

# Epistemic Modality Markers in European and American Law Journals

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## *Abstract*

Over the last few years the interest of scholars working in the field of academic discourse has been directed towards language variation, and academic writing is no longer considered as a consistent and homogeneous form of discourse. The importance traditionally given to the consensual and static aspects of disciplinary communication has been coupled with the emphasis placed upon the analysis not only of interactions, practices and activities typical of various discourse communities, but also new terminologies and instances of interdiscursivity in genres as the results of the development of new communication media. The findings of the linguistic analysis conducted on the variation in the use of epistemic modality markers in the online research articles included in the corpus can be used to understand the socio-cultural implications of the virtual encounters of local and global practices and perspectives.

*Keywords:* academic writing, law journals, epistemic modality, argumentative strategies.

## **1. Introduction**

In the last few decades the attention of scholars working in the field of social sciences has been directed towards language variation, and discourse analysis has increasingly evolved as a valuable way of understanding the use of language in a variety of academic, institutional and professional settings (Bamford and Bondi 2005; Del Lungo Camiciotti and Bonelli 2004; Hyland 2004; 2005). According to the sociolinguist approach, genres become dynamically rhetorical structures that can be manoeuvred according to the discipline's norms, values and ideology, both historically and incrementally changing as disciplinary knowledge and genres required and created by discourse communities evolve (Salager-Meyer 1994; Hyland 1998).

This is particularly evident in the legal field, where procedural and social competence play a key role in the acquisition and strategic deployment of generic (i.e. genre-related) conventions as academic writers participate in their profession's knowledge-producing activities (Hyland and Bondi 2006; Hyland 2009).

The aim of this paper is to explore the use of epistemic modality markers in a number of European and American legal journals dealing with constitutional law and Public Law & Administration, written in English and published between the 1990s and 2000s. Emphasis will be given to the emerging constitution of the European Union. Starting from the generally agreed assumption that epistemic assessment of the information conveyed is a significant aspect of academic discourse (Nuyts 2001; Varttala 2001; Vold 2006), the present work focuses on differences/similarities in the use of the most frequently-occurring markers in the texts included in the corpus. The author's intent is to understand the socio-cultural implications in order to uncover the rhetorical organisation and argumentative strategies deployed by European and American disciplinary actors in response to the changing community's norms and ideology.

## **2. Materials and methods**

The material for this study comes from a corpus of eighty European academic research articles (forty articles belong to European journals, and forty to American journals) dating from 1990-2010 and comprising of 2,400,176 words. More specifically, all articles are taken from prestigious refereed journals.

The European sub-corpus consists of 10 articles from the *Oxford Journal of Legal Studies* (OJLS – 276,543 words), 10 articles from the *Cambridge Law Journal* (CLJ – 219,010 words), 10 articles from the *European Law Journal* (ELJ – 132,215 words) and 10 articles from the *Common Market Law Review* (CMLR – 202,506 words). All the European journals deal with matters relating to law, legal history and philosophy, with an emphasis on broad issues such as comparative and international law and the law of the European Community.

The American sub-corpus consists of 10 articles from *Columbia Journal of European Law* (CJEL – 445,504 words), 10 articles

from *Boston College International and Comparative Law Review* (BCI&CLR – 322,830 words), 10 articles from *Indiana International and Comparative Law Review* (II&CLR – 528,380 words), and 10 from *Tulane European and Civil Law Forum* (TE&CLF – 273,188 words). All the American journals deal with a variety of international and comparative law issues such as human rights, cross-border environmental disputes, international investment, and the evolution of the European Union that is considered of vital concern to U.S. practitioners advising clients who conduct business in Europe, and to the academic community, which is closely monitoring these developments.

Although *CMLR* (in the European sub-corpus) and *CJEL* (in the American sub-corpus) are primarily concerned with economic issues, all journals in the two sub-corpora have been selected on the basis of their subject, that is the emerging Constitution of the European Community and the European Union. The imbalance between sub-corpora sizes is due to the journals' policies and the corresponding stylistic preferences. Therefore, our analysis will be based mainly on relative frequencies rather than absolute numbers.

In the present study markers have been coded according to their meaning in the specific/particular context(s). Furthermore, since the present work is concerned with the hedging effect of epistemic modality, expressions of certainty have not been included ("in the light of such experience rules on the specific cases *certainly appear* desirable" *CMLR-2000*), whereas modalization of reporting frameworks has been included as well as passive forms ("cooperation *may be further promoted*" *CJEL-2008*). The next paragraph illustrates the research findings and explores the semantic properties and communicative functions that the epistemic markers serve in the selected papers.

### 3. Findings

Table 1 and Table 2 list the frequency of the selected markers in normalised terms (calculated per 1000 words) produced by using *Wordsmith Tools* (Scott 2004) as they occur in the European sub-corpus (*CMLR*, *OJLS*, *ELJ*, *CLJ*) and the American sub-corpus (*CJEL*, *II&CLR*, *BCI&CLR*, *TE&CLF*) respectively.

TABLE 1

Frequency of epistemic modality markers in the European sub-corpus.

Marker	CMLR <i>ep, occ 1000 w</i>	OJLS <i>ep, occ 1000 w</i>	ELJ <i>ep, occ 1000 w</i>	CLJ <i>ep, occ 1000 w</i>
<i>may</i>	22,04 (444)	7,54 (203)	13,66 (193)	6,55 (178)
<i>could</i>	11,03 (218)	3,81 (107)	6,2 (80)	4,87 (103)
<i>might</i>	3,28 (78)	2,3 (78)	6,64 (86)	2,54 (54)
<i>possible</i>	4,26 (82)	1,07 (29)	6,11 (76)	1,52 (36)
<i>appear</i>	0,57 (13)	0,99 (14)	1 (12)	0,53 (15)
<i>perhaps</i>	1,5 (40)	0,44 (11)	1,06 (13)	0,91 (28)
<i>probably</i>	1,05 (19)	0,44 (11)	0,67 (8)	0,53 (17)
<i>seem</i>	2,54 (42)	0,41 (10)	1,14 (14)	0,39 (12)
<i>assume</i>	0,22 (5)	0,24 (8)	0,57 (8)	0,03 (1)
<i>indicate</i>	0,12 (3)	0,15 (5)	0,59 (7)	0,08 (1)

TABLE 2

Frequency of epistemic modality markers in the American sub-corpus

Marker	CJEL <i>ep, occ 1000 w</i>	II&CLR <i>ep, occ 1000 w</i>	BCI&CLR <i>ep, occ 1000 w</i>	TE&CLF <i>ep, occ 1000 w</i>
<i>may</i>	8,86 (423)	6,91 (379)	8,65 (246)	4,89 (151)
<i>could</i>	3,43 (175)	3,91 (191)	3,24 (107)	5,1 (175)
<i>might</i>	1,67 (89)	1,49 (85)	0,86 (32)	2,19 (57)
<i>possible</i>	1,7 (83)	1,78 (75)	1,15 (43)	1,95 (57)
<i>appear</i>	0,3 (17)	0,41 (28)	0,45 (15)	0,65 (17)
<i>perhaps</i>	0,61 (36)	0,26 (11)	0,12 (4)	1,05 (24)
<i>probably</i>	0,35 (13)	0,14 (6)	0,26 (11)	0,31 (9)
<i>seem</i>	0,63 (27)	0,28 (17)	0,33 (11)	0,83 (23)
<i>assume</i>	0,6 (19)	0,1 (6)	—	0,12 (3)
<i>indicate</i>	0,25 (7)	0,18 (10)	—	0,23 (9)

As the analysis of the research articles included in our corpus reveals, in addition to the modal verbs *may* and *might*, lexical items were the most frequent markers of epistemic modality in both sub-corpora.

Overall, *may* was the most frequent, followed by *could*, *appear*, *seem*, *perhaps*, *assume*, and *indicate*. *Possible* and *probably* were also included because they are often considered to be typical markers of epistemic modality. More specifically, *may*, *might*, *could*, *possible* refer to the notion of possibility and the eventuality they express

can be understood as an objective rather than a personal judgement of the truth value of the information expressed by the proposition (Salager-Mayer 1994; Hyland 2004; 2005; 2006; Varttala 2001; Nuyts 2001; Vold 2006a; 2006b). *Assume, seem, appear* are quite subjective verbs “in the sense that they, by their semantics, presuppose a modalizing agent” (Vold 2006b: 234). Furthermore, they may be used to express conclusions in a cautious manner (Vold 2006a; 2006b), but *seem* and *appear* are also semi-auxiliaries which involve a personal evaluation although the source of the evaluation in most cases remains implicit (Vold 2006a; 2006b; Varttala; 2001).

The relatively high occurrence of *may, might, could, possible* is all the more evident in the parts of the research articles where authors:

- talk about the possible limitations of the study. In this case the signal of a limitation is very often followed by a proposition introduced by a contrastive marker such as *nevertheless, nonetheless, however, while, but*, thus reducing the significance and potential consequences of such a limitation, by negotiating and grounding the topic under discussion:

(1) *However, deliberative theory does not develop further which institutional arrangement might satisfy this condition<sup>1</sup>. (ELJ-2006)*

(2) Thus, *while* federalists *might condemn* governments for opposing the construction of a full political union, realists will argue that this is to be expected: states remain the ‘real’ actors which operate the international institutions that they establish. (CJEL-2003)

- provide possible explanations. They serve as explanations for the study in order to foreground and negotiate the topic under discussion with potential readers. *May, might, could* and *perhaps* are the markers typically used for these purposes:

(3) If one tries to concretise the legitimacy idea, one can turn to two sometimes competing and sometimes complementary visions which *could be identified* and offering ‘meaning’ to the enterprise of the Treaty of Amsterdam. One is the so-called ‘European Social Model’ which the Commission has faithfully promoted for many years. The other is the idea of an ‘area of freedom, security and justice’ which is one of the leitmotifs

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<sup>1</sup> Emphasis added here and there.

of the new Treaty. But some *might regard* the latter as a ‘pathology’ rather than a vision [...] (ELJ-1998)

(4) In other words, the Academic Common Frame of Reference will not be structured on a ‘take it (all) or leave it’ basis; perhaps not every detail can be cherry-picked intact, but in any event larger areas *could be taken up* without being forced to accept the entirety. The areas which *might be removed* in order to restrict the CFR to mere contract law would then be turned into ‘background material’. (TE&CLF-2008)

– put forward hypotheses and present conclusions in a cautious manner (mitigation protects the writer in case his/her conclusions, at a later stage, should turn out to be inaccurate/are belied by facts or new findings):

(5) The notion of a ‘living constitution’ *suggests* a kind of change by the emergence of new routines of political behaviour; adding the notion of an ‘open society’ *suggests that* it is not the political authorities alone who are relevant actors advancing constitutional change. (ELJ-1999)

(6) Movement *may occur* in the future as a result of the enlargement of the EC because the qualified majority necessary for adoption has changed. (BCI&CLR-1996)

– present cautious criticism of other researchers, schools, approaches, etc.:

(7) Whatever liberal interpretation one may care to make, it *seems clear* that general school education is not covered by the definition of ‘vocational training’, except that part of school education which consists of vocational training course. (CLJ-1994)

(8) In general, then, this topic *seems to be* a good example of where the DCFR itself needs further exploration and, perhaps, elaboration before it can become a model, whether for a European Civil Code or legislative toolbox, or, less ambitiously, for adoption or inspiration in national laws of obligations. (TE&CLF-2010)

The analysis indicates that epistemic modality markers (and, more specifically, *may*, *might*, *could* and *possible*) seem to be particularly numerous in the research journals published in the period immediately following important institutional and political events in the context of the European Union, and more specifically:

- 1) *The Treaties of Amsterdam and Nice*, signed respectively in 1997 and 2001: particularly evident in the European journals, more specifically *OJLS*, *CLJ* and *EJL* from 1996 and 2002<sup>2</sup>;
- 2) *The Draft Treaty establishing a Constitution for Europe* submitted to the EU Council in 2003: particularly evident in all European journals and the American journals *CJEL* and *BCI&CLR* from 2002 and 2005<sup>3</sup>;
- 3) *The Treaty of Lisbon* signed on 13 December 2007<sup>4</sup>: the analysis showed an increase in the use of epistemic markers in both European and American journals from 2008 to 2011.

A comparison between the two sub-corpora reveals that epistemic modality markers seem to be more frequent in American research journals dealing with socio-cultural changes affecting the legal categories of constitutional domain (i.e. democracy, the rule of law, subsidiarity, universality and indivisibility of human rights and fundamental freedoms, economic development, etc.), whereas the same markers are particularly recurrent in European research journals dealing with recognition of a 'European common core' and the idea of an EU constitutional identity<sup>5</sup>.

The analysis also indicates a high frequency of epistemic markers in the European and American research articles respectively from the *CMLR* and the *CJEL*, particularly *may*, *might*, *could*, *possible* (in addition to *probably*) which refer to the notion of possibility and can be taken simply to state an eventuality without presupposing a specific modalising agent. This could be related to the fact that both the *CMLR* and the *CJEL* deal mostly with economic issues

<sup>2</sup> Both European Councils (*Amsterdam 1997* and *Nice 2001*) had to deal with particular problematic issues, such as the simplification of the treaties, powers/roles of parliaments, and the status of the Charter of Fundamental Rights (Milton and Keller-Noëllet 2005).

<sup>3</sup> This *Draft* was submitted to the European Council and was intended to repeal in one fell swoop all the existing European treaties. Ratification by all the member states of the Treaty establishing a Constitution for Europe was necessary for it to become law.

<sup>4</sup> This *Treaty* is the result of negotiations between European Member States in an intergovernmental conference (IGC). According to their proponents, the Treaty provides the EU with the legal framework and tools necessary to face the challenges ahead and respond to EU citizens' needs.

<sup>5</sup> For more details on this issue, see Milton and Keller-Noëllet 2005, Falkner *et al.* 2005, on 2008.

on European Union law such as business law, developments in market deregulation, the single European currency, the EU/WTO relationship and therefore the authors in both journals need to present conclusions in a cautious manner. In other words, the eventuality that the authors express should be understood as an objective rather than a personal judgement.

#### 4. Conclusion

The tendency to mitigate criticism and express caution when interpreting other researchers' ideas and conclusions is common in all the legal journals included in our corpus. Since both journals contain articles written by scholars of different nationalities (not just European or American), this tendency may depend on other factors, such as the subject treated, the influence of journal styles and the new global era characterised by virtual encounters of professionals from different countries whose academic livelihood is increasingly co-dependent and mutually supporting. From this point of view, European and American sub-corpora differ in the length of articles, with the American editors allowing more space to authors.

In this paper, the research articles have been selected according to the subject treated, that is, the emerging Constitution of the European Union, and the analysis has pointed out the rhetorical organisation and the argumentative strategies used by the authors (of the selected European and American journals) in response to changing community norms and ideology. A relatively high occurrence of *may*, *might*, *could*, *possible* was found in those parts of the research articles where authors talk about the possible limitations of the study, provide possible explanations, put forward hypotheses (particularly evident in the American sub-corpus), present conclusions in a cautious manner, and cautiously disagree with other researchers, schools, and points of view (particularly evident in the European sub-corpus).

While these findings seem to reflect similarities in argumentation strategies and rhetorical organisation in the research journals of the two sub-corpora, other factors such as journal policies and the historical and political contexts might influence the use of epistemic modality in the American journals. From this point of view, the

analysis suggests that, unlike the European research journals, the American ones published between 1996 and 2002 have a low frequency of the selected markers. This may be due to the fact that the American editors did not consider institutional and political events in the context of the European Union of that time particularly relevant or of vital concern to the US academic community and legal practitioners.

If the analysis of language may reveal difficulties in negotiating meaning and identities for cultural reasons, it may however help place cultural practices in a wider context, showing that academic writing and its specific conventions have developed in response to particular social situations resulting from the diverse socio-cultural and historical backgrounds of its participants (Hyland 2009).

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