

Legal genres in English and Spanish: some attempts of analysis

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Abstract

Understanding the differences and subtleties between the legal communication of the English-speaking world, and the Continental law countries –and, more specifically, Spain– has become a necessary practice in the global context. For the most part, it involves unravelling the differences and concomitances between the array of legal genres produced by the professionals of the specialist communities within these two traditions (i.e., Common Law and Continental Law). This paper attempts an analysis in layers –generic or pragmatic, textual or cognitive, and formal or superficial– of two types of genre within the domain of public and private law, namely delegated legislation and tenancy agreements or leases, the study of which has been seldom attempted, despite the customary presence of these instruments in the legal routine. The result of such analysis will, hopefully, cast some light on the way these communities interact within themselves and with the rest of the world, providing new clues to tackle the application of those genres and making it possible to draw new conclusions about the way in which linguistic interaction takes place in the context of these specialist communities in English and Spanish.

Keywords: legal genre, legal communication, legal text, generic analysis.

Resumen

Los géneros jurídicos en inglés y en español: algunos intentos de análisis

La comprensión de las diferencias y sutilezas que subyacen a la comunicación jurídica en inglés como lengua franca en el contexto global, y su traducción al español se ha convertido en una práctica necesaria hoy en día. En su mayor parte, dicha práctica consiste en desvelar las diferencias y concomitancias que existen entre el abanico de géneros jurídicos que emanan de la práctica profesional de los especialistas inmersos en las comunidades profesionales de estas dos tradiciones, tan distintas una de otra, a saber, la de Common Law y la de

Derecho Continental. El presente artículo emprende un análisis en capas –genérica o pragmática, textual o cognitiva, y formal o superficial– de dos tipos de géneros dentro del ámbito de la legislación pública y privada, respectivamente. Es de esperar que los resultados de dicho análisis aporten nueva información a la forma en que nuestras comunidades interactúan entre sí y con el resto del mundo, al contribuir con nuevas pistas para afrontar la traducción, la docencia y la aplicación de dichos géneros y al extraer nuevas conclusiones sobre la forma en que tiene lugar la interacción lingüística en el contexto especializado de la comunicación jurídica global.

Palabras clave: género jurídico, comunicación jurídica, texto jurídico, análisis de género.

Introduction

The development of different legal frameworks in the global context, as well as the implementation of legislative procedures and juridical processes across countries, is subject to variation according to the peculiar socio-political, cultural, economic and legal developments within those specific traditions. This is a factor that has to be acknowledged in the face of the dismantling of international boundaries, since transactions are increasingly taking place in the context of international markets and global agreements (Bhatia et al., 2005).

The economic, social and political preeminence of countries like USA or UK has made universal the usage of public and private legislation instruments like world agreements (*UNCTAD* and *UNCITRAL* conventions) as well as international contracts in the form of *INCOTERMS*, for example. All these legal instruments are intended to be applied worldwide, sometimes to the apprehension and uneasiness of EU citizens and lawyers as a whole, but especially in the context of our continent. Since international transactions are, for the most part, carried out in English, international litigation and legal practice worldwide are conducted in English as well (Vogt, 2004). Continental legal experts are accustomed to drafting and interpreting treaties and agreements from their own legal perspective; on the contrary, when in the translational context, these professionals are bound, by the current state of affairs of English as the *lingua franca* of lawyers, to construct them from the standpoint of a dramatically dissimilar legal system such as the Common law. Therefore, understanding differences and subtleties between the legal tradition of the English-speaking world and, in the European context, of Continental law -which constitutes the basis of legal practices in many countries of the EU- has become a necessary practice, which involves

unravelling the differences between their legal genres, as products of very different law traditions.

Accordingly, the aim of this paper is to prove that awareness of different cultural patterns is of the essence when analysing how differently legal genres are shaped in the public and private law of both traditions. Legal English and legal Spanish pertain to different systems of law, the Common and the Civil law, respectively, and have to be explained as the cultural products of different specialised communities. Every legal system has developed its own kind of language from the onset, as the direct consequence of the particularities of its sources and hermeneutic procedures.

All of the above leads me to regard a contextual, cultural description of legal behaviour as bearing a formidable significance for the teaching of Languages for Legal Purposes and, for that matter, Legal Translation. Three highly influential legal traditions are distinguished in the contemporary world: civil law, common law, and socialist law, as “a set of differently and deeply rooted, historically-conditioned attitudes about the nature of law, relating the legal system to the culture of which it is a partial expression” (Merryman, 1985: 1). Other legal traditions include Moslem law, Hindu law, Jewish law, laws of the Far East, and African tribal laws, as well as the Scandinavian tradition. Some legal systems are mixed, as it is the case of those in which the rule of law emanates from more than one legal tradition. This happens with the Québec legal system, where the basic private law is derived partly from the civil law tradition and partly from the common law tradition; or with the Egyptian system, in which the basic private law springs partly from the civil law tradition, and partly from Moslem or other religious practices (Tetley, 2000).

Civil law is the dominant legal tradition today in most of Europe, all of Central and South America, parts of Asia and Africa, and even some remote areas of the Common-law world (e.g., Louisiana, Québec, and Puerto Rico). Public international law and the law of the European Community are in large part the product of professionals trained in the civil-law tradition. Continental, or Civil law, originated in Roman law, as codified in the *Corpus Juris Civilis* of Justinian, later developed in Continental Europe and around the world. Eventually, as Tetley (2000) points out, civil law followed two different paths: the codified Roman law (including the inheritors of the French Civil Code of 1804 or Code Napoleon: Continental Europe, Québec and Louisiana); and uncodified Roman law, such as the one that survives in

Scotland and South Africa. In the civil-law tradition, the reasoning process is deductive, proceeding from stated general principles or rules of law contained in the legal codes to a specific solution.

Common law is the legal tradition which evolved in England from the 11th century onwards. Its principles appear for the most part in reported judgments, precedents in relation to specific fact situations arising in disputes which courts have adjudicated previously, in accordance with the *stare decisis* (“stay upon what has been decided”) system. In common-law countries the process is the reverse to that in the Continent, as far as exegetic norms are concerned: judges apply inductive reasoning, deriving general principles or rules of law from preceding cases or a series of specific rulings from which an applicable rule is extracted, and is consequently applied to specific cases. Common law constitutes the legal basis of England, Wales and Ireland, but it also reigns in forty-nine U.S. states and nine Canadian provinces, not forgetting those countries which first received that law as colonies of the British Empire and which, in many cases, have preserved it as independent States of the British Commonwealth (Orts, 2007).

The basic tenet of this article is that both the civil law and the common law traditions are “translatable” with respect to each other, provided that their legal traditions and the genres that constitute the communicative tools of their specialised communities are duly respected and kept in equilibrium, so that one does not overshadow and obliterate the other. Only in that way can the “convergence” of the two traditions, now under way in Europe, truly enrich and strengthen national and international legal culture.

Genre as a tool to understand and analyse legal texts

Genre theory explains the way in which the communicative events produced by a specialised linguistic community are structured (Swales, 1990). Basically, a genre is a highly structured communicative event, which may be written (business letters, statutes, abstracts) or oral (job interviews, witness examination, negotiations). Getting to know a genre amounts to asserting that the more generic knowledge one has, the more initiated one may become in the mechanisms that run the communicative processes of a specialised community.

Based on Swales’s (1981, 1985 & 1990) works on genre analysis, Bhatia (1993: 13) defines “genre” as:

(...) a recognisable communicative event characterised by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalised with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by expert members of the discourse community to achieve private intentions within the framework of socially recognised purpose(s).

Following Swales's definition step by step, firstly a genre is a distinctive communicative event, characterised by a group of identifiable communicative purposes, tacitly understood by the members of an academic or professional community where it is usually deployed. Hence, even if there are factors like the content, form or audience of the genre in question, that very genre is characterised by the communicative purpose it aims at fulfilling, and it is precisely the communicative purpose which builds up the genre from the point of view of its higher organisation or "macrostructure". Relevant changes in the communicative purpose of the event itself will generate different types of genre. Inside the professional discourse of law, lease contracts and insurance policies are different kinds of genre, for, even if they are instances of private written legislation, their communicative purposes are entirely different (leasing a property or insuring a good, respectively). Less noticeable changes will produce different subgenres. For example, Lloyd's insurance policies comprise five different groups of clauses, each one constituting a distinct type of subgenre, inasmuch as their communicative purposes vary to a certain degree, according to the type of cover they supply for goods transported by sea (Orts, 2006).

Secondly, genre is, mostly, a highly structured and conventionalised communicative event. The member specialists of any professional or academic community possess, not just the knowledge about the communicative goals of their group, but also the know-how to structure the genres in which they partake daily in their work routine. Subsequently, what forms the genre and conventionalises its internal structure is, also, the result of a period of vocational training and experience within the specialised community.

Thirdly, the different genres show restrictions in terms of their intention, positioning, form and functional value. Hence, even if the drafter possesses a certain freedom to use the linguistic resources at hand, s/he has to keep well within the standard practices governing each peculiar genre. Likewise,

certain lexico-grammatical resources and rhetorical-discursive mechanisms generally associated with the scope of the different registers are used exclusively within each generic typology. As Bhatia (1993) points out, though it is not always possible to find an exact correlation between linguistic resources –both lexico-grammatical and discursive– and the functional values that they assume in the communicative process, it is much easier to do it through genres than through any other concept explaining linguistic variation.

Finally, these limitations are exploited by expert members of the discursive community so as to attain concrete objectives within the socially recognised framework of those purposes. Hence the concept “genre literacy” or knowledge that the members of the discipline have about the relevant communicative conventions (Spack, 1988) operating in the reading and writing practices carried out so as to construct their own identity and establish themselves in their professional cosmos.

The model of generic scrutiny herein proposed divides the research-teaching process into three different levels, from top to bottom: “generic” (that I separate into cognitive and pragmatic), “discursive” or “textual” and “formal” or “superficial” (divided in turn into lexical and morphosyntactic elements).

The generic level: texts in context

As I have repeatedly pointed out above, genres are, mainly, the stratified discourse of a very specific specialised community. This, generically speaking, is shown both in their external and internal organizational structuring and in their communicative function and sociopragmatic conventions.

For the functional purposes of my analytical description, I have divided pragmatic parameters into two groups, namely, “communicative” and “cognitive” elements. With this distinction I have attempted to give account, firstly, of the way in which formal and discursive incidences in the language of different text types are associated to cognitive phenomena that take place specifically in professional discourse. The cognitive elements of professional language are visible in its supra-organisation or “macrostructure”, which is a very definite part within the text and frames the textual segment, consisting of a cluster of linguistic data that make that very text uniform and define its internal structuring, accounting for the peculiarity of each specialised

discourse. This cognitive structuring reflects the conventionalised social knowledge at the disposal of the discursive or professional community, besides the strategies or tactic choices used in general to render the discourse more effective for the sender's purpose. The macrostructural rigidity, for instance, of legal genres is also pointed out by Alcaraz (2000), such inflexibility proving to be of an enormous help for learners of Languages for Legal Purposes, due to the clarity which characterises the layout of the genres, in contrast with their internal lexico-grammatical structuring.

Secondly, looking at language from its communicative perspective implies introducing a description of language in use, the specification of its pragmatic-discursive meaning, or combining the linguistic and psycholinguistic aspects of textual construction and interpretation together with the sociocultural factors that integrate it, namely:

- the identification of the sender or writer of the text (the communicative community it springs from), its audience, relationships and purposes, which will be identified as the “tenor” of the genre;
- the specification of the historical, sociocultural, and occupational positioning of the community where the genre originates, that will be associated here with the “legal tradition” from which the genre originates, and within which the specialised community operates;
- the identification of the blend of texts and linguistic traditions that compose the background of the text or genre specifically and that will be identified as “hibridity and intertextuality” phenomena that may take place at several levels in the genre;
- the identification of the matter/subject/extra-textual reality that the text attempts to represent, change or use, namely its “dominant contextual focus” (Werlich, 1976; Hatim & Mason 1990 & 1997; Hatim, 1997). Hatim (2001: 77-78) subscribes Reiss's (1976) text typology, distinguishing three main text focuses:
 - i. exposition, as found in descriptive and narrative texts, description dealing with “objects” or “situations”, and narrations organizing “actions” and “events” in a specific order;
 - ii. instruction, as divided into two subtypes: instructions “with options”, as in advertisements or consumer recommendations,

and instructions “without options”, as in contracts and treaties, instruments prescriptively regulating civil behaviour; and

- iii. argumentation, where the focus is on what is known as “situation managing”, being the dominant function of the text “to manage or steer the situation in a manner favourable to the text producer’s goals”. Hatim states that argumentative formats vary within, as well as across, languages and cultures, the preference for one or the other form being motivated by many factors such as politeness, power structures, and ideology.

The discursive level: the textual elements

This level scrutinises genre as an instance of text or written discourse, and not just as a mere chain of words randomly arranged; that is to say, it operates from the basic rules of linguistic organisation that make a text work, analysing the linguistic instruments that confer it its informative role. I will label as textual elements those intra- and supra-sentence elements which contribute to its “textualization”, or property of a text that makes it different from a random sequence of unconnected sentences. As texts are processed, a necessary level of interpretation is the recognition of recurrent textual patterns. These patterns show in textual segments with recurrent and finite functional relationships -clauses, sentences or paragraphs- subject to dynamic cognitive organisations (logical sequence, repetition, or syntactic parallelism, among others), proof of the communicative activity carried out by the community where the genre in question originates.

De Beaugrande and Dressler (1981) point out that the stability of a text is kept by means of a sequential continuity of events, each one essential to have access to the next, and building up grammatical and lexical cohesion. In this way, the surface text has a short-term organisation of a lexical-syntactic type -as opposed to the pragmatic or conceptual organisation that reveals long-term communicative structuring- with structures of re-usage, modification or consolidation which contribute to the balance or economy of the text.

On the one hand, the grammatical links that supply the text with cohesion can be classified into three general types: reference, ellipsis/substitution and conjunction (McCarthy, 1991). Reference, in its turn, can be endophoric or exophoric. English legal genres at large have singular cohesion structuring, achieved by mere lexical repetition and an almost total absence of average

anaphoric devices, which makes the legal text in general very difficult to follow.

On the other hand, lexical cohesion is also an element describing certain semantic relationships between words so as to create “textuality”. Lexical reiteration, for instance, is a veritable feature of textuality, since it exploits lexical relationships either restating an item in a later part of the discourse or reasserting its meaning. Lexical relations are stable semantic connections between words, and constitute the basis of the descriptions given in dictionaries and thesauri. I refer to, for example, synonymy or hyponymy, as well as superordinates or general words, called “general nouns” (Halliday and Hasan, 1976) or “procedural words” (Harris, 1997). The lexical “textuality” of the genre embodies its semantic coherence and accounts for many of the technicalities as found in every area of legal discourse.

“Staging” is a tool similarly used by the sender to organise his/her overall strategy of rhetorical presentation, and it is essential to orientate the audience. Thematic sequences and marked thematic forms are going to convey an idea to the receiver on the parts of discourse considered as relevant by the sender. Staging choices explain recurrent phenomena such as “passivization” and “nominalization” devices in legislation, where the information has to be presented so as to conceal the authorship of events, to detach the discourse as much as possible from the source of it, as it is invested with an aura of objectivity and impartiality, typical of the universal statements of the rule of law itself.

The formal level: the superficial elements

This level deals with the study of the surface elements (Crystal & Davy, 1969) or substance, or raw material of the text –as well as the peculiar combinations that that substance is submitted to so as to develop into higher units. It is a superficial level of analysis that contributes very useful data for the discovery of peculiarities of regular or irregular behaviour of graphetic and lexico-grammatical units and which constitutes the foundation for the subsequent discursive/pragmatic studies. It consists, for instance, of the analysis of layout devices, lexical recurrences and syntactic phenomena that take place in genres as different as court rulings, insurance contracts or separation agreements, all of them within the context of legal discourse, where formal traits are so different as to become worlds apart in terms of their comprehension and subsequent production.

Graphetic, lexical and syntactic forms and their presence or absence are unreliable indicators when analysed separately; together and in their context they can supply very useful information about their discursive/pragmatic function. Ostensibly, the linguistic forms of legal English genres are mostly selected to be explicit and precise, as well as –paradoxically– flexible and condensed, which often leads to a great deal of discursive opacity. Along the same lines, one of the most distinguished forensic linguists in Spain, Enrique Alcaraz, has described the lexicon and syntax of legal discourse in Spanish as opaque, obscure and awkward; full of formulaic sentences and devoid of elegance (Alcaraz, 2002).

Genre at work: analysing legal texts

As Wen (2004) points out, genre analysis helps to make translators become aware that different professional genres might require different steps of restructuring of the source text. I may add here that it also may help trainers and learners of English for Legal Purposes (ELP) to be conscious of the fact that, even if the legal profession offers some generic concomitances, in tune with the purpose and context in which texts of the same genre are issued (an affidavit will always be a sworn declaration by an individual, both in Spain and Great Britain, like a power of attorney will confer representation of an individual by another in both countries), there also exist differences, subtle or ubiquitous, marked by the legal tradition and exegetical norms of each culture. Tables 1 and 2 illustrate how genres are organized in these two legal traditions, according to their structuring in the overall legal scenario.

To illustrate my arguments, I have selected to analyse and deconstruct two different samples of genre in both the English (in this corpus, British and Canadian, respectively) and the Spanish system. Because legislation and judicial opinions have already been analysed in previous literature (Alcaraz, 2000, 2001 & 2002; Borja Albí, 2000; Orts, 2007), and belong to that area of legal language more likely to be theorised upon, in this paper I will seek to analyse genres that fit in the dominion of common usage, but that have been the subject of very little analysis, namely a set of by-laws on the code of conduct of schools, as a sample of delegated legislation, as well as two instances of private law instruments, specifically samples of lease agreements in Spanish and English.

WRITTEN LEGAL DISCOURSE
PUBLIC LAW:

- a) UNENACTED LAW
 - LAW REPORTS (JUDGEMENTS)
 - SUBPOENAS, SUMMONS, INJUNCTIONS
- b) ENACTED LAW
 - ENACTMENTS, STATUTES
 - DELEGATED LEGISLATION

PRIVATE LAW: LEGAL INSTRUMENTS

- WILLS, DEEDS, UNDERWRITINGS
- PRIVATE AGREEMENTS: POWERS OF ATTORNEY, DIVORCE AGREEMENTS
- CONTRACTS
 - LEASES
 - SALES CONTRACTS
 - INTERNATIONAL SALES CONTRACTS:
 - EXPORT DOCUMENTS: Bills of Lading, Letter of Credit, Charter Parties
 - INSURANCE POLICIES: INSTITUTE CARGO CLAUSES
 - ARBITRATION CLAUSES

DOCTRINE AND JURISPRUDENCE: TEXTBOOKS, CASEBOOKS, ARTICLES, MANUALS

 Table 1: Legal Genres in Common Law.

DISCURSO LEGAL ESCRITO
DERECHO PÚBLICO:

- a) CÓDIGOS
- b) LEYES PARLAMENTARIAS
- c) LEGISLACIÓN DELEGADA
- d) JURISPRUDENCIA: SENTENCIAS (AUTOS, PROVIDENCIAS)

DERECHO ADMINISTRATIVO: INSTANCIAS, EXPEDIENTES**DERECHO PRIVADO:**

- DECLARACIONES UNIPERSONALES DE LA VOLUNTAD: TESTAMENTOS
- ESCRITURAS DE COMPRAVENTA
- CONTRATOS DE TODO TIPO, CONVENIOS REGULADORES
- PODERES
- MEDIOS DE PAGO INTERNACIONALES, PÓLIZAS DE SEGURO

DOCTRINA JURÍDICA: MANUALES, LIBROS DE TEXTO, ENSAYOS, ARTÍCULOS

 Table 2: Legal Genres in Spanish (Continental) law.

In order to carry out my analysis, my approach will be top-down, paying particular attention to the following generic aspects of the texts:

- 1) the rhetorical function of the genres in question, as illustrated by their focus: instructive, expositive and argumentative;
- 2) their indexes of hybridation, or intertextuality in order to appraise the apparition or not of other texts belonging to stored knowledge patterns of the specialised community;
- 3) their cognitive structuring or macrostructure;

- 4) their textualization devices, regarding topicalization and staging strategies; and,
- 5) their formal surface, including morphosyntactic and lexical choices.

In this way, the pragmatic and contextualised dimension of the text will be deemed necessary to study the contextual and communicative conventions of the genre (type of sender, audience and their reciprocal relationships, subject, background, etc.) as well as its cognitive macrostructure or primary and secondary conceptual organisation. Once these items have been identified, the unravelling of the peculiarities of the genre as an informative text with a genuine purpose and rhetorical presentation is carried out. To conclude, the graphetic, lexico-grammatical and syntactic characteristics of the text are determined and analysed. This procedure will prevent us from losing sight of the text or texts under scrutiny as purposefully communicative, that character being achieved by means of rhetorical and formal –or linguistic– means.

Delegated legislation under analysis: school codes of conduct in Spain and Great Britain²

Drafting delegated legislation, administrative rules or by-laws has both a public and private ramification. Still, its function is to confer a right, privilege or power, abridge a right, privilege or power; or oblige a person to act or not to act, even if a public administrative agency's rulemaking authority is delegated and limited to its enabling legislation –therefore, having a restricted scope (Fajans, Falk & Shapo, 2004). The texts under analysis are codes of conduct comprising standards of behaviour, principles, identification of disruptive behaviour, consequences of non-compliance and consequences specifically forbidden. They are different kinds of text, coming from different sources; it could even be argued that they are samples of different genres, since the Spanish document is a legislative decree, therefore public, the British is a self-regulatory instrument within a school, thus private. However, both constitute samples of systems of rules of bodies within a larger legal framework, conferring them powers to self-regulate, hence constituting, equally, examples of delegated legislation (Fajans, Falk & Shapo, 2004). Likewise, both have a common purpose, namely to set the context for a safe and productive learning environment by

outlining expected behaviour in safe and caring schools. As they are texts where prescriptive norms determining conditions for their fulfilment are established, their main essence is that of an instructive text. Nevertheless, the way in which norms are established is very different in the two types of documents, the mode of expression changing in each case.

In the Spanish code of conduct, norms and penalties are presented in an expositive way, with structures of the type: “se considera grave”, or “las conductas (...) podrán ser corregidas con las siguientes normas educativas”. In any case, albeit in an indirect form, prescription is implicit all through the document, even at the end of the text, where expressions like “el alumno deberá” are included. On the other hand, the English text uses clearly expounded exhortative forms, like “pupils should be”, “pupils are expected to”, or “they must”. The imperative tone is present in the text as a whole, also portraying a secondary expositive focus in some of its sections, such as the introduction and the end, where penalties are enumerated.

As far as intertextuality is concerned, codes seem to have a peculiar relation to substantive policy, as no reference is made to external legislation. This may be due to the fact that even if they must comply with law in the area, they may have greater freedom to determine rights, duties and proceedings within their normative scope.

Textualization is enhanced, on the other hand, in both texts, by similar isotopic means, the sequence of expressions being linked in the same semantic denominator of prescription and punishment. Nevertheless, the Spanish text shows staging devices in tune with the rhetorical patterns that foreground impersonality and detach the user from the issuer of the text. Nominalisation devices are, thus, recurrent in this peculiar text, as nominalising a verb turns it into an object that can, literally, be viewed objectively, in this case the contingencies where punishment should be applied. Let's consider examples like: “(Se consideran conductas gravemente perjudiciales para la convivencia en el centro) ... La reiteración de conductas contrarias (...); La agresión grave física o moral (...); La suplantación de personalidad (...)", etc. Nominalising punishment separates it from the school subjects, decreasing emotional attachment and facilitating unbiased judgement. Such constructions are less present in the English text, where conditional sentences, modal verbs and passives without agent, show that the instructions are given to explicit subjects –i.e., the students. Let's see, for example, the following: “If a pupil does not hand in their homework on time

and has no explanatory note from his/her parents” (conditional), “Incidents and sanctions given will be reported to the form teacher” (passive), “pupils should line up sensibly at the appropriate time and should walk round to the canteen when asked to do so” (modal).

Tenor devices show that the Spanish text is a formal discourse with legal flavour, as it is shown in the choice of lexicon, such as *conducta tipificada*, *injuria*, and *vejaciones*. Notwithstanding this fact, and the presence of staging devices making the discourse impartial, it is a text written in an expository way, which somewhat relaxes the general prescriptive tone. Not so in the English one, where the legal flavour is somehow lost, in favour of directness and a moral bias, as in the use of emotional lexicon like “rudeness”, “cheekiness”, “bad language”, “behave responsibly”, etc.

The macrostructure of the Spanish text is quite clear, and there are two large sections labelled *Artículo 51. Tipificación*, and *Artículo 52. Medidas educativas de corrección*. In the former, a list of punishable conducts is enumerated, covering the range of misbehaviour liable to be disciplined. The latter, in two sections, lists two ranges of penalties, according to their degree of severity, and in harmony with the seriousness of certain conducts. The English text itemises three epigraphs, containing the norms that govern the school and their corresponding punishments, namely:

- those that specify forbidden behaviour and its range of punishments, such as “Behaviour towards others” and “Using School Transport”;
- those that solely specify banned conducts, like: “Items not allowed in school”, “Behaviour in class”, “Homework” and “Moving around school, breaks and lunchtimes”; and
- those that solely specify likely punishments, as in “Sanctions for breaking the code of conduct could include”.

Finally, some sentences in bold close the text, describing special treatment of particularly severe instances of misconduct.

As far as formal traits are concerned, in the epigraph *Artículo 51. Tipificación* of the Spanish code of conduct, the example of a text where short and concise sentences proliferate is found, and where complex structures are scarce, with the exception of some relative subordinates. In contrast, the second section, where punishments are described, shows sentences that tend

to become longer, subordination getting more frequent, with time adverbials. Both sections show coordination and juxtaposition.

In the British code of conduct, sentence complexity is not a relevant syntactic feature, and enumeration and tabulation devices exist to simplify the reading of the text. Nevertheless, there exists an overuse of juxtaposition and coordination, as well as some occasional subordination (as in the listing of items forbidden in school or in the classification of unacceptable behaviour). On the contrary, some parts of the discourse illustrate a certain syntax intricacy, with subordinates of infinitive, and manner and/or time adverbials (as in “Having chosen a seat, they should remain there for the duration of the meal unless asked to move by an adult”).

The table below shows some of the more recurrent features in the lexicon of both codes. In general, the Spanish text shows more far-fetchedness and specialisation in lexicon, probably in tune with the higher normative character and formality of this text. The English text, contrastively, shows a higher awareness of a lay audience, alluding to the recipients’ values and age.

Spanish	British English
Código de conducta	Code of conduct
Alumno	Pupil
Miembro de la comunidad educativa	Peers and any adult in the school / School community
Suspender el derecho de asistencia	To be excluded from school
Daños causados en los locales materiales o documentos del centro	Misuse/Abuse of school equipment, or the fabric of the building

Table 3. Lexical differences and concomitances between both texts.

Private instruments under analysis: tenancy agreements³

A lawyer’s most common form of private-law drafting is probably the drafting of contracts (Fajans, Falk & Shapo, 2004). A lawyer drafts contracts for many purposes, such as for the sale of goods, employment agreements and leases of real estate. Like statutes and other forms of enacted law, contracts regulate future conduct and should stand the test of time, even if they are private instruments, which is why the main focus of both texts in Canadian English and Spanish is that of an instructive or exhortative text. Contracts are often the product of collaboration and negotiations undertaken to hammer out language that all parties will accept. Coherent

organization of contract terms or clauses is needed, permitting the parties to locate the terms that they may need easily. This is also the reason for the existence of a secondary focus of an expositive fashion, describing the property and utilities under rental, services and facilities and other relevant information for the users.

In this part of my analysis I have chosen two contracts, one Spanish *Contrato de arrendamiento de vivienda*, and one Canadian “Tenancy Agreement”. The reason why I have chosen a contract used in a country other than England within the Commonwealth realm, this time, is an attempt to show that the features salient in countries with a Common Law system are recurrent within this tradition of law. This choice enriches the analysis, especially considering that Canada is so influenced by the English legal system that, for example, until 1963 High Court regarded decisions of the English House of Lords binding.

In general, legal instruments of this kind are found within the realm of the legal system governing contracts as a whole, and the laws governing this particular type of lease contract. The legal constraints that limit the private scope of rights and duties is clear in both texts, showing explicitly indexes of intertextuality having to do with this spirit of legal compliance. The Spanish *Contrato de arrendamiento de vivienda* displays hybridation indices in several of its clauses as shown in Table 4:

<i>Cláusula Primera: “lo establecido en la Ley 29/1994 de 24 de Noviembre, de Arrendamientos Urbanos y se registrá por lo dispuesto, y por lo pactado en este documento.”</i>
<i>Cláusula Cuarta: “el Índice General de Precios al Consumo que fije el Instituto Nacional de Estadística.”</i>
<i>Cláusula Novena: “derechos especiales que le concede la Ley 29/1994 de Arrendamientos Urbanos”.</i>
<i>Cláusula Décima: “Art. 16 de la Ley 29/1994 de Arrendamiento Urbano, respecto al evento de fallecimiento de la arrendataria”.</i>
<i>Art. 14 de la vigente Ley de Arrendamientos Urbanos respecto a la extinción del arrendamiento.</i>

Table 4. Intertextuality in the Spanish text.

As far as the Tenancy Agreement is concerned, the first display of intertextuality appears in section 4, as “Rent increases must be given in accordance with the provisions of section 85 of the Landlord and Tenant Act”. Later, section 6A, “Statutory Conditions” shows a precise reference to the different parts of the enactment (see Table 5).

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1. Conditions and Premises – Section 76(l)(a).
 2. A. Services – Section (l) (c) 2B. Good Behaviour – Section 76 (2) (b).
 3. Obligation of the Tenant – Section 76 (e) (f).
 4. Subletting Premises – Section 71.
 5. Abandonment and Termination – Section 72
 6. Entry of Premises – b) – Section 73
 7. Entry doors – Section 75
 9. Termination of Tenancy: “notice to terminate by a landlord to a tenant is not enforceable under section 96”/section 90 and subsection (3) in relation to tenancy notice termination”
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Table 5. Intertextuality in the Canadian text

As far as cohesion and textuality devices are concerned, both texts reflect—in equal degree—the enforceable promises that are the expression of the parties’ intent. Coherence requires that the contractual terms are set into categories defining those promises and intentions. Expressions of prohibition and condition in the Spanish text are substituted with nominalizations, deontic modals and latinized expressions, and subordinations with graphical disposition. Both samples of genre show that, even if they are meant to be read and interpreted by the specialist, they are also meant to regulate relationships between private users, and their main function being to create pacts between individuals.

The tenor and the degree of formality-informality between sender and receiver of the text in the *Contrato de arrendamiento de vivienda* show little distance between the parties and a low degree of formality, as compared to the text in English. This may be seen in the usage of simple present and future structures, and absence of conditionals in the expression of duty and obligation, alluding to users as *el arrendador, el arrendatario, las partes contratantes* or, simply, *las partes*. In contrast, the *Sample form of tenancy agreement* portrays a rigid feeling of formality. It shows a tight formal structure and exhaustiveness regarding the specificity of the contract details (“parties”, “premises”, “term”, “rent”, “security deposit”), as well as the aims of the parties that are entering into it. Distance is achieved through passives and modal verbs, mainly “shall” (with an imperative import on the parties, namely “the tenant” and “the landlord”) and “will”, but also “may”.

The macrostructure of the *Contrato de arrendamiento de vivienda* is developed as follows:

1. A heading and introductory paragraph in the shape of a form to be completed by both parties regarding city and date. The introductory paragraph identifies the parties to the contract using

the formula *REUNIDOS* (to be completed with the names of the *arrendador* and the *arrendatario*), *INTERVIENEN* and *EXPONEN* (as introductory formulae to the subsequent recitals).

2. The recitals themselves are built upon in several moves.
 - a. The first three recitals refer to the dwelling itself, its location and prospective usage, as well as the contract deadline and the law ruling its lease.
 - b. Recitals number four, six and eight make reference to the amount to be paid by the lessee and to the instalments to make such payment effective, other expenses and lessee's duties and obligations, and terms to make and recover a deposit, respectively.
 - c. Recitals five and seven reveal two moves which illustrate the lessee's duty to return the dwelling in perfect condition, and supply details about its maintenance, with the prohibition to make reforms of refurbishments, and establishing the extent of the lessee's liability in case of damages to such a dwelling.
 - d. Recital nine and ten refer back to the *Ley de Arrendamientos Urbanos*, the background enactment ruling lease contracts in Spain, number ten also establishing the steps to take in case of the lessee's decease.
3. The contract ends with the recorded signature of both parties.

The Canadian Form of Tenancy Agreement is built upon nine recitals, or sections, some of them subdivided into subsections, sub-subsections and even lower divisions, and a final signature. The initial moves are similar to those in the Spanish text referring to premises, term and duration of the contract; even section 6, establishing the "Statutory Conditions" of the law is similar to its counterpart in the Spanish text.

However, section 4, about rent specifications, explicitly stipulates a complete account of domestic facilities included in the payment of rent, such as appliances and the like, which is not specified with such detail within the body of the Spanish contract itself, an inventory being attached to the main text listing the *continente* of the dwelling. There may be a cultural reason to include all the furniture and fittings in the body of the Tenancy Agreement, since the common usage of outside laundry services, the need for TV

licences, and the presence of coin meters in the appliances (heaters, air conditioning, etc.) of some Canadian homes renders it necessary to make its provision explicit, if that is the case; in a Spanish context such an account within the legal document itself would be redundant and unnecessary.

Another striking difference of the Tenancy Agreement as regards the Spanish *Contrato* is the fact that section 6B includes the contingency of a mobile home, as these are governed under different terms as far as parking spaces, code of conduct and even rental conditions. Such contingency would not normally appear in a Spanish lease, with the exception of summer leisure areas, and differs from the Canadian reality, where mobile homes are common. Finally, the last recital of the Spanish contract contemplates the event of the lessee's demise, ignored in the Canadian text, which merely refers to the occurrence of termination or expiration of the contract.

Last but not least are the formal traits present in both texts. On the one hand, the Spanish *Contrato* shows long sentences with no graphical division, and a high degree of subordination: 46 subordinate sentences, as compared to 7 simple sentences, and 13 coordinates in the rest of the text. The Canadian text is much longer, and even denser, filled with subordinate sentences of the conditional type, in the form of legal qualifications, using Bhatia's (1993) terminology, but very clearly separated in a graphical division with enumeration and tabulation. All the possible contingencies of the lease are taken into account (with long juxtapositions and lexical doublets and triplets), but with the clear attempt to avoid hampering the reader's comprehension through visual clarity; on the other hand, the long, embedded paragraphs of the Spanish contract make the text more difficult to process, even if the degrees of subordination and sentence length are lower than the Canadian text. Still, the latter is more notorious in its usage of words of authority and formality, such as the adverbial combinations of "notwithstanding", "thereafter", "foregoing", among others. As shown in Table 6, there is a fair possibility of translation by equivalence of the main terms in the documents, basically those used to identify the main characters and data in both texts.

Canadian text	Spanish text
Tenancy	<i>Arrendamiento de vivienda</i>
Landlord	<i>Arrendador</i>
Tenant	<i>Arrendatario</i>
Termination	<i>Rescisión, disolución</i>
Expiration	<i>Vencimiento</i>
Residential premises	<i>Finca</i>

Table 6. Lexical differences and concomitances between both texts.

Conclusion

At some point of this article I established the basic tenet that awareness of different cultural patterns is of the essence when analysing how differently legal genres are shaped in the public and private law of the legal traditions under study: the Civil Law and the Common Law. My aim was, ultimately, to discuss how the different cultural approaches of these two countries have very much to do with the way in which their legal traditions articulate their genres and their interpretation. The interpretation and application of the legal genres between traditions –I feel– can be attained provided that those legal traditions and the genres that constitute the communicative tools of their specialised communities are duly respected and kept in equilibrium. Such respect and equilibrium is unavoidably to be achieved through “initiated” knowledge of the way in which genres are articulated in the different legal communities, either within the (Continental) or the Anglo-Saxon (Common) contexts in the area of law.

The two different kinds of –public and private– legal instruments, namely delegated legislation in Spain and Britain in texts regulating school conduct, and tenancy agreements in the Spanish and Canadian versions have been seldom studied, but are text-types commonly used in the everyday context of social organization. All of them are normative texts, being either the consequence of internal regulations of professional bodies or corporations (as in the case of deontological codes within educative contexts or legislative decrees regulating school behaviour) or of private agreements to lease or rent a property. Its prescriptive display is, nonetheless, utterly different in each culture, and is also in accordance to factors like the content, form or audience of the genre in question, since genre is characterised by the communicative purpose it aims at fulfilling, and it is precisely the communicative purpose which builds up the genre from the point of view of its higher organisation or “macrostructure”. Such a structuring represents the distinctive regularities of its internal organisation, and reflects the accumulated social and conventionalised knowledge of a particular discursive and professional community. I believe that a systematic study of these examples, and more (wills, powers of attorney, divorce agreements, bye-laws) is bound to have consequential repercussions in the way in which the linguistic community will teach Languages for Legal Purposes and Legal Translation in the coming years.

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NOTES

¹ It should be worth pointing out here that the tradition of legal training is different in Common law and Continental law. In civil law countries the study of law at a faculty of law follows graduation from high school, with no transitional instruction in humanities or other fields of learning, and scarce contact with subjects taught in other disciplines in a university. In contrast, in a common-law country, the study of law is almost always post-graduate. The law student is exposed to other subjects prior to enrolment in law school. This situation has perhaps led to a different awareness among Common law judges and lawyers about the role of law in society, who boast a greater resilience and capacity to deal with new circumstances than exists among their colleagues in Continental law (Apple & Deyling, 1995).

² Spanish version: *Decreto 115/2005 del Consejo de Gobierno de la Región de Murcia de 21 de octubre, por el que se establecen las normas de convivencia en los centros escolares*, URL: [http://www.carm.es/neweb2/servlet/integra.servlets.ControlPublico?IDCONTENIDO=19491&IDTIPO=60&RASTRO=c792\\$m4001,4531,4105](http://www.carm.es/neweb2/servlet/integra.servlets.ControlPublico?IDCONTENIDO=19491&IDTIPO=60&RASTRO=c792$m4001,4531,4105). English version: *Ingleton School Code of Conduct*, URL: <http://www.ingleton-middle-school.org.uk/prospect.htm>

³ Spanish version: *Contrato de arrendamiento de vivienda*, URL: <http://pre.universia.es/consejos/alquiler/modelo-carta/index.htm>. Canadian version: *Sample form of Tenancy agreement*, URL: <http://www.community.gov.yk.ca/pdf/sampleformtenancyagreement.pdf>