Int J Semiot Law (2023) 36:1081–1107
https://doi.org/10.1007/s11196-023-10010-5

The Concept of Legal Language: What Makes Legal Language 'Legal'?

Ondřej Glogar[1]

Accepted: 19 April 2023 / Published online: 3 May 2023

Abstract
Many legal theorists and linguists have addressed the notion of legal language from different perspectives. Despite that, the definitions of legal language vary. Almost all of the approaches conclude that legal language entails several types of communication. Nevertheless, not all of these categories are sufficiently researched. Some types of legal communication seem to be neglected. This lack of interest might be rooted in the uncertainty of whether these texts or utterances even fall under the scope of the concept of legal language. In order to avoid this superficiality in subsequent research, it is first necessary to come to a clear determination of which communicative acts can be considered a part of legal language and which cannot. Accordingly, in this search for the definition of legal language, we should not neglect the fact that language is executed in concrete communicative acts, and the only means to grasp the language is through communication. The aim of this article is therefore to clearly delineate the boundaries of this concept. Based on analysis of how the given term is currently defined, I draw out the common features and trace the characteristics in which they differ. Taking into account these findings, I propose a novel comprehensive demarcation of legal language. This concept argues that the 'legal' nature of language should be determined by the context and function of the particular statement or exchange, in connection with the role of participants in the communication. This means that a particular act may be considered a part of legal language not in accordance with a certain form or lexicon used, but mainly by extralinguistic circumstances in the context of which it is being performed.

Keywords Legal language · Communication · Conceptualization · Legal communication · Pragmatics

✉ Ondřej Glogar
ondrej.glogar@mail.muni.cz

[1] Department of Legal Theory, Faculty of Law, Masaryk University, Brno, Czech Republic

1 Introduction

"Our law is a law of words. Words are also a lawyer's most essential tools." [1 p. 1] These sentences can be found at the very beginning of Peter M. Tiersma's extraordinary book exploring legal language. There can be no doubt about their accuracy. Recently, it has become clearer how apt these statements are, and how the study of language is playing an increasingly important role in law and jurisprudence. Language is not only essential for understanding the law and comprehending its content, it is the very foundation for the existence of law [2]. Despite that, approaches to the description of legal language vary [3, p. 273] and research often focuses only on a selected segment of legal language.[1] In order to determine what should be within the scope of our examination, we need to find out first what are the borders and limits of legal language, i.e. which speech acts should be the subject of our interest and taken into account. We can also conclude that since there is no agreement on the definition of legal language, there is a risk of over-simplifying jurisprudence in relation to the study of legal language. I also perceive it as problematic that jurisprudence generally neglects the study of some types of communication, and, together, these studies do not present a comprehensive picture of legal language. That is why I aim to contribute to the discussion about legal language in this article, and explore more deeply the concept that this term covers and represents.

The aim of this paper is therefore to find the criteria by which legal language can be identified. At first glance this question may seem trivial, but as I will show below, there are several possible answers and there is certainly no consensus on which definition is accurate. My effort will therefore be to define clear criteria that make a language 'legal'. In other words, how to recognise that a particular statement or text is an example of legal language. I will not go down the route of listing all specific examples or types or genres of legal language (in the sense of an extension of the term), but I will look for general criteria that define what legal language is (i.e., the intension of the term in Carnap's sense [5]), since such a clear definition of legal language is still lacking in existing state of the art.

This paper is divided into four parts. First, I will outline some notes on the topic of conceptualization and describe in detail my procedure in searching for the concept of the term 'legal language'. Second, I present possible viewpoints on legal language. This chapter serves as the core basis, as it not only summarizes the current state of study but entails various approaches to defining the term and what should be the characteristics of the phenomenon in question. The third part then presents a critical discussion of these results. This should be a bridging chapter between the concepts discussed and a proposed novel concept of legal language building on the insights of communication studies and pragmatics. That naturally forms the main content of the last, fourth, part. In conclusion I come up with a suggestion of what should be the basic markers for determining whether certain text or speech should be considered legal language.

[1] Mainly focusing on the language of statutes, at most on the language of court decisions [see e.g., 4].

2 Looking for the Concept: Methods of Analysis

Before I proceed to the description of methodology and my chosen way of defining the term 'legal language', I will briefly introduce the term 'concept' itself and how it is used in this paper as it can often be the subject of confusion with other terms. By concept I understand a mental construction that brings together observations and experiences that have something in common, and which therefore summarizes a certain mental representation of a certain term [6]. Through concepts we can also map the field of meaning in which we operate. We must distinguish the concept from its designation (sometimes the word 'term' is also used in this meaning), since the concept is in any case a certain intangible slice of reality to which the given designation (term or word) refers. In some cases, a term can also refer to a specific thing. However, the term 'legal language' cannot be described by merely pointing to an object (like e.g., an apple, a table etc.). Therefore, we need to find where are boundaries of the slice of reality and reach certain criteria for defining it [7]. This is the concept I will try to capture and define.[2]

The aim of this article is to come up with a concept of legal language. As with almost any legal term (or maybe all the terms), its meaning is shaped, transformed, and can be revealed through discursive practice, i.e., within the communication and minds of individuals using such a term. In other words, the meaning of 'legal language' is shaped by how it is used, talked about and thought about. Insights into social reality might help to illuminate the boundaries and definitions of legal language. For instance, Maciej Dybowski, when arguing for an inferentialist picture of semantics, bases his conclusions on legal concepts being shaped through their use by legal practitioners: "when legal practitioners use legal concepts (when they engage in legal discursive practice (LDP)), they remain within given autonomous discursive practice (ADP) in a natural language. It must be assumed that such practitioners have discursive skills and abilities that extend in some respect beyond those of any participant of ADP. Legislatures, administrative bodies, courts, solicitors, counsels, prosecutors and so on are all institutional users in the sense that their discursive moves in that practice count only insofar as they take place when such users act in their official, status-related, capacity. It must also be assumed that practitioners are reasonable in LDP, just as they are in ADP. LDP is built on the ability to use legal concepts in order to form beliefs and/or actions that can be treated by other participants of that LPD as having determinate content." [9 p. 44] Based on Brandom, Dybowski also concludes that the user of a concept is responsible for, and to, the conceptual content. The user determines (in the sense of sharpening)[3] the content

[2] However, there is no complete agreement on how exactly to understand the word 'concept' itself, and approaches to this term vary across the social sciences [8]. For the purposes of this paper we will use the outlined definition.

[3] This process could be more closely described as a certain refinement of the meaning of a given expression based on its use by speakers. For example, in which context the expression can still be used and in which context the native speaker will not use it anymore and will choose another word. Or, alternatively, a certain actualization of the meaning of the word, i.e. adding a new lexical meaning by using it in a new sense and then, on the basis of each further use, the given meaning gradually becomes one of the layers of the given expression. On the various layers of lexical meaning, see also [10].

of the legal concepts and provides some guidelines for future users. Moreover, the users are themselves responsible to the concept inherited by prior users [9, p. 47].

Provided that legal concepts are shaped by the way legal practitioners use them, and that legal language is a technical term [11, p. 93], we can look for the meaning of the concept in legal discursive practice. I am aware that, by focusing on legal practitioners, I could be (at first sight) undermine the original emphasis on taking into account the complex social aspects shaping the content of the concept. However, the notion of legal language is specific. Although the layperson is likely to be familiar with the term (perhaps as with many other legal terms), we can assume that a more comprehensive idea of its extent will be held by members of the professional legal community. Indeed, one might expect laypeople to characterize legal language more in terms of individual features (e.g., complex, incomprehensible), but this does not illuminate the scope of the concept and delineate its boundaries. On the contrary, these individuals will often have no idea which categories could even be included in the extension of the term.[4] Thus, only people with legal training or who are otherwise deeply focused on law and language can shed light on this question.

It should also be mentioned that this work represents a rather analytical approach to language. Although its discursive function has also been emphasised recently (e.g. as an instrument of power according to Bourdieu [12] or language in the dispute resolution process and its separation into official and deviant language as Sousa Santos describes it [13]), it can be assumed that the concept of language as a means of communication, still prominent and dominant, will be sufficient to define the content of the notion of 'legal language'. Therefore, I draw only on the classical view of language (in the Saussurean and subsequent structuralist sense of language as a system, as explained in detail below [14]). I am aware that this focus excludes from my investigation a very broad (and perhaps recently dominant) view of linguistic reality—be they critical legal theory, legal pluralism or postcolonialism. However, most of these texts have in common that they are concerned with the problems associated with the practical use of legal language rather than the nature of legal language itself. Thus, while they are certainly significant and central to an understanding of legal reality, they should be useful for the subsequent stage of legal language research. Since in this paper I am seeking an answer to what legal language actually is (and not yet how it specifically operates and what it causes in society), these streams will not be so helpful as they do not provide a comprehensive definition of legal language (in the sense of intension of the term).

Given these considerations, one of the methods for the conceptualization of the term at hand could be to approach a number of experts on the subject and—put simply—ask them what they consider to be 'legal language' and how it should be demarcated. The choice of such a technique would undoubtedly be innovative and could provide some novel thoughts on the conceptualisation of this term.

[4] Of course, this may be a certain prejudice, but in professional publications the opinion is held that the "language of laws" is too complex and dense for ordinary citizens, which in a way evokes a certain limited perception of the concept of legal language being the language of only one type of sources of law [11].

Nevertheless, an analysis of the work of these experts, in which many of them have already given their ideas on the content of the concept, could serve equally well. Therefore, I will use the method of literature review inspired by some content analysis technique. Of course, the topic of legal language is certainly not an unexplored area, but the conceptualization of the term itself is a somewhat neglected topic. In the case of a large number of samples, we would be unable to focus on specific characteristics of the concepts and would have to be content with a more superficial analysis [15]. For these reasons, a qualitative analysis seems more suitable. The samples chosen should reflect key perspectives on the formation of the concept (given the significance of the influence of these individuals and their publications). A stratified selection, ensuring that the research sample includes documents (or other data) in key categories, seems to be appropriate for this (Patton describes this as 'purposive sampling' [15]). While this method may suffer from a lack of transparency in the sampling, it is, in my view, balanced by a considerable representativeness across different theories and disciplines which could not be achieved by simply randomly selecting publications. However, in order to make the process of selecting the works under study clear, I have set out several criteria, which I describe below.

As part of the pilot analysis, I used the keyword 'legal language' as the default search term. Within the search results, it was then possible to trace certain interconnections when, for example, they cited similar authors or explicitly endorsed a particular methodology with which they approached legal language. I also came across references to other works that were not part of the initial search results because they worked with a different key concept (language of law, legal discourse, legal communication) and I also took these works into consideration. In order to facilitate the preparation of the search, I have grouped the studies into certain streams to make them easier to work with. Up to now, I have identified mainly the legal-theoretical, linguistic, semiotic, pragmatic and other applied and interdisciplinary approaches (including, e.g., forensic linguistics, work with computer tools, translation and the art of proper writing) [16]. From these streams I chose major publications that are most relevant or have the biggest impact (by the number of citations). Furthermore, more general publications that focus on legal language comprehensively were preferred over those that address only a particular aspect of legal language. This is because these books or papers may provide a more accurate view of the definition of the concept of legal language. Other criteria reflected an attempt to represent works from different legal cultures and geographies, as well as both older and recent studies and the inclusion of more diverse disciplines besides legal theory.

On the basis of this key, I arrived at the following publications, from which I extracted the particular concepts of legal language. First of all, we can look at the legal language strictly from legal-theoretical approach. This workstream should involve older studies, probably some of the first comprehensive descriptions of legal language including legal theorists from both common law and continental system. Let us take the following two works[5]:

[5] From continental system we could also consider a work by Helmut Hatz [17]. However, Wróblewski's book was published earlier.

1. Wróblewski, Bronisław. 1948. *Jezyk prawny i prawniczy*.
2. Mellinkoff, David. 1963. *The Language of the Law*.

Legal language is an interdisciplinary term as it affects (at least) law and linguistics. Hence, I would like to emphasise the need to not limit the research to legal scholars and their view of legal language. We should be looking for the meaning of this term at the intersection of both fields. An ideal proponent of this interconnection, being both legally and linguistically educated, is Peter M. Tiersma:

3. Tiersma, Peter M. 2000. *Legal Language*.

Since Tiersma is a proponent of common law thinking, to ensure more balance I would like to compare his concept with continental linguistic approach. Such descriptions can be found mainly in stylistics handbooks[6] from which we can choose a Czech one depicting the influential theory coming out of the so-called Prague Linguistic Circle:

4. Čechová, Marie et al. 2008. *Současná stylistika*.

All the books selected so far represent more or less traditional ways of thinking about legal language. The following works, however, should introduce a more recent perspective view of the term in question. For this reason, only works of more recent date, i.e. approximately no more than 10 years old, are included in the further analysis. Such currently trending approaches are undoubtedly legal semiotics and legal pragmatics. It is difficult to identify a single flagship covering the prevailing or main ideas on the subject of legal language from these streams. Therefore, the selected works are rather cross-sectional, chosen according to the criteria of novelty and collaboration of several authors (which should entail inclusion of multiple opinions):

5. Broekman, Jan M., and Larry Catà Backer. 2013. *Lawyers Making Meaning*.
6. Capone, Alessandro, and Francesca Poggi. 2016. *Pragmatics and law: Philosophical perspectives*.

There are also streams that draw on other fields, e.g., using various computer tools, practising translation of legal texts and speech, forensic linguistics, or many handbooks on legal writing and legal rhetoric. However, many of them treat the matter rather selectively, and can thus only be used to provide a complementary perspective. On the other hand, a comprehensive overview can be found in the following publications, focusing in the first case on the general theory of translation, and in the second case on the analysis of the style of legal discourse.

[6] Even though it might seem that a handbook does not have such relevance and scientific value, they are picked because of their impact on the linguistic area of research as shaping the ideas of other linguists.

7. Cao, Deborah. 2007. *Translating Law*.
8. Garner, Bryan A. 2009. *Garner on Language and Writing: Selected Essays and Speeches of Bryan A. Garner*.

To sum up, the works listed above were selected from diverse approaches to legal language to be proportionally represented within the whole set. I am convinced that this list encompasses not only different methodological and substantive approaches to legal language, but also both classical and modern streams, plus diversity in the background of fields and major legal systems.[7] From each of these works, I will extract a concept of legal language. A comprehensive description of these concepts follows in the next chapter. Afterwards, I will proceed to analyse and compare them in identification of common characteristics, and delineation of my concept of legal language.

3 Approaches to Legal Language

Following the methodology described in the previous part of this paper, I will describe possible viewpoints on legal language, and extract the key elements of the concept of legal language they present. Firstly, let us look deeper into some (and in my view the most important) legal theoretical works on this topic, which also constitutes the most traditional branch of the research. Our second approach will lead us, on the other hand, to the field of linguistics and how this area deals with the phenomenon of legal language. Then, I will move on to more recent approaches, all of which occupy a transition zone between jurisprudence and different branch of study. In these interdisciplinary fields, we will be starting with legal semiotics—the study of signs—according to which not only language but also law itself can be understood as a system of signs. Then (in part 4) I explore the connections between law and pragmatics, especially those aspects that liken law to (ordinary or natural language based) communication. The last, fifth, part is devoted to other applied approaches. It covers the fields of forensic linguistics, legal translation, legal writing and rhetoric or corpus-based language analysis. This may appear to be a sort of a residual category, nevertheless, outcomes of these approaches can have also much to say about the concept of legal language.

[7] Of course, one could argue that certain works or streams are missing in the review. Unfortunately, this is an inevitable quirk of the social sciences, where each researcher comes from a different background and different frames of reference are available to them (given, for example, by the language and geographical limitations of the author). However, the presented results were obtained based on the described key and criteria (with regard to the chosen keywords, citation rate criterion, a preference for general works that were entirely devoted to legal language), which at the same time should guarantee greater transparency of the procedure.

3.1 Godfathers of Legal Language: Wróblewski and Mellinkof

Questions connected to language and its role in the fields of law are far from new. Many legal scholars have tackled the issues during the history of jurisprudence from various points of view.[8] However, the first really comprehensive analysis of legal language and its usage and characteristics is the work of Bronisław Wróblewski in continental Europe (especially in Central and Eastern European circles) and David Mellinkoff in common law countries. Even though the latter is probably more famous and his book *The Language of Law* (1963) is now appreciated as groundbreaking in this field, Wróblewski's work is of more recent date. His book *Jezyk prawny i prawniczy* was published in 1948 (posthumously), hence 15 years earlier than Mellinkoff's *The Language of Law*. However, probably because there is only a Polish edition, it has not gained such an impact outside Poland and surrounding countries. Both of these publications are not limited to legal theoretical implications but present a complex overview and description of the language of law. Based on this, I consider both Wróblewski and Mellinkoff to be godfathers of legal language—ergo the title of this subchapter.

As the title suggests, Bronisław Wróblewski bases his entire book on the distinction between 'jezyk prawny' (legal language) and 'jezyk prawniczy' (the language of lawyers). This stratification of language used in legal realm was followed not only by Wróblewski and other Polish scholars, but also by many others [see e.g., 19–21]. According to Wróblewski, legal language (stricto sensu) in this traditional categorization represents the language of the sources of law or other manifestations of public authorities. We could widen this description to not just the language of normative texts, i.e., texts that are considered a formal source of law and that reflect a legal rule (mainly, statutes or court decisions), but also generally to all acts issued by public authority (administrative decisions, internal guidelines etc.). Some even question whether the language used by academics within legal literature should be part of 'jezyk prawny' as well, regardless of its normativity or the lack of public authority [19]. In contrast to these texts, there is the language of lawyers, which encompasses expressions used by legal practitioners. This could include for instance the jargon of attorneys or possibly communication by law students as well.

Nevertheless, even following this division, we face some challenges when we try to comprehend what we mean by legal language. The key criterion of legal language (stricto sensu) for Wróblewski is 'officialness' and an act attributable to state authority. It is however a limited category, and even though the differentiation can be helpful for academic purposes, it should not imply that only official legal communication is relevant. On the contrary, language is a complex phenomenon which should be researched in all its variations. Furthermore, the category of correctness has recently become increasingly marginalised as the key ground for stratification of language [22]. Besides that, language is continually developing through linguistic

[8] Among others, for example, we can mention general issues of legal interpretation that work with language in a fundamental way and involve several formal (linguistic) matters. As an example for all, H. L. A. Hart and his discussion of the open texture of law and the vagueness of legal concepts [18].

practice, and can be subject to change and mutual transformation. For comparison, similar classification of legal language can be found elsewhere. For instance, Bernard Jackson differentiates written legal communication from oral [23]. Although the divisions do not overlap entirely, they both emphasize that legal language cannot be narrowed to written official texts in statutes or precedents [23]. The fact that legal language can take many forms or varieties, is further discussed below.

Mellinkoff, on the other hand, uses a completely different definition of legal language, or 'language of law' as he labels it (however, for the purposes of this paper, I am going to use consistently the term legal language). He defines legal English as "the customary language used by lawyers in those common law jurisdictions where English is the official language." [24 p. 3] Since he focuses on 'legal English', one of the elements of the definition is also the geographical delimitation on countries where English serves as the official language. Despite that, we can still highlight the main part of his concept—the fact that he understands this phenomenon as the 'language used by lawyers'. Besides that he emphasizes the variety of legal language, being determined by law as well as by the prevailing language of the particular environment [24, p. 3–4].

Although *The Language of Law* is an extraordinary book describing the complexity of legal language, Mellinkoff does not devote so much space to the delimitation of the term. He instead takes the reader on a journey through history and the development of legal English. Yet in the second part of the book, he depicts the language of law based of the assumption (and apparently quite a fitting one) that it has many flaws and is in general incomprehensible. For example, he characterizes legal language with the following aspects—frequent use of common words with uncommon meanings, use of old Latin and French words, terms of art, argot and formal words, use of words and expressions with flexible meaning, attempts at extreme precision [24, pp. 11–22]. Regardless of that, Mellinkoff also notes that these characteristics may differ according to a given genre and thus implies an existence of various types of communicative acts within legal language.

3.2 A Linguistic View: Legal Language as a Sublanguage or a Style

The linguistic field is perhaps not as concerned with law as legal theorists are interested in language. The reason for that is simple—it might seem that only a part of language and communication is legal, whereas almost every aspect of law is expressed in words.[9] Legal-related issues present only one topic for linguistics, so it is understandable that it is discussed on few pages of stylistics handbooks. Despite that, they should not be ignored, because of their impact on the linguistic area of research, together with other ideas from stylistics in general. Apart from these handbooks, legal language attracts the eyes of linguists who are educated not only in language, but also in law. One of them is Peter M. Tiersma. I included his work in this approach since he follows Mellinkoff in a certain way—yet he also adds remarks

[9] Or at least must be expressible in words, see [2].

from his linguistic expertise. Because of that I will start with his concept of legal language and then I will move to its description in stylistics.

According to Tiersma, legal language is an extremely broad topic. Similarly to Mellinkoff, he thinks of legal language as the language of lawyers. Although for him it is not merely a tool for lawyers, it affects the daily lives of virtually everyone. For instance, every time a consumer buys a parking ticket, he should read the small print on the reverse side which is nothing if not legal language [1, pp. 1–2]. In his book Tiersma gives an exhaustive description of all aspects of legal language. For example, he concludes that the way lawyers speak and write (at least the English ones) is different from ordinary language—it differs in lexicon or in the pronunciation of some words [1]. In addition, he is also trying to determine what exactly legal language is in the sense of linguistic stratification. It is not dialect, nor jargon or argot, since these concepts are associated with either a specific geographic or social environment. The language of lawyers encompasses much more [1]. Not even the notion of style is the best description, as the term itself is ambiguous (more attention will be paid to this problem in the second part of this section on stylistics). It seems that Tiersma leans towards the term sublanguage, by which he understands "language used in a body of texts dealing with a circumscribed subject area in which the authors of the documents share a common vocabulary and common habits of word usage." [1, pp. 142–143] According to him, many characteristics attributed to sublanguages also apply to legal language. Legal language has a limited subject-matter and its own special grammatical rules, as it differs from ordinary language not only in lexicon but also in terms of morphology, syntax or semantics. That is why he considers the language used by lawyers to be a subset of the language as a whole [1]. While Tiersma inclined towards the label 'sublanguage', some other scholars have developed these ideas and proposed the notion of register as more convenient [25], but we will get to that later in this article.

Tiersma also supports Mellinkoff's conclusion that the language of lawyers remains unclear and incomprehensible to the lay person. Similarly to Mellinkoff, he lists some of the reasons that this persists. One of the reasons might be that this way of communication is strategic and depends on the goal of the communication (which is a concept widely developed by pragmatic approach as we shall see below). Tiersma suggests that it can also be the adversarial nature of legal language or economic reasons. He also mentions the notion that the language of law is ritualistic, which provides speakers with a badge of membership in the community. And last but not least, it can be motivated by the attempts of lawyers to be as objective as possible, and to create the impression that law is mysterious and complex [1, pp. 241–244].

The most significant contribution of Tiersma's work to the concept of legal language is perhaps his emphasis on the fact that legal language is not a unitary system: "There is great variation in legal language, depending on geographical location, degree of formality, speaking versus writing, and related factors." [1, p. 139] It thus creates, as he calls it, various 'genres' of legal language [1, p. 51]. The genres have different characteristics, and different stylistic rules, and expectations apply to them as well. Besides written texts it can also include oral communication. This would imply that legal language is an extremely broad area and we should be cautious

about generalizing conclusions and blanket descriptions of legal language when it contains many genres that may differ. This idea can be also supported by the linguistic axiom that language in general is not a simple and uniform phenomenon, but a complex organism, differentiated vertically and horizontally, i.e., we can notice social and functional as well as regional and territorial diversification of language [26].

Let us now move to the strictly linguistic viewpoint of legal language with a focus on Central European perceptions of stylistics. Linguists usually emphasize the need to examine a particular communication act and its function (purpose), which is followed by the speaker (addresser) in his utterance [26]. This idea was mainly promoted by the members of the Prague Linguistic Circle (or so-called Prague School) operating especially in the interwar period and which was spread and developed afterwards as part of the structuralist theory [27]. Style can be characterized as a principle that leads us in the choosing of expressions and linguistics in particular speech. In this way it contributes to the construction of communication and its meaning. Style has both a differentiating and a classifying role—it allows us to distinguish a certain communication from another, and at the same time to classify it in a superior group of texts and to treat it accordingly. The Prague School then differentiates styles according to the leading function of the communication act, i.e., the intention pursued by the author, the purpose or the aim served by the speech [26, p. 28].

It can be deduced that the stylistic handbook examined classifies legal language as administrative style, within the normative and directive subtype [26, pp. 238–239]. The authors explicitly emphasize that merely 'part of the legal agenda' can be included in the administrative style but there is always an intersecting or transitional zone. Therefore, we need to consider the classification of each communication according to its predominant function. This remark can be useful and should be noted. On the other hand, the handbook still mentions only judgments and statutes or regulations. This somewhat selective perception of the legal field can be problematic if we agree with Tiersma's conclusion that legal communication is much broader. That is why it can be more helpful to consider the notion of the functional style itself rather than clearly determining that legal language is a part of a certain function style.

3.3 Law and Language as Systems of Signs

In the following subsection, I will move from purely legal or linguistic perspectives on legal language to the approach of (legal) semiotics. The fundamental starting point for semiotics (legal, as well as general) is the emphasis on sign systems and communicative interactions [28]. Words as the daily-bread of lawyers are of a sign character, i.e., they refer to something other than themselves, and by this they determine an effect upon a person (in Peirce's words an interpretant) [29]. From semiotics developed the view that law and language have much in common and can be both considered sign systems, yet they also have a communicative form. As this seems a crucial remark to conceptualization of legal language, I will firstly introduce the

dual nature of the word ‘language’. Afterwards I will describe some observations of semioticians specifically on legal language.

Semiotics notes that language can be recognized in two forms, namely as a sign system and also communication: “This fact underlines the system-character of language (as made visible in traffic signs) and the communicative features of law (there is no society without “signs of law”).” [30, p. 16] This follows the well-known concept of Ferdinand de Saussure who differentiated ‘langue’ (language) and ‘parole’ (speaking). The former corresponds to an abstract system of signs and rules for their usage which serve as prerequisites for the latter—concrete acts of speech executed on the basis of selection and combination of units from the langue [14]. Legal semiotics adopts this dual nature of language and focuses on the signs per se and also how they are used in communication, as production and uncovering of meanings. For example, Roberta Kevelson, possibly a founder of legal semiotics, stresses that law is envisaged as a language. On the one hand, it is a realm of arguments and unique rhetoric, on the other it is a profession of words as signs that manage meaning [30]. She claims that law can be considered a system of signs in terms of legal semiotics, interrelated with other social sign systems such as language, provided that law can be understood as a process of communication or exchange of meanings (which are inherently sign-based) [28].

Nevertheless, these considerations are inevitably connected to one’s approach to law in general, and the theory or concept that she adopted. Let us take for example a classical dogmatic view of law as a system of rules (or norms) [18]. This view could thus correspond to language in the sense of langue. On the other hand, the view of law as a discursive space and social practice has been increasingly developed recently [31], followed by [32]. However, these seemingly incompatible views can be easier to understand precisely by paralleling law to language (as langue and parole). Law too can take the form of both an abstract system of norms (even likened by some to signs) [33, 34] and of communication. In my view these two forms are interdependent and contingent, for there cannot be one without the other, and we cannot examine law (as a langue-system) without examining individual communicative acts concerning the law (in the sense of law as parole). Similarly see the extent of the metaphor ‘law is language’ [16].

Similar accentuation of the importance of practice and discourse can be deduced from the works of legal semiotics as well. This is most noticeable when claiming that lawyers not only work with words and meanings, but also engineer them: “lawyers manage meanings, because meanings are not beyond any human power of using or inventing words, signs, symbols and special meanings. Consider how legal practice incorporates a specific body of knowledge, which at law’s core issue: making law fit to multiple contexts of society.” [30, p. 109] In this view, law is determined by the discourse, it is dominated by actions and through patterns of its practitioners who eventually influence the shape of law. And legal practice (what lawyers do and say) can be to some extent considered as law itself.

Mastering meanings entails engineering of a form of society as well, that is why legal semiotics implies that legal language is an instrument of power. Lawyers move between two different modes of communication, and by ‘translating’ one to another they create meanings in incomprehensible ways which ensures them the status of an

elite [35]. To do this, they must "master two languages: the language of everyday delivers them meanings of life in a directness that does not exist in law, and the language of law delivers them meanings to operate in a jargon that does not exist in daily life. The two, of course, intertwine but the legal- and state institutions wish to have the citizen's interests be translated in legal language so that the latter type of language dominates their lives." [30 p. 120] Roughly summarized, legal language can be—according to the legal semioticians—described as language which must be translated into regular language in order to be understood by lay people (and vice versa).

3.4 Pragmatic Approach

The pragmatic approach can be in fact quite similar to what I described in the previous section as the semiotic concept of language. Compared to semiotics, legal pragmatics focuses strictly on individual communication and uses different methods. In simple terms, it is founded on the assumption that every communication has, in addition to its semantic content, a pragmatic content (level). No communication takes place in a vacuum, but is influenced by extra-linguistic phenomena. In addition to semantics, the intention of the parties to the conversation and their mutual expectations, context, barriers of communication, etc. play an important role in the interpretation of a speech act [36].Furthermore, pragmatists focus not only on what has been said but also on that which has been only implied. That might be the reason why some authors tend to use the term legal discourse rather than legal language (which can appear to be limited to the verbal side of communication). However, for our purposes, I will keep on using the latter.

One of the goals of legal pragmatics is answering the question as to whether legal interpretation differs from ordinary understanding [4]. Thus, they focus mainly on the language of statutes and other normative text which must be interpreted. However, they principally acknowledge that legal discourse is much broader [see e.g., 4, p. 42]. Izabela Skoczeń, for instance, divides legal language into the following categories (although she also notes that this is certainly not a definitive and exhaustive list):

1. *An exchange within a legislative body*
2. *An exchange between a legislature and courts*
3. *An exchange between a court and parties*
4. *An exchange between parties*
5. *Contracts and other legal declarations of intent* [37, p. 2]

What can also be interesting are the numerous debates on the topic of whether legal language is a part of common natural languages, or is a technical/artificial language. Mario Jori arrived at a rather unusual perspective that legal language is a mixture of both, i.e., partly similar to natural languages and partly similar to an artificial one [38]. He also argues that the key feature distinguishing one type of language from another is its function. Jori argues that the central point of legal

language is the usual connection to legal authorities, the associated coercive power, and the interaction of laymen and jurists. Therefore, he proposes that legal language is an administered language, as it ensures creation and changes of law and the complex structural interactions between authorities, public and lawyers [38, pp. 58–59]. We can note the striking proximity of Jori's concept of administered language (and function as a determinant) to the Prague school of functional styles and the placement of legal language on the borderline between administrative and professional style. Both imply that the legal nature of language is characterized by a certain pragmatic criterion, namely its function.

3.5 Legal Language Applied: on the Intersection of Fields

The applied approaches basically only support the broad view of legal language described in regard to pragmatics of law. For example, although computer-based research does not give a comprehensive description of legal language, we can encounter the processing of many different types of communication in various corpus-based and corpus-driven studies [see e.g., 39, 40]. Forensic linguistics takes a similar approach to legal language when analysing discourse in legal settings in various forms—oral and written, in statutes as well as in contracts, and not limited to the speeches and texts produced by a lawyer (including issues connected with e.g. voice identification, interpretation of expressed meaning in laws and legal writings, statements, authorship identification or analysis of courtroom language used by trial participants) [41].

But since the approaches mentioned above generally work with legal language rather selectively (choosing a specific category without generalisation), it seems more appropriate to start from a different applied field. We will first look at the theory of translation of legal texts and the flagship text on the subject, *Translating Law*, by Deborah Cao. The next section will focus on the work of Bryan A. Garner, one of the most prominent proponents of legal writing and legal rhetoric. In particular, I will draw on facts from these books that have not been covered, or at least not strongly emphasized, in the approaches summarized so far.

Deborah Cao, similarly to Tiersma and many others, notices that legal language is not homogeneous and does not just cover language of laws (statutes and other normative sources of law), but many other communications in legal settings. Therefore, legal texts or communications may have various communicative purposes (normative or informative, prescriptive or descriptive). She also considers to what extent legal language is based on ordinary language or if it is an independent, technical language. While legal language has several peculiarities and deviations from ordinary language (lexical, syntactical, textual or even pragmatic), it still shares a common core of general language [25]. Unlike Tiersma (and his conclusion that legal language has the nature of sub-language), Cao describes legal language as a register, i.e., "a variety of language appropriate to different occasions and situations of use, and in this case, a variety of language appropriate to legal situations of use." [25, p. 9] As such, it is based on regular language, but in addition has some special deviations (we could say, special signs and rules for their use). These deviations

are selected by the speaker from a register and applied according to the particular 'legal' situation at hand, and different signs and rules may be applicable in each case. Thus, there might be different sub-types (genres) of legal language and each of them comes with distinct characteristics.

Cao adopts a broad definition of legal language, as she considers it any "language of and related to law and legal process. This includes language of the law, language about law, and language used in other legal communicative situations." [25 p. 9] Though one may wonder whether the definition is really broad or rather vague or even tautological. Nevertheless, she further clarifies this by assigning legal language to language used in texts produced or used for legal purposes in legal settings (even though she focuses in this list solely on texts, it can be applied to speeches as well). She distinguishes four major categories of legal texts: legislative, judicial, legal scholarly texts (academic literature or commentaries) and private legal texts. It is interesting that the fourth category according to Cao includes "texts written by lawyers, e.g. contracts and litigation documents, and also texts written by non-lawyers, e.g. private agreements, witness statements and other documents produced by non-lawyers and used in litigation and other legal situations." [25, pp. 9–10] That is different from the majority of above-mentioned approaches which usually consider legal language only as texts produced strictly by lawyers.

Let us move on to Garner's approach to legal language. He thinks about this phenomenon especially from the view of style of writing, or as he calls it (referring to Jonathan Swift's definition) putting 'proper words in proper places' [42 p. 39]. And that is why his work is grounded in a description of a tension between traditional legal language and modern tendencies to use plain language. Garner can be certainly considered a proponent of the plain language movement, as he repeatedly expresses the belief that anything that can be simplified should be said in simpler words [42]. According to him, plain language is the "idiomatic and grammatical use of language that most effectively presents ideas to the reader." [42, p. 40].

In contrast to plain language there is the traditional one, so called 'legalese' as "the complicated language of legal documents." [42 p. 302] Garner counters the idea that legalese ensures precision of legal texts, enjoys more respectability, or is generally preferable. Although he strives for clarity, brevity and accuracy as well, these qualities of a text cannot be guaranteed by legalese. And the belief that precision goes hand in hand with legalese is a myth [42 p. 296]. Garner also expresses a view that these qualities—such as clarity, brevity and accuracy—are just the first step. Everything hangs on context and purpose. Lawyers must do more than just simply communicate, sometimes the aim is also to persuade or even delight [42]. Despite Garner's favoring of plain language, we can presume that for Garner, both legalese and plain language (in legal drafting) are legal language. Even (plain) language used in drafting statutes or contracts (as it was in some attempts applied, see [42 pp. 298–299]) still remains 'legal' and has the quality of language of law. Garner actually argues that such language can have even bigger potential for the legal community to gain the respect of the public and maybe even the authority of law [42].

Let us take stock after this—I believe—intense and exhaustive chapter. So far, I have described various concepts of legal language, and one might say that each of them is different and with few exceptions they have little in common. I dare to say

the opposite. Although each approach emphasizes different features, they share a common core. Alternatively, there appear to be at least germs of certain basic types of legal language concepts that can be compared and critically analysed in their context. Given the scope and complexity, I will address these issues in the following chapter, which will also be an imaginary bridge to my definition of legal language in the final section.

4 What Can Various Approaches to Legal Language Tell Us?

The following paragraphs are intended not only to summarize the concepts of legal language described in the previous chapter, but also to abstract the key elements from the concepts, compare them and discuss them. First, I will focus on the word 'language'. Then I will look into the attribute 'legal' and what connotations it may have, which will lead us to a more detailed examination of the communication structure and its functions. At this stage, then, I will try to identify all possible criteria that are considered to define the 'legal' nature of language. However, it is already evident here that there are several of these characteristics and that they overlap and interfere with each other. It will therefore be necessary to critically evaluate them and determine which criteria (or combination of some of them) will be defining for the intension of the term under investigation.

4.1 'Language': Communication, Sublanguage or Register?

As we learned from the semiotic approach, language can mean both the system of signs (words), and the particular communicative situations of their usage. Commonly, we do not distinguish between these two meanings and often simply consider particular texts as legal language. Of course, such a text is not itself legal language, but merely represents one of the instances in which legal language is used. This distinction, however, is more of an academic question. Naturally, in legal communication (parole) we use nothing else than the legal language, and conversely, we come to know legal language as a system of signs and rules (langue) only through the individual instances of its use. They are therefore essentially two sides of the same coin. Despite all this, it is good to remember that when we conceptualize the notion of legal 'language', we are looking for the definition of an abstract system of signs and rules for their use. At the same time, we must focus on the texts and utterances themselves, and it is only from their character that we can infer whether or not legal language is used in them at all. Therefore, even though it could be more precise to differentiate legal language from legal communication, the important thing is that in order to paint the picture of the 'system' we must first grasp it through the particular acts of communication.

What almost all of the concepts have in common is the emphasis on the heterogenous nature of legal language. Similar to language in general, legal language comprises many genres and varieties of oral and written communication, official as well as unofficial (sometimes called jargon). However, it is sometimes pointed out that

written and spoken language cannot be considered the same and should be distinguished. Although texts and speech may have different characteristics, the emphasis on the primacy or importance of only one is in many respects overcome (as Derrida in particular pointed out [43]). Particularly in the search for a concept of legal language, this distinction is meaningless, since both forms of language are cases of communication and fall equally under the use of legal language. That is why, in the following, I always try to take into consideration both texts and speeches.

There is an almost unanimous opinion that legal language is rooted in ordinary language, albeit with some variations—whether lexical, syntactic, phonetic or pragmatic. From a linguistic point of view, there can be two notions to describe such a phenomenon—either a sublanguage (as promoted by Tiersma), or a register (as promoted by Cao). Sublanguage is usually understood as a subset of (sentences of) a whole language in a particular community [44, 45]. But legal language should not be just a part of a separate (linguistic) community of professionals. On the contrary, there is a systematic interaction between jurists and lay people, and requirements are placed on lawyers to ensure at least some degree of lay understanding [38]. Moreover, the lexicon and grammar (signs and rules of their usage) create only a certain part of the lexicon and grammar of the language as a whole. On the other hand, a register can be considered as a variety which supplies a taxonomy of features according to certain situational parameters. They include determinants such as field, tenor and mode, i.e., the type of activity (its content, ideas and institutional focus), the status and role relationships of the participants and the channel of communication, respectively [46]. We can also note some similarities of the term 'register' and the 'functional style' as termed by Prague School, since both of them refer to specific situational settings [45].

The concepts of legal language described above usually highlight the peculiarities (on various linguistic levels) which cause the differentiation from natural language. It can be deduced that the reason for choosing to use these peculiarities are specific situational factors, mainly the nature of the actors and the purpose of the communication (this will be discussed further below). Therefore, the term 'register' seems to correspond best and be appropriate as the description of legal language. The most important thing is still what it entails. Legal language as a register should include many kinds of features which should be chosen and applied in a specific communication act based on given situational settings. We need to find out what the situational settings should be that trigger the use of legal language. For now, it is clear that defining them as 'somehow connected to the law' will not be sufficient.

4.2 What Could the Attribute 'Legal' Mean?

In the course of the previous chapter, the basic criteria for determining the 'legal' nature of legal language gradually crystallized. All of the approaches described provide interesting insights into legal language, and I am aware that they cannot be limited only to the way they define legal language. Nevertheless, for the purposes of

this paper, I believe I can draw from all of them the following possible criteria for determining the 'legal' character:

1. Defined by a 'quality' (e.g., incomprehensibility, complexity);
2. Defined by 'officialness' (manifestations of public authorities bearing normativity);
3. Defined by speakers and their profession (as language used by lawyers);
4. Defined by an enumeration of genres or categories of texts or speeches;
5. Defined by situational settings (especially function).

Let us now look at each of these characteristics and assess how appropriate they are or what is problematic about them.

4.2.1 Definition by a Quality

Criteria like 'too complicated' or 'incomprehensible' can be described as basically the definition of a circle. They do not help to determine the extent (range) of the term legal language, in fact they already describe what they consider as part of the legal language. Furthermore, we can refer to Garner, who, although basically starting from the definition of legal language as a poor style of writing, also considers plain language as 'legal'. Imagine, for example, a provision in a statute that is clearly written in a concise and understandable sentence. Does it make it any less an example of 'legal language' than a dubious complex sentences with several Latin words? I believe not. A statute is a statute not by its length or a lexicon used, but by the form of publication which enjoys the authority of being normative [45].

4.2.2 Definition by Officialness

Another characteristic is based on Wróblewski's conception of legal language as opposed to the language of lawyers. Without a doubt, this differentiation is useful as it categorizes our perception and can help us to better understand and navigate such a complex system. However, legal language cannot be limited to a language of statutes and other normative sources of law. That would be too restrictive and would not correlate with a complex legal discourse as we understand it from today's, pluralist, perspective. Therefore, I support the idea of structuring legal language, but only as an internal stratification, so that the concept is inclusive of all instances of legal communication (which actually does not contradict Wróblewski's view, who himself paid a lot of attention to the language of lawyers) [47]. This is not to deny that the language of legislation may have much greater relevance to jurisprudence, and that different rules or characteristics may also apply. However, from this alone, in my view, it cannot be concluded that the concept of legal language should be limited to the language of statutes (such a conclusion is, in fact, contrary to most of the other concepts described).

4.2.3 Definition by Speakers and Their Profession

Probably the most used criterion (proposed by Mellinkoff and followed by Tiersma) is the nature of the speakers as legal practitioners. Two questions can be asked with regard to this idea. Firstly, is legal language used solely by lawyers? Can there not be any instances of legal language being used by a person without legal education who is just somehow involved in the process of law? And secondly, should be every sentence uttered by a lawyer be considered as legal language? Let us explore these two issues.

Legal language is primarily inherent in the legal community. As Tiersma and Garner show, it could be almost one of the privileges that symbolically confer on an otherwise 'ordinary' person the status of someone enabled to practice law or at least belonging to an exclusive group of people. Of course, this is more of a myth, but it does not undermine the primacy of lawyers in the use of this specific language.

On the other hand, this view could raise the question of whether a statute is after all an instance of legal language if we are not sure who wrote it or performed the act.[10] Not all lawmakers are lawyers. Or let us take for example an administrative decision which can be issued by an official without legal education. And how about a contract written by two parties that did not involve legal education? Or should we consider as legal language any communication that has impact on a legal status of a person (so even almost any implied-in-fact contracts as Mooney implies [49])? After all, even a witness testimony is of importance for the process of law. Some of the described concepts of legal language imply that these acts should be considered as legal language. Moreover, there is no doubt about assigning this nature to statutes or even (court) decisions as they are the typical examples of legal language.

Help to answer these questions can be provided, in my opinion, by the prototype theory. This theory has played an important role in dealing with borderline cases of meanings of terms [50]. Its central figure is Eleanor Rosch who conducted several experiments on categorization, and promoted the idea that not all terms can be defined by sets of features that are both necessary and sufficient (in classic Aristotelian way). According to Rosh, people have a prototype of a concept stored in their memory, and then classify individual objects into categories based on comparison with this mental image. If an object corresponds to a prototype, it can be classified under the concept that the prototype represents [51]. It may be surprising that this theory has much in common with Hart's thesis of the open texture of law [52]. Similarly to Hart, Rosh concluded that prototypical categories can be hard to clearly define by using a single set of criteria, since they have blurred edges (in Wittgenstein's sense of the term [53]). Therefore, we need to think about concepts as a certain degree of typicality for assigning a particular object to a given category (under a given concept). There will always be some borderline cases that we have to assess on a contextual basis, and often we will not even agree on their categorisation [50]. But we cannot, because of that, abandon the effort to grasp the concept and define

[10] I am aware that this topic was discussed from many perspectives and that is why I am putting aside that the notion of a communication by ‚lawmaker ' when enacting an act is not simply resolved [48].

it. At least some typical core of the concept is definable, so we can focus on it in conceptualization.

Although the theory described uses largely experimental methods, it can at least help us understand that some objects can be a more 'typical' example of a certain term, and some can be only similar to it in some features. I would also say that legal language can be a subject of imitation. A typical example is the generally widespread practice of copy-paste contracts. Non-legal consumers often try to avoid the expensive services of lawyers by downloading a template of a contract and adapting the key parts of it. It is fair to say, I suppose, that such a document is not an example of legal language, it is its mere imitation. Similar assumptions can be claimed about some administrative decisions. These can be often prepared by somebody without legal education, according to a template and the instructions of a lawyer. Or on the other hand, a text of a statute or any other regulation is usually prepared by a legislator (legally educated person) [11], even though it is often subject to amendments or corrections in the subsequent legislative procedure. The difference is however in the nature of such acts and the implications they entail. They are based on language originally produced by lawyers. We should consider them as part of legal language as a whole. regardless of the uncertainty of whether they were completely produced by lawyers. Therefore, the acts of an official who represents a state authority can be also instances of use of legal language.

Different attitudes should be, nevertheless, taken in regard to witness statements and other lay talk. Even though they might be of enormous importance for the process of law, they are not the purest form of legal language. On the other hand, we can think of them as lay talk which must be transformed (or even translated) to legal language by a judge or an attorney [54, p. 64]. Such transcripts of lawyers would be an instance of legal language. However, the preceding form expressed by a lay person is not.

We can move on to the second question outlined above, in particular whether every text or speech written or pronounced by lawyer should be considered legal language. Imagine for example a lawyer speaking to her lay husband or to her kids about their plans for a dinner. I am sure that while lawyers can incorporate adopted peculiarities from legal jargon into relatively ordinary conversations, such statements will not amount to a prototypical example of legal language. Therefore, the questions raised by the criterion of the nature of a speaker and some of the replies above show that a 'legal' nature of language is not ensured just by the category of a speaker. The concept of legal language should include more criteria than just 'language of lawyers'. This brings us to the fourth criterion, in particular the definition by the enumeration of categories.

4.2.4 Definition by an Enumeration of Genres or Categories

Some concepts worked with listing of categories or genres covering instances within which legal language is used. Although it could seem like a good strategy, these definitions usually do not deal with the specific function of a communication act itself, but are focused more on the type of document or act (court decisions, contracts, witness testimony etc.). This procedure can lead to the omission of some genres. Also,

not every time can the 'legal' nature be determined by the type of a document, e.g., as stressed above, not all contracts will be of the typical nature of legal language (for example, with regard to verbal consumer-to-consumer contracts alone). In this article, I made it my goal to make the concept of legal language as comprehensive and precise as possible. Evidently, the concept defined by a list of categories cannot fulfil this aim.[11]

4.2.5 Definition by Situational Settings

The last characteristic entails the specific pragmatic role of the act of communication, or in other words, concrete situational settings. It is not a prevailing feature in the concepts explored, however in a way many of them imply the use of something more than just words and the form of a text or speech. This criterion emphasizes the background, i.e., what is going on beyond the text or spoken words, and takes into consideration extralinguistic features that can have an impact on the meaning or are otherwise important for the communication. It needs to be pointed out that this approach is based on the premise of performativity of law and the necessity of communicating law and law-related issues [35, 54]. One of the most frequent factors mentioned in the concepts described is the function (or purpose) of a communication. As it seems that understanding of communication in connection with its functions is crucial for developing a concept of legal language, these topics deserve more exploration and I will now briefly address them.

4.3 Functions of Legal Communication

Communication, especially in connection with its functions, has been extensively elaborated by the Russian linguist (and at the same time one of the representatives of the Prague structuralist school) Roman Jakobson. In his studies he observed both the structure of communication and the creation of meaning in terms of its functions, on the basis of which he also developed the well-known dual model of communication [55]. In the first diagram, he presents the constitutive elements of a communicative act. These are then followed in the second depiction by the individual functions associated with the given elements. Jakobson builds on earlier procedural models of communication by considering communication as a situation where the speaker

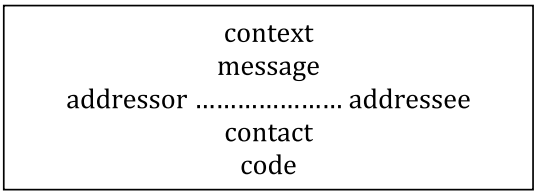

Fig. 1 Jakobson's processual model of communication

[11] Cf. for example Kurzon's approach, who also emphasized that legal discourse has not just a generic side, but also a linguistic one (i.e., register that can be recognized by the function of a communication) [45].

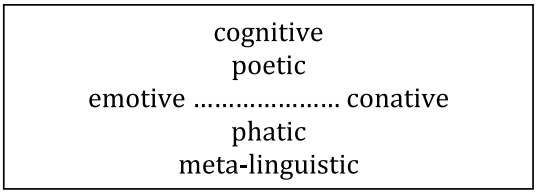

Fig. 2 Jakobson's semiotic model of communication

(addresser) sends a message to the addressee. However, since a message usually does not refer to itself, a necessary complement to these three elements is context, i.e., a section of the actual or possible world to which the message refers. To this, however, Jakobson adds two more elements, contact and code. By contact Jakobson means the physical channel and psychic connection between speaker and addressee. In other words, it is the element of communication that constructs the relationship, psyche or emotion between the transmitter and the receiver and enables them to initiate the communication and, with the help of maintaining contact between them, to maintain the communication. The code can then be understood as a shared system of meaning (essentially sign meaning) by which the message is structured [56]. The process model of communication can be illustrated as follows (Fig. 1):

On the basis of the scheme above, Jakobson then created a corresponding representation, through which he wanted to depict the basic six functions of language—cognitive, emotive, conative, phatic, meta-linguistic and poetic. Each function is determined by one of the six constitutive elements of communication mentioned above. The first of these, cognitive function, concerns context and thus focuses on the reality being referred to (the main purpose is to communicate information). If the communicative act is directed at the transmitter and directly expresses the speaker's attitude towards what is communicated, Jakobson speaks of an emotive (or expressive) function. In contrast, the orientation towards the addressee usually gives rise to the so-called conative or appellative function, the clearest form of which is the use of the imperative or vocative. A less common function is the phatic function (focusing on contact), which serves to establish and maintain communication. In the case of a focus on code, we use the so-called meta-linguistic function, and, as the last function, Jakobson mentions the poetic function, which is accentuated when the message itself is at the core of the communicative act [56]. Jakobson mapped these six functions onto a diagram corresponding to the procedural model and corresponding to the constitutive elements of communication (Fig. 2):

These functions can help us understand that communication is not merely about transmitting information. It can serve various purposes, within legal realm notably the conative function, as we can assume that some communication bears normativity and ensures that some individuals will (or shall) act in a certain way. Jakobson's model of communication highlights that communication is not only about a message itself or about the participants of the conversation. More elements are involved. Therefore, we need to examine all of these elements when proposing a concept of legal language, and also the meanings of such communication reflected in the relevant function of the act.

5 The Concept of Legal Language

The concept of legal language can be described with a help of Aristotelian distinction between *genus proximum* and *differentia specifica*, i.e., by placing it in a generically superior concept (e.g., man is an animal) and assigning concrete specifications that distinguish it from other cases falling into the same category (e.g., social, walking on two legs, talking, etc.). The word 'language' could serve as a sort of a genus proximum since it indicates the form of the set of phenomena, a part of which should be determined by the attribute 'legal'. The meaning of the term 'language' must be however adjusted to more accurately reflect what it represents. That is to say, it is not a natural, national language, but represents a certain register of it. That means that as it is used in certain situations, but in addition/or as variable to regular language, it has some signs and rules which are different.

The more pressing issue, however, is understanding how to recognize such use of a register (special characters or rules). The previous section showed that it cannot just be determined by the speaker, but also by the given context within which a certain act is performed (eventually by the addressee, message or code of the communication). As for the addresser, for a communication act to have the nature of legal language it must be either performed by a lawyer (a legal practitioner) or it must be attributed to a state authority, i.e., the act is performed by an authorized person who acts as a representative of state authority. The second condition is dependent on the context within which the act was performed and the function of the communication. Let us now look more closely at these contextual and functional settings.

I have come to the conclusion that there are typically three situations of communicative acts linked to legal language. The first case involves the conative function of the act implying that a norm should apply to a certain addressee. As such, the act must be performed in a form or by a means of message that is, under given jurisdiction, considered to be legally binding. In other words, this category would encompass the acts that are generally accepted as a formal source of law. To the second and the third one we cannot precisely assign a function in Jakobson's division. However, the context is important for both of these categories in the meaning of extra-linguistic circumstances within which the communication is performed. One of them would be a general reference to law (in the meaning of a set of norms). That is for example a lawyer describing law or interpreting it for her client or discussing some legal issue with her colleague. As another case we could imagine a communicative act of a lawyer when she does not strictly refer to law but she is involved in the process of law, in particular in the process of creation or application of law. There are some uncertain cases in this type of context, for example individual norm-making when a legal practitioner creates or concludes a contract or when she appears in the courtroom just as a witness. For eliminating this grey zone, we should exclude all those instances when such application of norms concerns a lawyer's private life. Thus, only those instances of acts in the process of law when a lawyer acts as a representative of a legal status or in the course of her employment should be considered as use of legal language.

And does an addressee or a code of communication matter in determining the scope of legal language? I assume that the addressee can be almost anybody (if there is any at all): state authority, another lawyer or a lay person. We could think of the distinctiveness of a code of communication as well in a way that it somehow bears normativity. However, that is not given by the code itself (sign system that the addresser uses) but again by the context, since it has a form that is generally accepted as a source of law.

To put it briefly (and perhaps a little tentatively), this concept of legal language refers to the following types of communications. First should be the documents generally accepted as the formal sources of law, e.g., statutes, precedents, documents reflecting some legal customs. Second case could be a lawyer when she refers to law (in the course of performing her work/employment). This could be for instance legal scholars' literature, speech/opinion of an attorney to a client, conversation of lawyers on a case (even with some specific jargon lexicon). And thirdly, some acts in the process of law should be involved, such as communication within a legislative body, communication within court (written and oral), contracts and intents of will. At this point, however, I want to remind you that this exemplary list is not a delineation of the concept of legal language itself (indeed, I criticized this way of formulating it above). Despite this criticism, even analysing these categories could be enriching for the research of legal language. However in this paper I was looking for an intension of the term (as opposed to its extension in Carnap's terms following Frege's differentiation [5]).

I am certain that the concept of legal language outlined above can have some limits. One of these can be the applicability of the conceptualization in all jurisdictions, since our understanding of the term can differ across the world. To this I must make clear that I focus mainly on the continental and common law view of law and this concept is based on it. This also matches the chosen research methodology, which is to reflect diverse approaches to legal language. The proposed concept is also quite general and broad. That was however my aim from the very beginning. and it is intended to serve as a basic starting point for more specific legal language research, which should be based on established criteria and be aware of the scope of the concept. It may also be worth clarifying that I am not of the opinion that all instances of legal language are equally important. As many other legal terms, legal language is an example of a term with blurred edges [53]. We can therefore only approximate the content of this concept, knowing that some cases will remain borderline and debatable. Despite this, I am convinced of the importance of this exploration, as it can help us to articulate these borderline cases and subject them to debate.

6 Conclusion

In this article I outlined the possible approaches to legal language and proposed a novel concept of this term. Legal language is a part of language as a register which uses suitable signs and rules of their usage in accordance with given communication and its purpose. However, it can be problematic regarding not only the rules or signs to use in a particular situation but also how we recognize that the situation triggers

use of this register (of so-called 'legal language'). The legal nature of language cannot be characterized by formal features of a text or speech, nor is it sufficient to say that it is the language used in state acts or by lawyers *tout court*. The best characterization is by a combination of the criteria of certain communication acts, notably by its specific pragmatic (extralinguistic) role. The first key determinant is the nature of the addresser who by a definition must be a lawyer. The second and equally important determinant is the context within which the particular act is performed. Either the context implies that the function of the communication is to create a legally binding norm, or it refers to law, or it is performed in the process of creating or applying law. Although legal language may not at first glance be a typical legal term, it is undoubtedly a concept that is essential to jurisprudence and legal theory. In this way, this article has the potential to help illuminate the meaning and scope of the term so that future legal language research can build on this definition, knowing that it encompasses many instances of communication of various kinds.

Acknowledgements This publication was written at Masaryk University as part of the project The Concept of the Term Legal Language number MUNI/A/1529/2021 with the support of the Specific University Research Grant, as provided by the Ministry of Education, Youth and Sports of the Czech Republic in 2022.

Funding Open access publishing supported by the National Technical Library in Prague.

References

1. Tiersma, Peter Meijes. 2000. *Legal Language*. Paperback. Chicago: The University of Chicago Press.
2. Weinberger, Ota. 1995. *Norma a instituce: úvod do teorie práva*. Masarykova univerzita: Spisy Právnické Fakulty Masarykovy Univerzity v Brně.
3. Myška, Matěj, Terezie Smejkalová, Jaromír Šavelka, and Martin Škop. 2012. Creative Commons and Grand Challenge to Make Legal Language Simple. In *AI Approaches to the Complexity of Legal Systems. Models and Ethical Challenges for Legal Systems Legal Language and Legal Ontologies, Argumentation and Software Agents*, ed. Monica Palmirani, Ugo Pagallo, Pompeu Casanovas, and Giovanni Sartor. Berlin: Lecture Notes in Computer Science.
4. Capone, Alessandro, and Francesca Poggi, eds. 2016. *Pragmatics and Law: Philosophical Perspectives*, 1st ed. New York: Springer.
5. Carnap, Rudolf. 1988. *Meaning and Necessity: A Study in Semantics and Modal Logic*, 2nd ed. Chicago: University of Chicago Press.
6. Sartori, Giovanni. 2008. Guidelines for Concept Analysis. In *Concepts and method in social science: The tradition of Giovanni Sartori*, ed. David Collier and John Gerring, 97–133. New York: Routledge.
7. Buriánek, Jiří. 2020. Konceptualizace. Edited by Zdeněk R. Nešpor. *Sociologická encyklopedie*.

8. Ginsburg, Tom, and Nicholas Stephanopoulos. 2017. The Concepts of Law. *University of Chicago Law Review* 84: 147–175.
9. Dybowski, Maciej. 2018. Articulating Ratio Legis and Practical Reasoning. In *Ratio Legis: Philosophical and Theoretical Perspectives*, ed. Verena Klappstein and Maciej Dybowski. New York: Springer.
10. Leech, Geoffrey N. 1974. *Semantics*. Harmondsworth: Penguin Books.
11. Škop, Martin, Michal Malaník, Terezie Smejkalová, Markéta Štěpáníková, and Barbora Vacková. 2019. Tvorba práva–empirické studie. In *Spisy Právnické fakulty Masarykovy univerzity v Brně*. Brno: Masarykova univerzita.
12. Pierre, Bourdieu. 1993. Language and Symbolic Power. In *Harvard University Press*, ed. John Thompson. Cambridge.
13. Santos, Boaventura, and de Sousa. 1977. The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada. *Law & Society Review* 12: 5–126. https://doi.org/10.2307/3053321.
14. de Saussure, Ferdinand. 1959. *Course in general linguistics*. New York: Philosophical Library.
15. Patton, Michael Quinn. 2015. *Qualitative Research & Evaluation Methods: Integrating Theory and Practice*, 4th ed. Thousand Oaks, California: SAGE.
16. Glogar, Ondřej. 2021. The Concept of Legal Language: Law is Language. In *Argumentation 2021: International Conference on Alternative Methods of Argumentation in Law*, 51–68. Brno: Masaryk University Press.
17. Hatz, Helmut. 1963. *Rechtssprache und juristischer Begriff*. Stuttgart: W. Kohlhammer Verlag.
18. Hart, H.L.A. 2012. *The Concept of Law*, 3rd ed. Oxford: Oxford University Press.
19. Knapp, Viktor. 1978. Právní pojmy a právní terminologie (Právní pojmosloví a názvosloví). *Státní správa: Bulletin Ústavu státní správy v Praze* 4: 5–68.
20. MacCormick, Neil, and Ota Weinberger. 1986. *An Institutional Theory of Law: New Approaches to Legal Positivism*. Dordrecht: Springer.
21 Tomášek, Michal. 1998. *Překlad v právní praxi*. Praha: Linde.
22. Nebeská, Iva. 2012. Spisovná čeština. In *CzechEncy—Nový encyklopedický slovník češtiny*, ed. Jana Pleskalová, Petr Karlík, and Marek Nekula. Brno: Masarykova Univerzita.
23. Jackson, Bernard S. 1995. *Making Sense in Law: Linguistic, Psychological and Semiotic Perspectives*. Liverpool: Deborah Charles Publications.
24. Mellinkoff, David. 2004. *The Language of the Law*. Eugene, Oregon: Wipf & Stock Publishers.
25 Cao, Deborah. 2007. *Translating Law*. Clevedon: Multilingual Matters.
26 Čechová, Marie, Marie Krčmová, and Eva Minářová. 2008. *Současná stylistika*. Praha: NLN Nakladatelství Lidové noviny.
27. Havránek, Bohuslav. 2014. The functional differentiation of the standard language. In *Chapters from the History of Czech Functional Linguistics*, ed. Jan Chovanec, 27–40. Brno: Masarykova univerzita.
28. Kevelson, Roberta. 1988. *The Law as a System of Signs*. New York: Plenum Press.
29. Charles-Sanders, Peirce. 1992. *The Essential Peirce, Volume 2: Selected Philosophical Writings (1893–1913)*. Bloomington: Indiana University Press.
30. Broekman, Jan M., and Larry Catà Backer. 2013. *Lawyers Making Meaning: The Semiotics of Law in Legal Education II*. Dordrecht: Springer.
31. White, James Boyd. 1981. Law as Language: Reading Law and Reading Literature. *Texas Law Review* 60: 415–446.
32. Hoecke, Van, and Mark. 2002. *Law as Communication*. Oxford: Hart publishing.
33. Cover, Robert M. 1983. Foreword: Nomos and Narrative. *Harvard Law Review* 97: 4–78. https://doi.org/10.2307/1340787.
34 Škop, Martin. 2013. *právo, jazyk a příběh*. Praha: Auditorium.
35. Smejkalová, Terezie, and Markéta Štěpáníková. 2019. Law for Elites. *Studies in Logic, Grammar and Rhetoric* 59: 47–68. https://doi.org/10.2478/slgr-2019-0028.
36. Marmor, Andrei. 2014. *The Language of Law*. Oxford: Oxford University Press.
37. Skoczeń, Izabela. 2019. *Implicatures within Legal Language*. Cham: Springer.
38. Jori, Mario. 2016. Legal Pragmatics. In *Pragmatics and Law: Philosophical Perspectives*, 1st ed., ed. Alessandro Capone and Francesca Poggi. New York: Springer.
39. Solan, Lawrence M., and Tammy Gales. 2018. Corpus Linguistics as a Tool in Legal Interpretation. *BYU Law Review* 2017: 1311–1358.

40. Mouritsen, Stephen. 2017. Corpus Linguistics in Legal Interpretation: An Evolving Interpretative Framework. *International Journal of Language & Law JLL* 6: 67–89. https://doi.org/10.14762/JLL.2017.067.
41. McMenamin, Gerald R. 2002. *Forensic Linguistics: Advances in Forensic Stylistics*. Boca Raton: CRC Press.
42. Garner, Bryan A. 2009. *Garner on Language and Writing: Selected Essays and Speeches of Bryan A*. ABA Defending Liberty Pursuing Justice, Chicago: Garner.
43. Derrida, Jacques. 1976. *Of Grammatology*. Baltimore: Johns Hopkins University Press.
44. Kittredge, Richard, and John Lehrberger, eds. 1982. *Sublanguage: Studies of Language in Restricted Semantic Domains*. Berlin: Walter de Gruyter.
45. Kurzon, Dennis. 1997. "Legal language": Varieties, genres, registers, discourses. *International Journal of Applied Linguistics* 7: 119–139. https://doi.org/10.1111/j.1473-4192.1997.tb00111.x.
46. Swales, John M., and John Swales. 1990. *Genre Analysis: English in Academic and Research Settings*. Cambridge: Cambridge University Press.
47 Wróblewski, Bronisław. 1948. *Język prawny i prawniczy*. Kraków: Polska Akademia Umiejętności.
48. Greenberg, Mark. 2011. Legislation As Communication? Legal Interpretation and the Study of Linguistic Communication. In *Philosophical Foundations of Language in the Law*, ed. Andrei Marmor and Scott Soames. Oxford: Oxford University Press.
49. Mooney, Annabelle. 2014. *Language and Law*. London: Palgrave Macmillan.
50. Geeraerts, Dirk. 2016. Prospects and Problems of Prototype Theory. *Diacronia* 3: 1–16. https://doi.org/10.17684/i4A53en.
51. Rosch, Eleanor H. 1973. Natural Categories. *Cognitive Psychology* 4: 328–350. https://doi.org/10.1016/0010-0285(73)90017-0.
52. Zeifert, Mateusz. 2022. Rethinking Hart: From Open Texture to Prototype Theory—Analytic Philosophy Meets Cognitive Linguistics. *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 35: 409–430. https://doi.org/10.1007/s11196-020-09722-9.
53. Wittgenstein, Ludwig. 1968. *Philosophical Investigations*. Oxford: Basil Blackwell.
54. Smejkalová, Terezie. 2017. Legal Performance: Translating into Law and Subjectivity in Law. *Tilburg Law Review* 22: 62–76. https://doi.org/10.1163/22112596-02201004.
55. Fiske, John. 2011. *Introduction to Communication Studies*, 3rd ed. Routledge: Routledge.
56. Jakobson, Roman. 1995. *Poetická funkce*. Jinočany: Artes et litterae H & H.