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ON THE CONCEPT OF 'GENRE' IN DISCOURSE ANALYSIS: THE LEGAL DOMAIN

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Abstract:Any discourse analysis should devote an important place to the concept of 'genre', defined within the parameters of communicative goals. More specifically, genre appears as an act of communication among the members of the academic or professional community. Genre analysis goes beyond the syntactic and lexico-semantic levels, it captures the specific meanings that reveal themselves in professional settings and contexts. In approaching the concept of 'genre', the paper mainly makes reference to the legal domain and legal discourse, to the way in which legal professionals identify and understand communicative purposes or conceptualize domain-specific issues, a process which imposes certain constraints on the use of linguistic resources.

Keywords: genre, discourse, discourse analysis, professional communication, legal domain

1. The relationship between discourse and genre

The concept of 'genre' plays an essential part within discourse analysis. Inspired by pragmatics, discourse analysis approaches language beyond sentence boundaries and casts light on the study of meaning by considering, discussing and interpreting context. On the other hand, genre analysis is "a way of analysing, interpreting, and accounting for some of the discursive actions taking place in specific academic and professional contexts, and considers context and any form of specific genre knowledge as an important contributor to its understanding of genre" (Bhatia & Nodoushan, 2015: 122).

Bhatia (2002: 17, 18) perceives discourse as text, genre and social practice, three complementary and interacting views. Discourse as text involves an analysis of language use limited to the surface level properties of discourse, without a significant analysis of context, which is not well configured in terms of textual links. The construction of the textual product is given more attention than its actual use or interpretation.

Discourse as genre includes context in the analysis beyond the textual output, considering not only the way in which the text is constructed, but also how it may be used, interpreted, exploited in various contexts in order to achieve communicative goals. Context is "more specifically configured in terms of disciplinary cultures" (Bhatia, 2002: 17).

Discourse as social practice takes into account social context, the focus is no longer on the textual product, but on the features of context. Socio-culture realities broadly configure context.

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There are researchers who argue that 'text' and 'discourse', 'text type' and 'genre' should be used as synonyms. Trosborg, for instance, considers that a strict delineation between text linguistics and discourse analysis is not necessary, while suggesting to use the terms 'text' and 'discourse' interchangeably, for they both may denote any kind of reality or aim of language (Trosborg 1997: 4, in Berūkštienė, 2016: 93). "In general, it seems that discourse is made of texts falling under different text types which are further classified into genres" (Berūkštienė, 2016: 94).

2. Defining genre and genre analysis

Genre is generally defined in terms of communicative goals, appearing as an act of communication among the members of the academic or professional community. Genre analysis goes beyond the syntactic and lexico-semantic levels, it captures the specific meanings that reveal themselves in professional settings and contexts.

The term 'genre' was first employed in relation to the linguistic means used in different types of texts. The methods of linguistic investigation varied as well. For instance, Barber (1962) and Morrow (1989) approached genres by counting the number of conjuncts, with Morrow also discussing the communicative and pragmatic functions of these linguistic devices.

Genre has been seen from several perspectives. Miller, for instance, defined genres as "typified rhetorical actions based in recurrent situations" (Miller, 1984: 159), contending that genres reflect the typical, yet dynamic, dialogical interactions among social actors that address one another in the framework of specific rhetorical situations.

In Trosborg's view, genres are "coded and keyed events set within social communicative process ..." (Trosborg 1997: 8), whereas other opinions see genres as "conventional forms of texts associated with particular types of social occasions" (Hatim and Mason 1997: 218, in Berūkštienė, 2016: 92)

But the most famous and thorough definition of genre is the one offered by Bhatia (1993: 13):

> "a recognizable communicative event characterized 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 conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s)".

Thus, genre appears as part of a communicative process which leads to a three-level textual analysis: the communicative purpose of the genre, its move-structure and the rhetorical strategies used (Wølch Rasmussen & Engberg, 2017: 114).

As for genre analysis, it may be defined as "*typification of social and rhetorical action*, as in Miller (1984), and Berkenkotter & Huckin (1995), as *regularities of staged, goal oriented social processes* as in Martin (1993), or as *consistency of communicative purposes*, Swales (1990) and Bhatia (1993), (…) often viewed as the study of situated linguistic behaviour" (Bhatia, 2002: 4).

3. Genre analysis: beginnings and evolution

The beginnings of genre analysis can be traced back to the eighties, when the conceptualization of genre emerged in the context of the "concerns about the teaching and learning of English for Specific Purposes" (Bhatia &Nodoushan, 2015: 121).

An overview of Genre Analysis, as a discipline, in its evolution towards Critical Genre Analysis, is presented in an interview that Vijay Kumar Bhatia gave Salmani Nodoushan in

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2015. Thus, Genre Analysis is one of the three approaches to discourse studies in various forms, especially from academic and professional perspectives. These three approaches can be briefly presented as follows (Bhatia & Nodoushan, 2015: 121, 122):

- the American tradition, inspired by the studies of classical Greek rhetoric (Miller, 1984);
- the second approach, stemming from Systemic-Functional Linguistics (Halliday, 1994);
- the British Tradition (to which Bhatia belongs), attempting to study academic and professional discourses with a view to developing ESP programmes in the United Kingdom and other ESL learning contexts.

The publication of Swales' *Genre Analysis* (1990) increased the popularity of genre studies. Swales' Creating a Research Space model (the CARS model) had an impact on the teaching of academic writing and generally, on genre analysis in ESP, trying to give an account of the laboratory of research in the academic environment.

The writings of Bhatia (1987, 1993, 1996, 1997, 2002, 2004) marked the development of genre analysis, which integrated textual and social context analyses according to certain practical methodological procedures that he identified.

Bhatia (1993) focuses on the study of ESP contexts, where genre analysis can identify certain language teaching problems while attempting to provide solutions. He explains why grammar is helpful in language teaching and illustrates the use of nominal expressions in professional and academic discourse.

Bhatia (2008) created a framework for critical genre analysis meant to demystify academic and professional discourses. The purpose of critical genre analysis is reiterated in 2015:

> "(…) we need to go well beyond the mere analysis and description of language use and widen considerably the notion of context in which such discursive acts take place. This involves a closer and much deeper look at the professional practice of specialists, paying particular attention to what I have often referred to as 'discursive performance', which is invariably realised interdiscursively because of the increasing involvement of interdisciplinary practices and contexts" (Bhatia & Nodoushan, 2015: 124).

Therefore, a closer look at professional practice complements professional discourse analyses, which is essential in understanding how specialists construct, use and interpret professional discourses in order to achieve professional objectives. But beyond the discursive practice, there is the professional practice and also the professional and disciplinary culture (ibid., p. 123).

The study of genres was also marked by Swales (1998), who used interviews, observations, in-depth analysis of textual histories in order to reveal the interaction between text and context; Hyland (2000), who made a corpus-based analysis of academic genres and later on (Hyland, 2002; Hyland, 2014) underlined the idea that genre studies should deal with the differences characterizing the use of language within various disciplines; Tardy (2003), who performed an intertextual approach to genre analysis, etc.

Genre-based approaches also have important pedagogical implications, the features of genres acquiring new characteristics which transform genres into "a more social construct which shapes and is shaped by human activity" (Tardy, 2006: 79).

Traditional genres are continuously evolving, coexisting with emerging genres determined by social and technological changes. In 2014, the volume *Evolution in genre. Emergence, variation, multimodality,* edited by Evangelisti Allori, Bateman and Bhatia, contributed to the enrichment of genre-related aspects, dealing with the notion of families/groups

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of genres and making an analysis of their linguistic and non-linguistic realisations, as well as forms of expression both within the same genre and across related genres from the standpoint of social or medial constraints or possibilities.

Along the same line, Bhatia argues that we often direct attention to pure genres for the sake of simplifying things, "whereas in real life situations, genres are most often found in hybrid forms", that is why he suggests "to focus more on the complexity and dynamicity of genres, rather than on the purity of such discursive configurations" (Bhatia & Nodoushan, 2015: 124).

4. Genres characterizing the legal domain

Speaking about legal genres, Varo and Hughes employ the terms 'text type' and 'genre' synonymously (Varo and Hughes 2002: 201, in Berūkštienė, 2016: 94). It results that legal genres are types of legal texts, but there is no consensus on the criteria lying at the basis of the classification of legal texts into genres. However, legal texts may be divided into several genres depending on the situation of use or function, on the one hand, or depending on the branches of law or legal profession involved, on the other hand (Berūkštienė, 2016: 105).

Varo and Hughes (2002: 102) note that genres of legal texts mirror various branches of law, i.e. civil law, criminal law, European Union law, administrative law, etc. They mention three such classes of genres: legal texts related to statute law, public law and judgments; private law texts dealing with agreements or arrangements made by private individuals, including contracts, wills, deeds, etc. (therefore contract law, succession law, etc.); law-related academic writings, such as textbooks and various papers.

According to the the functions of language, i.e. regulatory (prescriptive) and informative (descriptive), Šarčevic divides legal texts into genres as follows: (1) primarily prescriptive (regulatory texts emanating from authorities, e.g. laws, rules, regulations, codes, treaties, etc.), (2) primarily descriptive but also prescriptive (hybrid legal texts, e.g. judicial decisions, actions, appeals, etc.), and (3) purely descriptive (the doctrine, texts written by legal scholars) (Šarčevic 2000: 11-12, in Berūkštienė, 2016: 107).

Considering the situation of use as the basis for the classification of legal texts, Cao (2007: 9-10) determines four types of legal texts: (1) legislative texts (e.g. national laws, international treaties, multilingual laws, etc.); (2) judicial texts produced during judicial proceedings; (3) legal scholarly texts produced by scholars in the field; and (4) private legal texts (various documents drafted by lawyers, e.g. contracts, wills, litigation documents, witness statements, etc. and documents produced by non-lawyers).

In another opinion, types of legal genres are determined according to professional communication in the legal domain (Hafner, 2014: 349). Hafner identifies legal professional written genres and legal professional spoken interaction. The former category contains: 1. genres used to construct the law (normative texts produced in the public sphere, i.e. legislation, and in the private sphere, such as contracts and deeds); 2 genres used to interpret the law (e.g. expressing legal opinions, rendering a judicial decision, providing legal advice); 3 genres in the legal workplace (e.g. communicating with a law firm, drafting a will, negotiating settlements, writing correspondence, etc.). Spoken interaction in the professional legal context includes courtroom interaction, police interviews, lawyer-client interaction, etc.

5. Conclusions

The future of genre analysis pertains to the study of hybrid genres. All that has been said proves that genre is still at the core of research, taking versatile forms and constantly adapting to

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new communicative situations, many of them occurring in multilingual and multicultural contexts.

Last, but not least, one should not ignore the practical applications of genre studies. Such studies contribute to the reform of the language found in legislation and other documents, as well as to the development of courses for translators, the focus moving towards linguistic conventions, extralinguistic features of texts and their generic similarities. Genre analysis may also enhance the cooperation between linguists and lawyers (Wølch Rasmussen & Engberg, 2017: 131-132).

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