures can be found in Robert Brooke Kaplan (1966) who noticed that foreign students appeared to have some trouble with Anglo-American discourse structures (Kaplan 1966: 247) – deviations from the "English linearity".

The autonomy of legal language resides, according to Stanisław Roszkowski (1999: 10), in the semantic relations of the lexicon. Once constituted a system, the language of the law represents an entire universe of legal meanings. Thus, having a lexicon constituted in a manner different from that of the ordinary language, and involving terms related to each other in ways different from those of ordinary language, legal discourse must be autonomous of the ordinary language. This is a structuralist approach according to which the sign is arbitrary: thus, for example, a particular word (signifier) need not inevitably have only one signified. Therefore, an ordinary word need not have the same meaning in a legal context. But more than that, since the 'meaning' of the sign is determined by its relations within the semiotic system, a sign in one such system

(law) must have a different 'meaning' of the sign in another system (ordinary language).

Taking the standpoint of jurisprudence, we may also come to similar conclusions, i.e. that legal language is, following Herbert Lionel Adolphus Hart's thesis (1954), unique unto itself – *sui generis* (the opposite opinion in, e.g. Malinowski 2006: 234-240). To support his thesis, Hart differentiates four distinctive characteristics of legal language. First, legal language presupposes the existence of a legal system, a system of rules of law (Hart 1954: 42).

The second distinctive feature results from the first feature and concerns the use of legal terms (see Chapter 3 on semantics of legal discourse). The uses presuppose the related rules of law that give the words contextual meaning (Hart 1954: 42-43). Legal language presupposes particular rules of law, against the background of which legal language obtains its meaningfulness and particular meaning (Morrison 1989: 295) (see Chapter 6.3. of the present study on legal interpretation). For example, the word "dog" is part of ordinary English, and its meaning can be given verbally by naming its genus and differentiating features or by pointing to one and saying, "That is a dog" (Hart 1954: 46). In contrast, because there is nothing to which we can point and say, "That is a company", there are no such things as companies apart from the law (Hart 1954: 38, 42, 45-47). The word "company" is a legal word (a law word) whose meaning is given only by and accessible through the law. In using "company" we know what we are saying only insofar as we know the law of companies. Moreover, any "ordinary words or phrases when with the names of corporations take on a special legal use, for the words are correlated with the facts, *not solely by the rules of ordinary English* but also by the rules of *English law...*" (Hart 1954: 58), as in the following example: "The Chrysler Corporation can pay a bill". In Hart's view, all of legal language ultimately would be *sui generis* because even such apparently ordinary English words as "can" take on a special legal meaning when we use them with words such as "corporation" that have meaning only in and through rules of law (Morrison 1989: 297).

To illustrate Hart's logic, below there is a definition ("elucidation" in his terminology) of the expression: "a legal right" (1954: 50, 52-55):

> *(1) A statement of the form "X has the right" is true if the following conditions are satisfied:*
> *a) There is in existence a legal system.*
> *b) Under a rule or rules of the system some other person Y is, in the events which have happened, obliged to do or abstain from some action.*
> *c) This obligation is made by law dependent on the choice either of X or some other person authorized to act on his behalf so that either Y is bound to do or abstain from some action only if X (or some authorized person) so chooses or alternatively only until X (or such person) chooses otherwise.*
> *(2) A statement of the form "X has the right" is used to draw a conclusion of law in a particular case which falls under such rules.*

Hart's third distinguishing general characteristics of legal language is that sentences of legal language differ in meaning, import or effect (or all three) depending upon who utters them, where, and when (Hart 1954: 43-44). This feature reminds us that an institutional context plays an important role in analyzing legal communication (see Chapter 5). It also is similar to speech act analysis, and particularly a performative-verb analysis of the sort for which J.L. Austin is famous (1962) (see Chapter 4.5.).

The fourth characteristic of legal language rests on a distinctive feature of a universal function of any rules which function is to apply to more than one fact. For rules of law, the variation among fact patterns is an essential element in the application of legal rules (Hart 1954: 45) because the same pattern of facts can be unified under different rules to yield the same or different legal conclusions (Hart 1954: 44-45). This phenomenon of different rules applying to the same facts Hart calls the multiciplicity-of-applicable-rules.

Such rule-governed determination of legal meaning, a proposition first arrived at by Kelsen, and with minor emendations still adhered to by Hart, was deemed to be the distinctive characteristic of legal language in jurisprudence. We should like, however, to take our analysis one step further. A theoretically adequate analysis of the legal discourse must take account of the socio-cultural extensions of legal language, to include the factor of power and inter-group relations (see Chapter 6 on legal power).

Another approach enquiring a similar problem, i.e. what kinds of factors make a language of law distinctive, is taken by Dennis R. Klinck (1992: 143-164). Klinck highlights in this respect a complex relationship of three factors: form, function, and context of expectations. Although function may underlie the distinction of language types, what is crucial are the formal characteristics of the language related to function of language and function of the particular context or occasion of use, of authorial "intent", and of audience expectation (Klinck 1992: 152).

Since the formal features (attributes of the text itself) and functions of legal language will be discussed in other Chapters of this work, Chapters 4. and 1.3. respectively, we will only refer to context of use and audience expectation. Klinck does it from the point of view of speech act theory, as the notion of "legal language" as a complex issue involves, according to him, a whole speech situation: that is, addresser, text (as a formal construct), addressee, and what he calls "occasion" (1992: 163). We will look closer at legal speech acts in Chapter 4.5., but we can agree at this point with Dennis Klinck that speech act theory may add a dimension to our reflections about "legal language" (1992: 155).

Stanisław Roszkowski (1999: 14) pointed to one possible way of empirically investigating the nature of the sublanguage of law, i.e. by means of language corpora. A variety of corpora may be used as a tool to investigate a hypothesis that the language of law is different from unconstrained natural language in many

important respects (*cf.* research in Polish legislative act corpus of almost 550 thousand words by Malinowski 2006). A key feature of apparently all sublanguages would be a high degree of closure at all levels of descriptions. Closure understood as a tendency for a particular feature towards being finite, for example a possibility to develop a simple list of sentence types for the language. It could be possible, according to Roszkowski (1999: 14), to look for various types of closure in one corpus, which one will hypothesise that it represents a sublanguage, and compare it against one or more other corpora that one assumes are not sublanguage corpora. Higher closure should be observed in the sublanguage corpus and a tendency away from closure in the unconstrained language corpora.

If a corpus is a finite body of language, and the sublanguage tends to be finite, it follows that it should be possible in this case to develop a corpus that would be a sole explicandum of a particular variety of language. In short, a corpus should be a good tool for identifying and describing a sublanguage, because they both have one important feature in common – a finite nature (compare similar opinion in Goodrich 1987: 175). Given a large enough corpus of a sublanguage one should be able to see the description of that language beginning to complete itself, whereas for a corresponding corpus of unconstrained language one should see a continuing growth and diversity in such features as sentence types. As a result, corpora should give us a very sharp contrast in terms of closure between any supposed sublanguage and any unconstrained language.

It would be extremely doubtful to assume that legal discourse is finite. It would seem more appropriate to say that perhaps a specific genre of legal discourse, for instance, an insurance policy could be a likely candidate.

Under various approaches, special languages are treated differently. The British approach seems to be more functional; the emphasis is laid on the specific purposes special languages are supposed to serve. The American approach (Swales 1990) is focused on the notion of specialist discourse community and we shall partly base the methodological apparatus of this study on its findings (see Chapter 2). In Europe, the attention is focused more on the languages themselves. Franciszek Grucza (1994: 10) categorizes special languages, which he labels as *technolects*, as a characteristic of various groups of humans, of various human communities. Technolects exists only in the form of certain skills, of practical knowledge of individual persons (Grucza 1994: 20). He regards them as an extension of some general 'lect' since both functionally and ontologically they are only partially autonomous – hence – more appropriately they could be called 'semilects'.

Special languages have little in common with *sociolects*, which are defined as sublanguges of social and/or professional groups "determined by the specific use they make of languages means" (Hoffmann 1987: 299). Special languages are always *functional languages* and belong to a certain subject field. Sociolects, on the