Of course, indeed or clearly? The interactional potential of modal adverbs in legal genres

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The paper explores the rhetorical potential of modal adverbs and it brings an interactional dimension to the study of legal genres. In agreement with Traugott (2010), it follows the view that "very little language use is purely monologic" and that speakers and writers frequently position themselves towards alternative viewpoints, contesting or refuting counterarguments and expressing doubt. To this end, based on data from adversarial proceedings, US Supreme Court oral arguments and written opinions as well as Opinions of the Advocates General at the European Court of Justice, the study examines the functional spectrum of modal adverbs distinguished by Simon-Vandenbergen and Aijmer (2007). As revealed by the analysis, the interpersonal meanings conveyed by the adverbs found in the corpus include politeness and solidarity, on the one hand, and power and authority, on the other.

Keywords: epistemic stance, heteroglossia, legal discourse, legal genres, modal adverbs, power relations

1. Introduction

The dialogic orientation of *any* discourse was duly noted already by Bakhtin (1981), introducing the notion of heteroglossia in the context of literary genres. Similar voices can also be found in the linguistics literature, with scholars claiming that "very little language use is purely monologic" (Traugott 2010: 15) or that the expression of speakers' attitudes is "pervasive in all uses of language" (Stubbs 1996: 202). Likewise, in this paper I demonstrate that legal discourse reveals the influence of alternative viewpoints and that as such, it can be approached as dialogic, regardless of whether it is spoken or written. Towards this end, I explore the recruitment of modal adverbs of certainty in the legal setting, focusing, in particular, on their potential to negotiate personal stances and to foreground and background competing arguments. In the analysis, I draw on the dynamic approach to modal adverbs proposed by Simon-Vandenbergen and Aijmer (2007), stressing the role of these adverbs in co-constructing interpersonal meanings, rather than merely expressing varying degrees of certainty and doubt.

2. Research focus, methodology and data

As stated above, this paper sets out to examine the interactional potential of modal adverbs of certainty, with the aim of establishing the most frequent co-occurrence patterns as well as discourse-pragmatic functions of the adverbs under scrutiny. More specifically, the study focuses on the choice and distribution of modal adverbs across selected legal genres, both spoken and written, with a view to demonstrating how their use reflects power relations as well as the type of social activity and the social roles of the discourse participants. It also offers a closer look at the functional spectrum of the items analysed, hoping to reveal pragmatic meanings which are salient in the legal setting.

In examining the deployment of the adverbs in the data, I follow Simon-Vandenbergen and Aijmer's (2007) treatment of modal adverbs of certainty. Thus, in line with the linguists' dynamic approach to modal adverbs, I adopt the assumption that these adverbs are interactive devices which are used predominantly to convey stance and that they should therefore be interpreted in the context of other utterances, whether prior or anticipated (i.e. real or imagined). Along the same lines, applying the notion of Bakhtinian heteroglossia, I subscribe to the view that all utterances are dialogised, that is that they interact with one another as well as with other opinions, points of view or value judgments (Bakhtin 1981: 279).

For this study, I have compiled a 2,265,000-word corpus composed of four subcorpora, i.e.:

- Transcripts from 32 days of court proceedings in the Irving v. Lipstadt trial (app. 1.5m words);
- Transcripts from 30 oral arguments heard by the Supreme Court of the United States of America (app. 405,000 words);
- 30 dissenting opinions written by the justices of the Supreme Court of the United States of America (app. 120,000 words);
- 30 Opinions of the Advocates General at the European Court of Justice (app. 240,000 words).

To balance spoken and written data, the first two subcorpora comprise spoken genres, whereas the latter two represent written legal discourse. It should also be noted that the Irving v. Lipstadt trial data exemplify adversarial (accusatorial) proceedings, during which the parties' main goal is to furnish evidence in support of their position and, ultimately, to affect the judge's perception of the case. In order to do so, they resort to coercive questioning in an attempt to discredit, or even ridicule, the testimony provided by the opposing party. Oral arguments, on the other hand, are delivered by attorneys, who have 30 minutes each to argue their case before the Supreme Court of the United States of America, and they can be interrupted by questions from the justices. Though it is not always the case, discussions during oral arguments can also change the justices' final ruling. As for the written genres, I have selected dissenting opinions written by the justices of the Supreme Court of the United States of America, since they are written by individual justices and as such, they contain numerous stance markers, with modal adverbs being no exception. Similarly, opinions written by the Advocates General and intended to convincingly justify the Court's decision were chosen due to their persuasive potential.¹

As for the method used, at the outset of the investigation, the most frequent modal adverbs of certainty in each subcategory were identified in the respective subcorpora. Though acknowledging the fact that functions can overlap and that therefore no categorization can ever be absolute, for the purposes of the study I adopted, after Simon-Vandenbergen and Aijmer (2007), the rough division into epistemic, evidential, expectation and speech act adverbs and so during the analysis the adverbs were grouped accordingly. It should also be mentioned that the frequency count was a starting point for the qualitatively oriented reading of the data and that its main goal was to identify items worth looking at in greater detail during the subsequent stage of the study.

3. Findings

3.1 Frequency of modal adverbs in spoken and written genres

As suggested above, combining quantitative and qualitative approaches, the study has revealed interesting correlations between the choice of adverbs and selected legal genres. Accordingly, Table 1 shows the most frequent modal adverbs in each subcategory (epistemic, evidential, expectation and speech act).² For reasons of space, other modal adverbs, though also attested by the data, have been excluded from the analysis. To ensure consistency and comparability, and given the varied sizes of the subcorpora, the raw scores have been normalised to reflect the number of occurrences per million words.

	SPOKEN GENRES			WRITTEN GENRES		
	Adversarial Oral proceedings Arguments			Dissenting opinions		
	Raw (Normalised)	Raw (Normalised)	Spoken Total (Normalised)	Raw (Normalised)	Raw (Normalised)	Written Total (Normalised)
Epistemic						
certainly	677 (451.33)	150 (370.37)	(821.70)	20 (166.66)	6 (25)	(191,66)
no doubt	200 (133.33)	5 (12.34)	(145.67)	3 (25)	6 (25)	(50)
indeed	495 (330)	28 (69.13)	(399.13)	54 (450)	116 (483.33)	(933.33)
Evidential						
obviously	440 (293.33)	46 (113.58)	(406.91)	6 (50)	11 (45.83)	(95.83)
clearly	443 (295.33)	70 (170.83)	(466.16)	29 (241.66)	54 (225)	(466.66)
plainly	45 (30)	4 (9.87)	(39.87)	7 (58.33)	5 (20.83)	(79.16)
Expectation						
of course	1254 (836)	113 (279.01)	(1133.01)	30 (250)	11 (45.83)	(295.83)
necessarily	38 (25.33)	19 (46.91)	(72.24)	21 (175)	12 (50)	(225)
not necessarily	103 (68.66)	23 (56.79)	(125.45)	9 (75)	11 (45.83)	(120.83)
Speech act						
admittedly	23 (15.33)	2 (4.93)	(20.26)	0 (0)	6 (25)	(25)
arguably	4 (2.66)	12 (29.62)	(32,28)	1 (8.33)	7 (29.16)	(37.49)
unquestionably	5 (3.33)	5 (12.34)	(15.67)	1 (8.33)	2 (8.33)	(16.66)
TOTAL			(3,709.28)			(2,554.11)

Table 1 Frequency of modal adverbs in selected legal genres

As corroborated by the data, both in spoken and written genres, the category of epistemic adverbs proved to be the most visible, with a remarkably low frequency of speech act adverbs in all the contexts analysed. With regard to individual adverbs, *of course* (with 1133.01 occurrences per million words) was by far the most common item in the spoken genres, while *indeed* (attested by as many as 933.33 occurrences per million words) emerged as the preferred choice in the written genres. On the other hand, predictably, the incidence of *of course* in written text was low, just as was the frequency of *indeed* in spoken data. Further, *certainly* ranked as the second most common adverb (821.70 attestations per million words) in the spoken data, followed by *clearly* (466.16 tokens) and *obviously* (406.91 tokens). As for

the written subcorpus, apart from the most common *indeed*, which plainly outnumbered all the other adverbs, *clearly* (466.66 tokens) and *of course* (295.83 tokens) resurfaced as relatively frequent choices too. Somewhat surprisingly, in the case of *clearly*, the normalized frequencies in the spoken and written genres were almost identical, even though previous research suggests that this adverb is more frequent in spoken interactions than in written genres (cf. Simon-Vandenbergen and Aijmer 2007: 201-202).

To provide a broader picture and to put the findings in perspective, Tables 2 and 3 below juxtapose the relative frequencies of selected modal adverbs in legal and non-legal spoken and written genres, respectively. While, obviously, no generalisations can be made at this point, certain trends can be observed and interpretations attempted. Firstly, it can be noticed that of course, which is by far the most frequent adverb in the data, is preferred in highly competitive and argumentative contexts such as adversarial proceedings (836 tokens) or parliamentary debates (1100 tokens). However, since no contextual data are provided, it is not possible to determine whether the adverb is used predominantly to convey solidarity or to signal superiority (cf. Sections 3.2.1 and 3.2.2 below). On the other hand, in the case of social letters, where of course is also quite frequent (667 tokens), we may speculate that this adverb is, in all probability, solidarity-oriented and that as such, it is used to create familiarity rather than to increase the distance between the writer and the recipient.³ Frequent in parliamentary discourse (850 tokens), indeed, in turn, emerges as an important element of academic writing (600 tokens) too, where, somewhat unexpectedly, it is more common than in different types of legal writing (with 450 and 483.33 attestations, respectively). Finally, also worthy of note is the distribution of *clearly*, which, as the data suggest, is at least twice as frequent in spoken and written legal genres as it is in non-legal settings, where it is used relatively infrequently. Thus, the usage of this adverb might be described as typical of legalese.

	SPOKEN LEGAL GENRES		SPOKEN NON-LEGAL GENRES		
	Adversarial proceedings	Oral arguments	NON-LEGA Parliamentary debates	Direct conversations	Unscripted speeches
	per million words	per million words	per million words	per million words	per million words
certainly	451.33	370.37	50	350	333
no doubt	133.33	12.34	250	22	83
indeed	330	69.13	850	61	233
obviously	293.33	113.58	250	428	467
clearly	295.33	170.83	150	6	150
of course	836	279.01	1100	422	108

Table 2 Frequency of selected modal adverbs in spoken genres⁴

	WRITTEN LEGAL GENRES		WRI' NON-LEG		
	Dissenting opinions	Opinions of Advocates General	Humanities academic writing	Social letters	Business letters
	per million words	per million words	per million words	per million words	per million words
certainly	166.66	25	100	67	133
no doubt	25	25	150	233	133
indeed	450	483.33	600	67	167
obviously	50	45.83		167	33
clearly	241.66	225	100	67	33
of course	250	45.83	450	667	450

Table 3 Frequency of selected modal adverbs in written genres⁵

3.2 Interpersonal functions of modal adverbs in legal genres

Having looked at the frequencies of selected modal adverbs across various genres and contexts, in the remainder of the article I will turn my attention to the interpersonal functions of these adverbs, described, accordingly, as: (1) politeness and solidarity and (2) power and authority.

3.2.1 *Politeness and solidarity*

Besides signalling various degrees of certainty and doubt, modal adverbs index politeness and solidarity too. As borne out by the present set of data, they play a role in creating a sense of togetherness also in the legal context, even though in this setting it seems less obvious (or expected) than their role in asserting power and authority.

To start with, a noteworthy pattern recognised in the data was that involving the adverbs *indeed*, *of course*, and, to a lesser extent, *certainly* and *obviously*. More often than not, the first two of them appeared in sequences of moves produced by speakers or writers to balance the arguments, i.e. to background opposing viewpoints and to foreground their own propositions. Thus, stressing their partial agreement or solidarity with the opponent, the arguers realised tripartite Concessive schemata in the sense of Couper-Kuhlen and Thompson (2000) and Barth-Weingarten (2003), including cardinal or reversed combinations of claims, acknowledgments (often co-occurring with *indeed* or *of course*) and counterclaims (typically signalled with contrastive markers such as *but* or *however*).

That said, the examples in (1), (2) and (3) below illustrate the ways in which the adverbs are used for alignment and for stressing common ground with the recipient, rather than for disalignment with opposing arguments. Accordingly, representing the claim-acknowledgment-counterclaim pattern in written data, (1) can be interpreted as an attempt to make a minor concession (*while it does indeed interfere with that right*)⁶ in order to pave the way for the General Advocate's preferred argument (strengthened with the authority-oriented statement *is in my view clearly permitted*) that the German court's interference was in certain circumstances justified.

(1) **[X]** First, Fujitsu and Hewlett Packard argue that the Bundesgerichtshof's interpretation interferes with the right to property guaranteed by Article 17 of the Charter of Fundamental Rights, (61) in that it prevents rightholders from granting free licences to copy their works.

[X'] However, while it does indeed interfere with that right,

[Y] <u>such interference is in my view clearly permitted</u> by the second sentence of Article 17(1) of the Charter, in so far as it is 'in the public interest and in the cases and under the conditions provided for by law' and fair compensation is paid. [W_O_6]

Similarly to *indeed* above, in (2), illustrating the reversed counterclaim- acknowledgment-return to the counterclaim pattern in written material, *of course* is recruited to acknowledge the justifiability of an alternative legal interpretation (*though*, *of course*, *the former interpretation is subsumed within the latter*). In this instance, however, the acknowledgment is postposed, i.e. it comes after the writer's preferred argument (*I reached the view that ...*) introduced at the beginning of the argumentative sequence. What is more, in this case, *of course* is used in the acknowledgment (X') which is not the main point that the arguer is trying to make. Instead, the strategy is meant to introduce a reply to an alternative (or opposing) standpoint, which, though not expressly stated, is built into the argumentation, while the main weight of the argument lies in the counterclaim. In this way, *of course* operates as an "authoritative backgrounding device" used to play down an alternative standpoint (cf. Simon-Vandenbergen and Aijmer 2007: 221).

(2) [Y-] In my Opinion in Bolbol (at points 77 to 84 and 100 to 102), <u>I reached the view</u> that the latter interpretation was correct, and I am still of that view [X'] – <u>though</u>, of course, the former interpretation is subsumed within the latter, [-Y] which will include any event rendering UNRWA incapable of providing assistance. [W_O_12]

In (3), in turn, extracted from the spoken portion of the corpus, the typical Yes, but schema is signalled with certainly in the acknowledgment and the contrastive but in the rebuttal. In this instance, arguing his case before Supreme Court justices, the attorney responds to the justice's proposition that same-sex parents should enjoy full recognition and full status. He begins his argument saying politely: Your Honor, I certainly would not dispute the importance of that consideration only to continue with a rebuttal to the effect that in the context of the matter in hand there simply is no data. Thus, mitigating the possible negative effect that his disagreement might have, the attorney engages in a polite dialogue with the justice, while managing to advance his preferred argument which differs from that put forward by his interlocutor.

(3) [X] JUSTICE KENNEDY: <u>I -- I think there's – there's substantial -- that there's substance to the point</u> that sociological information is new. We have five years of information to weigh against 2,000 years of history or more. On the other hand, there is an immediate legal injury or legal -- what could be a legal injury,

and that's the voice of these children. There are some 40,000 children in California, according to the Red Brief, that live with same-sex parents, and they want their parents to have full recognition and full status. The voice of those children is important in this case, don't you think?

[X'] MR. COOPER: <u>Your Honor, I certainly would not dispute</u> the importance of that consideration. That consideration especially in the political process where this issue is being debated and will continue to be debated, certainly, in California. It's being debated elsewhere.

[Y] <u>But on that -- on that specific question, Your Honor, there -- there simply is</u> no data. [S_OA_18]

Apart from the cases of *indeed*, *of course* and *certainly* discussed above, *obviously* and *evidently* also swam into view during the analysis. Although the two adverbs literally mark the source of certainty and evidence, they have also developed the meanings of 'apparently' and 'as evidence seems to suggest', as duly noted by Simon-Vandenbergen and Aijmer (2007: 316). For instance in (4), *obviously*, which was far more frequent than *evidently*, operates as a mitigator, lessening the forcefulness of the claim advanced by the arguer, otherwise strengthened by the repeated use of *certainly*.

(4) MS. KAPLAN: <u>That would be certainly</u> a different case. It'd be more similar to the case I think you heard yesterday than the case that we have today. <u>We certainly believe</u> that sexual-orientation discrimination should get heightened scrutiny. If it doesn't get heightened scrutiny, **obviously**, it'd be rational basis, and the question would be what the State interests were in not allowing couples, for example, in North Carolina who are gay to get married. [S_OA_23]

The adverb *evidently*, on the other hand, which might well be expected among the most frequent modal adverbs in judicial reasoning based on logic and tangible evidence, was used rather infrequently.⁸ This seems to corroborate the assertion that the adverb is being used to convey a lesser degree of certainty and tentativeness rather than to refer to solid evidence, as illustrated by an excerpt from the closing statement of the claimant in (5).

(5) The Goebbels diary is sometimes a very deceitful document; it must be recognized as such and treated very gingerly indeed. It is the diary of a liar, a propagandist. The fact that it was **evidently** written up not one, but two or even three days later, after the Kristallnacht episode, calls for additional caution in relying on it for chronology and content. [S_Ad_Day_10]

So, on the whole, it can be concluded that modal adverbs function as markers of alignment and solidarity, intended to acknowledge the opponent's arguments instead of bluntly discarding them, on the one hand, and as "precursors of disagreement," enabling an analyst to predict the occurrence of a counterclaim, on the other.

3.2.2 *Power and authority*

As shown in the preceding sections of the article, modal adverbs serve to mark solidarity and politeness; however, since they are polysemous, they can be employed to signal power and superiority too. Seen from this perspective, (6) and (7) illustrate how *of course*, shown to play

a role in stressing familiarity in (2), can be useful in asserting superiority. Here, in the context of an antagonistic and competitive cross-examination, the claimant condescendingly questions the figures related to the quantity of Zyklon-B used in the Auschwitz concentration camp. The mocking effect of *of course* is strengthened by the combination with question tags that clearly point to the speaker's intention to claim superior knowledge and to challenge the credibility of the witness and their testimony (*you have, of course, read, have you not?; if you had assumed three, of course, you would have come, would you not?*). Unlike the Concessive use of *of course* in (2) stressing solidarity with the addressee, *of course* as it stands in (6) and (7), conversely, has a "put-down" effect, with the speaker claiming authority and undisputed knowledge.

- (6) MR IRVING: My first question is <u>you have</u>, of course, <u>read</u>, <u>have you not</u>, the testimony and supporting evidence in the trial of Bruno Tesch whose company was the main distributor East of the Elf for Zyklon-B [S_Ad_Day_10]
- (7) A. [Professor Robert Jan van Pelt] Nine tonnes can be justified, but it is a very high number because I am assuming two complete delousings of the camp, of all the buildings in the camp, per year.

 Q. [Mr Irving] If you had assumed three, of course, you would have come over 12 tonnes, would you not? [S_Ad_Day_10]

Just as *of course* in the examples cited above, the adverb *certainly* can be used to mark power and superiority as well. The example in (8), for instance, shows how Justice Scalia, trying not to make absolute assessments with regard to same-sex marriage, firmly states that *it is certainly true that* -- *that there's no scientific answer to that question at this point in time*. Clearly, in the sentence analysed, *certainly* is meant to underscore the justice's authority, thus increasing the pragmatic force of his argument.

(8) JUSTICE SCALIA: I -- it's true, but irrelevant. They're arguing for a nationwide rule which applies to States other than California, that every State must allow marriage by same-sex couples. And so even though States that believe it is harmful -- and I take no position on whether it's harmful or not, but it is certainly true that -- that there's no scientific answer to that question at this point in time. [S OA 18]

By the same token, the *A and indeed B* pattern displayed in (9), adds more emphasis and conveys authority. It is also worthwhile pointing out that similarly to political discourse, the *and indeed* sequence is employed to enhance the rhetorical effect of the argument in the context of legal genres too. To achieve this goal, a less forceful assertion *taxable persons* were <u>entitled</u> ... to allocate capital goods is followed not only by the emphatic <u>indeed</u>, but also by the stronger claim that they were <u>required</u> to allocate capital goods.

(9) I would point out, however, that the main proceedings concern the acquisition and installation of solar panels in 2005, at which time <u>taxable persons were entitled (and indeed required)</u> to allocate capital goods as between the private and business spheres. [W_O_1]

Finally, in the following two excerpts, conviction and authority are successfully conveyed thanks to the adverbs *clearly* and *necessarily*. As can be seen, sentence-initial *clearly* in (10) stresses the status of the writer and the validity of their argument, whereas *necessarily* in (11) underlines external circumstances and the "expectedness" of a certain state of affairs, that is, in this context, the need to base one's argument on specific legal rules and instruments.

- (10) Clearly, to the extent that he acts as a taxable person, Mr Fuchs is subject to all the rules of EU and national law which govern the rights and obligations of taxable persons. [W_O_1]
- (11) Such an assessment is necessarily based on the rules contained in Title II of Regulation No 1408/71 which concern the determination of the legislation applicable. [W_O_21]

4. Conclusions

My goal in this paper has been to demonstrate that modal adverbs of certainty perform a number of interpersonal functions, with politeness and solidarity at one end of the spectrum (e.g. note the use of *of course* or *certainly*) and power and authority, at the other (e.g. note the use of *indeed* or *clearly*). As has been shown, it is thorough the use of modal adverbs that legal discourse participants, in a bid to play down alternative standpoints, make their voices sound more resoundingly and enact their social roles, be it that of attorney, claimant or justice. In consequence, legal communication bears traces of alternative voices, real or anticipated, which are built into it, successfully increasing the rhetorical effect of counterarguments. Still, I do not claim here that the interactional approach is the only angle from which to explore the role of modal adverbs in legal genres. What I have been trying to show, however, is that they contribute to a great extent to the dialogic nature of legal discourse, regardless of whether it is represented by highly antagonistic and dynamic courtroom interaction or carefully edited briefs and opinions drafted by skilful attorneys or erudite jurists.

Notes

¹ An interesting discussion on the persuasive strategies employed by the Advocates General in the Opinions can be found in Salmi-Tolonen (2005).

² It should be clarified at this point that the adverbs which are most frequent in the respective categories are not necessarily the most frequent ones in the total count.

³ As Simon-Vandenbergen and Aijmer (2007: 210) rightly point out, social letters resemble spoken dialogue and are therefore more likely to have the same solidarity-oriented strategies as spoken genres.

⁴ I quote reference data on the frequency of selected modal adverbs in spoken genres after Simon-Vandenbergen and Aijmer (2007: 201-202).

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⁵ I quote reference data on the frequency of selected modal adverbs in written genres after Simon-Vandenbergen and Aijmer (2007: 202).

⁶ In the acknowledging move, *indeed* frequently co-occurs with the emphatic *do* (cf. Szczyrbak 2014).

⁷ Remarkably, the greatest accumulation of *evidently* was found in the transcript from the last day of the libel trial, documenting the closing statements of the litigant parties, unlike the cross-examination data, where the adverb was used rather sparingly.

⁸ Cf. Simon-Vandenbergen and Aijmer (2007: 209).

⁹ The "put-down" effect of *of course* has been discussed in Simon-Vandenbergen, White and Aijmer (2007).

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