



Review Article of *Recht und Sprache in der Praxis/Law and Language in Practice* (Facultas 2021)

Daniel Green¹

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Abstract

Kohl and Nimmerfall, two legal scholars from the Faculty of Law at the University of Vienna, have put forth an edited volume dealing with ‘law and language in practice’. In this article, I present a critical evaluation of the work, taking into consideration its structure and organisation, the range and depth of the work, and the construction of and perspectivation on legal language in use and the legal language user. I do so from the interdisciplinary view of (applied) legal linguistics and social semiotics, two areas of critical intellectual inquiry that are doubtlessly underrepresented in this volume. While legal linguists in Austria have anticipated the work as a hopeful bridge-builder across the domains of law and language, Kohl and Nimmerfall display a lack of awareness towards ongoing controversies in legal linguistics on the national and international level that seriously jeopardise the aim of the work. Currently the volume is being used in a course held by the authors entitled “Legal Literacy: Contract drafting, legislation and other areas of law”. Despite the work’s breadth of legal contexts touched upon and its undisputed worth for the community of practice, the work gives a sometimes disconcerting impression of authority in the field. While the authors’ openness to embracing language issues in legal contexts ought to be welcomed, the nearly complete lack of references made to the ever-growing body of research in legal linguistics, not only in Austria but around the globe, is surprising and concerning.

Keywords Legal linguistics · Law and language · Linguistic prescriptivism · Legislative drafting · Contract drafting · Legal advice · Legal proceedings · Legal language in journalism

✉ Daniel Green
daniel.green@univie.ac.at

¹ Austrian Association for Legal Linguistics (AALL), Plenergasse 11, 1180 Vienna, Austria

1 Introduction

Kohl and Nimmerfall, two legal scholars from the Faculty of Law at the University of Vienna, have put forward an edited volume entitled *Recht und Sprache in der Praxis* ('Law and Language in Practice') [11]. Defining the aim of their work, they state the following:

Wir wollen Recht und Sprache aus unterschiedlichen Blickwinkeln betrachten und Ihnen, liebe Leser*innen, zeigen, welche sprachlichen Tücken und Fallstricke in der Praxis lauern. In vielen Fällen gibt es nicht einfach "richtig" oder "falsch", sondern verschiedene Möglichkeiten. Um auf das Bild vom Werkzeug zurückzukommen: Nach der Lektüre dieses Buches sollten Sie wissen, welche sprachlichen Werkzeuge Ihnen zur Anwendung in der juristischen Praxis zur Verfügung stehen [11: 11]

We want to look at law and language from various perspectives and show you, dear readers, which linguistic traps and pitfalls lurk in practice. In many cases there is not just "right" or "wrong", but different possibilities. To come back to the picture of tools: after reading this book, you should know which linguistic tools are available to you for use in legal practice¹

What appears to be the editors' good intention to create such a reference book for legal professionals is quite an ambitious mission for various reasons to be discussed. Any criticism I express is driven by my sincere commitment to the matters at hand and my critique directed at "excesses of academic tribalism" [13]. Such otherisation of academic fields and disciplines has too often in the past proven an obstacle in mutual exchange and understanding between legal professionals and linguists, best expressed by Schroth, who states that

[i]f *the linguists* conclude that the lawyers and judges are doing something other than, or in addition to, objectively determining the meaning the relevant expression has for the educated native speaker, and *the lawyers and judges* conclude that *the linguists* offer almost nothing helpful on questions of law, then both will be correct ([18: 28], my emphasis).

That is not to argue that Kohl and Nimmerfall adopt the same view as Schroth on what he frames as almost complete unhelpfulness of linguistic analysis. I am aware that quite the opposite is indeed the case, and the non-representative use of Google Ngram Viewer (see [10: 125-126]) indicates that the editors seem to take interest in quantitative methods of applied linguistic analysis. However, the lack of reference made to the rapidly evolving literature in legal linguistics and related fields gives the impression that they may have either been largely unfamiliar with it or have intentionally decided not to incorporate it. The latter would be surprising, since the legal community of practice has over the years shown increasing curiosity about collaboration and not merely cooperation in various areas.² Therefore, the work at hand

¹ All translations from German to English are my own.

² To distinguish between these two concepts, I follow Ingram and Hathorn [9: 216], who define cooperation as splitting a task "into roughly equal pieces to be completed by the individuals, and then stitched together" in order to finish it. In contrast, they conceptualise collaboration as a more complex type of working together, in the sense that all parts of a task are discussed with changes made "in conjunction

confronts those working in language and law with the question as to why decades of established research to this day have not found their way into the volume. In particular, a work intended for use in tertiary legal education should show passionate balance, giving equal weight to both law and linguistics so as to build bridges between the disciplines rather than to ignore each other.

2 Structure and Organisation

The work is composed of four main chapters (I, II, III and IV) and eight subchapters dealing with different contexts of what is constructed as legal language use.

Table 1 shows an overview of these chapters along with the corresponding page numbers.

The work clearly adopts the structure of a language guide for law students and/or legal professionals, which is visible in Table 2 showing the eight subchapters.

The chapters provide a clear and reasonable overall structure at the text level and generally seem to make effective use of paragraphing. Points are developed systematically, though at times—at least from the perspective of legal linguistics—theoretically underdeveloped. The relationship between ideas is most times clearly marked and readers are guided by linking devices. The presentation of German syntax is also satisfactory, with the dreaded run-on sentences tending to be the exception rather than the rule. It remains at times unclear as to how certain concepts are used and whether the definition of these concepts changes throughout the volume. It cannot be outright assumed that journalists (see chapter III. E.) conceptualise ‘language’ in the same or very similar way to legislative drafters (see chapter III. A.), contract drafters (see chapter III. B.) or judges (see chapter III. D.). It is therefore recommended to include carefully formulated definitions of the key concepts in future editions of this volume.

3 Range

The authors touch upon and engage with a wide range of topics at the intersection of law and language. It is a clear strength of the work to include essays on very different discursive practices in legal contexts, such as legislative drafting [3: 106–135], contract drafting [15: 136–155], legal counselling [14: 156–170] and court proceedings [7: 171–191]. The inclusion of an essay on law and language in journalism [12: 192–204] constitutes a successful attempt to integrate legal and non-legal text types. However, the diverse range of what may be regarded as critical contexts within legal practice also raises the question as to why the editors have not also included uncomfortable contexts, such as asylum law, language rights and minorities, or matters

Footnote 2 (continued)

with one another” as researchers “come to understand more about the topic” [9: 216] dealt with in a project.

Table 1 Four main chapters of the volume

No	German original	English translation	Page numbers
I	21 Vorschläge für bessere Sprache und verständlichere Texte	21 suggestions for better language and more understandable texts	pp. 14–24
II	Allgemeiner Teil: Grundlagen und Problemfelder	General part: Basics and problem areas	pp. 25–105
III	Besonderer Teil: Anwendungsgebiete	Special part: Areas of application	pp. 106–204
IV	Übungsbeispiele [11: 5–9]	Exercises	pp. 205–252

relating to multilingualism. Of course, this also depends on availabilities and other economic and non-economic resources of the publishing process. Nevertheless, the pressing issues currently discussed in the literature of the field have been left largely unaddressed, e.g. practical questions arising from multilingual legal settings, disability rights with regard to sign language, the interplay of translation and statutory interpretation, to name a few.

The work largely focuses on improving what is conceptualised as insufficient and/or incorrect legal language and thus largely reproduces a discourse of prescriptivism. A thorough engagement with the vast discursive space of law and language in practice should also take into consideration the role of legal language use in social conflict, hierarchies or, to put it more generally, the entanglement of law, language and power. Therefore, ethics in legal work and language use matters, as eloquently phrased by Capozzi, who turns to future generations of legal professionals and addresses them as follows:

You must be careful with this new mind of yours. Its power can have serious repercussions. You must pledge not to use this weaponry on loved ones or helpless souls. For if you do, conflict is sure to erupt. At its most grandiose misuse, terrible social injustices can and will occur [2].

When engaging with legal language use in practice, the work also reproduces (prescriptive) subdiscourses of optimisation in the deterministic sense of cause and effect (“Nur wer einen klaren Gedanken hat, kann diesen auch klar und verständlich niederschreiben” [11: 16]; ‘Only if you have a clear thought can you write it down in a clear and understandable way’, my translation). Of course, psycholinguistic expertise (see [17]) is beyond the scope of this work, but some statements made on legal language use appear at times too bold for them to be evidence-based.

Language in the hands of legal professionals can be a tool, but it can also be used as a weapon to threaten and to intimidate others, to include and exclude, and to belong. Legal language can be used to rule the legally less literate. The various ethical challenges associated with this common insight should have also been addressed

Table 2 Eight subchapters of the volume

No	German original	English translation	Page numbers
I	Kein Unterkapitel	No subchapter	pp. 14–24
II	A. Sprache im Kontext B. Problemfelder C. Formale Textgestaltung	A. Language in context B. Problem areas C. Formal text design	pp. 25–105
III	A. Recht und Sprache in der Gesetzgebung B. Recht und Sprache in der Vertragsgestaltung C. Recht und Sprache in der Rechtsberatung D. Recht und Sprache im Gerichtsprozess E. Recht und Sprache im Journalismus	A. Law and language in legislation B. Law and language in contract drafting C. Law and language in legal consultation D. Law and language in trials E. Law and Language in journalism	pp. 106–204
IV	Übungsbeispiele 1 bis 15 [11: 5–9]	Exercises 1 to 15	pp. 205–252

in the work, especially since it is for the most part being used in an educational setting where future lawyers, judges, prosecutors etc. learn how to use language as a key tool of their profession. It is insufficient to show legal professionals as to how they may sharpen their tools even more without drawing attention to the potential for grandiose misuse and the social injustices which may result from or in the context of legal language use.

4 Depth

As laid out in section II of this review, the work contains essays, prescriptive as well as descriptive, by Fucik, Nimmerfall, Müller, Hinger and Kommenda, all of which share the common theme of legal language use.

Chapter I by Kohl and Nimmerfall introduces 21 rules, which at times may appear quite prescriptivist, even though the editors repeatedly stress that they only wish to raise awareness of some of the issues at hand. Table 3 shows the 21 rules, as stated by Kohl and Nimmerfall [11: 14–24].³

Stating one thing and doing the other is, of course, a trap to which everyone in academia may be prone. What is startling in this work, however, is the explicit intention to avoid prescriptivism on the one hand, and the discursive practice of prescribing what legal language ought to be like on the other. Chapter 1 clearly sets a prescriptive tone that is maintained throughout most, but not all, parts of the work, a

³ I use the term ‘rule’ here since the structure and tone of what may be intended to be advice is predominantly phrased in an imperative tone rather than a descriptive account of ‘well-formed/ill-formed’ legal language use.

tone that purports to leave every decision to emancipated readers but nevertheless knows what is best for them.

In chapter II Kohl and Nimmerfall provide their interpretation of language and communication that is intended for a general audience and clearly pertains to the domain of popular science. From the perspectives of applied linguistics generally and applied legal linguistics specifically, there is not much content provided other than what the different strands of linguistics have been discussing for decades. When Kohl and Nimmerfall state that the spoken word perishes, the written word lasts (“Gesprochenes Wort vergeht, geschriebenes Wort besteht” [11: 42]), they clearly exclude sign language and other non-verbal communication systems that are equally important and certainly at least worth mentioning. The remainder of the chapter appears somewhat muddled in scope, ranging from general problem areas to questions of text organisation and font choice.

Chapter A. by Fucik eloquently deals with the process of norm genesis, providing interesting insights into the specific contexts of legislative drafting in Germany and in Austria. A re-occurring theme in Fucik’s essay is what I understand as the continuum between determinacy and indeterminacy, he writes the following:

Hat man die passenden und die unpassenden Konstellationen gesammelt, dann muss man nach der Formulierung suchen, die die passenden Fälle am besten ein- und die unpassenden am besten ausschließt [3: 109]	Once you have collected the appropriate and the unsuitable constellations, you have to look for the formulation that best includes the appropriate cases and best excludes the unsuitable ones
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In sum, legislative drafting is described as a task ‘with special aims and methods’, following what Fucik calls the ‘basics of communication’. He describes the discursive practice of legislative drafting and defines intelligibility of normative texts as its primary consideration. He goes on to state:

Der Inhalt einer Norm muss als Botschaft bei den Rechtsunterworfenen ankommen, damit die Norm den Zweck einer Handlungsanleitung erfüllen kann [3: 106]	The content of a norm must reach those subject to the law as a message so that the norm can fulfil the purpose of an instruction manual
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According to Fucik, knowledge about the concrete purpose and the aims of a legal provision should be a primary consideration. He adds that legal language can only be improved if teleological knowledge (the projected purpose and the aims of the provision) is the foundation of any such improvements. The chapter puts forward a definition of the legislative drafters’ function in the drafting process, arguing the following:

Table 3 21 rules as provided by Kohl and Nimmerfall [11: 12–24]

Rule 1	Denken Sie serviceorientiert und leserfreundlich	Think service-oriented and reader-friendly
Rule 2	Behalten Sie den Adressaten im Blick: Für wen schreiben Sie?	Keep an eye on the addressee: who are you writing for?
Rule 3	Den Stil verbessern—das heißt den Gedanken verbessern	Improving the style—that means improving the thought
Rule 4	Ein guter Text hat eine sinnvolle Gliederung	A good text has a meaningful structure
Rule 5	Trennen Sie sich von der "Juristensprache"	Separate yourself from the "legal language"
Rule 6	Subjekt, Prädikat, Objekt	Subject, predicate, object
Rule 7	Kurze oder lange Sätze?	Short or long sentences?
Rule 8	Variation in der Satzstruktur stärkt den Lesefluss	Variation in the sentence structure strengthens the reading flow
Rule 9	Stellen Sie die Hauptaussage an den Beginn	Put the main statement at the beginning
Rule 10	Überflüssiges streichen	Cross out superfluous content
Rule 11	Zusammen, was zusammengehört	Put together, what belongs together
Rule 12	Aufgeblähte Wörter und Formulierungen vermeiden	Avoid bloated words and formulations
Rule 13	Den Nominalstil einschränken	Limit the nominal style
Rule 14	Aktiv und Passiv	Active and passive
Rule 15	Vermeiden Sie die Inversion	Avoid inversion
Rule 16	Formulieren Sie sachlich und frei von Emotionen	Formulate objectively and free of emotions
Rule 17	Nachträgliche Kontrolle und Mut zur Überarbeitung	Subsequent checking and the courage to revise
Rule 18	Arbeiten Sie präzise	Work precisely
Rule 19	Einheitlichkeit	Consistency
Rule 20	Den Text in Form bringen	Getting the text into shape
Rule 21	Seien Sie kritisch und brechen Sie die Regeln	Be critical and break the rules

Legisten sind nicht der Gesetzgeber. Die persönliche politische Meinung derjenigen, die einen Gesetzestext abfassen, tut nichts zur Sache. Souverän ist das Parlament, nicht die Legisten. Ob eine Norm politischen Konsens im Parlament findet, haben die Legisten nicht zu bestimmen, sondern sie sind davon abhängig [3: 107]

Legislative drafters are not the legislator. The personal political opinion of those who draft a legislative text is irrelevant. Parliament is sovereign, not the legislators. It is not up to legislative drafters to determine whether a norm finds political consensus in parliament; rather they are dependent on it

Finally, Fucik's concept of 'juristische Textarbeit' (legal text handling) as embedded in various areas of legal practice raises thought-provoking questions. In particular, he makes an interesting point when arguing that legislative drafting is co-influenced and impacted by time pressure and linguistic incapability ('sprachliches Unvermögen') of the drafters. This line of argumentation is supported by what he refers to as 'COVID-19 turbo legislation' ("COVID-19-Turbo-Gesetz- und Verordnungsgesetzgebung" [3: 107]). This chapter provides fine examples of the various discourses and subdiscourses within legislative drafting practices, providing ample opportunities for future generations of legal linguists to link arms with legislative drafters.

In chapter B. Nimmerfall provides an interesting account of contract drafting and the relationship between language and what he refers to as 'Vertragstechnik' (contract drafting technique). He states that the focus of the chapter is intended to be on the linguistic realisation of contracts, but readers are cautioned to keep the editors' general comments on style—presumably from chapter 1—in the back of their minds. He starts with the following observation:

Die Tatsache, dass es sich dabei um Beispiele aus der Praxis handelt, zeigt Ihnen zwei Dinge: Erstens, dass schlechter Sprachgebrauch kein Hirngespinnst der Autoren ist, sondern in der Praxis tatsächlich – und leider zu oft – vorkommt. Und zweitens, dass niemand vor Fehlern gefeit ist [15: 136]

The fact that these are examples from practice shows you two things: first, that bad language use is not the authors' brainchild, but actually – and unfortunately too often – occurs in practice. And second, that nobody is immune to mistakes

The prescriptive tone of the chapter may appear disconcerting for applied linguists, but it should also be read in the light of the author's intended helpfulness in improving contract drafting techniques. Nimmerfall seeks to warn than to ridicule, and he points out that the correct use of language remains relative ("Die 'richtige' Verwendung von Sprache ist relativ" [15: 138]). What makes Nimmerfall's contribution to the volume so impressive, and perhaps one of the most suitable, is the bundle of hands-on examples that are included throughout, giving readers numerous aspects to ponder on. One may therefore suggest that legal linguists reading the work should balance the prescriptive attitudes found in the chapter with the author's quite successful attempt to raise legal problems in the linguistic world of contract drafting.

In chapter C. Müller confronts the legal profession with a very critical account of legal counselling, stating in his introduction the following self-critical remark:

Beratung ist Dienstleistung, und das gilt in jeder Hinsicht auch für die Rechtsberatung. Traditionell war das Verständnis der Rechtsanwälte gewiss anders. Viele Anwälte sahen sich im Vergleich zu anderen akademischen Dienstleistungsberufen in einer Sonderstellung. Die Haltung ist falsch. Auch ein Organ der Rechtspflege bleibt, wenn es um Rechtsberatung geht, ein Dienstleister wie jeder andere [14: 156]

Advice is a service, and this also applies to legal advice in every respect. Traditionally, the understanding of lawyers was certainly different. Many lawyers saw themselves in a special position compared to other academic service professions. This attitude is wrong. Even an organ of the administration of justice remains a service provider like any other when it comes to legal advice

What makes Müller's account so refreshing is how he approaches the linguistic practice of giving legal advice. He focuses on the changing contexts of legal advice, depending on the target audience such as legal professionals, the business world and private individuals. Müller then turns to text types, distinguishing between letters of advice ('Beratungsschreiben'), expert reports ('Gutachten'), preparatory correspondence ('vorbereitende Korrespondenz') and correspondence with other lawyers ('Korrespondenz mit anderen Anwälten') [14: 159-160]. He gives general advice on matters of intelligibility, largely focusing on lexical and syntactic elements of legal text production and projected text reception. The reader is given carefully phrased advice to refrain from anglicisms when giving legal advice. In this context, Müller argues in his fifth section entitled "Deutsch" (German) the following:

Auch hat es wenig Sinn, sich im Austausch mit Anwaltskollegen- und kolleginnen [sic!] in einem international geprägten Transaktionsumfeld von eingebürgerten Begriffen wie *Due Diligence* oder *Letter of Intent* zu verabschieden. Ansonsten muss man nicht alles „double-checken“, „highlighten“ oder sich ständig „committen“, und man braucht auch weder ein „Heads-up“ noch ein „Brainstorming“ oder poshes „Get-together“ [14: 165]

It also makes little sense to say goodbye to terms such as *due diligence* or *letter of intent* in an exchange with lawyers in an international transaction environment. This being said, you don't have to "double-check", "highlight" or constantly "commit" oneself to everything, and nor do you need a "heads-up", a "brainstorming" or a posh "get-together"

Müller makes a clear point when expressing strong language attitudes towards the integration of English in everyday legal communication, where he deems it unnecessary. Certainly, this view may not be shared by the majority of legal professionals in Austria. Indeed, the multi-faceted influence of the English language on legal communication in German is portrayed by Müller in a rather negative light, as something to be avoided. A counterargument would be the undeniable and enriching role of English as a *lingua franca* [19] in the community of legal practice. English may be perceived by some as a killer of other languages, but it seems this is not a question of intelligibility, as Müller claims, but one of language ideology [1].

In chapter D. Hinger starts with the observation that in theory legal proceedings are a verbal matter ("In der Theorie ist der Gerichtsprozess mündlich" [7: 170]), but he does not provide an established or innovative theoretical framework against which his renderings can be evaluated. However, this chapter constitutes a fascinating insight into how a judge of a Higher Regional Court perceives legal proceedings, providing legal linguists with a set of communication rules

found in the law according to which the conduct of judges should be assessed in court (see Table 4).

Hinger gives a personal account of the discursive practices in legal contexts that have come to his attention. As shown in the examples above, he gives a rather prescriptive and jargon-oriented evaluation of intratextual phenomena at court, largely commenting on the (in)correct use of lexical items and German syntax. He makes an interesting observation regarding the notion of intelligibility of legal documents, noting that it is not possible from the outset to reinvent the wheel so fundamentally with every single formulation so that everyone understands every text immediately (“Es ist also von vornherein nicht möglich, bei jeder Formulierung das Rad so grundlegend neu zu erfinden, dass jeder jeden Text sofort verstünde” [7: 174]). The examples Hinger gives show anew the necessity of discourse-linguistic research at the courts, prosecution offices and police stations so as to counsel, to encourage, and if need be, to warn of tendencies observed in the normative space. Future generations of legal linguists will doubtlessly feel enduring gratitude for Hinger’s straightforwardness when discussing some of the key issues in court communication so openly.

In chapter E. Kommenda describes interesting parallels between the legal professional and the journalist, comparing and contrasting the role intelligibility may play in their respective domains.

He states the following:

Im Allgemeinen aber sind Journalisten noch mehr angehalten, ja sogar darauf angewiesen, sich verständlich auszudrücken. Warum? Juristische Texte werden von ihren Adressaten üblicherweise nicht ganz freiwillig gelesen. [...] Der journalistische Text hingegen muss trachten, die Lesenden oder Hörenden neugierig zu machen und ihre freiwillige Aufmerksamkeit zu binden [12: 193]

In general, however, journalists are even more encouraged and even dependent on expressing themselves in an understandable manner. Why? Legal texts are usually not read voluntarily by their addressees. [...] The journalistic text, on the other hand, must aim to arouse the curiosity of readers or listeners and to attract their voluntary attention

Kommenda then gives the reader an interesting account of what he describes as the trajectory of a journalist’s article, also focusing on different text types and, importantly, on written communication rather than spoken or signed language.

He states his perception that legal jargon and daily language (“Alltagssprache”) are different worlds, which may, in a reading of H. G. Wells’ famous novel “War of the Worlds” [21], give rise to the question as to what the social ramifications would be if those two worlds were indeed at war. However, Kommenda does not comment on the metadiscursive constructedness of linguistic appropriacy in legal practice, nor does he provide an extensive social critique. He constructs the journalist’s role as having to write attractively without getting it wrong (“Ansprechend schreiben, ohne falsch zu werden” [12: 201]), but when it comes to legal language use, he largely refers to intertextual features in legal practice. Nevertheless, his contribution to the volume could serve as a solid basis for legal linguists who investigate intersections and/or multi-layered interdiscursive phenomena across different

Table 4 10 examples of rules as provided by Hinger [7: 171–172]

Rule 1	Im Verkehr mit den Parteien ist die gebotene Höflichkeit zu wahren und den Parteien ist „mit Ruhe“ zu begegnen	In dealings with the parties, the necessary courtesy must be maintained and the parties must be treated “calmly”
Rule 2	Der Umgang ist streng sachlich zu führen, zwecklose Auseinandersetzungen sind so früh wie möglich zu beenden	Dealing is to be conducted in a strictly objective manner, pointless arguments are to be ended as early as possible
Rule 3	Die Richterinnen und Richter sollen sich in keine Streitigkeiten mit den Parteien und den Vertretern einlassen, keine Rügen erteilen, keine Werturteile fällen und keine spöttischen Bemerkungen machen	The judges should not get involved in any disputes with the parties or the representatives, should not issue any complaints, make any value judgments or make mocking remarks
Rule 4	Bei den notwendigen Zurechtweisungen soll nicht heftig vorgegangen werden, und alle verletzenden Äußerungen müssen vermieden werden	The necessary reprimands should not be violent and all offensive statements should be avoided
Rule 5	Die Anredeformen „Herr“ und „Frau“ (überkommen, aber noch dem Rechtsstand angehörend; auch „Fräulein“) sind im mündlichen und im schriftlichen Verkehr zu verwenden	The forms of address “Herr” (“Mr.”) and “Frau” (“Mrs.”) (traditional, but still belonging to the legal status; also “Fräulein” (“Miss”)) are to be used in oral and written correspondence
Rule 6	Jeder Person ist der ihr gesetzlich zukommende Titel (in Österreich bekanntlich sehr wichtig) oder die ihr nach dem Beruf oder der Lebensstellung zukommende oder verkehrstübliche Bezeichnung zu geben	Each person is to be given the title they are entitled to by law (as is famously well known to be very important in Austria) or the name they are entitled to according to their occupation or position in life or what is customary in the trade
Rule 7	Es muss immer darauf Bedacht genommen werden, dass die Beteiligten das, was verkündet und geschrieben wird, auch verstehen (§ 53 Abs. 2 Geo)	Care must always be taken that those involved understand what is being announced and written (section 53 para 2 Geo)
Rule 8	Bei den Texten soll entbehrliche Fremdwörter vermieden werden, ebenso eine von der Umgangssprache abweichende Amtssprache	In the texts, dispensable foreign words should be avoided, as well as official language that deviates from colloquial language
Rule 9	Die Erledigung muss verständlich, die Ausdrucksweise muss richtig und der Würde des Gerichts angepasst sein	The execution must be understandable, the language must be correct and appropriate to the dignity of the court
Rule 10	Bei der Anführung der Namen [ist] auf die richtige Schreibweise zu achten [...] (§ 53 Abs. 5 Geo) [7: 171–172]	When quoting the names, pay attention to the correct spelling [...] (§ 53 para 5 Geo)

planes of knowledge, e.g. procedural knowledge and attitudes of legal professionals and journalists alike.

5 The Representation of Gender Throughout the Volume

The editors state the following in their preface:

Wir haben uns bewusst dafür entschieden, in diesem Buch verschiedene Formen des Genderens (oder Nichtgenderens) zu verwenden, diese Frage also nicht von einem doktrinären, sondern von einem praktischen Standpunkt zu betrachten [11: 12]

We have made the conscious decision to use different forms of gendering (or non-gendering) in this book, so as to consider this question not from a doctrinal but from a practical point of view

It is surprising that the notion of non-gendering (“Nichtgenderen”) has been left undiscussed in the context of intelligibility. Indeed, whoever seeks to make reference to human beings (see [6, 16]) ought to decide which system of gender representation they choose. There is no such thing as a practice of ‘non-gendering’, as the generic masculine in itself is a, though very exclusive and borderline discriminatory, form of gender representation.⁴ The central issue left unaddressed in the volume is how to strike the right balance between gender representation and intelligibility. The structural omission of non-masculine forms is still commonplace in the legal community of practice, the overcoming of which would have been welcomed in the light that both editors are very close to legal practice and the challenges of gender representation associated with it. They make the following critical remark:

Manchen Personen fällt es extrem negativ auf, wenn Sie nicht genderen. Andere wiederum meinen, dass gendergerechte Sprache den Lesefluss stört. Wir haben uns in diesem Werk bewusst inkonsequent für Einzelfalllösungen entschieden [11: 15]

Some people find it extremely negative if you do not gender. Others in turn believe that gender-sensitive language disrupts the flow of reading. We made a conscious inconsistent decision in favour of individual solutions in this work

The suggestion implied in the two sentences above is that gender representation may remain a matter of personal preference and of how one’s own linguistic choices may be perceived by others. In fact, one may argue that this discussion is not about the perception of gender representation, but it rather revolves around the very order of society as reflected in how the law and legal discourse construct gender. It is surprising that the prescriptive tone of parts of the work is not extended to inclusive gender representation.

Kohl and Nimmerfall describe the relationship between language, politics and gender equality as follows:

⁴ It is worth pointing out that the “representation interdiction” [4: 7], which is clearly operative in some parts of this volume, is a discourse phenomenon still commonplace in general legal practice. What is yet to be confirmed by empirical studies is whether it occurs in certain areas of legal work more frequently than in others.

Wer sich der Sprache bedient, sollte sich des Risikos unbeabsichtigter Signalsendung bewusst sein. In einem weiteren Sinn „politisch“ ist die Frage der sogenannten „Gendergerechtigkeit“. Hier gerät man rasch in ein Spannungsverhältnis zwischen Verständlichkeit, d.h. Nachvollziehbarkeit der eigenen Gedanken durch Dritte, und dem Postulat einer gendergerechten und geschlechtersensiblen Sprache. Zwar gibt es Studien, die der gendergerechten Sprache bescheinigen, nicht schlechter verständlich zu sein, doch muss man auch nach Gegenbeispielen nicht lange suchen [11: 40]

Anyone who uses language should be aware of the risk of unintentional signal transmission. In a broader sense, “political” is the question of so-called “gender equality”. Here one quickly finds oneself in a tense relationship between intelligibility, i.e. traceability of one’s own thoughts by third parties, and the postulate of gender-appropriate and gender-sensitive language. Although there are studies that claim that gender-sensitive language is not less understandable, it does not take long to find counterexamples

The editors may not wish to engage in unintentional signal transmission. However, the observation that all contributors identify as (cis) men may send precisely such a signal. Critical legal linguists with an interest in legal gender studies will notice the consistently male forms used in the biographical notes provided at the end of the volume. What is more, some of the drawings provided throughout the volume clearly reflect outdated gender stereotypes and reveal, intentionally or not, a discourse of androcentrism that is partly reproduced by the volume (see Fucik’s drawing in Fig. 1 [11: 27]).

Particularly drawings such as the one in Fig. 1 give the impression that the editors at least tolerate subservient depictions of those constructed as women. Of course, the visual representation of gender identity in legal contexts has increasingly become a challenging task that will unlikely be considered a closed matter soon. However, the editors do not give an in-depth discussion of these issues, nor do they give advice on this delicate matter, which could have provided food for thought to foster critical thinking and problem-solving techniques amongst student readers. The latter is a key strength of most parts of the work that is notably absent when it comes to gender representation. This being said, Kohl and Nimmerfall do point out that, socially and/or biologically speaking, a third gender category has recently become a point of interest, but they do not engage with the existing literature.

6 Conclusion

Taking into account all strengths and limitations of the volume, the depth can be described as satisfactory for students of Austrian law. However, from the view of legal linguistics, there are some crucial issues with the volume that render it uncomfortably underdeveloped in terms of linguistic theory and quite limited in terms of its scope and the subjective analyses of the features discussed. This is the case, of course, since key works from discourse linguistics, legal linguistics and forensic

Fig. 1 “Da ist etwas Grünes in der Soße” as provided by Fucik [11: 27]



„Da ist etwas Grünes in der Soße...“

linguistics have been, for the most part, consistently omitted. This applies to works widely considered pillars of research nationally and internationally, not only in legal linguistics but also in discourse linguistics. For instance, Wodak’s famous work “Das Sprachverhalten von Angeklagten bei Gericht” [22] (The language behavior of defendants in court) has been left unmentioned, as have Mautner’s (2017) recent works on discourse analysis generally and organisational discourse specifically.

The volume clearly shows that unlike in other countries, such as the US, the UK or Germany, linguistic expertise is still considered as a threat or irrelevant among some members of the legal community of practice in Austria. Indeed, quite the opposite is the case. If legal professionals as agents of practice and (legal) linguists as researchers of discursive practices join hands, the normative space will eventually more likely develop into a participatory space [4].⁵ Recent contributions to lay linguistics, as put forward by Hoffmeister, Hundt and Naths [8], could serve as a basis to investigate what legal professionals construct as knowledge about their own language and their attitudes towards it.

In the present volume under review, a common theoretical and empirical basis for the statements made is largely missing and the work would have certainly benefited from an in-depth engagement with standard works in legal linguistics, such as the late Peter M. Tiersma’s *Legal Language* [20]. It is unclear as to why the authors have not included the wealth of English literature available. In light of this, the reference made to multilingualism, namely to Zedler’s *Mehrsprachigkeit und Methode* [23], is surprising given the long list of monolingual (German) references. Be that as it may, the reference section creates the impression that in Austria, the rule of law ought to be the rule of ‘proper’ German. Of course, such linguistic isolationism

⁵ “The concept of the participatory gap can be understood as a multifactorial phenomenon in the normative space that arises on the one hand from the legal context of action and on the other hand from the use of legal terminology as a medium of institutional power” [5: 571; my translation].

would be contrary to current policy aims to create a multilingual population on the European continent.

Last but not least, the volume leaves the task unaddressed as to how to strike the right balance between gender representation and intelligibility, a question most readers will feel should have been answered given the prescriptive tone of the work. There is no criticism directed at the structural omission of non-masculine forms still commonplace in the Austrian legal community. Some of the drawings provided in the volume seem to reproduce outdated gender stereotypes and, depending on the viewpoint of the reader, a discourse of androcentrism.

The volume can be recommended for students of law and linguistics alike, but the lack legal-linguistic theory is at times difficult to ignore and will require critical commentary on the part of the lecturer. The incorporation of literature from legal linguistics and legal semiotics would have enhanced the quality of the volume.

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