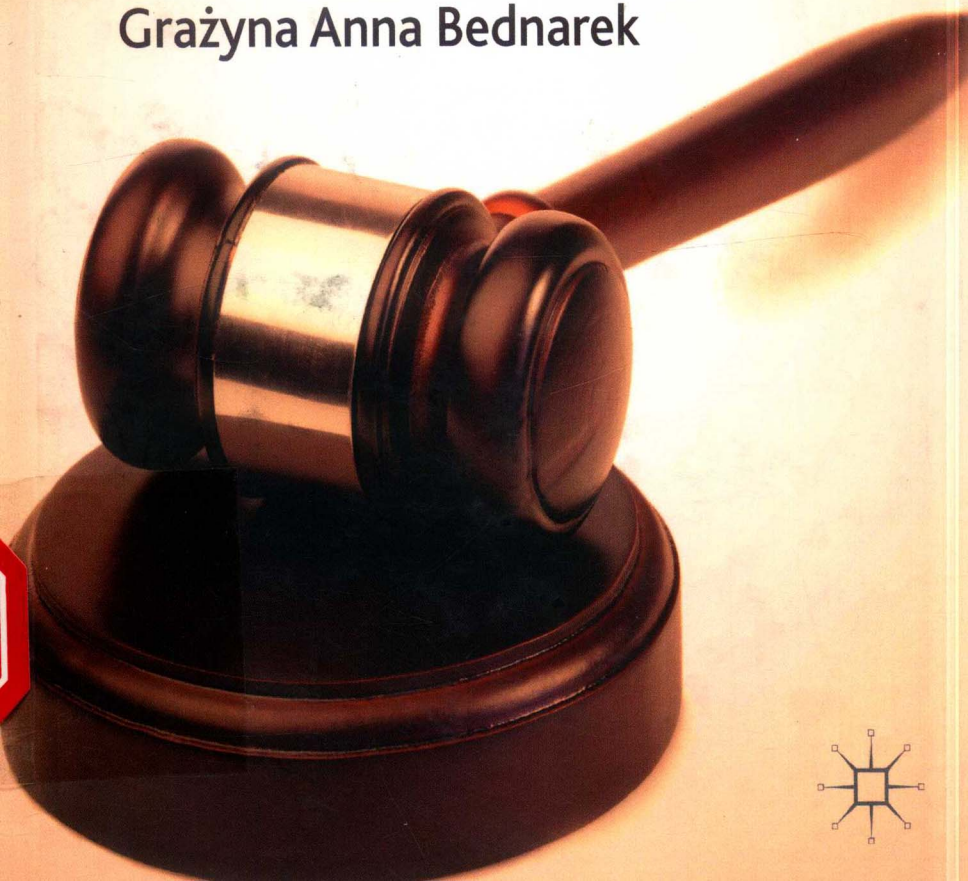
POLISH vs. AMERICAN COURTROOM DISCOURSE

Inquisitorial and Adversarial Procedures of Witness Examination in Criminal Trials

Grażyna Anna Bednarek



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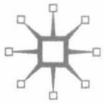

First published 2014 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

ISBN: 978–1–137–41424–3

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Bednarek, Grazyna Anna, 1960– author.

Polish vs. American courtroom discourse: inquisitorial and adversarial procedures of witness examination in criminal trials / Grazyna Anna Bednarek, University of Economy in Bydgoszcz, Poland.

pages cm

Includes bibliographical references and index.

Summary: "Polish vs. American Courtroom Discourse investigates different methods of witness examination in criminal trials under two disparate legal systems: Civil Law and Common Law. Its major objective is to identify, illustrate and explain the cross-cultural similarities and disparities between the inquisitorial and adversarial procedures of witness examination in criminal trials. The book argues that these are two culturally distinct ways of seeking the truth and pursuing justice. The author investigates verbal interaction during penal cases and examines by what means and to what effect social (institutional), historical and cultural context shapes the use of language in court. Polish vs. American Courtroom Discourse seeks to present the language used in courtroom interaction by the representatives of the legal professions, including the judge, attorney for prosecution and defense as a distinctive example of linguistic genre, a unique phenomenon which is culturally varied and socially conditioned. This book makes a significant contribution both to the fields of discourse analysis and socio-legal studies and will be of great interest to those researching language and the law, as well as language and linguistics more generally." – Provided by publisher.

ISBN 978–1–137–41424–3 (hardback)

1. Examination of witnesses – United States. 2. Examination of witnesses – Poland. 3. Discourse analysis. 4. Law – Language. I. Title. II. Title: Polish versus American courtroom discourse.

K5483.B43 2014
345.438'075—dc23 2014019964

No two languages are ever sufficiently similar to be considered the same social reality. The worlds in which different societies live are distinct worlds, not merely the same world with different labels attached.

Sapir ([1929] 1949: 162)

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Acknowledgments

I would like to express my deep gratitude to Professor Roman Kopytko, from the Faculty of English, Adam Mickiewicz University in Poznań for his guidance, encouragement and critiques of this research work.

My grateful thanks are also extended to the editorial staff at Palgrave Macmillan for their advice and assistance on this project.

List of Abbreviations

CA	Conversation Analysis
CP	Co-operation Principle
EU	European Union
FBI	Federal Bureau of Investigation
IFID	illocutionary force indicating device
LA	Los Angeles
LAPD	Los Angeles Police Department
LAX	Los Angeles Airport
Q-A	Questions and Answers
USA	United States of America

Contents

Introduction

This book is about courtroom discourse. Its primary aim is to shed new light on the language used during courtroom interaction in criminal trials, which thus far has revolved around verbal communication within one legal system, namely Anglo-American common law. Ensuing from the idea that courtroom discourse is profoundly affected by the socio-cultural (institutional) and historical context in which it occurs, this book seeks to demonstrate that depending on the legal system in which criminal trials take place, each courtroom discourse constitutes a phenomenon *sui generis*, a distinctive example of linguistic genre. What follows is a comparative analysis of Polish vs. American courtroom discourse, with particular attention to the inquisitorial and adversarial procedures of witness examination in criminal trials as two diverging ways of seeking the truth and pursuing justice within the common law and civil law.

The book encompasses four chapters. Chapter 1 introduces the principal objectives of the study, explains the reasons for exploring courtroom discourse, defines the fundamental concepts employed in the book, describes the general perspective of the research, provides the origin of the data and validates the use of the methodology applied to analyse courtroom discourse. Chapters 2 and 3 constitute an empirical study of American and Polish courtroom discourse via: (a) the ethnography of communication; (b) conversation analysis; and (c) pragmatics. The findings of the research in terms of similarities and disparities between Polish and American courtroom discourse with reference to the ethnography of communication, conversation analysis and pragmatics are subsequently presented in Chapter 4, which also discusses the major implications of the findings. The book ends with succinct conclusions and reflections on courtroom discourse in the light of the present study.

1
Explorations of Courtroom Discourse

Introduction

The foremost aim of this chapter is to introduce the reader into courtroom discourse. The chapter commences with a statement of the major objectives of this book and an explanation of the rationale for research in this field. It concisely reviews previous explorations into courtroom discourse and describes how the current study diverges from prior contributions. It also delineates the key concepts from different branches of science, including: theory and philosophy of law, comparative law, sociology and anthropology of law, and anthropological linguistics relevant for the proper perception of the investigations of courtroom discourse. Finally, it demonstrates the general perspective of the research, explains the origin of the data, and justifies the methodology employed to investigate courtroom discourse.

1.1 Major objective of the book and rationale for research into courtroom discourse

This book is dedicated to the analysis of courtroom discourse. It investigates Polish and American methods of witness examination in criminal trials under the Civil Law and Common Law. Its major objective is to identify, illustrate and explain the cross-cultural similarities and disparities between the inquisitorial and adversarial procedures of examining witnesses in Polish and American courtroom discourse as two culturally distinct ways of seeking the truth and pursuing justice. In doing so, this book examines verbal interaction during witness examination under two disparate legal systems (Civil Law and Common Law) and investigates how, by what means and to what extent the social (institutional), cultural and historical contexts affect the use of language in court.

The major raison d'être for the study of courtroom discourse is that law affects the lives of the entire population of the world. Law exerts an influence on how we interact in the wider political, social and economic environment (Melone and Karnes 2008: 3–18ff.). In a country where law regulates human behavior, citizens are not allowed to take revenge for wrongdoings, because remedy for unlawful acts may only be sought through a legitimate and due legal process. Whenever conflicts arise, the responsibility of law is to settle them peacefully. Legal institutions, such as courts, are established to guarantee safe and objective resolution of conflicts, and the legal norms that prevail in a given nation should never favor the interests of any party to the legal proceedings.

Although lack of legal knowledge is not penalized in any country, two Latin proverbs *Ignorantia iuris nocet*, and *Ignorantia legis non excusat* seem to caution all the people around the world that, notwithstanding the type of the legal system in which they happen to live, not being familiar with the legal norms does not excuse anyone from responsibility for its violation.

With respect to the above, research into the area of law, with particular attention to courtroom discourse, appears to be especially relevant to translation of legal texts, as well as interpreting of courtroom proceedings in criminal trials. Under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, every citizen charged with a criminal offence enjoys the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.[1] Section 3(a) of this article endows all citizens, charged with a criminal offence, with their minimum rights, including, inter alia, the right "to be informed promptly in the language which he understands and in detail of the nature and cause of the accusation against him." Such rights are also enshrined under Article 47 of the Charter of Fundamental Rights of the European Union (EU).[2]

Within the field of translation studies, the notion of translational competence has been delineated by Neubert (2000: 3–18), who maintains that translational competence encompasses five parameters, viz.: (a) language competence; (b) textual competence; (c) subject competence; (d) cultural competence; and (e) transfer competence. The textual factor of translational competence entails the translator's discourse proficiency, that is to say translators and interpreters are required to be conversant with written and spoken discourse (Neubert 2000: 8). Such competence involves expertise in the types of discourse, which translators and interpreters deal with on the day-to-day basis while practicing their profession.

Proficiency in courtroom discourse appears to be an indispensable precondition for all courtroom interpreters, whose knowledge of the similarities and differences between the inquisitorial and adversarial methods of conducting criminal trials is vital in terms of proficiency of the interpreting services provided during the trial, whereby the defendants' rights to a fair trial are guaranteed by the aforementioned national and international laws.

Owing to the fact that the law of the EU constitutes one of the sources of Polish law (since May 1, 2004, when the country joined the EU), Poland was required to transpose into Polish law the Directive 2010/64/EU of the European Parliament and the Council of October 20, 2010 – on the right to interpreting and translation in criminal proceedings – by October 27, 2013.[3] This directive guarantees free and adequate linguistic assistance, which allows suspected and accused persons, who do not speak or understand the language of the criminal proceedings, to exercise their right to a fair trial (Article 1[1]). Pursuant to Article 5(1) of this directive, the EU Member States are required to undertake concrete measures to guarantee high quality interpreting, as well as to establish a list of independent translators and interpreters appropriately qualified to provide such services (Article 5[2]) in order to guarantee fairness of the criminal proceedings.[4]

In Poland, the participation of sworn translators and interpreters in criminal trials is regulated under Article 72 § 1 of the Code of Criminal Procedure, which provides that defendants are entitled to the assistance of a sworn translator, free of charge, if their command of the Polish language is not sufficient to understand the proceedings. In addition, Article 204 § 1 and § 2 of this code stipulate that a translator needs to be called in when there is a necessity to question a defendant who does not speak Polish, as well as in cases when it is necessary to have documents translated either from the Polish language into a foreign language or vice versa.

The 2010 EU directive mentioned above endorses the use of video-conference interpreting in criminal proceedings by the judicial authorities in the entire EU. In connection with that, there is a pressing need to redefine translational competence of courtroom interpreters.[5] Since, so far, courtroom interpreting had, in the preponderance of cases, been restricted to hearing of witnesses or experts within the territory of one country – with courtroom proceedings being broadcast from one court to another court, or from prison to court – the discourse competence of courtroom interpreters fundamentally involved national issues, that is to say it was necessary for courtroom

interpreters to be conversant with courtroom proceedings typical for one legal system of a particular country. As soon as the new directive became effective in all the EU Member States, courtroom proceedings were to be broadcast across the borders, which implies that courtroom interpreters have to be conversant with both their native as well as the foreign courtroom discourse in order to provide high level of translation and interpreting services.

Article 6 of the EU directive demands that adequate training of court interpreters and translators be established to guarantee professional interpreting and translation services. This book, which studies Polish and American courtroom discourse in criminal trials, is a contribution towards already-existing research dedicated to the language of law as described below.

1.2 A concise overview of the research dedicated to courtroom discourse and what distinguishes the present study from the prior contributions

The language of law, frequently referred to as the lawyers' most essential tool (Mellinkoff 1963: vii; Tiersma 1999: 1), in which law is formulated, construed and enacted, is far from ordinary speech. For this reason, the language of law has become the object of extensive research conducted by linguists, lawyers and translators. Two approaches to linguistics, the formalist and functionalist, have directed this research into two distinct tracks. While the formalists have taken an interest in the abstract form and structure of the language, the functionalists have concentrated on what the language is used to do. The research into the formal aspects of the language of law is primarily focused on the syntactic, lexical or semantic traits of the language of law[6]; on the other hand, the functional investigations of the language of law revolve around the form and function of the language of law beyond the level of sentence and concentrate on how, through the use of language, people attain certain communicative goals and participate in certain communicative situations within the legal settings. The principal aim of the functionalist study of the language of law is to examine how people communicate and interact with one another in particular speech communities, as well as how, through the use of language, people perform certain social roles. In other words, the functionalist research seeks to understand how language, which occurs in certain spatiotemporal milieus, operates in society. What follows is a concise overview of the previous investigations into courtroom discourse.

Courtroom discourse is not a terra incognita. It has been studied before. Thus far, courtroom discourse has been approached from a number of diverse perspectives, such as: (a) legal history; (b) legal anthropology and sociology; (c) sociology; (d) forensic linguistics; (e) courtroom interpreting; and (f) linguistics.

The prevailing study of courtroom discourse has been conducted by legal historians, including, inter alia: Beattie (1986), Langbein (2003; 2009, Hostettler (2006; 2009), Hostettler and Braby (2006). The major subject theme, which dominates their contributions, revolves around the origins and history of the adversary criminal trial, with particular attention to the historic reasons, at the dawn of criminal justice, for denial of counsel for the defense. The contributions abound with material related to the emergence of adversary criminal justice starting with the times without lawyers and moving towards the lawyer-dominated era. They tell breathtaking stories about the time when the accused had to speak in their own defense in response to the charges brought against them in court. Although these contributions do not offer any linguistic insight into courtroom discourse, they are not to be underestimated, as they are the foremost source of information about the evolving sociopolitical, historical and institutional backdrop in which courtroom discourse existed for hundreds of years, and which exerted such an overwhelming influence on the language used in courtroom interaction.

Within the area of legal anthropology and sociology, Conley and O'Barr (1990) discuss how the lay public interacted with the legal system, that is to say how lay people identified and analyzed legal problems. In their contribution, which they founded on materials collected in three different regions of the United States in small-claims courts, Conley and O'Barr analyze how lay people identified and resolved legal problems. The analyzed data, which encompass 466 cases recorded during 36 days in court, relate to the language of the litigants as the major object of enquiry. The methodology employed in this study, which is that of the ethnography of discourse, has enabled the authors to observe and conduct an analysis of the language, focused on such phenomena as how the litigants managed to handle questions of responsibility. The major aim of their book is to examine the most fundamental component of human interaction, namely talk, the study, which the authors explore at the level of interaction, accounts and narratives. Their contribution offers an anthropological point of view on the legal system, in which legal anthropologists seek to explicate the local means by which people maintain order and resolve disputes. As such, the book offers insight related to the presentation of courtroom discourse in the light