THE PREFIX *COUNTER-* IN FORMING LEGAL TERMS

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Abstract

The article investigates the meanings and uses of the prefix *counter-* in the English language, with a focus on the legal terms it forms. This prefix combines with nouns and verbs so as to form new nouns and verbs which express the reduced or opposite effect of an action or situation. The semantic examination of the legal terms containing the prefix *counter-* starts from lexicographic and terminological definitions, the senses being illustrated in a functional, contextual analysis. The etymology of this prefix, as well as the evolution of meanings account for many of its current uses, especially in legal language. It is a quite productive word-forming element in the areas of law and administration, more precisely in such legal branches as: civil law, criminal law, procedural law, contracts, property law, succession, etc. *Counter-* terms reveal themselves as interdisciplinary terms, too.

Key-words: *derivation, prefix* counter-*, legal terms, lexico-semantic analysis, functional analysis*

Résumé

L'article examine les significations et les utilisations du préfixe *counter-* en anglais, en mettant l'accent sur les termes juridiques qu'il forme. Ce préfixe se combine avec des noms et des verbes afin de former de nouveaux noms et verbes qui expriment l'effet réduit ou opposé d'une action ou d'une situation. Les significations des termes juridiques contenant le préfixe *counter-* sont expliquées à partir des définitions lexicographiques et terminologiques et sont illustrées dans une analyse fonctionnelle, contextuelle. L'étymologie de ce préfixe, ainsi que l'évolution des significations, expliquent nombre de ses utilisations actuelles, notamment dans le langage juridique. C'est un élément assez productif dans le domaine du droit et de l'administration, notamment dans le droit civil, droit pénal, droit procédural, les contrats, le droit de la propriété, les successions, etc. Les termes formés avec *counter-* se révèlent comme termes interdisciplinaires, aussi.

Mots-clés: *dérivation, préfixe* counter-*, termes juridiques, analyse lexico-sémantique, analyse fonctionnelle*

0. The article makes an in-depth lexico-semantic analysis of the prefix *counter-* in the English language, while paying particular attention to the senses and uses of the legal terms formed with this prefix.

The semantic investigation of the legal terms containing the prefix *counter-* starts from lexicographic and terminological definitions and prefigures the uses which are illustrated in a functional analysis. Context plays an essential part in delimiting and understanding the word-forming potential of the prefix in the legal domain, in various branches of law and administration.

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The etymology of this prefix and the evolution of meanings account for many of its current uses, especially in legal language.

1. Evolution and meanings of the prefix *counter-*

1.1. Etymology

As a word-forming element, ***counter-,*** a doublet of ***contra-,*** started to be used around 1300, with the general sense "against, counter to, in opposition to", from Anglo-French *countre-*, French *contre-*, Latin *contra* "opposite, contrary to"[1].

The prefix was nominal and verbal in Old French (OF), but the Middle English loans from OF include nouns (*counterpoise*), adjectives (*counterfeit*), verbs (*countermand, counterplead, countervail*). It became productive in the second half of the 16th century, along with a number of military terms borrowed from French: *counter-gard* 1523, *counter-mure* 1524, *counter-mine* 1548, *counter-fort* 1590, *counter-battery* 1592, *counter-force* 1609, or terms from other areas, such as *counter-poison* 1578[2].

It is interesting to note that, historically, a *counter* (which is a noun) was an advocate or professional pleader; one who counts (i.e., orally recites) for a client. Counters had coalesced into an identifiable group practicing before the Common Bench by the beginning of the 13th century. They were the leaders of the medieval legal profession, and over time came to be known as *serjeants-at-law*[3].

1.2. Evolution of meanings

The prefix *counter-* combines with nouns and verbs in order to form new nouns and verbs, thus describing an action or activity which opposes another action or activity. Derivatives with *counter-* express the reduced or opposite effect of an action or situation. They are normally written with a hyphen, but some common words are spelt as one word. E.g.: *counter-accusation, counteract, counter-appeal, counterargument, counterattack, counterbalance, counter-bid, countercharge, counter-claim, counter-espionage, counterexample, counterfire, counterforce, counter-measure, counter-offensive, counterplan, counter-plot, counter-proposal, counteraction, counter-reform, counter-strategy, counterweight. Counterfoil, counterpart, counterpoint, countersign* are considered by some authors words with other meanings[4].

Two-word terminological units (without a hyphen) are also common, for instance *counter indemnity, counter guarantee* etc. Sometimes, the same terminological unit is spelt in different ways. For example, *counterdeed* is the form recorded in *Black's Law Dictionary,* whereas *The Law Dictionary, Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed,* mentions the form *counter-deed.*

At present, among the meanings of the prefix *counter-*, one can identify the following: "against" (*counterintuitive*), "in response to" (*counterattack*), "thwarting, nullifying" (*counterespionage*), "refuting, disproving" (*counterexample*), "in the opposite direction" (*countercurrent*), "offsetting" (*counterbalance; counterpart*), "occurring simultaneously" (*countermelody*)[5].

As for the historical background of this prefix, the first English coinages meant '-done in replication, as a rejoinder, in reciprocation of or return for a-', which became

[1] *Online Etymology Dictionary*, https://www.etymonline.com/word/counter-#etymonline_v_19158.
[2] Marchand, 1969, p. 151.
[3] Baker, 2007; *Black's Law Dictionary*, 1999.
[4] *Collins Cobuild English Guides 2 Word Formation,* 1994, p. 28.
[5] Based on *The Free Dictionary,* https://www.thefreedictionary.com/counter.

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the predominant meaning, based on the relation 'adjunct/primary'. E.g. *counterplea* 1565, *counterbond* 1594, *countercharge* 1611, *counterevidence* 1665, *counterspell* 1725, *counterdeed* 1727, *counterrevolution* 1793, *counterinfluence* 1834, *counterreformation* 1840, *countermove* 1858, *counterclaim* 1876, etc[6].

The meaning '-coming counter' is reflected in obsolete sea terms: *countersea, counterstream, countertide,* etc. In the locative sense 'opposite and parallel', *counter-* mainly occurs with terms of heraldry, but also with other words, such as *counterpoise* (ME) 'weight on the opposite side' (= OF *countrepeis*), *counterbalance* 1580 'opposite scale of a balance' (obs.), obs. *counterbill* 1598 'counterpart of a bill', *counterpart* 1617, obs. *counterbook* 1622, *counterfoil* 1706, *counterarch* 1726, *counterpole* 1839, *counterearth* 1857, etc. The meaning 'parallel, second' arises in technical words: obs. *counter-admiral* (F) 'rear-admiral', *countercipher, countercopy, counterdrain, counterseal, countertype*, etc. Combinations with proper nouns are rare: *counter-apostle, counter-prophet,* etc[7].

2. The prefix *counter-* in forming legal terms

The prefix *counter-* is quite productive in the legal domain. We have selected several such terms[8] in an attempt, on the one hand, to explain their legal meanings by presenting their lexicographic and terminological definitions and, on the other hand, to illustrate their uses by providing different contexts in which they occur more or less frequently, thus making a functional analysis of the terms in question.

counteraction a synonym of *counterclaim,* as a legal term.

Most often, its meaning is not legal, but it denotes the act of opposing and mitigating the effects by performing a contrary action:

"Deputy Permanent Representative said 'If South Korea does not respond to our ultimatum, our military *counteraction* will be inevitable and that *counteraction* will be very strong.' "
(https://www.thefreelibrary.com/DPRK+envoy+in+UN+blames+joint+US+and+South+Korea+military+operation-a0426253975, accessed 08.05.2019)

counteraffidavit an affidavit (voluntary declaration of facts) made to contradict and oppose another affidavit.

"If you're preparing the *affidavit* to be submitted as part of a court case, the heading at the top of the *affidavit* document should be the case caption, which identifies the case in question." (https://www.wikihow.com/Write-an-Affidavit, accessed 08.05.2019)

counterbond (or *counter bond*) a bond to indemnify a surety. It is considered an old practice word, referring to a bond protecting someone who has given bond for another person. *Counter security* seems to be more frequently used. Yet, these terms are not common.

"But the court said it is only mindful of Estradas right to due process so he could file a *counterbond* or a motion to quash the writ." (https://www.thefreedictionary.com/counterbond, accessed 08.05.2019)

[6] Marchand, 1969, p. 151.
[7] Idem, *ibidem,* p. 152.
[8] The definitions mainly rely on *Black's Law Dictionary*, 1999. See also *Bibliography.*

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counterclaim a claim for relief filed against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the claim of the plaintiff. Also termed *counteraction, countersuit, cross-demand* (US). *Counterclaim* is a verb, too, and the person who files a counterclaim is called a *counterclaimant.*

In English legal history, the Judicature Acts 1873-75 carried the reforms further. According to these reforms, a counterclaim could be included in a brief statement made by the defendant, after the plaintiff had begun with a statement of claim containing "the facts on which he relied and what relief he claimed"[9].

The term *counterclaim* occurs in such syntagms as: *compulsory counterclaim* (a counterclaim that must be asserted to be cognizable, usu. because it relates to the opposing party's claim and arises out of the same subject-matter), *permissive counterclaim* (a counterclaim that need not be asserted to be cognizable, usu. because it does not arise out of the same subject-matter as the opposing party's claim or involves third parties over which the court does not have jurisdiction).

A synonym is *countersuit.*

"Some consumers believe it is smart to file a *counterclaim* against the debt buyer." (https://www.alabamaconsumer.com/2012/01/why-you-should-not-file-a-counterclaim- to-a-debt-buyer-lawsuit/, accessed 12.05.2019)

counterdeed a secret deed, executed either before a notary or under a private seal, that voids, invalidates, or alters a public deed.

"Well, time went by, and I saw nothing of the *counter-deed,* which by rights should have been in my hands." (https://www.wordnik.com/words/counter-deed, accessed 12.05.2019)

counterfeisance is an archaic word which refers to the act of counterfeiting.

counterfeit to forge, copy, or imitate (something) without a right to do so and with the purpose of deceiving or defrauding; esp. to manufacture fake money (or other security) that might be used in place of the genuine article.

The Treason Act 1351 mentioned a lesser form of high treason which implied "counterfeiting the king's great or privy seal, or his money, or importing and uttering false money imitating the coin of the realm"[10]. In 1540, a Chancery official wrongly used the matrix of the true seal in order to counterfeit patents, a form of treason which was reduced to felony in the 19th century[11].

Counterfeit may be a verb, noun, or adjective.

The person who makes an unauthorized imitation of something, in particular of a document, another's signature, or currency, with the intent to deceive or defraud, is called a *counterfeiter.*

"This instrument was devised for the purpose of detecting *counterfeit* coin, especially guineas and half-guineas." (https://sentence.yourdictionary.com/counterfeit, accessed 22.05.2019)

counterfoil a detachable part of a writing on which the particulars of the main part are summarized.

[9] Baker, 2007, p. 91.
[10] Idem, *ibidem*, p. 528.
[11] Idem, *ibidem.*

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"In the face of this, Falder, do you still deny that you altered both cheque and *counterfoil*?" (JUSTICE (SECOND SERIES PLAYS)|JOHN GALSWORTHY, https://www.dictionary.com/browse/counterfoil, accessed 22.05.2019)

counterletter a document by which a record owner of real property acknowledges that another actually owns the property. It is a term pertaining to civil law systems and it is used when the party agrees to reconvey the property after a period of time.

"(...) a writing embodying the agreement *counterletter* can have no effects against third persons in good faith." (Louisiana Civil Code, https://www.merriam-webster.com/legal/counterletter, accessed 22.05.2019)

countermand an action that has the effect of voiding something previously issued; a revocation or change of orders. It is also a verb.

"A week or remorse nearly made Meg sick, and the discovery that John had *countermanded* the order for his new greatcoat reduced her to a state of despair which was pathetic to behold." (Louisa May Alcott, *Little Women,* https://alcott. thefreelibrary.com/Little-Women/2-5#countermanded, accessed 03.06.2019)

counteroffer an offer made in response to another, containing new terms or altering terms. In common law, it is an offeree's new offer that varies the terms of the original offer and therefore it is often considered as a rejection of this offer. The term is specific to contracts. It is also a verb and the person who makes a counteroffer is called a counterofferor.

"But interoperability—from ad-blocking to switching app stores—is a means by which customers can assay real *counteroffers*."(*The Economist*, "Regulating Big Tech makes them stronger, so they need competition instead," 6 June 2019 , https://www.economist.com/open-future/2019/06/06/regulating-big-tech-makes-them-stronger-so-they-need-competition-instead, accessed 03.06.2019)

counterpart 1. In conveyancing, a corresponding part of an instrument; 2. One of two or more copies or duplicates of a legal instrument.

"A signed original copy of any legal document is always an acceptable *counterpart*." (*Counterparts and Legally Binding Signatures,* https://www. thebalancesmb.com/counterparts-and-legally-binding-signatures-398169, accessed 03.06.2019)

counterpromise a promise made in exchange for another party's promise. A noun and a verb, too.

"Mutual promises constitute consideration. A single consideration may support several *counterpromises*." (https://definitions.uslegal.com/c/counterpromise/, accessed 03.06.2019)

counter-roll (hist.) a record kept by an officer as a check on another officer's record, especially the rolls maintained by a sheriff and a coroner.

countersign to write one's own name next to someone else's to verify the other signer's identity. Also a noun.

The noun is *countersignature* and refers to a signature that attests the authenticity of a document already signed by another person.

"The commanding officer (para 4 a) directs the use of the *countersign* and parole word." (*Countersigns and Parole Words,* https://www.armystudyguide. com/content/ army_board_study_guide_topics/guard_duty/countersigns-and-parole-w.shtml, accessed 03.06.2019)

countertrade a type of international barter in which purchases made by an importing nation are linked to offsetting purchases made by the exporting nation.

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"*Countertrade* is an important means of trade used by developing countries." (https://study.com/academy/lesson/countertrade-definition-types-examples.html, accessed 03.06.2019)

countervailable subsidy a foreign government's subsidy on the manufacture of goods exported to another country, therefore the importing country is entitled to impose a countervailing duty on the goods in case their import caused or threatens to cause material injury to national industry.

"For the purpose of a CVD investigation, a *countervailable subsidy* is financial assistance from foreign governments that benefits the production of goods from foreign companies and is limited to specific enterprises or industries, or is contingent either upon export performance or upon the use of domestic goods over imported goods." (https://www.commerce.gov/news/fact-sheets/2017/03/fact-sheet-commerce-finds-dumping-and-countervailable-subsidies-imports-1, accessed 03.06.2019)

countervailing duty a duty or surtax that protects national industry by offsetting subsidies granted by foreign governments to manufacturers of imported goods.

"The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping and *countervailing duty* orders and findings with December anniversary dates." (https://www.federalregister.gov/ documents/2019/03/14/2019-04750/initiation-of-antidumping-and-countervailing-duty-administrative-reviews, accessed 03.06.2019)

countervailing equity a contrary and balancing equity, equally deserving of consideration, where *equity* means a right, interest, or remedy recognizable by a court of equity.

counter will one of two separate wills in which two persons, usually a husband and wife, establish identical or similar testamentary provisions disposing of their estates in favour of each other. Also termed *mutual will, reciprocal will, double will, mutual testament,* terms which are preferred in practice. As a syntagm, *counter will* is rare.

"*Mutual wills* are usually made by two people pursuant to a separate agreement between them to make the wills and not to revoke them without the consent of the other." (https://singaporelegaladvice.com/law-articles/what-is-a-joint-will-mutual-will-and-mirror-will/, accessed 03.06.2019)

There are also other nouns that follow this pattern: *counter indemnity, counter guarantee* (with or without a hyphen), etc.

A search in the *Multilingual Thesaurus of the European Union – EU Vocabularies* provides the following terminological units formed with the prefix *counter-* and pertaining to EU domains, either legal or non-legal: *counterfeiting* (domain: law, subdomain: criminal law, economic offence), *countertrade* (domain: trade, Romanian translation 'schimb în compensație'), *countervailing duty* (or *anti-dumping duty*, domain: business and competition, subdomain: competition law, Romanian translation 'taxă antidumping'), *countervailing charge* (domain: trade, subdomain: tariff policy, Romanian translation 'taxă compensatorie'), *counter-terrorism* (domain: politics, subdomain: politics and public safety), *counter-claim* (domain: law, subdomain: civil law).

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3. Conclusions

The meanings of the prefix *counter-* have evolved in the English language to the extent that the derivatives formed with this prefix denote actions and activities opposing other actions and activities. Such derivatives are quite frequent in the legal and administrative domain or reveal themselves as interdisciplinary terms. Thus, there are terms that can be found in different branches of law: civil law (*counteraction, counterclaim*), procedural law (*affidavit*), criminal law (*counterfeit*), contracts (*counteroffer, counterpromise*), property law (*counterdeed, counterletter* - a civil law system term), succession (*counter will*). Others are in use in several domains, such as the terms *countertrade* (used in both law and business), *countervailing duty* (business and competition law), *countervailable subsidy* (business and administration), *counter-terrorism* (law, politics, public safety), etc.

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