THE PREFIX *MAL-* IN FORMING LEGAL TERMS

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Abstract

The article continues the series of studies dedicated to prefixes which express negation in English. The starting point is a cognitive grammar description of the prefix *mal-,* which combines with nouns, adjectives, and verbs, resulting into new nouns, adjectives, and verbs. The approach does not ignore the benefits of a lexico-semantic and functional analysis of the legal terms formed with this prefix, as occur in lexicographic and terminological definitions, along with other specialist sources. The paper also presents the historical evolution of the prefix *mal-,* which explains much of its current meanings and uses, as well as the rivalry between the adverseness-signalling prefixes *mal-* and *mis-*. Although the prefix *mal-* is not very productive in the spheres of law and administration, there are terms which have survived and are still in use. On the other hand, some terms occur in law-related texts, but are not recorded in legal dictionaries.

Key-words: *derivation, prefix* mal-*, legal terms, cognitive grammar description, lexico-semantic and functional analysis*

Résumé

Cet article continue une série d'études réservée aux préfixes qui expriment la négation en anglais. Le point de départ est constitué par une description du préfixe *mal-*, à la manière de la grammaire cognitive, combiné avec des noms, adjectifs et verbes pour en former de nouveaux noms, adjectifs et verbes. Notre approche met en valeur les avantages d'une analyse lexico-sémantique et fonctionnelle des termes juridiques formés avec ce préfixe, tels qu'ils apparaissent dans les définitions lexicographique et terminologiques, mais aussi dans d'autres travaux de spécialité. Notre travail présente aussi l'évolution historique du préfixe *mal-*, ce qui explique une grande partie de ses sens et utilisations actuels, ainsi que la rivalité entre les préfixes marquant l'adversité, *mal-* et *mis-*. Bien que le préfixe *mal-* ne soit pas très productif dans la sphère du droit et de l'administration, il y en a toujours des termes qui ont survécu et sont encore en usage. D'autre part, certains termes apparaissent dans des contextes juridiques, mais ils ne sont pas enregistrés par les dictionnaires juridiques.

Mots-clés: *dérivation, préfixe* mal-*, termes juridiques, grammaire cognitive, analyse lexico-sémantique et fonctionnelle*

1. Preliminary issues

This article continues the series of studies dedicated to affixes in English as far as the formation of legal terms is concerned, and more precisely to prefixes expressing negation, among which the prefix *mal-*. We will focus on a cognitive grammar description of this prefix, without ignoring the benefits of a lexico-semantic and functional analysis of the legal terms in which it occurs, thus considering lexicographic and terminological definitions, on the one hand, and other specialist sources, on the other hand.

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In cognitive grammar, a prefix is a bound morpheme which forms a new word when "added in front of a semantically-positive free morpheme"[1]. There is an assumption that linguistic items are polysemous, therefore prefixes have distinct, but related senses. The central, the most representative or salient instance of this network of senses is the prototype. Semantic extension fosters a derivation from the prototype, which leads to other senses forming the periphery. In this context, different environments in which a prefix occurs mean different meanings. The semantic information carried by prefixes is dynamic, the senses they express are not fixed, absolute. Converging prefixes are grouped in domains, such as oppositeness or adverseness, expressed by negative prefixes[2].

2. The prefix *mal-*, an adverseness-signalling prefix

The prefix *mal-* is used to describe bad, unpleasant things, lacking perfection or success[3]. According to another opinion, it designates the "inappropriate execution of the thing denoted by the root"[4], the pejorative nuances of this prefix often involving intentional cruelty and lack of kindness arising out of selfish interest.

2.1. Historical background of the prefix *mal-*

The prefix *mal-* is a Middle English prefix, borrowed from Anglo-French. The French *mal* (adv.) comes from Old French *mal* (adj., adv.) "evil, ill, wrong, wrongly" (9c.), from Latin *male* (adv.) "badly", or *malus* (adj.) "bad, evil" (fem. *mala*, neuter *malum*)[5].

It first occurred in French loans with a negative or disqualifying character, this latter feature being preserved in the English prefix, e.g. obs. *maladventure* c 1470 'lawless doings', *malversation* 1549 'corrupt behavior (especially as regards money) in an office of trust'. *Mal-* became productive in English in the 17th century, mainly enriching the spheres of law and administration, and denoting "improper, irregular behaviour, as *maladministration* 1644, *malgovernment* 1653, *malpractice* 1671, *malexecution* 1689, *malfeasance* (Law French) 1696, *malconduct* 1741. Obsolete are *mal-institution* (of the law) 1714, and *mal-publication* 1715"[6].

Most *mal-* derivatives are 19th century coinages[7], but medical *and physiological terms meaning 'defective, faulty' are quite common beginning with the 18th century. This is also the period when the spelling mal- becomes entrenched, after the Early Modern English spelling male-, probably under Latin influence*[8].

2.2. Rival prefixes: *mal-* and *mis-*

The meaning of *mal-* conveys the idea of "ill, evil, wrong, defective, improper"[9], while *mis-* suggests the meaning "badly, wrongly, improperly, amiss"[10]. In

[1]Hamawand, 2011: 69.
[2] Hamawand, 2011: 57, 81.
[3] *Collins Cobuild English Guides 2 Word Formation,* 1994: 104.
[4] Hamawand, 2011: 99.
[5] *Online Etymology Dictionary*, https://www.etymonline.com/word/mal-?ref=etymonline_crossreference, *Merriam-Webster Dictionary,* https://www.merriam-webster.com/dictionary/mal-.
[6] Marchand, 1969: 174
[7] *Merriam-Webster Dictionary,* https://www.merriam-webster.com/
[8] Marchand, 1969: 174-175.
[9] Marchand, 1969: 174.
[10] Marchand, 1969: 176.

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a cognitive approach, both the prefix *mal-* and its rival, the prefix *mis-,* denote treatment. If the former is the intentional facet, most often describing mental acts, treating an entity purposely, the latter represents the accidental facet focused on action and treating an entity unconsciously. For instance, *maladministration* is "the act of managing something inefficiently or dishonestly", while the noun *misconception* is "the act of understanding somebody's words or actions wrongly"[11]. Another opposition between the two refers to psychological damage, determined by *mis-,* and physical damage, caused by *mal-* [12]. Nouns formed with these two prefixes are sometimes derived from the same nominal base, e.g. *misadjustment* ('false adjustment') and *maladjustment* ('inappropriate adjustment')[13]. It is also interesting to mention that in some derivatives one prefix replaced the other. For instance, the form *misgovernment* came to be preferred to *malgovernment.*

2.3. The prefix *mal-* in forming legal terms

Mal- combines with nouns, adjectives, and verbs, resulting into new nouns, adjectives, and verbs[14]. On the other hand, M. Marchand considers that this prefix has never formed adjectives in English. For instance, *malorganized* (1862) is derived from *malorganization* 1841, the noun *malpractitioner* (1800), meaning 'corrupt practitioner of law or medicine' derives from *malpractice* (1671). The verb *maladminister* (1705) comes from *maladministration* (1644)[15]. The prefix still occurs in derivatives belonging to the spheres of law and administration. Here are several *mal-* terms that can be found in legal dictionaries:

maladministration poor management or regulation, especially in an official capacity. It is also termed *misadministration.*

"The Office of the Ombudsman was established under the Ombudsman Act, 1980. (...) The Office deals with specific complaints from the public about administrative injustice and *maladministration*."
(https://www.ombudsman.ie/en/Publications/Investigation-Reports/Health-Service-Executive/Report-to-the-Health-Service-Executive-concerning-complaints-against-the-Public-Health-Service/Maladministration.html)

malapportionment the improper or unconstitutional apportionment of a legislative district.

"Comparative studies of electoral institutions have largely neglected a fundamental characteristic of most of the world's electoral systems: *malapportionment*." (http://users.polisci.umn.edu/~dsamuels/BJPS2001.pdf)

malesworn/malsworn forsworn (the Old English verb forswerian meaning 'to swear falsely'). This term seems to occur only in dictionaries, it is no longer used in current legal English.

malconduct especially in the phrase *malconduct in office,* also termed *misconduct in office, misbehavior in office, misdemeanor in office, corruption in office, official corruption, official misconduct. "*A public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance"[16].

[11] Hamawand, 2011: 99.
[12] Hamawand, 2011: 117.
[13] Hamawand, 2011: 118.
[14] *Collins Cobuild English Guides 2 Word Formation,* 1994: 104.
[15] Marchand, 1969: 174.
[16] *Black's Law Dictionary,* 1999: 1014.

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"Given the constitutional dimension of these actions and the scale on which they occurred, it is the opinion of this court that they constitute election *malconduct*." (http://www.alaskacommons.com/2016/10/06/court-overturns-election-results-ben-nageak-declared-winner/)

malfeasance a wrongful or unlawful act; especially, wrongdoing or misconduct by a public official. The corresponding adjective is *malfeasant* and the agent noun is *malfeasor.* It is also termed *misfeasance* (in the narrower sense*,* a wrongfully performed lawful act, and in the broader sense, a transgression or trespass), in particular in the phrase *misfeasance in public office*, a tort involving the excessive, malicious, or negligent exercise of statutory powers by a public officer.

"Corporate *malfeasance* issues arise in various corporate decision making contexts and can often result in a breach of fiduciary duty.*"* (http://www.lawyer-chicago.com/litigation/business-litigation/breach-of-fiduciary-duty/corporate-malfeasance/)

malfunction especially in the phrase *malfunction theory.* It occurs in products-liability law and designates the principle enabling a products-liability plaintiff to prove that a product was defective due to its malfunctioning, instead of requiring the plaintiff to demonstrate the existence of a specific defect.

"*Malfunction* theory is a principle to prove that a product was defective by showing that the product malfunctions. This principle is mainly applied to product-liability cases." (https://definitions.uslegal.com/m/malfunction-theory/)

malpractice an instance of negligence or incompetence on the part of a professional. It is also referred to as *professional negligence.* In such a case, a plaintiff must also prove proximate cause and damages. The term *malpractice* usually occurs in such syntagms as *legal malpractice* (or *attorney malpractice,* a lawyer's failure to render professional services with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances)*, medical malpractice, malpractice insurance,* etc.

"Medical *malpractice* law makes it possible for patients to recover compensation from any harms that result from sub-standard treatment." (https://www.medicalnewstoday.com/articles/248175.php)

maltreatment bad treatment(especially improper treatment by a surgeon) resulting from ignorance, neglect, or willfulness.

"Child *maltreatment* includes all types of abuse and neglect of a child under the age of 18 by a parent, caregiver, or another person in a custodial role (e.g., clergy, coach, teacher)." (https://www.cdc.gov/violenceprevention/childmaltreatment/index.html)

There are also terms borrowed directly from French or Latin, or from Latin via French, that contain the prefix *mal-,* so the derivative is not created in English. Such is, for instance, the term *malversation,* i.e. *"*professional or official corruption", "a misbehaviour, especially by someone exercising an office", 1540s, < French *malversation*, from *malverser*, < Latin *male versari*, from *male* "wrongly, ill" +*versari "*to behave, conduct oneself"[17]. The term is also present in phrases like *personal*

[17] According to *Black's Law Dictionary,* 1999, and *Online Etymology Dictionary,* https://www.etymonline.com/word/malversation.

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malversation, meaning 'official misconduct against individuals' interests', or *public malversation*, the sense of which is 'official misconduct against public interest'. *Malversation* can be translated into Romanian as 'abuz în serviciu'[18].

"THE Sandiganbayan Third Division sentenced from two to seven years imprisonment former mayor and now Vice Mayor Dionisio Torres of Noveleta, Cavite, for *malversation* of public funds involving P1 million the municipality received as soft loan from the Office of the President in year 2002 during his term as local chief executive." (http://www.journal.com.ph/news/provincial/cavite-vice-mayor-gets-7-years-for-malversation)

Terms like *malexecution* (bad execution) or *malperformance* (faulty or inadequate performance) are not recorded in legal dictionaries, but one may come across them in law-related texts (mostly in translations or the English used in African countries, for instance), especially in such collocations as *malexecution/malperformance of a contract*:

"Typical problems that can arise in connection with informal modeling and representation of contracts and their execution include: (...) (iv) breach or *malexecution* of contract; (...)." (http://www.diku.dk/~simonsen/papers/c2.pdf)

"In the case of "obligatio non faciendi" ("negative obligation), *malperformance* takes place when the debtor performs an act which he or she may not perform." (https://www.lawteacher.net/free-law-essays/contract-law/the-law-of-contract-in-south-africa-contract-law-essay.php)

A search in the *Multilingual Thesaurus of the European Union* provides the following terms (or expressions containing terms) formed with the prefix *mal-* and pertaining to EU domains, either legal or non-legal: *advertising malpractice* (domain: business and competition, synonym: *misleading publicity*, both translated into Romanian as 'publicitate abuzivă'), *congenital malformation* (domain: health), *malnutrition* (domain: health, synonym: *undernutrition*)

3. Conclusions

The prefix *mal-* is not very productive in the legal and administrative domain. The number of derivatives containing this prefix is quite limited. However, there are terms which have survived and are still in use, such as *maladministration*, *malconduct*, *malfeasance*, *malpractice.* In some derivatives, *mal-* was replaced by its rival prefix *mis-,* e.g. *misgovernment* replaced *malgovernment.* On the other hand, one can find terms which occur in legal texts, but are not recorded in legal dictionaries, e.g. *malexecution* or *malperformance.*

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