

The formation of legal terms: a case study

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1 Introduction

In recent years, the focus in terminology research has shifted from normative and descriptive studies to more explanatory studies, dealing with how and why new terms are formed. The present study falls within this trend. Our objective is to describe how legal terms come into being and to discuss methods for monitoring legal neologisms. The study is a part of a broader project which has the aim of describing and explaining differences in discursive norms in French and Norwegian legal texts. Within the scope of this article, we will however focus solely on the formation of Norwegian legal terms.

2 What is a legal neologism?

The objective of law is to regulate the rights and obligations of legal persons. Legal concepts are thus drawn from all types of social activities that require regulation. The need for new concepts often arises as a result of innovative developments for instance in technology, business practices or financial markets. The need for new *legal* concepts arises when these developments require amendments in existing legislation or the elaboration of new legislation.

Neologism can be perceived as pertaining to the concept itself or the semiotic expression designating the concept. We approach neologism from a conceptual point of view and our focus of interest is therefore the formation of new concepts or the restructuring of existing concepts. The adequate expression to be used to designate new concepts or restructured concepts will often be the subject of discussion or negotiation before a conclusion is reached.

3 The genesis of legal neologisms

The genesis of legal terms is closely linked to the legislative process. In Norway, this process is usually initiated by the government. A white paper describing the situation that requires regulation is commissioned from a group of specialists in the relevant field. The white paper, often called a *NOU* in Norway, contains a recommendation forming the basis for a draft law. Given the importance of defining concepts in accordance with the intention of the law, the report will focus on the legal effects of a given concept and will attempt to assure that the concepts cover all and only the occurrences it is intended to cover, i.e. has the right intension. The white papers therefore contain a mine of “reflective text fragments” (Temmermann, 2000). In the following we will discuss how these white papers can be exploited to identify new legal terms.

4 Methodology

The semiotic expressions used to designate legal concepts are often commonly used words and cannot be easily singled out as terms. The use of automatic term extraction tools is therefore of lesser interest than in many other fields as the recall and precision rates will be low. As an example, the expression “mor” (mother) is a legal term which may occur in a white paper both as a legal term and as a common word, depending on the context. We have therefore chosen to search for metadiscursive expressions indicating reflective text fragments where legal concepts are discussed and negotiated. We have read a number of white papers closely in order to identify which expressions tend to be used in these discussions. Surprisingly, the term “term” does not occur in any of the white papers we studied. The terms “betegnelse” (designation) and “begrep” (concept) on the other hand, occur frequently, the latter either on its own or in composite words such as “begrepsendring” (concept change), “begrepsbruk” (use of concept).

In order to explore the usefulness of searching for these key words, we have conducted a qualitative pilot study on one the white paper *Farskap og annen morskap*, which deals with parenthood, and the need for the definition of new types of legal parents.

As mentioned above, the need for regulation must be seen against the backdrop of new social developments. In the present case, the need for regulation has arisen as a result of biotechnological advances and new family patterns. Today, the concepts of mother and father have become fuzzy and have to be redefined as legal concepts in order to ensure the rights of children born into “non prototypical” families. The white paper discusses social and biotechnological challenges, and recommends amendments to the existing Children’s Act (*barnelova*). In this discussion, a number of new concepts and terms are proposed. By searching for the key words mentioned above, we have found a large number of reflective text fragments containing terminological discussions relating to both the concept itself and its semiotic expression. The following text fragment is a good illustration of the type of discussion we can find in the white paper:

Den rettslige moren er kvinnen som føder barnet også dersom hun har mottatt egg fra en annen kvinne. Svangerskap og fødsel gjør kvinnen til biologisk mor. Utvalget har i sine drøftelser valgt å bruke **begrepe** mor og surrogatmor når det er naturlig å skille mellom disse kategoriene. **Begrepet** surrogatmor benyttes for å omtale en kvinne som bærer fram et barn i den hensikt å gi barnet fra seg, uavhengig av om barnet stammer fra hennes eget egg eller egg fra en annen kvinne. Det er intensjonen om å gi barnet hun bærer til en annen som gjør kvinnen til surrogatmor [...] En surrogatmor som føder på norsk sykehus vil etter gjeldende regelverk anses som rettslig mor til barnet. [...] utvalget benytter **begrepe** genetisk mor og genetisk far der det er hensiktsmessig å henvise til de personene der henholdsvis eggcellen og sædcellen har sin opprinnelse. For øvrig er **begrepe** biologisk og genetisk far brukt synonymt.

The various reflective text fragments in this white paper provide us with information about a wide variety of individual terms. They also enable us to establish a provisional conceptual system pertaining to motherhood, which is the key superordinate concept discussed in the white paper:

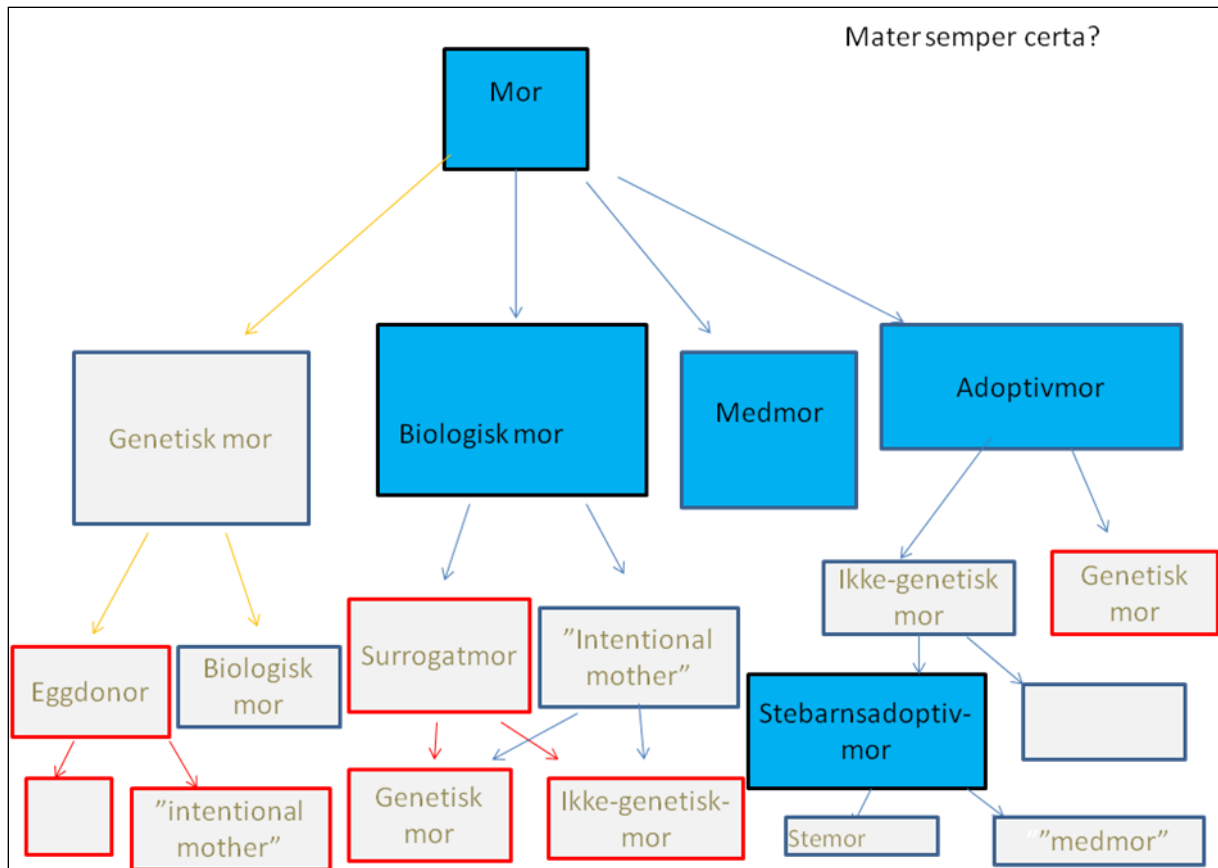


Figure 1

Concept system – motherhood

Not all the concepts in the system are legal concepts in the sense that they do not all have legal implications. In the system above, the legal terms are in blue boxes. The grey boxes with a blue outline contain non legal concepts, i.e. types of motherhood that are not regulated by law, whereas the boxes with a red outline contain concepts describing types of motherhood that are illegal in Norway.

The most interesting concept in this system is medmor (co-mother). This is a new legal term which is given a clear definition that deviates from its use in general language. As a legal term, “medmor” entails *inter alia* the use of medically assisted procreation and the declaration of co-motherhood within a certain time limit. In general language use, the word medmor is used more loosely to designate a social mother who lives with the child’s biological mother. The white paper contains a lengthy discussion of the need for this new type of legal parenthood, which today constitutes a third legal means of becoming a mother, alongside childbirth and adoption.

5 Conclusion

Our pilot study shows that the white papers contain substantial terminological input, and that the use of key words is an adequate means of identifying the relevant text fragments which not only introduce new concepts, but also provide information on how this concept fits into the relevant conceptual system. This type of information cannot always be found in the legislative texts and not all legal concepts are defined in the law. Notwithstanding the fact that concepts such as those described above first become legal concepts when legislation has been

passed, the white papers are essential to understanding why and how new legal concepts are formed. For terminographic purposes, white papers are extremely useful for compiling conceptual information which can serve as a basis for definitions. The concepts identified in the white papers must however be analyzed with discretion, as they may be rejected by the legislators.

A comparative study of white papers will provide valuable insights into the type of terminological discussion and negotiation that characterizes different legal cultures and the ideological underpinnings of individual legal terms. In this respect, white papers are an interesting text type and genre where discursive norms may vary from one legal culture to another. White papers will therefore be an important source in our overall project on discursive norms in legal texts.

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