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A diachronic analysis of authorial presence markers in legal discourse

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Abstract. The present study aims to identify linguistic items used for creating authorial presence in genres of legal discourse varying from highly institutional to private ones. The study makes an attempt to conduct an analysis of the factors that contributed to the depersonalization of legal genres from a diachronic perspective. Explicit and implicit linguistic tools used to mark the authorial presence are identified. The analysis revealed three types of authorial presence in legal discourse: absence of authorial signs, implicit authorial presence, and explicit authorial presence.
Keywords: legal discourse, author, genre, authorial presence, depersonalization
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Диахронический анализ маркеров авторского присутствия в юридическом дискурсе

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Аннотация. Целью настоящей работы является диахронический анализ языковых средств, маркирующих авторское присутствие в жанрах юридического дискурса. Осуществлен анализ факторов, способствовавших обезличиванию юридических жанров. В ходе анализа были выявлены три типа авторского присутствия в жанрах юридического дискурса: элиминация авторских следов; имплицитное присутствие автора; эксплицитное присутствие автора, несущего персональную ответственность за продуцируемые высказывания.
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Introduction

The current study is part of an ongoing project that aims to promote the research field of legal discourse analysis. Legal discourse has been comprehensively analyzed from a variety of angles. Research into discursive practices occurring in the legal setting has involved analyses of legal style and legal language[1], legal genres[2], legal translation[3], legal sociolinguistic[4], legal semiotics[5], etc. In Russia, research on legal discourse does not have such a long and rich tradition as in the Western countries. Nevertheless, in the last 20 years, one can observe a growing interest in legal language. Empirical studies conducted by Russian scholars concern, among other things: 1) rhetorical features of courtroom interactions[6]; 2) genre-specific features of legal texts[1], or 3) legal-lay interactions[2]. Most of

[1] Archer D. Questions and answers in the English courtroom (1640–1760). Amsterdam: John Benjamins, 2005. 374 p.; Breeze R. Lexical bundles across four legal genres. International Journal of Corpus Linguistics, 2013, vol. 18 (2), pp. 229–253; Chaemsaithong K. Evaluative stancetaking in courtroom opening statements. Folia Linguistica, 2017, vol. 51(1), pp. 103–132; Gotti M. Linguistic insights into legislative drafting. Theory and Practice of Legislation, 2014, vol. 2(2), pp. 123–143; Hansen M. B. Patterns of thanking in the closing section of U.K. service calls: Marking conversational macro-structure vs. interpersonal relations. Pragmatics and Society, 2006, vol. 7, pp. 664–692; Tiersma P. Legal Language. Chicago: The University of Chicago Press, 1999; Yang M., Wang M. A science mapping of studies on courtroom discourse with CiteSpace. International Journal of Legal Discourse, 2021, vol. 6 (2), pp. 291–322.

2 Tiersma P. Legal Language. Chicago: The University of Chicago Press, 1999; Boginskaya O. Competition - game ritual: Three aspects of communicative interactions in the courtroom. Tomsk State University Journal of Philology, 2022, vol. 76, pp. 5–27; 9. Cotterill J. Language and Power in Court: A Linguistic Analysis of the O.J. Simpson Trial. London: Palgrave Macmillan, 2003. 245 p.; Felton Rosulek L. Dueling discourses: The construction of reality in closing arguments. New York: Oxford University Press, 2015. 248 p.; Heffer C. The Language of Jury Trial. A Corpus-aided Analysis of Legal-Lay Discourse. Basingstoke: Palgrave Macmillan, 2005. 253 p.

[3] Biel Ł. The textual fit of translated EU law: A corpus-based study of deontic modality. The Translator, 2014, vol. 20 (3), pp. 332–355; Boginskaya O. A Contrastive Study of Deontic Modality in Parallel Texts. ELOPE: English Language Overseas Perspectives and Enquiries, 2021, vol. 18 (2), pp. 31–49; Sarcevic S. New approach to legal translation. The Hague, Netherlands: Kluwer. Smith, 1997. 308 p.

[4] Eades D. Sociolinguistics and the legal process. Bristol: Multilingual Matters, 2010. 303 p.

[5] Cheng L., Sha L., Zheng Y. A semiotic interpretation of legal terms. Contemporary Rhetoric, 2009, vol. 2, pp. 37–43.

[6] Akhmetova S. Diskursivnyi analiz sudebnykh dokumentov [Discourse analysis of courtroom documents]. Bulletin of South Ural University. Law, 2016, vol. 16 (1), pp. 12–17; Palashevskaya I. Correlations of status positions of courtroom discourse participants. XLingaue, 2017, vol. 10(3), pp. 45–56; Pishkova E., Lalayan S. K voprosu o sudebnykh postanovleniiakh kak forme realizatsii iuridicheskogo diskursa [Judicial verdicts as a form of implementation of legal discourse]. Humanities and social sciences, 2020, vol. 2, pp. 224–231; Sudebnyi diskurs: iazykovye aspekty [Judicial discourse: linguistic aspects]. Bulletin of Pyatigorsk State Linguistic University, 2003, vol. 3, pp. 42–46.

these studies have described legal discourse as interpersonal rather than objective and impersonal, revealing how legal professionals evaluate and argue their claims and build solidarity with an audience.

Despite this research is valuable, little empirical studies appear to have analyzed legal discourse in terms of authorial presence, even though this aspect is crucial and performs an important role in controlling the ideational content.

Given the imbalance in the amount of research into linguistic features of legal discourse and to complement the picture of legal discourse, the present study explored authorial presence markers in different legal genres from a diachronic perspective based on the main provisions of postmodernism. The article aims to show that legal genres feature different degrees of personalization determined by historical contexts in which they have developed and depersonalization of legal texts is not determined by causes suggested by postmodernism theorists.

The present study was conducted on a corpus of 34 legal documents of different genres derived from the Internet websites. The size of the corpus was 23,542 words. The legal texts were downloaded from the Internet, converted to the Microsoft DOCS format and analyzed to identify the ways of creating authorial presence. As the study aims to analyze how authorial presence is realized linguistically from a diachronic perspective, the methods of quantitative and qualitative analysis were applied.

The analysis followed two stages: first, the legal texts were read and manually scanned in search of potential authorial presence markers. Every occurrence of an authorial presence marker was manually double checked in context to verify that it marks an authorial identity. To ensure in-depth exploration into the use of authorial presence markers, examples were taken from the corpus being studied and explanations were provided.

Main body

Legal discourse is a complex multidimensional phenomenon whose constituent elements (speech genres) form a network of multiple intersections. The types of legal discourse can be distinguished based on a division of the world into public and private areas which are typical of modern social knowledge. While private legal discourse involves individuals, public one – public institutions (legislative, law-enforcing and judicial).

Statutes create the core of legislative discourse; the core of courtroom discourse is formed by judicial decisions reflecting conclusions made in the courtroom proceedings. Private legal discourse is verbally expressed in contracts, wills, warrants, etc.

Due to the heterogeneity of legal discourse and differences in the relations between the participants and their illocutionary intentions, legal genres manifest different discursive features and use different rhetorical strategies. In particular, while the legislative genres

[1] Shatin Y., Silantev I. Rossiiskii sudebnyi diskurs v svete sovremennoi teorii argumentatsii [Russian judicial discourse in the light of the modern theory of argumentation]. Kritika and Semiotika, 2022, vol. 2, pp. 401–412.

[2] Boginskaya O. Competition – game – ritual: Three aspects of communicative interactions in the courtroom. Tomsk State University Journal of Philology, 2022, vol. 76, pp. 5–27.

can be described as depersonalized, private and some courtroom ones contain explicit traces of authorial presence.

The issue of author in discourse was raised within the philosophical theory of the 20th century – postmodernism, the main theoretical postulates of which are associated with criticism and rethinking of classical ideas about *author* and *subjectivity*. In terms of postmodernism, the very use of the term *subject* or *author* is nothing more than a tribute to the classical philosophical tradition. The analysis of *subject*, as Foucault claims, is an analysis of the conditions under which it is possible for an individual to act as a subject[1]. Following the postmodern traditions, the subject of discourse is an institution rather than an individual. The task of the former is to determine what can and cannot be said[2]. According to Foucault, the most visible form of the institution is a ritual which determines qualifications that speakers must have, gestures, behavior, circumstances and the whole set of signs that must accompany the discourse. Religious, legal, therapeutic and partly political discourses are completely inseparable from the ritual, which determines roles assigned to speakers[3].

The "death of subject", one more postmodernist concept, means both the erasure of all individual characteristics of the writer and the liberation of the text from authorial power and responsibility for the utterances produced. The subject acts only as a reproducer of discursive practices of an institution which imposes its ideology and rules of behavior that determine the content of discourse and the ways of its production. According to Barthes who defined the term "death of subject" in relation to the text, the concept of Fatherhood cannot be applied to Text[4]. The text becomes self-sufficient and does not interfere with the absence of the addresser, the trace left by the addresser; Text breaks away from its sender and continues to act on the other side of its life[5]. As can be seen, postmodern philosophy replaces the concept of author with the concept of scriptor who is not a producer of Text.

Thus, the postmodern era created an impersonal information carrier instead of an author responsible for own utterances. This information carrier is different from the author bearing personal responsibility for discursive practices. As Deleuze put it, the information carrier is an impersonal field that lacks synthetic consciousness or subjective self-identity[6]. The disappearance of the author is a widely recognized fact evidenced by the studies conducted from different perspectives.

In this regard, it seems interesting to focus on the impersonal nature of legal discourse and factors that influence the lack of authorial traces in some legal genres. Are the factors that caused the disappearance of subject from postmodern discourse similar to the ones that have made legal texts impersonal?

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[1] Foucault M. Volia k istine: po tu storonu znaniia, vlasti i seksual'nosti. Raboty raznykh let [The Will to Truth: Beyond Knowledge, Power and Sexuality. Works of different years]. Moscow: Kastal', 1996. 446 p.

[2] Ibid.

[3] Ibid.

[4] Barthes R. Izbrannye trudy: Semiotika. Poetika [Selected Works: Semiotics. Poetics]. Moscow: Progress; Univers, 1994. 616 p.

[5] Ibid.

[6] Deleuze G. Expressionism in philosophy: Spinoza. New York: Zone Books, 1992. 445 p.

It seems that factors that contributed to the disappearance of the author from legal discourse date back to the past and differ significantly from the reasons suggested by Foucault, Baudrillard, Barthes and other postmodernists who made attempts to explain the depersonalized nature of postmodern discourse. Moreover, not all legal genres lack the authorial traces. In legal genres, the degree of authorial manifestation varies to a great extent.

The literature review and corpus-based analysis revealed that the trend to eliminate authorial signs from legislative discourse was first manifested in the 13th century. In an earlier historical period, the explicit authorial traces were a key feature of legislative texts. This observation was made based on the analysis of *Charter of Liberties* (1100) written by King Henry I. The linguistic tools used to mark the author are first-person singular and possessive pronouns which are explicit markers of authorial presence:

> "*And if any of my barons or men shall grow feeble, as he shall give or arrange to give his money, I grant that it be so given. <…> I impose a strict peace upon my whole kingdom and command that it be maintained henceforth*."[1]

Starting from the second half of the twelfth century, the key authorial presence marker was first-person plural pronouns:

> *"That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III."*[2]

Due to political transformations, legislative discourse gradually became depersonalized: in 1215, under the pressure from rebellious barons, King John Landless signed the *Magna Carta* which limited the power of the British monarch and introduced a new type of legal acts such as parliament statutes. The procedure of issuing statutes involved the development of proposals (bills) by the lower house of parliament. The bill then was approved by the lords and sent to the king for signature. The Statute of York of 1322 stated that all issues concerning the position of the king, the country and the people should be discussed, agreed and accepted by the parliament of the king with the consent of prelates, earls, barons and the community[3]. In the 15th century, no statute was adopted without the approval of the House of Commons.

It is interesting that since that period the British kings began using in their legal acts the form *Pluralis Majestatis* symbolizing the divine origin of their power and unity with God. It is believed that the *Pluralis Majestatis* was first used in 1169 by King Henry II who be-

[1] Charter of Liberties. Available at: http://nhinet.org/ccs/docs/char-lib.htm (accessed: 15.09.2022).

[2] Magna Carta. Available at: https://www.bl.uk/magna-carta/articles/magna-carta (accessed: 15.09.2022).

[3] Guntova E.V. Angliia v 14–15 vekakh [England in the 14th–15th centuries]. Middle Ages, 1987, no. 50, pp. 58–77.

lieved in his unity with God and sacred power. As Luchitskaya put it, according to divine power transferred to him by sanctification, the monarch was considered to be Christ or God-man, a representative of God[1]. What is interesting, in contemporary discourse of the British monarch, the *Pluralis Majestatis* is not used. In her throne speeches at the official opening ceremony of the sessions of the British Parliament, Elizabeth II marks herself with *I*-pronoun.

Later political innovations could not but affect the linguistic status of legislative discourse, including its central genre – statute – which got rid of authorial signs and turned into a set of impersonal regulations. A striking example is one of the documents of the English Reformation – *the Sacrament Act* (the Act against Revilers, and for Receiving in Both Kinds) of 1547.

> *… and* ***this Act shall not affect*** *the validity, invalidity, effect, or consequences of anything already done or suffered …*[2].

This document is a systematic presentation of the Anglican creeds approved by the Parliament and signed by King Edward VI. However, as can be seen from the example, the document lacks authorial signs. The explicit presence of the subjects participating in the development of this statute - the king and the parliament members – does not provide us with an answer posed by Eco "Who is speaking?"[3]. The inanimate object – *the act* – performs the role of a subject.

A more recent example of depersonalization in legislative discourse is *The Virginia Statute for Religious Freedom* of 1786. This statute was originally written by Thomas Jefferson in 1777. The Virginia General Assembly adopted it in 1786, having previously excluded a number of important provisions from the original text. The changes introduced distorted the original, which does not allow us to speak about Jefferson's authorship in relation to this act. Moreover, the legal act was signed by Archibald Carey, the speaker of the Senate, and Benjamin Harrison, the speaker of the Virginia House of Representatives, which raises Eco's question '*Who is the author?'*– Thomas Jefferson who wrote the original text, the General Assembly which approved it, or Carey and Harrison who signed the act. The linguistic features are not helpful in identifying the author. The first-person plural pronouns *we* and *our* that appear in the text refer to a collective subject that cannot be identified due to the absence of a name behind them. It is worth noting that *we*-pronoun has complex in terms of its semantics. *We* is considered to be a very tricky pronoun that can refer to the speaker and someone else. But who else is unclear. Due to the great variability of the semantic content of *we*, it often becomes a manipulative linguistic tool. *We*-

[1] Luchitskaya S. I. Dva tela korolia. Ocherk politicheskoi teologii Srednevekov'ia. – Istoriia mental'nostei, istoricheskaia antropologiia. Zarubezhnye issledovaniia v obzorakh i referatakh [The two bodies of the king. Essay on the political theology of the Middle Ages. History of mentalities, historical anthropology: foreign research in reviews and abstracts]. Moscow: Rossiiskii gumanitarnyi universitet, 1996, pp. 142–154.

[2] Sacrament act. Available at: https://www.legislation.gov.uk/ (accessed: 15.09.2022).

[3] Eco U. Otsutstvuiushchaia struktura. Vvedenie v semiologiiu [Missing Structure: An Introduction to Semiology]. St. Petersburg: Petropolis, 1998. 544 p.

pronoun is used here show solidarity with an indefinite referent. This inclusive *we* realizes the meaning of collectiveness, generalized plurality. The pronoun can be described as a rhetorical device that identifies the speaker with a group to which the speaker belongs. At the same time, the semantics of compatibility gives rise to a sign that has a blurred, simulacrated referent. Non-referential, simulative *we* can denote individuals from the same community, sharing the same views, beliefs, nationality, political or territorial affiliation. It is the so-called ideological, political *we* that makes discourse depersonalized.

Depersonalization has become a feature of another legislative genre – constitution – that contains a great number of impersonal structures. For example, in the constitutional preambles, although they are personal utterances, the author is referentially vague. The preamble of the US Constitution illustrates the case. This preamble as well as the preambles of a number of other constitutions I have analyzed (Russian, Indian, French ones) are good examples of false personalization. On the one hand, they contain explicit authorial traces. On the other hand, the question 'Who is speaking?' remains unanswered. The non-referential pronoun *we* limits the circle of individuals and unites the subject together with those belonging to the same community. This is ideological *we* which delineates the boundaries of the own world opposed to the world of "strangers". *We* in the preamble has the meaning of collectiveness, generalized plurality[1]. Based on common sense and legislative norms, however, one can suggest that the authorship of the Constitution could not belong to the American people. Even the authorship of the Founding Fathers of the American Constitution is open to speculation. As the minutes of the Constitutional Convention show, every article, every section, every sentence, and even a single word of the Constitution were the results of debates and endless compromises. Diaries, memoirs and letters of the Founding Fathers say that only a few of them were satisfied with the final version. The reference to the American people is nothing else than a political move typical of the democratic regime.

In the evolutionary legalization, legislative texts were becoming more impersonal. Having emerged as a historical need caused by the transition to parliamentarism, the absence of the author turned into an objective textual requirement. As Charles Bally claims, official language has a pronounced social coloring being a set of speech facts that serve to express circumstances that language imposes on human life in precise and impersonal formulas[2].

The legal system strives to ensure that its prescriptions are as objective as possible, which is achieved through the rejection of *I*-valence and the use of passive and impersonal structures. Passive voice creates an impression of alienation from the process of producing legal utterances. Impersonal structures make the law impartial.

The absence of the author is determined by the nature of law in its broadest sense as a right transferred from the outside to a person and a priority to human institutions. As Plato

[1] Wodak R. Yazyk. Rassuzhdenie. Politika [Yazyk. Language. Discourse. Politics]. Volgograd: Peremena, 1997. 139 p.

[2] Bally Ch. Frantsuzskaya stilistika [French stylistics]. Moscow: Izdatel'stvo inostrannoi literatury, 1961. 393 p.

put it, the law is the ruler over the rulers, and they are its slaves[1]. While rulers, even the best ones, are subject to feelings, the law is "balanced mind. The law must rule over everything[2]. It is the human mind, since it governs all the peoples, and political and civil laws should be nothing more than special cases of application of this mind[3]. When Barthes says that the text is no longer created by the author[4], in relation to the legal text, it seems that SOMETHING intervenes in creating it, prescribing own rules and becoming its author. This SOMETHING is LAW as Human Mind or Absolute Spirit.

The rule of law reduces the role of the legislator to the scriptor. Through the scriptors, the law speaks to people. In an attempt to express absoluteness and objectivity of the Spirit of Law scriptors use linguistic means that help in achieving this goal.

It should be noted, however, that courtroom discourse features different rhetorical patterns of authorial presence. To create impersonal utterances, judges use different linguistic tools. In judicial decisions, it is forbidden, for example, to use first-person singular pronouns. A. Bondarko claims that the pragmatics plays a significant role in the semantics of personality directly related to the relationship of the content of language units and utterances in general to the participant in the speech act and its conditions[5]. In particular, in judicial decisions, first-person plural pronouns are used instead of the singular ones, or third-person forms are used instead of the first-person ones in order to eliminate subjectivity, create an aura of objectivity, authoritativeness and legitimacy.

This trend is observed both in current courtroom discourse and in judicial texts produced two or more centuries ago. While in judicial decisions of the 19th century the judge marked himself with the first-person plural pronoun *we*, currently the typical way of marking the author is the description *court*. In judicial texts, the personal pronoun *we* resembles the solemn *we* used to refer to persons of a higher rank. It is again the *Pluralis Majestatis* that is considered to be grandiloquent[6]. It makes the decision more objective and authoritative and creates an impression that the decision is made by a powerful body rather than a weak human. The description in judicial decisions, therefore, makes it possible to represent the author as a personification of law and justice and to liberate the judicial act from human emotions and bias.

Thus, the rules of courtroom discourse force the judge to hide ego to show the maximum degree of objectivity. In the era of postmodernity, when objective truth is denied in favor of private views, the ban on the use of *I* and *we* is often caused by a strive for maximum personal irresponsibility for own discourse.

In private legal discourse, the author is usually explicitly marked with various linguistic means. The most striking example is the will:

[1] Platon [Plato]. Works: in 4 volumes. Vol. 3. Moscow: Mysl', 1972. 620 p.

[2] Aristotel' [Aristotle]. Collection of works: in 4 vol. Vol. 4. Moscow: Mysl', 1984. 830 p.

[3] Montesquieu Ch. L. O dukhe zakonov [On the spirit of laws]. Moscow: Mysl',1999. 672 p.

[4] Barthes R. Izbrannye trudy: Semiotika. Poehtika [Selected Works: Semiotics. Poetics]. Moscow: Progress; Univers, 1994. 616 p.

[5] Bondarko A. V. Teoriia znacheniia v sisteme funktsional'noi grammatiki [Theory of meaning in the system of functional grammar]. Moscow: Iazyki slavianskoi kul'tury, 2002. 736 p.

[6] Tiersma P. Legal Language. Chicago: The University of Chicago Press, 1999.

I, *John Smith, being of full age and sound mind and memory, do make, publish and declare this to be* ***my*** *Last Will and Testament*[1].

The pronounced egocentricity of the will is determined by its purpose – to declare the authorial intention about the way how to use property after the death. To be clear, the will must be objectified, including by specifying the author. In order for the will to have legal consequences, the author must be explicit. As a result, this genre is saturated with explicit authorial markers. By positioning him/herself as an author, the writer thereby assumes personal responsibility for the utterances produced.

The ways of marking the author in the will is of interest from a diachronic perspective. Ancient wills served as post factum records of the event[2]. The testamentary act was oral, performed in the presence of several witnesses. Written documents were drawn up in third person, which differs them from the modern wills which are performative in nature. *I*-pronoun for creating an authorial presence has been used when the will turned from written evidence of the testamentary act into the performative act. Thus, in private legal interactions, the author is always explicitly marked.

Conclusion

The analysis of the legal genres in terms of authorial presence identified the following types:

• absence of the author, erasure of all authorial traces (legislative genres);
• implicit authorial presence (courtroom genres);
• explicit authorial presence (private legal genres).

Thus, the "alienating" impact of law on the author is not typical of all the legal genres. Depersonalization of legislative texts occurred long before the postmodern era with its "empty, fictitious neoplasms" and was determined by a strive for maximum objectivity, authority and legitimacy of law and the need to emphasize its continuity. This fact does not allow for an unambiguous parallel between the death of author proclaimed by postmodernists and the impersonal nature of some legal genres.

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[1] Last Will and Testament. Available at: https://templatelab.com/last-will-and-testament/ (accessed: 15.09.2022).

[2] Danet B. Orality, Literacy and Performativity in Anglo-Saxon Wills. Language and the Law. London; New York, 1994, pp. 100–135.

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