From Good Family Father to Reasonable Person

A Theoretical Discussion of Durability as an Argument in Favour of Gender-inclusive Legislative Language

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Abstract: Gender-inclusive language is becoming increasingly important in legislation. In many countries, particularly within the European Union and the Commonwealth, there is a growing tendency for substituting gendered language structures with gender-inclusive ones in legislative texts. However, a gendered, and in particular masculine, language use remains the norm in these legal systems, with many legal scholars even doubting the positive effects attributed to gender-inclusive language. Consequently, it is important that within the fields of linguistics, legal and gender studies the various benefits and challenges of gender-inclusive language are properly weighed out against each other. To this end, this paper aims, on the one hand, to provide a comprehensive overview of (i) the principles and strategies of gender-inclusive language use, and (ii) the extent to which this gender-inclusive language is used in legislation and which benefits/problems have been formulated by previous literature. On the other hand, we consider *durability* as an additional argument in favour of using gender-inclusive language strategies in legislation. Departing from linguistic theory about language norms and the optimisation of specialised communication, we will illustrate how a too conservative language policy in legislation might lead to legislative language becoming an archaic language register. This means that legislative language will grow more and more distant from the language use in other communicative settings, as well as the standard language norm, in which we assume gender-inclusive strategies will keep gaining ground. This archaisation, in turn, might create the possibility that jurists will turn to more hybrid registers for other legal settings and text genres, in particular when less institutionalised settings, spoken communication and communication with lay persons are involved, thus leading to the fragmentation of legal language. Therefore, we will argue that by (i) implementing a sufficient amount of gender-inclusive language in the law and (ii) setting out clear guidelines on which gender-inclusive strategies should be employed, legislative language can become more time-resistant and user-friendly (= durable). Furthermore, we will point out how such durability is expected to have secondary positive effects regarding (a) the endorsement of legislative texts by the public, (b) the learnability of legal language and, by extension, the law, (c) clarity, and (d) the correspondence of various provisions with social reality.

Keywords: Gender-inclusive language, Language change, Language norms, Legislative language, Specialised communication.

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1. Introduction

In western society, gender counts as an important topic in public debate. This topic, in turn, comprises many subtopics concerning different aspects of human life. One such aspect is legislation, i.e., the codified body of rules according to which society is organised. Here, gender can be discussed in view of both the *content* and *language* of the law. In the case of the former, issues are raised about to what extent gender should be arranged by law. A well-known issue, in this regard, is decertification, whereby the state should withdraw from registering or assigning a person's sex and gender.[2] Concerning the latter, the language of the law, discussions revolve around the question to what extent legal drafters should make use of *gender-inclusive language*.[3] This gender-inclusive (also gender-neutral) language[4] appeals to the issue that our language embodies an androcentric worldview and that by considering different genders in our formulations or even avoiding gendered structures we can help promote social change and gender equality (cf. Sect. 2.1).

As of 2022, many gender-inclusive structures have been finding their way into legislation. A well-known example is the substitution of *good family father* by *reasonable person* in various civil law systems and European legislation (cf. Sect. 3.1).[5] However, not everyone inside the legal field has been equally supportive of such language structures and many even doubt their desirability. A major issue is that a lot of effort is required from jurists to adopt such gender-inclusive structures and change previous legislation accordingly. Furthermore, it has been argued that the legislator's main focus should be on the content of the law (cf. Sect. 3.2).[6] Consequently, it is important that, within linguistics, legal doctrine and gender studies, the various arguments pro and contra different gender-inclusive drafting strategies are laid out and weighed up against each other. Such reflections can help drafters to better apply such strategies in legislation, which, in turn, can contribute to equal gender representation in this text genre.

In this regard, this study will, on the one hand, reflect on the principles and strategies of gender-inclusive language, how they are employed in legislation and which metalinguistic comments (regarding both benefits and problems) have been formulated on the matter by previous literature. On the other hand, we will consider *durability* as another possible argument in favour of gender-inclusive legislation.[7] Concerning durability, we will depart from linguistic theory on language norms, the nature of specialised language (e.g., legal language) and how such specialised language can be optimised. We thereby hypothesise that by using gender-inclusive strategies, legislative language will remain better in line with the language use of other communicative settings (cf. Sect. 4.1.2), including other legal text genres and legal settings, thus (i) preventing legislative language to become outdated due to gender-related reasons, and (ii) avoiding linguistic discrepancies to arise between different legal

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[2] Cf. D. COOPER, E. GRABHAM, F. RENZ, *Introduction to the Special Issue on the Future of Legal Gender: Exploring the Feminist Politics of Decertification*, in *Feminists@law*, 10/2, 2020, https://doi.org/10.22024/UniKent/03/fal.937 D. COOPER, R. EMERTON, *Pulling the thread of decertification: What challenges are raised by the proposal to reform legal gender status?* in *Feminists@law*, 10/2, 2020, https://doi.org/10.22024/UniKent/03/fal.938.

[3] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective*, in *Statute Law Review*, 19/2, 1998, pp. 93–112; S. PETERSSON, *Gender-Neutral Drafting: Recent Commonwealth Developments*, in *Statute Law Review*, 20/1, 1999, pp. 35–65; C. WILLIAMS, *The End of the 'Masculine Rule'? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland*, in *Statute Law Review*, 29/3, pp. 139–153.

[4] Note on the employed terminology: *gender-inclusive language* refers to a particular style that is used, whereas *gender-inclusive language structures/strategies* (e.g., the avoidance of the generic masculine) refer to the constitutive elements of this style.

[5] Cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen*, in *Juristenkrant*, 428, 2021, p. 12; V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek: Een discourslinguïstische bespreking*, in *Tijdschrift voor Wetgeving*, 23/2, 2022, pp. 77–87.

[6] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A Matter of Clarity*, in A. FLUCKIGER (ed.), *La rédaction administrative et législative inclusive: la francophonie entre impulsions et résistances*, Bern, 2019, pp. 57-72; H. XANTHAKI, *Gender Inclusive Legislative Drafting in English: A Drafter's Response to Emily Grabham*, in *Feminists@law*, 10/2, 2020, https://doi.org/10.22024/UniKent/03/fal.952.

[7] When using *gender-inclusive legislation* in this paper, we exclusively refer to the language of legislation.

language registers (cf. Sect. 4.3.1). This durable legislative language, in turn, might have positive effects on (a) the public's endorsement of the law, (b) the learnability of legal language, (c) clarity, and (d) the correspondence of various provisions with social reality (cf. Sect. 4.3.2). Our study thereby counts as an interdisciplinary one, since legal and – additionally – gender theory are taken into account as well.

This contribution is organised in the following manner. First, the underlying principles of gender-inclusive language and main strategies on the matter are laid out in Sect. 2. Thereafter, the use of and attitudes towards gender-inclusive language in legislation will be elaborated upon (Sect. 3). Sect. 4, the centre of our paper, then discusses durability as an additional argument in favour of using such language strategies in legislation. Finally, a conclusion and notes for future research are formulated in Sect. 5.

2. *Gender-inclusive language*

In order to elaborate on the use and perception of gender-inclusive language in legislation (cf. Sect. 3), as well as the possible benefits that it can have for the durability of legislative language (cf. Sect. 4), this section will explain the two main principles underlying gender-inclusive language (Sect. 2.1) and introduce the recurring strategies used by its proponents (Sect. 2.2).

2.1. *Principles*

When it comes to the question of why society should use gender-inclusive language structures, proponents will often make reference to two principles, which are closely linked to one another. The first principle regards the observation that our language is, in part, shaped according to an *androcentric worldview*.[8] This observation is backed up by empirical data within both linguistics and gender studies, and goes back to the work of Lakoff[9], which is often regarded as the beginning of gender linguistic research. This *linguistic androcentrism* thereby entails two aspects: (i) the differences in the language use of men and women, and (ii), the way in which gender is expressed by different language structures[10]:

(i)   The fact that men and women use language differently is the main observation deriving from Lakoff's pioneering work.[11] By contrasting the language use of men and women in the U.S., she came to the conclusion that the latter group was – particularly with regard to spoken language – characterised by the use of a so-called *tentative language*. By this tentative language she meant that women frequently utilised language structures that put them in a weakened position in (professional) conversations.[12] Amidst these structures Lakoff counted, among other, mitigators (*sort of, kind of like*) and inessential qualifiers (*really happy, so kind*), which often do not add relevant information to discussions and can express (or are considered to express) insecurity and (too much) emotional involvement. Additionally, she also found that women were often overly polite in

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[8] Cf. P. ECKERT, S. MCCONNELL-GINET, *Language and Gender: Historicizing Protest*, Cambridge, 2013, p. 1; M. HELLINER, H. BUßMANN, *Gender across languages: The linguistic representation of women and men*, in M. HELLINER and H. BUßMANN (eds.), *Gender across languages: The linguistic representation of women and men*, vol. 3, Amsterdam, 2003, p. 18; J. ABBOU, F.H. BAIDER, *Gender, Language and the Periphery: Grammatical and social gender from the margins*, Amsterdam, 2016, p. 4, 20.

[9] R. LAKOFF, *Language and Woman's Place*, New York, 1975.

[10] Cf. R. LAKOFF, *Language and Woman's Place, op. cit.*, p. 4; A.D. SVENDSEN, *Lakoff and Women's language: A Critical Overview of the Empirical Evidence for Lakoff's Thesis*, in *Leviathan: Interdisciplinary Journal of English*, 3/1, 2019, p. 1, https://doi.org/10.7146/lev.v0i4.112651.

[11] It should be noted that, within gender studies, the claims made by Lakoff have been subject to nuance due to newer, more adequate research on the matter, which (i) utilised more balanced corpora and more statistical data, and (ii) considered women as a more heterogeneous group, in which both social and linguistic variation can be found.

[12] Cf. A.D. SVENDSEN, *Lakoff and Women's Language, op. cit.*, 2019, https://doi.org/10.7146/lev.v0i4.112651.

discussions, possibly putting themselves in a "submissive" position with respect to male interlocutors.

(ii) The second aspect – the way in which gender is expressed by different language structures – comprises, in turn, two further subaspects: (a) the absence of female language structures in various communicative contexts and (b) the use of stereotypical – and possibly discriminating – language structures.

(a) The first subaspect regards the fact that, in many communicative contexts, masculine structures are used to refer to women (and non-binary persons) as well. This phenomenon is also known as the *generic masculine*.[13] In extreme cases, a feminine or neutral variant for the language structure in question might not even be available. This was, for instance, the case for the English form of address *sir*, for which for a long time no commonly agreed upon female variant (nowadays *ma'am*) existed.[14]

(b) The second subaspect concerns those structures which impose a certain (negative) role on females, such as the distinction between *miss* (= unmarried woman) and *mrs.* (= married women), which is exclusive for the female gender[15], as well as phraseology that stresses negative aspects of the female gender or even entails normative views regarding women's role in the household.[16]

Both of the aspects discussed above are problematic for a meritocratic society, since they prevent women from actively participating in it.[17] More precisely, the differences in language use (i) make it difficult for women to express their opinions, whereas the use of the generic masculine and stereotypical language (ii) make women feel left out or even discriminated against.[18]

However, linguists and gender scholars believe that both aspects are, in fact, mainly *ontogenetic* features of language and not *phylogenetic* ones.[19] This means that they are social products and thus the consequence of society's dynamics (e.g., upbringing, education, traditions) instead of biologically determined differences between men and women.[20] For instance, many features assigned to women's language by Lakoff, are, independently of a person's sex or gender, typical for informal and spoken settings.[21] Since many American women in the 1970s and the decades before were unemployed, they often found themselves in these settings and possibly utilised elements of these respective *language*

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[13] Cf. W. Martyna, *What does 'He Mean? Use of the Generic Masculine*, in *Journal of Communication*, 28/1, 1978, pp. 131-138, https://doi.org/10.1111/j.1460-2466.1978.tb01576.x; J. Silveira, *Generic masculine words and thinking*, in *Women's Studies International Quarterly*, 3/2-3, 1980, 165–178, https://doi.org/10.1016/S0148-0685(80)92113-2.

[14] Cf. P. Eckert, S. McConnell-Ginet, *Language and Gender*, *op. cit.*, p. 53.

[15] Cf. European Parliament, *Gender-neutral language in the European Parliament*, 2015, p. 8, https://www.europarl.europa.eu/cmsdata/151780/GNL_Guidelines_EN.pdf.

[16] Cf. A. Baran, *Gender in Estonian older Phraseology*, in *Linguo-cultural research on phraseology*, 3, 2015, pp. 315-336; E.G. Rubio, *Gender Stereotypes in Spanish Phraseology*, in *GÉNEROS – Multidisciplinary Journal of Gender Studies*, 7/3, 2018, pp. 1709–1735, https://doi.org/10.17283/generos.2018.3632.

[17] Cf. A. Curzan, *Gender shifts in the history of English*, Cambridge, 2009, p. 17; J. Abbou, F.H. Baider, *Gender, Language and the Periphery*, *op. cit.*, p. 16.

[18] Cf. P. Eckert, S. McConnell-Ginet, *Language and Gender*, *op. cit.*, p. 1.

[19] Cf. A. Curzan, *Gender shifts in the history of English*, *op. cit.*, pp. 24–27; J. Abbou, F.H. Baider, *Gender, Language and the Periphery*, *op. cit.*, p. 4.

[20] Cf. V. John-Steiner, H. Mahn, *Sociocultural approaches to learning and development: A Vygotskian framework*, in *Educational Psychologist*, 31/3–4, pp. 191–206.

[21] Cf. P. Koch, W. Oesterreicher, *Gesprochene Sprache in der Romania: Französisch, Italienisch, Spanisch*, Berlin, 2011; P. Koch, W. Oesterreicher, *Language of Immediacy—Language of Distance: Orality and Literacy from the Perspective of Language Theory and Linguistic History*, in C. Lange, B. Weber and G. Wolf (eds.), *Communicative Spaces: Variation, Contact, and Change*, Frankfurt, 2012, pp. 441–473.

registers[22] in other communicative situations as well. Similarly, the use of the generic masculine and stereotypical language can be traced back to the dominant role men have historically occupied in society.

Linguists and gender scholars argue that, since both aspects can be regarded as ontogenetic features, they can also be subject to positive change. This brings us to the second principle: namely the assumption that a more inclusive language can combat this linguistic androcentrism and thus promote gender equality.[23] Such *gender-inclusive language* – also called *gender-neutral* or *gender-fair language*[24] – directly addresses aspect (ii) by providing functional variants for masculine and/or stereotypical structures. However, it is believed that through eliminating the latter structures, women will feel more at ease to participate in communication, as well as society in general, which causes positive effects with respect to aspect (i) too. This idea, i.e., that language can affect perception and even behavior, is not unique to studies on gender and language, and is widely agreed upon within the cognitive sciences.[25]

2.2. Strategies

The need for such a gender-inclusive language became highlighted by feminists in the 1970s, who – independently from linguistic research on the matter – stood up against the dominantly masculine language in society.[26] Their battle – which was later joined by other activists, scientists and policy makers – has not been without success, particularly in Europe, the U.S. and the Commonwealth. In these countries, we find that more awareness towards gender and language has arisen and that many gendered structures have been substituted by gender-inclusive ones.[27]

Though each language has a different way to express gender grammatically/lexically – meaning some languages entail significantly more gendered structures than others due to the language's grammatical architecture[28] – there are a few gender-inclusive strategies that are used cross-linguistically. Three of these will be discussed here. We will call the first strategy *neutralisation*[29], whereby a gendered structure (e.g., a noun, an adjective, a noun phrase) is substituted by a structure

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[22] Cf. D. Biber, S. Conrad, *Register, Genre, and Style*, Cambridge, 2000; B. Szmrecsanyi, *Register in variationist linguistics*, in *Register Studies*, 1/1, 2019, pp. 76–99.

[23] Cf. A. Curzan, *Gender shifts in the history of English*, *op. cit.*, p. 19: S. Sczesny, M. Formanowicz, F. Moser, *Can Gender-Fair Language Reduce Gender Stereotyping and Discrimination?* in *Frontiers in Psychology*, 25/7, 2016, https://doi.org/10.3389/fpsyg.2016.00025.

[24] Although these terms are mostly used as synonyms, some scholars associate gender-neutral and gender-inclusive language with different non-gendered strategies. For Xanthaki, for instance, gender-neutral language concerns strategies in which the male and female gender are both made explicit (e.g., *he or she who* […]), whereas gender-inclusive language seeks to cancel gendered structures from the texts (e.g., *a person who* […]). In our framework, both are simply different gender-inclusive language strategies, the former being *symmetricalisation* and the latter being *neutralisation* (cf. Sect. 2.2).

[25] Cf. M. Pütz, M.H. Verspoor (eds.), *Explorations in Linguistic Relativity*, Amsterdam, 2000; C. Behme, M. Neef, (eds.), *Essays on linguistic realism*, Amsterdam, 2018.

[26] Cf. E. Bracchi, *Langage législatif européen et français selon une orientation genré*e, in S. Cavagnoli and L. Mori (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 69; F. Proia, *EU—und bundesdeutsche Gesetzgebungssprache aus Genderperspektive*, in S. Cavagnoli and L. Mori (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 213.

[27] Cf. W. Strunk, E.B. White, *The Elements of Style*, 4th edition, New York, 2000, p. 60; P. Baker, *Will Ms ever be as frequent as Mr? A corpus-based comparison of gendered terms across four diachronic corpora of British English*, in *Gender and Language*, 4/1, 2010, pp. 125–149; A. Curzan, *Gender shifts in the history of English*, *op. cit.*, pp. 184–185, 188.

[28] Cf. European Parliament, *Gender-neutral language in the European Parliament*, *op. cit.*, pp. 5–6; M.V. Buiatti, Gender Neutral Legal Language: A Comparative Overview, in *Comparative Law and Language*, 1/2, p. 34.

[29] In some works on gender-inclusive language, *neutralisation* is used to designate the strategy that we have called *symmetricalisation*—cf. S. Sczesny, M. Formanowicz, F. Moser, *Can Gender-Fair Language Reduce Gender Stereotyping and Discrimination?*, *op. cit.*

which does not entail specific reference to a gender.[30] The use of *him* in (1) is an example of such a gendered structure, since *someone* can also be female or non-binary. Therefore, substituting *him* by the generic pronoun *them*[31] (= neutralisation) can make the sentence more gender-inclusive (2).

(1)   Eng.: *If someone comes and asks about me, tell **him** that I am on leave until the end of next month*.

(2)   Eng.: *If someone comes and asks about me, tell **them** that I am on leave until the end of next month*.

The second strategy can be designated as *symmetricalisation*, which entails that both the male and female structure are used.[32] As such, the pronoun *him* in (1) is substituted by the multiword expression *him or her* (3).

(3)   Eng.: *If someone comes and asks about me, tell **him or her** that I am on leave until the end of next month*.

The sentence in (3) regards what we will call *syntactic symmetricalisation*, meaning that the symmetricalisation happens at the level of the sentence. Yet, there are also languages – like German (4a) and French (4b) – where such symmetricalisation is realised in the word itself, which we will call *morphological symmetricalisation*. These structures are used here since both French and German are – as opposed to English – grammatical gender languages (cf. Sect. 3.1), in which the ending of nouns and adjectives are, like in Italian, gender-sensitive.

(4)   a. Grm.: *Liebe Kolleg*innen / Liebe KollegInnen / Liebe Kolleg°innen / Liebe Kolleg-Innen*
        b. Fr.: *Cher.e.s collègues / Cher-e-s collègues*
        "Dear colleagues"

The third and final strategy is that of *feminisation*. With this strategy, masculine structures are changed when the referents of the structure are (mainly) women.[33] Take, for instance, the scenario in which the president of the European Commission would be a woman. Here, one would need to use *la présidente* in French (5a) and *la presidente* – or the less standardised variant *presidentessa* - in Italian (5b), instead of *le président* or *il presidente*. The latter two would then be used exclusively for talking about male persons (6).

(5)   a. Fr.: *La présidente Von der Leyen n'était pas d'accord*.
        b. It.: *La presidente Von der Leyen non era d'accordo*.

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[30] Cf. S. CAVAGNOLI, *Linguaggio giuridico europeo e italiano nella prospettiva linguistica di genere*, in S. CAVAGNOLI and L. MORI (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 147; A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, in S. CAVAGNOLI and L. MORI (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, pp. 115–116; H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, cit., pp. 67–69.

[31] It should be noted that *they* and *them* are, however, homonymous pronouns, since they can both be used to refer to each possible gender [MEANING 1], as well as just to people who identify as non-binary [MEANING 2].

[32] S. CAVAGNOLI, *Linguaggio giuridico europeo e italiano nella prospettiva linguistica di genere*, cit., p. 147; F. PROIA, *EU—und bundesdeutsche Gesetzgebungssprache aus Genderperspektive*, *op. cit.*, p. 236; A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, *op. cit.*, p. 118.

[33] Cf. C. LIPOVSKI, *Gender-specification and occupational nouns: Has linguistic change occurred in job advertisements since the French feminization reforms?* in *Gender & Language*, 8/4, 2014, pp. 361–392; S. CAVAGNOLI, *Linguaggio giuridico europeo e italiano nella prospettiva linguistica di genere*, cit., pp. 147–148; S. PILON, *Toward a More Gender-Inclusive and Gender-Neutral French Language*, in *The French Review*, 94/2, 2020, p. 193.

"President [f.] Von der Leyen did not agree"

(6)   a. Fr.: *Le président Barroso n'était pas d'accord*.
        b. It.: *Il presidente Barroso non era d'accordo*.
        "President [m.] Barroso did not agree"

Each strategy has, of course, different benefits and problems. Particularly the phenomenon of symmetricalisation has been subject to criticism. Whereas syntactic symmetricalisation causes elongated sentence structures, morphological symmetricalisation leads to non-canonical wordforms, which many language users are negative about. Both forms of symmetricalisation thus come with high processing costs, meaning that the readability of a text diminishes and that spoken discourses become more difficult to follow and produce.[34] This issue is also important when it comes to legislation, due to the already existing critique on the readability of law texts (cf. Sect. 3.1.2). With respect to syntactic symmetricalisation, the sequencing of the two genders has also been debated by activists and gender scholars, since in most structures and languages the masculine (pro)noun precedes the feminine one.[35] Finally, some language structures have arisen in recent years to refer to non-binary persons (e.g., the pronoun *iel* in French). These again cause problems when it comes to syntactic symmetricalisation, since, on the one hand, non-binary people are not included in a multiword expression like *he or she*, whereas, on the other, symmetrical structures including reference to a third gender weigh extra heavy on the processing costs of communication.[36]

3. Application to legislative language

We will now zoom in on legislative language, the language register at the heart of our study. In Sect. 3.1, we will first illustrate to what extent gendered structures are used in legislation and which measures have been taken to obtain more gender-inclusive law texts. In Sect. 3.2., we will then discuss which arguments have been formulated in favour of and against the use of such gender-inclusive language structures in this text genre.

3.1. Language use

Legislative language, as well as legal language in general, is a language register that has been particularly criticised for being gender-biased. Concretely, within legal language we observe an excessive use of masculine structures to refer to other genders, which has also been dubbed the *masculine rule*.[37] Here again, it should be noted that the extent to which gendered structures feature in legislation depends from language to language – and even from legal system to legal system (cf. Sect. 2.2.).[38] Particularly important, in this regard, is the morphological and grammatical system of each language, i.e., the extent to which nouns and adjectives show grammatical gender (= appearing with gendered articles, pronouns or inflection) and gender-neutral pronouns are available. In this regard, the

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[34] Cf. A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, *op. cit.*, p. 118; F. PROIA, *EU—und bundesdeutsche Gesetzgebungssprache aus Genderperspektive*, *op. cit.*, p. 236.

[35] Cf. A. ROSAR, 'Mann und Frau, Damen und Herren, Mutter und Väter': Zur ,(Ir-)Reversibilität der Geschlechterordnung in Binomialen, in G. DIEWALD and D. NÜBLING (eds.), *Genus—Sexus—Gender, Berlin*, 2022, p. 267, https://doi.org/10.1515/9783110746396.

[36] Cf. A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, *op. cit.*, p. 118.

[37] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective*, cit., pp. 93–112; S. PETERSSON, Gender-Neutral Drafting: Recent Commonwealth Developments, cit., pp. 35-65; C. WILLIAMS, *The End of the 'Masculine Rule'?*, cit., pp. 139–153.

[38] A good example for this is the substitution of *goed(e) huisvader* (Eng. Good family father) in Dutch: whereas in the legislation of the Netherlands (a monolingual legal system) this term was substituted by *redelijk persoon* (Eng. reasonable person) in the 1990s, Belgian legislation (a multilingual legal system featuring French legislation as well) kept using *goed(e) huisvader* until the recent recodification of the Civil Code in 2020—cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen*, *op. cit.*, p. 12.

European Parliament[39] makes a distinction between (i) *natural gender languages* (e.g., English and Dutch), where personal nouns are mostly gender-neutral and each gender has its own personal pronouns, (ii) *grammatical gender languages* (e.g., German and Italian), where every noun has grammatical gender and the pronoun/adjective mostly matches the noun's gender, and (iii) *genderless languages* (e.g., Estonian and Hungarian), where there is neither grammatical nor pronominal gender.[40]

Though genderless languages feature less gender-biased structures and grammatical gender languages are particularly prone to such a gender-bias, it should be noted that legislation in each language can undertake steps to be more gender-inclusive.[41] In our discussion of the language use in legislation – for which we first illustrate the gender-bias in legislation through some examples from Belgian law (Sect. 3.1.1) before pointing out some of the linguistic (Sect. 3.1.2) and legal measures taken against it (Sect. 3.1.3) – we will therefore try to take into account these differences between languages. However, the reader should be aware that in the following sections (which also include Sect. 3.2 and 4), our discussion will mostly concern gender and legislation in Europe and the Commonwealth, since previous literature on gender-inclusive legislation has mostly regarded these areas. Therefore, our depiction below – which is, due to the many legal systems/languages involved already generalising in nature – may not be valid for other legal systems which may be more conservative due to a variety of cultural factors.

3.1.1. Gender-bias in legislation

As mentioned in the paragraph above, gender-bias in legislation (mostly) consists in the use of masculine structures to refer to other genders as well, the so-called *masculine rule*. This gender-bias has often been regarded as a historical feature of legislative language. However, the origins of the masculine rule are not quite clear. Petersson found that, with respect to vagrancy law, the masculine rule found its origins in the early 1800s, when different legal scholars – among which Jeremy Bentham[42] – stressed the need for law texts to be more concise.[43] With the Abbreviation Act of 1850 the masculine rule became fully institutionalised.[44] Before this period, however, both masculine and feminine structures were used in vagrancy law. The collocation *hee or shee* was even considered to be a typical linguistic feature of Elizabethan legislation in the 16th century[45], during which syntactic symmetricalisation was thus used to equally represent men and women. Though Petersson argues that the language use of other types of law is likely to correspond to those of vagrancy laws[46], it is important for gender theory, historical sociolinguistics and legal history that the origins of masculine legislative language are mapped out in more detail. To this aim, research should extend to (i) different types of legislation, (ii) different legal systems and (iii) different languages.

Looking closer at the gendered language structures characterising legislation, it should be observed that such gendered structures can be found on different levels of language, such as *grammar*, *vocabulary* and *syntax*. The most famous feature with respect to *grammar* is the use of masculine 3rd singular pronouns, like *hij* ("he") in Dutch:

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[39] European Parliament, *Gender-neutral language in the European Parliament*, *op. cit.*, pp. 5–6.

[40] Please note that (i) within both these categories and languages of the same language family further differences in the use of gendered structures can be observed and (ii) languages of the same language family do not necessarily belong to the same category: whereas English and Dutch count as natural gender languages, German counts as a grammatical gender one, even though all three of them belong to the Germanic language family.

[41] Cf. A. VAASA, *Foreword*, in S. Cavagnoli and L. Mori (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 8.

[42] '[t]he development of phrases, instead of employing the usual ellipses: for example, when mention is made of the two sexes, in cases in which the masculine would have marked them both'—J. BENTHAM, *The Works of Jeremy Bentham*, Volume III, Edinburgh, 1984, p. 155.

[43] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective*, cit., p. 101.

[44] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective*, cit., p. 106.

[45] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective,* cit., pp. 97–98.

[46] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective,* cit., pp. 95–96.

(7)   Dt.: *Behoudens indien **hij** kan aantonen dat **hij** niet tijdig in kennis is gesteld* […]
           "Unless he can prove that he was not notified in a timely manner, […]"[47]

This feature has often been discussed in studies on gender in legislation. However, as indicated in our discussion of the different types of languages, such a grammatical gendering does not occur in genderless languages like Estonian and Hungarian. On the other hand, it becomes particularly problematic in grammatical gender languages like German and the Romance ones. As we shall see in Sect. 3.1.2., this will also have implications for the gender-inclusive strategies that can be used in these languages.

The sentence in (8) entails the prototypical example of gender-bias on the level of *vocabulary*, and more specific *terminology*: the collocation *goed(e) huisvader* (Eng. Good family father) which derives from the Latin *bonus pater familias* and designates a standard of care.[48] This term, which has mainly been used in legal systems on the European mainland, is an example of gender-bias that can be found in all three language types, since genderless languages, though not having grammatical gender, still have lexical gender and thus a distinction between *father* and *mother*.

(8)   Dt.: *Hij is verplicht aan de zaakwaarneming alle zorgen van een **goed huisvader** te besteden.*
           "He is required to care for the negotorium gestio like a good family father."[49]

Finally, on the syntactic level, we notice various syntactic patterns[50] featuring masculine structures. An example of this is the *hij die* + CAUSAL ACTION + CONSEQUENTIAL ACTION-pattern in Dutch (9). In this particular pattern, the masculine structure *hij die* functions as a fixed slot, meaning that it is the only lexically determined part of the pattern which returns in all its manifestations, thus leaving no place – according to the prevailing discourse tradition – for gender-inclusive structures.[51]

(9)   Dt.:   ***Hij die*** onder bezwarende titel, te goeder trouw, een zakelijk recht verkrijgt op een roerend goed van een p*ersoon die er niet over kon beschikken*[CAUSAL ACTION]*, wordt titularis van dat recht […]*[CONSEQUENTIAL ACTION].
           "He who for valuable consideration, in good faith, obtains an interest on a movable property from a person who could not have had access to it, becomes holder of that right […]"[52]

As said in Sect. 2.1., such an inequal representation of gender in the text of law is presumed to have a negative effect on (i) women's (and people of other genders') perception of the law and (ii) the social activity of these other gender groups. Yet, this does not mean that the rights and duties entailed in these provisions do not apply to people of other genders, since various legal provisions come into play to prevent such inequality from arising (see, however, the clarity argument in Sect. 3.2.1.). One such possible provision is the *principle of equal treatment*, which prevents people being discriminated due to factors as gender, sex, race and sexual orientation, and which is featured in the constitution of many countries.[53] As such, all rights/duties applying to men should also apply to other genders. Furthermore, in various common law systems the non-privileging interpretation of such masculine

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[47] Art. 674 bis §5 Belgian Judicial Code, 1967 [Dutch version from December 30 2022], https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1967101004&table_name=wet.

[48] The common law equivalent is *reasonable man*.

[49] Art. 1374 Belgian [Old] Civil Code, 1804 [updated Dutch version from July 1 2022], https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1804032134&table_name=wet.

[50] Cf. S. STEIN, S. STUMPF, *Muster in Sprache und Kommunikation: Eine Einführung in Konzepte sprachlicher Vorgeformtheit*, Berlin, 2019, pp. 100–115.

[51] Cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen, op. cit.*, p. 12.

[52] Art. 2 wet van 4 februari houdende boek 3 "Goederen" van het Burgerlijk Wetboek, *BS* 17 maart 2020, https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2020020416&table_name=wet.

[53] Cf. D. BIJNENS, H. BORTELS, J. THEUNIS, *Behoorlijke wetgeving in de rechtspraktijk van het Grondwettelijk Hof (2019-2020)*, in *Tijdschrift voor Wetgeving*, 22/2, 2021, pp. 87–94.

provisions is accommodated by so-called *interpretation acts* which state that *he*, unless explicitly stated otherwise, includes *she*.[54]

3.1.2. Language change

As mentioned in our introduction, various actions have been taken to make legislative language more gender-inclusive over the past few decades. This resulted, on the one hand, in the publication of various guidelines on how to adapt legal language appropriately (which thus spanned more than just legislative texts), and the effective implementation of gender-inclusive structures in the law, on the other.

The first international institution to provide such guidelines was UNICEF in 1989.[55] Later on, also other international institutions, like NATO[56] and the European Parliament[57], went on to publish such guidelines. Nowadays, the guidelines of the European Parliament – which, however, only provide examples for the English language – are the most cited ones in legal linguistic literature. Among the various gender-inclusive strategies proposed in these guidelines are the avoidance of the free morpheme *-man* (10), the use of *they* instead of *he* (11), and the use of gender-inclusive job titles (12).[58]

(10)   Eng.: *mankind* → **humanity**; *manpower* → **staff**; *Frenchman* → **French person**.

(11)   Eng.: *Someone may not know **their** tax number*.

(12)   Eng.: *fireman* → **firefighter**; *stewardess* → **flight attendant**; *foreman* → **supervisor**.

When comparing the above structures with the discussion of gender-inclusive strategies in Sect. 2.2, we see that the European Parliament mainly proposes *neutralisation* to combat gendered language. In fact, the only advice which cannot be regarded as neutralisation is related to the use of titles, where it is said to use *Mr.* and *Ms.* and to not make a further distinction between *Miss* and *Mrs.* for addressing female persons (cf. Sect. 2.1).[59]

We also see that, with regard to national legislation in the EU and the Commonwealth, such neutralisation structures are almost always preferred to other available gender-inclusive strategies. This can be best exemplified by the recent recodification of Belgian law, where in the new inheritance law *vader en moeder* ("father and mother") was substituted by *ouders* ("parents"), and *goed(e) huisvader* by *voorzichtig en redelijk persoon* ("careful and reasonable person") in the Civil Code, and

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[54] Cf. S. Petersson, *Gender Neutral Drafting: Historical Perspective,* cit., p. 102; S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments,* cit., p. 38.

[55] P. Khanna, Z. Kimmel, *CEDAW—Convention on the Elimination of All Forms of Discrimination Against Women*, UNICEF, 2016, https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016 /CEDAW-for-Youth.pdf; cf. S. Cavagnoli, *Introduzione: Lingua di genere e linguaggio legislative in Europa*, in S. Cavagnoli and L. Mori (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 21.

[56] NATO, *Gender-Inclusive Language Manual*, 2020, https://www.nato.int/nato_static_fl2014/assets/pictures/images_mfu/2021/5/pdf/210514-GIL-Manual_en.pdf.

[57] European Parliament, *Gender-neutral language in the European Parliament*, op. cit., https://www.europarl.europa.eu/cmsdata/151780/GNL_Guidelines_EN.pdf.

[58] Cf. European Parliament, *Gender-neutral language in the European Parliament, op. cit.*, pp. 10-11.

[59] Cf. European Parliament, *Gender-neutral language in the European Parliament, op. cit.*, p. 11.

normaal en redelijk persoon ("normal and reasonable person") in the Criminal Code.[60] The latter substitution also occurred in other national legal systems, for instance in France and the Netherlands.[61]

This neutralisation is, of course, mainly found in natural gender languages and genderless languages (cf. Sect. 3). This strategy is particularly advantageous since it includes every possible gender (masculine, feminine, non-binary) and will generally not lead to elongated sentences. However, in grammatical gender languages, such neutralisation is not always possible due to the language's structure. Consequently, here we see that *symmetricalisation* is sometimes employed, particularly when neutralisation structures from EU-legislation need to be translated or implemented in national legislation. However, due to the different deficiencies of such symmetricalisation, many gendered structures are left untouched in these languages/legal systems. When symmetricalisation is used this can also lead to criticism, from both inside and outside the legal field (cf. Sect. 3.2.2). Finally, the strategy of feminisation is almost uniquely used in legislation pertaining to women's rights, like abortion laws. This strategy has, however, become very frequent in contract drafting[62], where, unlike in legislative drafting, it is, in fact, possible to pinpoint the gender of the persons involved.

We thus see that in legislation, there is a trend to substitute gendered structures by gender-inclusive ones. This gender-inclusive drafting will at times also help the legislator to better depict social reality: for instance, by using *ouders* in the new inheritance law, the legislator accounts for the scenario in which the legal parents of a person have the same sex/gender and it is also more in line with the scenario in which a kid has only one legal parent (= single parenting). Nevertheless, a trend is not an absolute norm, meaning that (i) gendered structures are still used alongside gender-inclusive ones in legislation, and (ii) some legal systems put more effort into gender-inclusive drafting than others:

(i) Regarding the former, we saw, for instance, that the collocations *vader en moeder* and *goed(e) huisvader* were substituted by gender-inclusive ones during the recodification of Belgian law. However, in the Dutch version of the recodification bills, the syntactic pattern with *hij die* (cf. Sect. 3.1.1) was not,[63] even though in the other two national languages gender-inclusive structures (*quiconque* in French and *Wer* in German) were already used long before recodification began. Similar observations are made by Bracchi (2019), Sandrelli (2019) and Blini (2019) in their analysis of national legislation in, respectively, France, the UK and Spain.[64] Consequently, the incorporation of gender-inclusive language structures has led to a less uniform language norm in legislation, which may lead to interpretation problems or unwanted linguistic specialisation between different legal domains (cf. Sect. 3.2.2).

(ii) Concerning the latter, it should be noted that differences in the use of gender-inclusive strategies are not only the consequence of the type of the language (natural gender, grammatical gender, genderless) in which the legislation is drafted, but also of the language policy employed by society and, more specifically, the legislator. Countries that have been particularly applauded for their use of gender-inclusive language are, among other, Canada, Malta and India. The European Union is seen as a pioneer on the matter

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[60] Cf. V. LIÉGEOIS, J. AKKERMANS, *Recodifying the Law: A Metalinguistic Inquiry into the Recodification of Belgian Law Between 2014–2019*, in *Semiotics of Law*, 35/5, 2022, p. 1779, https://doi.org/10.1007/s11196-022-09894-6; V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek*, *op. cit.*, pp. 77–87.

[61] Cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen*, *op. cit.*, p. 12.

[62] Cf. C. WILLIAMS, *Legal drafting*, in J. VISCONTI (ed.), *Handbook of Communication in the Legal Sphere*, Berlin, 13–35.

[63] Cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen*, *op. cit.*, p. 12.

[64] Cf. E. BRACCHI, *Langage législatif européen et français selon une orientation genré*e, *op. cit.*, pp. 101–103; A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, *op. cit.*, pp. 136-137; L. BLINI, *Usos inclusivos de género en el castellano legislativo de la Unión Europea y de España*, in S. CAVAGNOLI and L. MORI (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 208.

too.[65] Other countries have, however, been criticised for not putting enough effort into this gender-inclusivity, most notable Italy.[66]

3.1.3. Interpretational provisions

Other than changing the language of legislation, some common law systems have also changed various interpretational provisions to better represent people of different genders.[67] As mentioned at the end of Sect. 3.1.1, many common law systems feature interpretational acts that prescribe how legal provisions should be interpreted. With respect to gender, these interpretational acts originally entailed the aforementioned *masculine rule*, which states that, unless mentioned otherwise, words importing the masculine gender include the feminine.[68] Petersson observed in her analysis of federal and regional legislation in the UK, Canada, Australia and New Zealand that said *masculine rule* was being substituted by other provisions by the end of the 20th century. More specifically, she noted that two new rules were being used: the *two-way rule* and the *all-gender rule*.

The former, the *two-way rule*, entails that in any act, unless mentioned otherwise, "(a) words importing the masculine gender include the feminine; (b) words importing the feminine gender include the masculine".[69] This interpretational rule is thus bidirectional, since masculine words can include the feminine and vice versa. Accordingly, the legislator could make (sole) use of feminine structures as well when drafting legislation. The latter, the *all-gender rule*, provides that in any act, unless again mentioned otherwise, "(a) words importing a gender include every other gender".[70] This provision thus seems particularly interesting when it comes to the legal and linguistic inclusion of non-binary persons. The two-way provision was implemented anno 1999 by the UK, Canada (federally, as well as regionally by four provinces: Alberta, Manitoba, New Brunswick and Prince Edward Island) and South Australia.[71] The all-gender rule, on the other hand, prevailed in Australia, where it was not only implemented on the federal level but also by various states: New South Wales, Queensland, Victoria and Western Australia.[72]

Though these interpretational provisions emerged because of the growing influence of various gender-related movements and provide a legal basis for a more gender-inclusive legislative language, Petersson (1999) argues that they do not dictate changes in drafting style: they state how to interpret legislation, not how to write laws. In fact, she notices that changes towards a more inclusive language use in these legal systems have happened independently from these provisions, i.e., due to other initiatives.[73] It should also be noted that the data provided by Petersson are over twenty years old and that the gender (language) movement has taken big steps in the last two decades. Consequently, it is imperative that new overviews on such gender-related interpretational acts are provided by legal scholars and that these are compared with the language use in each legal system, in order to empirically validate whether, in fact, no quantitative (regarding the number of gender-inclusive structures) or qualitative (regarding the types of strategies employed) correlations between these provisions and the corresponding legislative languages exist.

3.2. Metalinguistic discourse

The fact that many gender-inclusive language structures have been finding their way into legislation, whereas some gendered structures have remained untouched, makes it interesting to look at the issue from a metalinguistic perspective. This metalinguistic perspective regards the way legal

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[65] Cf. M.V. Buiatti, *Gender Neutral Legal Language, op. cit.*, pp. 38–41, 51.

[66] Cf. S. Cavagnoli, *Linguaggio giuridico europeo e italiano nella prospettiva linguistica di genere*, cit., p. 143; M.V. Buiatti, *Gender Neutral Legal Language, op. cit.*, pp. 43–45.

[67] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments,* cit., p. 35.

[68] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments,* cit., p. 36.

[69] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments,* cit., p. 37.

[70] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments,* cit., p. 43.

[71] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments*, cit., p. 39.

[72] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments*, cit., p. 45.

[73] Cf. S. Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments*, cit., p. 57.

specialists have viewed such language changes and, more specifically, which benefits (Sect. 3.2.1) and problems (Sect. 3.2.2) they associate with such gender-inclusive language.

3.2.1. Arguments in favour of using gender-inclusive language

Three arguments in favour of gender-inclusive legislative language return in the literature, which we will call the *gender equality argument* (i), the *clarity argument* (ii), and the *plain language argument* (iii).

The *gender equality argument* (i) entails that since equality is a fundamental human right, legislation – which is one of most effective means to achieve equality – should be expected to use an inclusive language with respect to gender. This argument is thus closely linked to the second principle of gender-inclusive language (cf. Sect. 2.1), as well as the women's and LGBTQIA+ rights movement. For this matter, when drafting the Universal Declaration of Human Rights[74] in 1948, long before the debate about gender-inclusive language even began, changes were made to the text of article 1. Originally, this article stated – in line with the preamble of the US' Declaration of Independence[75] – that "all *men* are born free and equal in dignity and rights", which was then changed into the more gender-inclusive "all *human beings* are born free and equal in dignity and rights".[76] This gender equality argument also appeared in two recommendations of the Council of Europe, in which warnings were made against the excessive use of masculine structures[77]: R (90) 4 on the elimination of sexism in language[78] and Rec (2003) 3 on balanced participation of women and men in political and public decision-making.[79]

The second argument is, much like the third one, situated on a more pragmatic level than the gender equality argument and regards *legal clarity*. This argument, which we have called the *clarity argument* (ii), has been elaborated upon mainly by Xanthaki[80], but also Rose[81] and Sandrelli[82] mention clarity as a possible positive feature of gender-inclusive legislation. For Xanthaki, the point of departure for considering clarity is that, though masculine structures are a typical feature of legislative language, they also lead to some semantic anomalies. Typical of legal semantics is the pursuit of monosemy, meaning that every language structure, and particularly words and collocations, can only be attributed one meaning. This practice is expected to contribute to legal certainty. In this regard, the masculine rule forms an exception to said practice since a structure like *he* can have two different meanings in legislation: one in which it is synonymous for *a person* [MEANING 1] and one in which it only regards *a person of the male sex/gender* [MEANING 2].[83] Xanthaki points out that, consequently, such masculine structures can be cause for confusion, not only for the lay reader who is not familiar with the special conventions of legislative language, but also for lawyers and judges in case possible

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[74] Universal Declaration of Human Rights, United Nations General Assembly, Res 217 A, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[75] The unanimous Declaration of the thirteen united states of America, Second Continental Congress, 1776, https://www.archives.gov/founding-docs/declaration-transcript.

[76] Cf. S. CAVAGNOLI, *Introduzione*, *op. cit.*, p. 20.

[77] Cf. S. CAVAGNOLI, *Introduzione*, *op. cit.*, pp. 22–23.

[78] Council of Europe, Recommendation No R. (90) 4 of the Committee of Ministers to Member States on the Elimination of sexism from language, 21 February 1990, https://rm.coe.int/1680505480.

[79] Council of Europe, Recommendation Rec (2003) 3 of the Committee of Ministers on the Balanced participation of women and men in political and public decision-making, 12 March 2003, https://rm.coe.int/1680519084.

[80] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, cit., pp. 57–72; H. XANTHAKI, *Gender Inclusive Legislative Drafting in English: A Drafter's Response to Emily Grabham*, cit., p. 8–9.

[81] Cf. L.M. ROSE, *The Supreme Court and gender-neutral language: Setting the standard or lagging behind?*, in *Duke Journal of Gender Law and Policy*, 17, p. 94.

[82] Cf. A. SANDRELLI, *Gender and language in English directives and UK national transportation measures*, *op. cit.*, p. 110.

[83] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, cit., p. 63, 67; H. XANTHAKI, *Gender Inclusive Legislative Drafting in English: A Drafter's Response to Emily Grabham*, cit., pp. 8-9 https://doi.org/10.22024/UniKent/03/fal.952.

gender-specific or gender-independent purposes are not elaborated upon sufficiently. To this end, she formulates an hypothetical example regarding legislation about military personnel:

> For example, in jurisdictions where the military is exclusively male, one wonders whether the application of "he includes she" could lead to the admission of women in the army by broad interpretation of the male pronoun under the Interpretation Act, especially where there is no express provision to the contrary.[84]

Similarly, we can refer to the abortion laws previously discussed in Sect. 3.1.2: such laws, considered a typical example of women's rights, are mostly formulated in the female gender. But would a man who had undergone a uterus transplant and gotten pregnant also be able to legally abort a baby? Though it is likely that the legal principles mentioned in Sect. 3.1.1. will set in, it remains an interesting thought experiment with respect to the gender question. Furthermore, it should be noted that the ambiguity of these masculine structures can contribute to social unrest. Grabham recounts, for instance, how two decades after the Abbreviation Act in Britain, 5,347 Manchester women 'claimed the right to be put on the voting list on the basis that the Representation of the People Act 1867 should be read in conjunction with the masculine rule in the 1850 Act' since no mention was made about a gender distinction within the law itself.[85] Likewise, with respect to vagrancy law, Petersson observed how the exclusive use of *he* in vagrancy laws was used by women as an argument not to comply to the previsions of this bill. This issue was only settled when in 1917 court rulings confirmed that, despite the masculine formulations of the law, women were, in fact, liable for vagrancy.[86]

Finally, the *plain language argument* (iii) deals with the fact that more gender-inclusive legislative texts will seem less estranged to people of other genders, who would thus feel more included. This means, as Mori puts it, that the *textual acceptability*[87] of legislation will grow.[88] This textual acceptability, in turn, is expected to lead to less critique on the law, regarding both content and language (see also Sect. 4.3.2).

3.2.2. Counter arguments

When it comes to counter arguments on the matter, we will distinguish between the *content-before-language argument* (i), the *consumer argument* (ii) and the *readability-and-aesthetics argument* (iii).

The *content-before-language argument* (i) is used here to refer to the critical stance different legal scholars have taken with respect to the gender equality argument. Although these scholars agree with the latter's proponents that (in Western legislation) it is indeed the function of the law to promote equality, they stress that said equality is primarily accomplished by the *content* of the law, i.e., the scope of the provisions rather than the amount of gender-inclusive language used in them.[89] As such, many scholars consider the benefits of gender-inclusive language to be irrelevant marginal gains when compared to bills regulating civil rights, gender quota or appealing to the physical (e.g., breast cancer by women; prostate cancer by men) and social issues (e.g., sexual harassment) facing people from a certain sex or gender.[90]

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[84] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, op. cit., p. 67.

[85] Cf. E. GRABHAM, *Exploring the Textual Alchemy of Legal Gender: Experimental Statutes and the Message in the Medium*, in *Feminists@law*, 10/2, 2020, p. 11 https://doi.org/10.22024/UniKent/03/fal.950.

[86] Cf. S. PETERSSON, *Gender Neutral Drafting: Historical Perspective*, cit., p. 109.

[87] Cf. R.A. DE BEAUGRANDE , W.U. DRESSLER, *Einführung in die Textlinguistik*, Tübingen, 1981.

[88] Cf. L. MORI, *La sociolinguistica dei corpora per lo studio della lingua inclusiva di genere*, in S. CAVAGNOLI and L. MORI (eds.), *Gender in legislative languages: From EU to national law in English, French, German, Italian and Spanish*, Berlin, 2019, p. 42.

[89] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, cit., pp. 58, 60; E. GRABHAM, *Exploring the Textual Alchemy of Legal Gender*, *op. cit.*, p. 1.

[90] This critical stance on the positive effects assigned to gender-inclusive language can partially be explained by the methodological differences between legal studies and linguistics. Whereas legal scholars primarily do literature research, linguists are mainly involved in empirical studies. Through these empirical studies linguists

In addition, these scholars point out that too great of a focus on gender-inclusive language has certain costs:[91] jurists will have to acquire additional language skills in order to make legislation (as well as other legal texts) gender-inclusive, extra care needs to go out to both gender and language during the drafting process, earlier legislation should be changed accordingly if uniformity is to be salvaged, etc. These costs may not outweigh the benefits when one considers the frequent content-related problems facing legislative texts, even those that are approved by parliament and have come into power. For instance, it is possible that the law does not take into account enough hypotheses to establish legal certainty, that case law and other (higher) legal norms have not been sufficiently considered, that the proportionality principle was not observed, etc. Subsequently, to what extent is it desirable that government and parliament, as well as those jurists advising both institutions, divert their attention from these content-related issues to the gender-inclusivity of the text (including both the law text and accompanying explanatory memorandum)?

The *consumer argument* (ii) then, is the counterclaim to the plain language argument. Whereas the plain language argument considers textual acceptability as a positive feat of gender-inclusive legislation, the consumer argument points out that legislation is mostly utilised (e.g., read, referenced) by people working with legal matters. This stance thus decreases the added value of textual acceptability and puts emphasis on the fact that legislative language is (part of) a specialised language register.[92] This means that legislation is expected (i) to have specific language conventions (e.g., terminology like *good family father*) that differ from other language registers, and (ii) to primarily accommodate jurists instead of lay persons. Consequently, according to the consumer argument a gendered structure would only be problematic when it creates problems for jurists – because it causes confusion (cf. the clarity argumenn) or is hardly used even within the legal field itself (cf. the durability argument in Sect. 4). Moreover, gender-inclusive language structures can even be seen as unwanted when they break with long-standing traditions and/or lead to language variation, which can both cause intelligibility problems for jurists not familiar with one of the two structures.

Finally, the *readability and aesthetics* of many gender-inclusive structures also form the object of language criticism.[93] This criticism particularly concerns the aforementioned symmetricalisation structures (cf. Sect. 2.2 and 3.1.2), but can also concern other structures that deviate too much from the prevailing idiomatic, lexical or grammatical norm of the language. As was pointed out in Sect. 2.2 this criticism is not unique for the legal field and, also from a purely linguistics point of view, various arguments can be formulated against the use of these symmetricalisation structures, particularly regarding their readability. In extreme cases, this criticism has even lead to the redrafting of legislative proposals. For instance, in 2020 the German legislator presented a draft on the further development bankruptcy and rehabilitation law[94], which only made use of the longer female versions of certain professions (e.g., *Arbeitnehmerinnen* instead of *Arbeitnehmer* ["employees"]). Since this linguistic feature of the law was heavily criticised both within and outside the legal field, the legislator eventually redrafted the text using only the shorter masculine structures.[95]

The counter arguments above all define valid issues when it comes to gender-inclusive legislation. Additionally, they debunk the claim that people opposing gender-inclusive language do so solely out of ideological reasons, since there are clear practical motivations underlying this more conservative stance. Independently from which further arguments linguists, gender scholars and jurists formulate in favour of gender-inclusive legislation (like the durability argument in Sect. 4), it is imperative that the issues above are attended to in the best way possible. In this regard, it seems particularly important to formulate clear guidelines on how to use gender-inclusive language in legislation, so that their

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can, among other, gain insights in the mental processes behind language use. Yet, such mental processes are not important to the main legal research paradigms, which leads to different perspectives on things like gender-inclusive language.

[91] Cf. E. GRABHAM, *Exploring the Textual Alchemy of Legal Gender*, *op. cit.*, p. 19; W. POSSEMIERS, *De goede huisvader gaat met pensioen*, *op. cit.*, p. 12.

[92] Cf. V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek*, *op. cit.*, p. 79.

[93] Cf. W. POSSEMIERS, *De goede huisvader gaat met pensioen*, *op. cit.*, p. 12.

[94] Gesetz zur Fortentwicklung des Sanierungs- und Insolvenzrechts, Germany, 30 December 2020, https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/DE/Fortentwicklung_Insolvenzrecht.html.

[95] Cf. W. POSSEMIERS, De goede huisvader gaat met pensioen, *op. cit.*, p. 12.

implementation requires less effort from the legislator (= the content-before-language argument) and does not cause interpretation problems for jurists (= the consumer argument). These guidelines should also point out which gender-inclusive structures compromise the readability of the law/clash with other language norms and are thus best avoided (= the readability-and-aesthetics argument). In sum, a clear norm on the use of gender-inclusive language is needed, which, as mentioned in Sect. 3.1.2, is now lacking (see also Sect. 4.3.3).

4. *The durability argument*

The discussion in Sect. 3.2 is important for the legislative field, since it is due to such reflections that drafters can better estimate the pros and cons of both the gender-inclusive and gendered strategies they want to employ (cf. Sect. 1). In this regard, this section will consider *durability* as another possible argument in favour of gender inclusivity. To this end, this section will first lay out a general hypothesis on how our language is expected to evolve with respect to the use of gender-inclusive strategies and how – depending on the strategies chosen when drafting legislation – this might lead to legislative language becoming either a more archaic, isolated language register or a more adapted, durable one (Sect. 4.1). In Sect. 4.2, we will then briefly frame this hypothesis within linguistic theory on language variation. Finally, Sect. 4.3 will elaborate on the way in which gender-inclusive strategies are expected to contribute to a durable legislative language (Sect. 4.3.1), what the additional benefits of said durability are (Sect. 4.3.2) and formulate some disclaimers on the claims made in this section (Sect. 4.3.3).

4.1. *Hypothesis*

Our hypothesis entails two aspects: a main assumption on the evolution of our language use and language norms (Sect. 4.1.1), on the one hand, and possible scenarios regarding the ways in which legislative language is adapted to this evolution (Sect. 4.1.2), on the other.

4.1.1. *Fundamental assumption*

The starting point of our hypothesis is the assumption that *gender-inclusive structures will keep gaining ground in communication*. Various studies, qualitative and/or quantitative, have pointed out the fact that the use of gender-inclusive language has, much like metadiscourse on the matter, been growing exponentially within Western society, even though masculine structures still remain the norm. In this regard, we see that both already existing gender-inclusive strategies become more and more employed and new gender-inclusive structures are being introduced as well.[96]

We argue that this linguistic trend will continue since it correlates with various other societal gender-related trends, like the growing emancipation of women in both private and public life and the emergence of the gender fluid movement, neither of which are expected to cease in growth in the near future. We consider it likely that these other societal trends shall be supporting factors in the evolution of a more gender-inclusive language norm in society. This *gender-inclusive trend* is thereby expected to, first and foremost, lead to a different *language use*, spanning different communicative settings (professional, formal/informal, written/spoken, etc.) and different layers of the population. Thereafter, various gender-inclusive structures might also manifest themselves in changes to the *standard language norm*. This means that prescriptive dictionaries and grammars will entail explanations on how language is best used in a gender-inclusive manner, enlist preferred strategies and label some gendered structures as less-preferable variants. This, in turn, can lead to many gendered language structures not only being poorly used in language, but also becoming viewed as archaisms.

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[96] Cf. W. STRUNK, E.B. WHITE, *The Elements of Style*, *op. cit.*, p. 60; P. BAKER, Will Ms ever be as frequent as Mr?, cit., pp. 125-149; A. CURZAN, *Gender shifts in the history of English*, *op. cit.*, pp. 184–185, 188.

4.1.2. Possible scenarios

This gender-inclusive trend can lead to two possible scenarios regarding the position of legislative language in the language continuum – i.e., with respect to other language registers (e.g., the academic register) and the standard language norm:

(i) The first one is the *archaisation scenario*, in which gender-inclusive strategies are not sufficiently employed in legislative texts. This is expected to lead to a legislative language which becomes more conventionalised – due to not following the usage and/or standard language norm – and which grows more distant from the other language registers.

(ii) The other one is the *durability scenario*, in which gender-inclusive strategies are, in fact, employed sufficiently enough in legislation for this language register to remain closer to the language registers/the standard language norm. This durability is expected to lead to a more time-resistant and user-friendly legislative language (cf. Sect. 4.3.1).

The scenarios above count as *opposite hypotheses*, since they entail that the opposite treatment of a certain element (i.e., gender-inclusive language) leads to an opposite outcome. Both hypotheses can, however, also be situated on a continuum, in which at the left end of the continuum we find *hypothetical* legislative languages[97] in which absolutely no gender-inclusive strategies are utilised (= extreme instances of the archaisation scenario). At the right end of such a continuum we would then find hypothetical legislative languages in which each gender-inclusive strategy is implemented (= extreme instances of the durability scenario). Between these two poles we then find legislative languages making use of a mixture of gender-inclusive and gendered language strategies.

In our depiction of both scenarios, the archaisation one is framed as being the one to avoid, since it creates more distance between legislative language and other language registers. The rest of our discussion will follow this line of argumentation. The following parts of our discussion – particularly Sect. 4.3.1 and Sect. 4.3.2 – will thus revolve around the benefits of the durability scenario and deficits of the archaisation one. However, some critical remarks regarding the durability scenario shall be pointed out in Sect. 4.3.3.

4.2. Theoretical background: language variation

The hypothesis elaborated in Sect. 4.1 departs from a fundamental aspect of human language, namely the fact that language is subject to variation. This observation is of crucial value for linguistic theory: theories about language can both be praised and criticised for the way they take language variation into account. Moreover, language variation constitutes the main research paradigm in a variety of linguistic subdisciplines, like historical linguistics, sociolinguistics and variationist linguistics. Subsequently, this "variation factor" needs to be taken into account when dealing with language policy and language planning. In this regard, two observations are important for our further discussion.

The first observation is that languages – take, for instance, English, Dutch and Italian – are not homogenous. This means that our use of such a language depends on the situation in which we find ourselves (e.g., the people with whom we conversate, professional/public/private settings, formal/informal settings, etc.). Consequently, whereas a language like Italian can have a *standard language norm* (which is codified in dictionaries and grammars), it also has, independently from this standard norm, different *usage norms* for the different situations in which the language is used.[98] For

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[97] We speak of *hypothetical legislative languages* since no legislative language is expected to totally neglect gender-inclusive language use or does not already entail gender-inclusive structures. Similarly, no legislative language is expected, due to the specialised needs of the domain (e.g., conciseness), to implement all gender-inclusive strategies.

[98] Cf. E. Coseriu, *Einführung in die allgemeine Sprachwissenschaft*, Tübingen, 1988.

our discussion, we maintain that each usage norm corresponds to a certain language register.[99] Every speaker of the language is thereby accustomed with at least a few registers, whose total sum makes up the idiolect of the speaker. Examples of such registers are legislative language (part of the more general register of legal language) and weather reports (part of the more general meteorological register). These registers do not only vary with respect to the extent they correspond to/differ from the standard language norm, but also with respect to the extent that they allow for creativity and innovation in language use.

This innovation brings us to the second observation: the fact that language changes over time, possibly due to innovation. This innovation can be situated on a purely grammatical level or rather on the interface with society. Grammatical innovation regards, for instance, the request to eliminate the subjunctive mood and *passato remoto* from the Italian standard norm, which some argue will lead to an "easier" language. On the societal level innovation then regards linguistic changes made with respect to the challenges society faces, such as inclusion. However, innovative structures – for instance, gender-inclusive pronouns – rarely enter directly in the standard norm. Mostly, such innovative structures manifest themselves in specific language registers first, before expanding to other registers and are only then included in prescriptive dictionaries and grammars (after being broadly used or regarded as useful additions to the language).[100]

4.3. The durability scenario

4.3.1. Effects of gender-inclusive language on durability

The legislative language register can, with regard to the first observation in Sect. 4.2, be classified as a very conservative one, as has also been pointed out by Koch & Oesterreicher.[101] First, the writing style of legislation is very formal and in most legal systems archaic language structures are utilised in these texts as well, which is in part due to legislation being an exclusively written text genre.[102] Second, since most legislative texts – and this is particularly true for codes and law books – are aimed for the long term, their language risks to become outdated when the standard language norm (or a variety of other language registers) changes. Furthermore, laws are normally only changed when adjustments need to be made to their *content*, and not for mere linguistic aims.[103] Consequently, legislation is a text genre that is poorly fit to adapt to language innovation and thus easily tends towards the use of outdated language. Regarding gender-inclusive language, we also see that many gender-inclusive structures that have now been adopted in various legislative systems were used in jurisprudence[104] and by legal scholars[105] long before changes to legislation were made. This is arguably because their respective legal language registers are less conservative than the legislative one (even though they still tend towards archaisation). Anno 2023, many – if not more – differences in the use of gender-inclusive language can still be observed between these different legal registers.

Accordingly, it becomes clear how both scenarios in Sect. 4.1.2 can either positively or negatively influence this feature inherent to legislative language. Regarding durability, the use of gender-inclusive language in legislation will – according to our assumption in 4.1.1 – first and foremost lead to a time-resistant legislation, meaning that legislative language will remain longer in line with other usage norms, as well as the standard language norm, thus not exacerbating criticism on the law's language. Though this time-resistance has never been at the heart of previous legal linguistic studies, various scholars have mentioned this issue, saying legislative languages needs to provide for the future

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[99] Cf. D. BIBER, S. CONRAD, *Register, Genre, and Style, op. cit.*; B. SZMRECSANYI, *Register in variationist linguistics*, cit., pp. 76–99.

[100] Cf. V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek, op. cit.* pp. 79–80.

[101] Cf. P. KOCH, W. OESTERREICHER, *Gesprochene Sprache in der Romania*, cit.; P. KOCH, W. OESTERREICHER, *Language of Immediacy—Language of Distance*, cit., pp. 441–473.

[102] Cf. P. KOCH, W. OESTERREICHER, *Gesprochene Sprache in der Romania*, cit., p. 13.

[103] Cf. V. LIÉGEOIS, J. AKKERMANS, *Recodifying the Law, op. cit.*, pp. 1783–1784.

[104] Cf. M.V. BUIATTI, *Gender Neutral Legal Language*, op. cit., p. 51.

[105] Cf. V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek, op. cit.*, pp. 85–86.

or become outdated.[106] In order to create this time-resistance, however, the legislator should not only consider how gendered and gender-inclusive language is used when the law is drafted (= application of current language norms), but also how gendered and gender-inclusive language are likely evolve in the (near) future (= anticipation of future language norms).

This time-resistance, in turn, contributes, as mentioned in Sect. 4.1.2, to legislation being more user-friendly. Returning to the discussion in Sect. 4.2, we pointed out that every speaker of a language is familiar with at least a few registers (and thus usage norms) within that language. This also applies to those people making use of legislative texts (judges, lawyers, legal scholars, etc.). Consequently, these persons are influenced by these other language registers when it comes to their language use in legislative contexts and thoughts on the matter. If, due to the insufficient implementation of gender-inclusive language, legislation grows too distant from the other language registers, many structures within legislative language will become difficult to use even for those specialists. This will be particularly problematic for spoken communication, less institutionalised settings and communication with lay persons (e.g., legal clients). With respect to contract drafting, for instance, Pajak has observed that many clients of legal firms are actively asking for their legal documents to be drafted in a gender-inclusive manner, leading to contract language having a more gender-inclusive norm than its legislative variant.[107]

Subsequently, it is likely that jurists will turn to more hybrid registers, thus creating additional variation within the legal language register (see also the previous comments on jurisprudence and legal scholars). Liégeois notes, for instance, that even though *goed(e) huisvader* was only recently substituted in Belgian law, many legal scholars, judges and magistrates were using terms similar to *redelijk persoon* a long time before legislative language changed.[108] In this regard, following linguistic literature on the matter, he hypothesises that due to the term *goed(e) huisvader* growing more and more distant from other language norms, it became more difficult to use even by specialists, which thus led to them using terminological alternatives.[109] Many legal scholars and legal linguists warn against such variation, since it can lead to interpretational problems and unnecessary specialisation within the legal field (cf. Sect. 3.2.2 and Sect. 4.3.2).

Concerning the effects of gender-inclusive language on durability (time-resistance + user-friendliness), it is interesting to briefly return to the plain language (Sect. 3.2.1) and consumer arguments (Sect. 3.2.2). The former pointed out that gender-inclusive language can contribute to the textual acceptability of the law since these texts will appear more inclusive to persons from different genders reading them. However, our discussion above shows that if gender-inclusive language indeed keeps expanding in society, the implementation of such language in legislation also becomes important for its correspondence with "general language use", which is an issue often considered by proponents of plain language in legislation. The latter, on the other hand, saw gendered structures only as problematic when they led to difficulties for legal specialists. As our discussion illustrates, these specialists do interact with society and, like legal language in general, legislative language cannot be regarded independently from other registers. Therefore, if the use of gender-inclusive language is only considered with respect to the legal community, this may, in the long turn, lead to linguistic deficiencies.

4.3.2. Positive effects of a durable legal language

A durable legislative language, as discussed in Sect. 4.3.1, thus implies that legislation is time-resistant and that its language is not overly conventionalised with respect to other – particularly legal – language registers, so that it can be easily used in other legal settings and a more uniform legal

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[106] Cf. E. BRACCHI, *Langage législatif européen et français selon une orientation genré*e, *op. cit.*, p. 103; A. POTTAGE, *Response to 'Exploring the Textual Alchemy of Gender'*, in *feminists@law*, 10/2, p. 1, https://doi.org/10.22024/UniKent/03/fal.951.

[107] Cf. K.I. PAJAK, *How to Write Gender-Neutral Contracts*, in *National Law Review*, 9, 2019, https://www.natlawreview.com/article/how-to-write-gender-neutral-contracts.

[108] Cf. V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek*, *op. cit.*, pp. 85–86.

[109] Future research is, however, needed to back up this hypothesis with empirical metalinguistic data on which variants were used before the recodification and what the reasons behind this usage were.

language register is maintained. These are, on their own, valid arguments for using gender-inclusive strategies in legislation, but secondary benefits of this durability should be pointed out as well:

(a) Concerning the time-resistance of legislation, gender-inclusive language is also expected to positively affect *the endorsement of legislative texts by the population*. A big amount – if not most – of the criticism to which legislation is subjected by the population regards the language of the law (cf. the previous comments on the plain language movement). Consequently, the more legislative language is in line with other language registers, the less such criticism is promoted.

(b) If legislative language should, however, grow more distant from other registers due to not properly integrating gender-inclusive structures, this will also affect the *learnability of both legislative language and the law*. Various studies – concerning various countries and languages – within linguistics have pointed out that students starting at university often encounter problems related to the specialised register used here.[110] This primarily regards terminology, but can also concern grammatical structures typical for this specialised register. Some universities have even started working on projects to tackle this issue.[111] Of course, the more distant such a specialist register becomes, the more difficult is to properly acquire this register, which, in turn, causes problems for understanding university lectures or, in relation to the focus of our paper, the law. Therefore, a more durable language register has positive effects for learnability as well.

(c) If due to this dissociation from other language registers, legal language becomes subject to internal variation, the possibility exists that this will lead to further linguistic specialisation (between different legal domains, legal text genres, legal systems using the same language, etc.), which, in turn, can contribute to *interpretational problems*. We once again refer to Liégeois's study on the collocation *voorzichtig en redelijk persoon* in the new Civil Code.[112] On the one hand, he noted that within legal theory various terms were used to substitute *goed(e) huisvader* – for instance, *voorzichtig persoon* ("careful person")*, redelijk persoon* ("reasonable person") and *voorzichtig en zorgvuldig persoon* ("gentle and careful person") – but that it is unclear whether semantic differences between these terms exists or whether they are absolute synonyms. This variation even translated itself into legislative language, since in the new Criminal Code *normaal en redelijk persoon* was used, whose difference with the *voorzichtig en redelijk persoon* is also unclear (cf. Sect. 3.1.2). As has been pointed out by Xanthaki[113] such unclarity is best avoided when it comes to legislation (cf. Sect. 3.2.1), thus also making durability interesting when it comes to the *clarity* and *effectiveness* of legislation.

(d) Finally, other than enhancing the correspondence with linguistic reality (i.e., the other language registers used in society), gender-inclusive language and durability can also be considered with respect to the law's correspondence with social reality (i.e., societal behaviour). In Sect. 3.1.2, we mentioned the structure *vader en moeder* ("father and mother") being substituted by *ouders* ("parents") in Belgian inheritance law. Though the latter is not likely to disappear from our language use or become an archaism (cf. Sect. 4.3.3), its substitution makes that the wordings of the law better account for new forms of parenthood that have emerged over the last decades, thus contributing to its durability.

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[110] Cf. B. DEYGERS, *Validating university entrance policy assumptions: Some inconvenient facts*, in E. Gutiérrez (Ed.), *Learning and Assessment: Making the Connections—Proceedings of the ALTE 6th International Conference*, Cambridge, 2017, pp. 46-50; B. DEYGERS, K. VAN DEN BRANDEN, E. PETERS, Checking assumed proficiency: comparing L1 and L2 performance on a university entrance test, in *Assessing Writing*, 32, 2017, pp. 43–56.

[111] Cf. J. MATHYSEN, H. DE SMET, L. HEYVAERT, D. JASPERS, P. PAUWELS, B. SZMRECSANYI, E. PETERS, *Innovative Digital Learning: Taal-kundig Leren Leren*, Conference presentation *Dag van het Onderzoek*, Kortrijk, 09 Jun 2022.

[112] Cf. V. LIÉGEOIS, *De 'voorzichtig en redelijk persoon' in het nieuw Burgerlijk Wetboek, op. cit.*, pp. 77–87.

[113] Cf. H. XANTHAKI, *Gender-inclusive legislative drafting in English: A matter of clarity*, cit., pp. 57–72; H. XANTHAKI, Gender Inclusive Legislative Drafting in English: A Drafter's Response to Emily Grabham, cit., pp. 8–9.

4.3.3. Disclaimers

The discussion in Sect. 4.3.1 and 4.3.2 has so far highlighted the positive aspects of the durability argument. However, some disclaimers are in order regarding the claims made above:

(i)   First, whether legislative language is more time-resistant or archaic also depends on other language strategies than those related to gender. Therefore, the use of gendered or gender-inclusive structures has an effect on time-resistance, but does not determine this in its entirety. Other factors have to be taken into account as well if a time-resistant or even modern legislative language register is to be obtained.

(ii)   Secondly, the amount to which gendered structures contribute to archaisation is likely to depend on the (type of) language involved, for which we refer to our discussion in Sect. 3. However, it is difficult to say in which type of language these structures have the biggest effect: such structures appear most frequently in the grammatical gender languages, but are a consequence of the language system itself, therefore it is possible that such structures have a bigger effect in natural gender and genderless languages, where they appear less frequently but deviate more from other language norms. Empirical research is imperative to provide more concrete insights on this matter.

(iii)   Thirdly, is unlikely that every gendered structure used in legislation will become outdated. For instance, whereas a structure like *good family father* already seems out of line with current language use, a structure like *father and mother* – which we have previously considered with respect to a durable correspondence of legal provisions with social reality (cf. Sect. 4.3.2) – is highly unlikely to disappear from our language. Nevertheless, as pointed out in Sect. 3.1.2 and Sect. 4.3.2, it could still be beneficial for legislation to substitute such a structure by a gender-inclusive one. Consequently, the durability argument cannot be the only argument for substituting gendered structures. In this regard, we particularly refer to our discussion in Sect. 3.2.1, where other benefits of gender-inclusive legislation are highlighted.

(iv)   Fourthly, not all gender-inclusive structures have the same potential to expand across registers and to be included in prescriptive dictionaries and grammars. This is important for legal drafting, since, as mentioned in Sect. 4.3.1, the legislator should not only take into consideration the language norms at the moment the law is drafted, but also anticipate on how they might change. In this regard, this paper has pointed out at various points that symmetricalisation structures have particular difficulty in being accepted by both the language community in its entirety and persons within the legal field. The legislator should refrain from using such structures as much as possible, since they may have a negative aspect on the durability of the law, as well as on other aspects (e.g., readability).

(v)   Finally, it should be pointed out that the durability argument does not cancel out the various counter arguments that have been formulated against gender-inclusive legislative language. This is specifically true for the content-before-language and readability-and-aesthetics arguments (cf. Sect. 3.2.2). Particularly problematic is that, even though gender-inclusive language can contribute to the consistency of legal language in the long term, it will create inconsistencies in the short run. Such structures, in fact, break with the previous language traditions and the substituted structures might still resurface in older legislative texts or other legal settings.

Regarding points (iii), (iv) and (v), we again highlight the need for each legal system to have clear guidelines on how to use gender-inclusive legislative language (cf. 3.2.2). If this is not the case, gender-inclusive language may pose more problems for legislation than it was able to solve (see our previous observations about non-uniform language norms and language criticism in 3.1.2). As such, these guidelines should be backed by empirical data and consider which gender-structures are outdated (iii), which gender-inclusive structures should be preferred to others (iv), as well as list both the

gendered and gender-inclusive variant for important or recurrent structures that have been changed in legislation (v). Considering, then, the idea that the legislator should also anticipate which gendered structures are likely to become outdated, linguistic advice, based on empirical data, is once again needed. Linguists and drafters should thereby also be careful not to propose gender-inclusive structures that are not conform the standard language norm (e.g., *Arbeiter*Innen* and *ArbeiterInnen* in German) and/or not supported by either the language community in its entirety or the specialists from the legal fields themselves.

5. *Conclusion and notes for future research*

We opened our paper with the observation that gender-inclusive language structures become more and more prevalent in legislation. Consequently, we argued that, to successfully incorporate such structures in legislation, it is important that their benefits and problems are reflected upon by linguists, legal and gender scholars (cf. Sect. 1). To this end, our paper had two purposes. First, it sought to elaborate on the principles of gender-inclusive language and the main strategies used on the matter, after which the use and reception of such structures in legislation was discussed. Secondly, we considered durability as an additional argument in favour of gender-inclusive legislation.

Regarding the first objective, we were able to point out that *neutralisation* (e.g., the substitution of *good family father* by *reasonable person*) has been the preferred gender-inclusive strategy in legislation, whereas *symmetricalisation* (e.g., *he or she* instead of *he*) is avoided as much as possible, even though its use may be inevitable in certain (grammatical gender) languages (cf. Sect. 3.1.2). These observations also resurfaced at various other points throughout our paper. We then singled out three arguments in favour of gender-inclusive legislation, namely the *gender equality argument*, the *clarity argument* and the *plain language argument* (cf. Sect. 3.2.1), whereas the counter arguments comprised the *content-before-language argument*, the *consumer argument* and the *readability-and-aesthetics* argument (cf. Sect. 3.2.2).

When it comes to our own argument, the *durability argument*, we departed from the assumption that gender-inclusive language will keep gaining ground in society (cf. Sect. 4.1.1) and that the legislative language register counts as a very conservative one, which – due to a variety of reasons – does not easily allow for innovation (cf. Sect. 4.3.1). Consequently, we pointed out that by not sufficiently implementing gender-inclusive language, archaisation is exacerbated, whereas by sufficiently implementing gender-inclusive structures a more durable legislative language can be obtained. This durability, on the one hand, comprises that the language of the law becomes more time-resistant and, on the other, that – due to this time-resistance – legislative language will be easier to use for legal specialists, thus contributing to the uniformity of legal language. Additionally, four other secondary benefits of this durability were singled out: (a) a higher endorsement of the law by the population, (b) a higher learnability of legislative language (and the law), (c) more clarity and (d) a better correspondence with social reality.

Nevertheless, we should once again point out that our discussion of durability started from an assumption (which was then backed by some preliminary empirical studies). Therefore, it is important to study the evolution of both legislative language and gender-inclusive language in more detail. This paper also identified various research gaps in legal linguistic literature. These concerned, for instance, missing data on interpretational provisions, language attitudes and the use of gendered language. In this regard, it is important to do empirical research on (i) which gendered structures are outdated or likely to become so, (ii) which gender-inclusive structures are preferred over others, and (iii) to systematically register which gendered structures are or can be substituted by gender-inclusive ones. Such research should therefore regard both *usage-based* (i.e., data on how language is used) and *metalinguistic data* (i.e., data on how language is perceived). Based on this, the guidelines which we have argued to be imperative for both the problems singled out in Sect. 3.2.2, as well as the durability argument in Sect. 4, can be created.

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