

# Identifying Obligation in Legal Finnish and Swedish through English Translations: A Corpus-Assisted Approach

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**Abstract** Even though deontic modality is one central feature of statutory texts, codifying obligation, the descriptions of obligation in Finnish legal texts are still few. This corpus-assisted study of Finnish statutory texts has an innovative approach in using English translations as a starting point for identifying the linguistic forms obligation takes in Finnish statutory texts. Beyond describing Finnish deontic modality, we look at ways it has been translated into legally valid Swedish statutes, paying special attention to existing instructions for translators. The results show that, in addition to explicitly modal expressions, Finnish statutory texts frequently express obligation using the present indicative. In Swedish, there is a range of options, but there, too, the use of the present indicative is common. Based on this study, using English translations to identify such cases for further study is a viable option. The results of the study can be applied in translator training as well as in the work of legal translators.

**Keywords** Modality, legal language, statutory texts, Finnish, Swedish, English, corpora

## 1 Introduction<sup>1</sup>

Statutory texts create a system of various types of legal rules: they permit, empower and oblige (Ministry of Justice 2016). One of the ways these rules are expressed in statutory texts – as in other texts – is deontic modality (Biel 2014). Different languages have different ways of expressing obligation, which makes the task of translators challenging at times. Particularly translation between languages which are not typologically related can cause unexpected obstacles. Our interest in this question arose partially because we both teach translation of legal texts, and the question of deontic modality is perennially difficult to approach, given that expressions of obligation in Finnish legal texts have not been exhaustively described. (Cf. Sections 2.1 and 2.2 for details.)

According to the Constitution of Finland (731/1999), the national languages of Finland are Finnish and Swedish. Everyone has the right to use his or her own language, either Finnish or Swedish, before the courts of law and other authorities, and to receive official documents in that language. This means that all legal texts are available in both languages. They are drafted in Finnish and translated into Swedish. Both are official versions and can be used as the basis of interpreting the law in courts (Language Act 423/2003). In addition to the of-

<sup>1</sup> The research reported here has been in part supported by the Academy of Finland project Democratization, Mediatization and Language Practices in Britain, 1700–1950 (DEMLANG) (project number 295381).

### Zitiervorschlag / Citation:

Nurmi, Arja/Kivilehto, Marja (2019): "Identifying Obligation in Legal Finnish and Swedish through English Translations: A Corpus-Assisted Approach." *Fachsprache. Journal of Professional and Scientific Communication* 41.3–4: 142–158.

ficial versions, an increasing number of statutes and decrees are translated from Finnish into English.

In this study, we focus on the expressions of deontic modality in Finnish legal texts. We approach the question in a novel way, through corpus-assisted comparison of Finnish source texts with their Swedish and English translations. We have operationalised our comparison by using the appearance of modal auxiliary *shall* in the English translations as a starting point. There are several reasons for this. First, as mentioned above, the expressions of deontic modality in Finnish legal texts are as yet incompletely described. Second, since Finnish and to some extent Swedish can express strong deontic modality by using the present indicative, using English translations facilitates identifying loci of strong deontic obligation. Our aim is to chart the variety of options in expressing obligation in Finnish, and to compare our findings to the instructions for translators of legal texts. This brings us to the third reason for choosing *shall* as our starting point: the instructions for translating Finnish statutory texts into English as well as the instructions of EU translators for translating EU directives into Finnish have specifics on the use of *shall*. As the instructions for translating Finnish texts into Swedish also touch on translating expressions of deontic modality, this allows us to compare how the instructions guide the practices of translation when producing a legally valid translation (Finnish to Swedish) as opposed to producing a translation for informational purposes (Finnish to English).

We start by discussing deontic modality in Finnish, Swedish and English legal texts. We then give a brief overview of the instructions for translators concerning modal expressions. After describing our corpus and methodology, we go on to present our findings of the expressions of obligation in Finnish, as well as the correspondences and differences in Swedish and English.

## 2 Deontic modality in legal texts

Since legal languages have their own conventions of expressing legal rules, it is necessary to investigate the broader phenomenon of expressing legal rules, i. e. *deontic modality*. Deontic modality is expressed by syntactic and lexical means: modal verbs, adverbs and adjectives as well as lexical verbs and the imperative mood. As the function of statutory texts is norm giving, some authors suggest that if a text is named a statute, an official rule or an order, all clauses have a deontic force, regardless of the presence of any explicit modal markers (cf. e.g. Williams 2009: 203, Kanner 2011: 23, Mattila 2017: 69).

### 2.1 Obligation in legal Finnish

In Finnish legal language expression of obligation is still sparsely studied, particularly from a quantitative perspective (Kanner 2011: 3), nor has the question been addressed in Finnish legal studies (Rydzewska-Siemiątkowska 2016b: 65). We know the broad strokes, but not many of the details. In Finnish legal texts obligation was previously expressed by imperatives, which go back to the Swedish law of 1734 (Mattila 2017: 68).<sup>2</sup> By the mid-20th century this so-called jussive declined in use and by 1970 law drafters were instructed not to use it (Kanner 2011: 37).

<sup>2</sup> Finland was part of Sweden at the time. The law of 1734 was first translated into Finnish in 1759. The translation was further modified and modernised during the nineteenth and early twentieth centuries (Kuutti 2010: 120–123, Tyynilä 2010: 140–141).

In newer statutory texts the prevalent forms expressing deontic modality are the VA participle, as well as the modal verb *tulee* (Ketola 2003, Kanner 2011: 34 f., Rydzewska-Siemiątkowska 2016a: 66, 2016b, Mattila 2017: 68).<sup>3</sup> This resembles to some extent the practices of general Finnish, as according to Kangasniemi (1992) the most frequent form of expressing obligation in general Finnish is the VA participle construction, followed by modal verbs *pitää*, *tulee* and *täytyy*.

The VA participle structure consists of the first participle form of the main verb in the passive voice (ending in *-va/vä*), combined with the verb *olla* ('to be'), as in (1). Ketola (2002: 123) notes that in 20th-century Finnish statutory texts the VA participle construction accounts for a third of all deontic expressions, while in the 21st century it is the most frequent construction, albeit still only accounting for a third of the expressions. In her data modal verbs *tulee*, *pitää* and *täytyy* are grouped together and make up approximately 10 % in both periods studied, but she mentions that *tulee* is the most frequent of these (Ketola 2002: 130). The modal verb *tulee* is combined with the infinitive of the main verb, as in (2).

(1) Jos 1 momentissa tarkoitettu lupa tulee uudelleen voimaan, lupatodistus *on* viipymättä *palautettava* luvanhaltijalle. (Ampuma-aselaki 1998/1)<sup>4</sup>

If the validity of the permit referred to in subsection 1 is renewed, the permit document *shall*, without delay, *be returned* to the holder of the permit. (Firearms Act 1998/1)<sup>5</sup>

(2) Puhelimissa *tulee olla* DSC-toiminto ja erillinen DSC-päivystys. (Valtioneuvoston asetus aluksen miehityksestä ja laivaväen pätevyydestä 2000/65)

The telephones *shall be provided with* DSC and with a dedicated DSC watchkeeping function. (Decree on the Safety of Certain Fishing Vessels 2000/65)

Rydzewska-Siemiątkowska (2016b) discusses the differences between the Finnish VA participle construction and the verb *tulee* in legal contexts on the basis of a survey. Overall, her survey showed that both constructions have a clear sense of obligation, although *tulee* was evaluated as less categorical by some informants.

Deontic obligation is not always expressed explicitly. When a text is normative in nature, also the present indicative can be used in a deontic sense (Kangasniemi 1992: 108, Ketola 2003, Mattila 2017: 69). In Finnish, the present indicative can be seen as an expression of a categorical statement (VISK § 1590). Simple present is also used in many other European languages where English uses *shall*; Williams (2007: 152) mentions Romance languages as an example. Kanner (2011: 94) notes the present indicative has increased in Finnish statutory texts since the 1970s. Ketola (2002: 123) observes the same trend, as passive and active indicatives account for some 13 % of instances in her 20th-century data while in the 21st-century statutes they make up 46 %. These proportions should be accepted with some caution, however, as Ketola (cf. e. g. 2002: 140) has included also descriptive clauses with no sense of obligation.

<sup>3</sup> The VA *participle* is the term used in VISK (§521). It refers to the morpheme added to the lexical verb. The upper case is used to cover variation consistent with Finnish vowel harmony. The form *tulee* is the 3rd person singular form of the verb *tulla*. We use the form *tulee*, since it is the form appearing in legal texts.

<sup>4</sup> The references to Finnish laws are in a form that allows them to be retrieved from the Finlex repository.

<sup>5</sup> In numbered examples the English translations are from the Finlex database unless otherwise mentioned.

The role of the present indicative in Finnish statutory texts has so far only been studied in more detail by Attila (2017: 30–31), who finds that the information structure of clauses may cause the choice of indicative when the subject of the clause is in the rheme position and blocks the VA participle. Present indicative also appears in a deontic sense in cases where continuous responsibilities are assigned and described; these can be connected to stative and durative aspects. Attila (2017: 32) describes these as weak tendencies. In her data, the obligation in indicative sentences is typically directed towards official bodies, whether government departments or municipalities. (Cf. also the discussion in Section 3.2.) Attila (2017: 47) also demonstrates the difficulty of teasing out the informative and directive senses of non-modal indicatives.

In addition to the expressions presented above, Finnish has some other ways of expressing obligation. Kangasniemi (1992: 105–107) mentions the combinations of *olla* ('to be') and a noun or adjective. Ketola (2002: 123, 2003) particularly notes the adjective *velvollinen* and the noun *velvollisuus*; the former appears in her two data sets consistently at the rate of 7 %.

## 2.2 Obligation in Swedish

Swedish is the other official language in Finland and all Finnish legislation is translated into Swedish. The Swedish translations are legally valid. It has been argued that civil law legal cultures such as Sweden “traditionally use fewer modal auxiliaries and a greater variety of different expressions of the modality than common law legal cultures” (Bhatia et al. 2007: 15). It can be assumed that the same applies to Swedish in Finland, although there are also differences between legal Swedish in Finland and Sweden (SLAF 2017: 49–52). So far, there are no comprehensive or frequency-based descriptions of deontic modality in Swedish language statutory texts, whether in Sweden or Finland.

In Swedish, deontic obligation is expressed by the modal auxiliaries *behöva* ‘need’, *böra* ‘ought to’, *borde* ‘should’, *måste* ‘must’ and *ska/ll* ‘shall’, as well as by the expression *vara tvungen* ‘to be forced’ and by the indicative and imperative moods (SAG 1: 198–199, SAG 4: 282–290).<sup>6</sup> Overall, the borderlines between the meanings of the modal auxiliaries in Swedish are not very clear, and e.g. *måste* can be interpreted as deontic or epistemic (Andersson 2003: 863). In the case of the indicative, the sentence *du sover* ‘you sleep’ can be taken as a statement, order, or an expression of surprise depending on intonation (SAG 1: 49).

Of the forms listed above, *behöva*, *måste* and *ska/ll* express strong deontic obligation, while *böra* is used in recommendations. The target of obligation can be but does not have to be the subject referent, i. e. auxiliaries can be either subject-dependent or subject-independent. The source of the obligation can be a norm system, physical necessity or general appropriateness (SAG 4: 286–287).

Modal auxiliaries in Swedish vary in how far they are subject-dependent or subject-independent. *Behöva* can be both subject-dependent and subject-independent. In the latter case, the obligation does not depend on the needs of the subject referent, but ensues instead from norm sources like regulations, customs and general appropriateness (SAG 4: 290–292). Similarly, *böra* can be both subject-dependent and subject-independent. In its deontic use, *böra* indicates that the proposition of the sentence corresponds to social norms or general appropriateness that govern how one should usually act. When used in the present tense *böra* is a fairly strong moral recommendation, whereas in its past tense form, i. e. *borde*, it is both less

<sup>6</sup> The verb *ska/ll* is found in older texts as *skall* and in newer ones as *ska*.

moral and a weaker recommendation. The speaker does not necessarily expect the recommendation to be followed (SAG 4: 292–294).

With reference to legal language, Palmgren (2017: 71) gives examples of different types of norms and the ways they are expressed in Swedish. The norm of competence, giving an official body authority to perform certain functions, seems to be expressed with present tense passive constructions, while legal obligation, the speech act of ordering, is expressed with *ska/ll*.

The two most frequent auxiliaries used to express deontic obligation in general Swedish are *måste* and *ska/ll*. When used deontically, *måste* implies that the norm-addressee is subject to an absolute demand and that norm sources consist of regulations, customs or general appropriateness (cf. *behöva*). Compared to *måste*, *ska(ll)* is more binding. It can be used in the present and in the past tense and it indicates that someone or something demands that one does something that does not come automatically. The demand can be rooted in a specific social or functional norm (duty, obligation, habit, order, normality and general appropriateness). *Ska/ll* is more directly linked with power: the right of a person or an institution to give instructions (orders, directions and advice) to others (SAG 4: 312–320).

### 2.3 Obligation in legal English

In English statutory texts obligation, and specifically the speech act of ordering, is usually expressed by *shall* (Charnock 2009: 177), and it has been “the most commonly used modal auxiliary for at least 600 years in prescriptive legal English” (Williams 2009: 199). The auxiliary in statutes “does not simply indicate what will happen” but rather creates a new obligation or duty and can be analysed as a performative marker (Charnock 2009: 186). The auxiliary is often not used in contexts where exceptions to the rule are specified (Charnock 2009: 187).

As part of the Plain English movement, there has been an effort to exchange *shall* with modal expressions more in tune with present-day general English practices (for an overview, cf. e.g. Williams 2009; for a discussion of the Plain English movement, cf. Garzone 2013: 72–75). Garzone (2013) shows that in UK legislation the decline of *shall* began in the 1990s and by 2011 it is barely used at all. Her study shows that from 11.9 instances of *shall* / 1,000 words in the 1970s, there was a small decline into 11.1 in the 1980s, and after that a dramatic drop to 1.9 in the 1990s and 0.4 in the 2010s.<sup>7</sup> Williams (2013: 361) shows higher figures for the UK (12.7 for 1970, 14.1 for 1980, 9.7 for 1990, 10.6 for 2000 and 0.2 for 2010), but his corpus is only 10 % of the one used by Garzone, so the impact of individual texts may play into Williams’ results. Garzone (2013: 71 f.) argues that the decline of *shall* was specifically the result of the Plain English movement, not a spontaneous development. For EU texts Williams’ figures show a slightly declining tendency (from 14.7 in 1973 to 10.0 in 2010), but given the small size of his corpus, it is difficult to say whether there is a tendency to use *shall* less in EU texts or whether this is just the effect of individual texts. (For the relationship of the EU and the Plain English movement, also concerning *shall*, cf. also Foley 2002. For the frequency of *shall* in EU legal texts, cf. also Biel 2014: 341 f.)

Foley (2001) has looked at a small corpus of EU data (treaties, regulations, directives and decisions) in their English, Finnish, French, German and Swedish versions. He has used this parallel corpus to disambiguate the senses of English *shall* and notes that the Finnish VA par-

<sup>7</sup> The normalised frequencies were calculated by the present authors based on Garzone’s tables 1 and 2 (2013: 70).

tiple clearly identifies the obligation senses of *shall* while French and German reveal the instances where *shall* is used purely in the future sense (Foley 2001: 189). Here the range of genres included in Foley's data leaves open the question whether these future instances appear in the statutory parts or in e.g. decisions.

Williams (2009: 201) has looked at English statutory texts which are “*shall-free*”, and has found that the auxiliary has been replaced by e.g. the present simple, *must*, *may* and *be to*. While many English-speaking countries have switched to a form of statutory language where *shall* is no longer used, the USA, the UK and the EU have longest persisted in its use. The implications for these powerful models for Finnish translators might well include the deliberate use of *shall* in the English translations of Finnish statutory texts.

### 3 Translating modality in legal texts

From the perspective of translation, the differing ways in which languages express obligation present a challenge. Biel (2014) has traced the differences in legislative Polish and EU legislation translated into Polish. She has found that the translations show a strong reliance on source language patterns of modality, which may, to some extent, reflect the different structure of texts, but can also at least partially be attributed to interference and power relations between the majority and minority cultures within the EU context. (For a discussion of corpus-based research of legal texts and legal translation, cf. Biel 2010.)

As Finnish statutory texts are always translated into Swedish, there is a well-established procedure for how translations are produced. The Prime Minister's Office is responsible for all ministries' translation and language services. The Swedish Language Unit translates government proposals, statutes and other documents into Swedish, and the Foreign Languages Unit provides language services in English and Russian (Prime Minister's Office 2017c).

The Prime Minister's Office regularly publishes guides for translators, revisers and authors of governmental texts.<sup>8</sup> One set of guidelines, *Svenskt lagspråk i Finland* (“Swedish legal language in Finland”, SLAF 2017) is for those who translate from Finnish into Swedish. Another set of guidelines (*Guide to Translating Finnish Statutes into English and Treaties into Finnish*, Prime Minister's Office 2017b, and *English Style Guide. A Handbook for Translators, Revisors and Authors of Government Texts*, Prime Minister's Office 2017a) are for those who translate Finnish statutory texts into English. Other guidance is provided by EU publications and publications produced by the counterpart of the Prime Minister's Office in Sweden. They are *Suomen kielen käyttöohjeita* (“Instructions for using Finnish”, DGT 2013), *Att översätta EU-rättsakter* (“Translating EU statutes”, DGT 2017) and *Gröna boken* (Regeringskansliet 2014).

Below, we take look at the recommendations given in the guides mentioned above with special focus on expressing and translating obligation in Swedish and English. Most notably, we examine the recommendations concerning modal verbs *ska* and *shall*.

#### 3.1 Instructions for Finnish-Swedish translations

When translating statutory texts from Finnish into Swedish, translators should use *ska* when the obligation is binding. It is better to avoid the plain indicative even if the Finnish source text has one, as in (3) (SLAF 2017: 59 f.). Similarly, in the instructions for drafting statutes in Sweden, avoiding the simple present in directive function is recommended; modal verb *skall*

<sup>8</sup> These are the latest versions available. We refer to earlier versions when necessary.

should be used instead (DS 1998: 105). A present indicative is acceptable for the sake of variation and in case of definitions and qualification rules, as in (4)–(6) (SLAF 2017: 60).

(3) Peruskoulussa *on* johtaja. (indicative)

Varje grundskola *ska ha* en föreståndare. [Every comprehensive school *shall have* a principal.]<sup>9</sup>

(4) I denna lag *avses* med ... [In this act *X is defined* as ...]

(5) Skattskyldig är den som ... [One who ... *is* liable to pay tax]

(6) Denna lag *träder* i kraft ... [This act *enters* into effect ...]

In addition to the indicative, Finnish source texts can also use the conditional mood. When discussing things that are decided by the parliament, the modal verb *ska* should be used (SLAF 2017: 61). Otherwise, the modal verb *bör* ('ought to') is recommended.

The recommendations of the publication *Gröna boken* (Regeringskansliet 2014) are in line with the recommendations of *SLAF* (2017). When someone is obliged to do something, the modal verb *ska* should be used. In case of prohibition, *får inte* 'may not' is recommended and in case of permission *får* 'may' should be used. Alternative expressions are *är skyldig att* 'shall' and *måste* 'must'. Using *kan* 'can' in regulations is seldom acceptable (Regeringskansliet 2014: 57).

When it comes to translating EU legislation into Swedish, the choice of expressions depends on the part of the statute the expressions occur in (DGT 2017). In introductory parts, *bör* 'ought to' and *måste* should be used. *Ska* should be avoided if the events and situations do not refer to the future. In the legislative part, *ska* is recommended even if the source text (in French/English) has an indicative, with the exceptions of definitions and non-binding statements (DGT 2017: 78).

### 3.2 Instructions for Finnish-English translations

The current set of instructions for translating Finnish statutory texts into languages other than Swedish specifically mentions only English in the title (Prime Minister's Office 2017b). The previous version, prepared by the Ministry of Justice (2010) referred to "translation into foreign languages" in the title, although in practice many of the more detailed points concerned English. The new set of guidelines does not discuss the use of modals at all, although there is an example translation which could be seen as a model to follow. The previous set of instructions, on the other hand, has specific instructions on the use of deontic modality, explicitly mentioning the auxiliary *shall* and its appearance in some of the examples included in the instructions. The instructions recommend the use of *shall* only when there is a future obligation decreed by the statute (i. e. when the indicative in Finnish can be replaced with the VA participle construction) and when the law mentions that something will be decreed in some later statute. Finnish indicative is thus clearly recognised as a potential expression of strong obligation, and a substitution test for identifying the deontic sense from plain indicative is suggested. This strategy places a great burden of interpreting the law on the shoulders of translators.

There are also instructions for translating legal texts from English into Finnish. These have been included in the *Suomen kielen käyttöohjeita* manual compiled by the Finnish language co-ordinators at DGT (DGT 2013). There is a specific mention of the use of *shall*. It is stated

<sup>9</sup> The English translations in these examples are ours.

that when the obligation is directed at EU organs, the Finnish translation should use the indicative, as in (7). This is in line with instructions for drafting EU legislation (EU 2015: 12) and is also reminiscent of the trend identified by Attila (2017) in Finnish legislation, where indicative is used for obliging official bodies. When the obligation is directed at other actors than EU organs, the Finnish translation should use the VA participle construction, as in (8).

- (7) The Commission *shall supervise* the proper management of the financial reference amount referred to in paragraph 1.

Komissio *valvoo* 1 kohdassa tarkoitettun rahoitusohjeen asianmukaista hallinnointia. (DGT 2013: 60; indicative in Finnish)

- (8) Interested parties providing confidential information *shall be required to furnish* non-confidential summaries thereof.

Asianomaisten osapuolten, jotka toimittavat luottamuksellisia tietoja, *on toimitettava* niistä ei-luottamukselliset yhteenvedot. (DGT 2013: 47; VA participle in Finnish)

Since EU translators translate also other types of texts, DGT (2013) offers specific instructions for non-statutory texts, where *shall* should be translated with a variety of forms to avoid legalese. For example, the modal verbs *tulee* and *pitää* and the indicative are recommended. Interestingly, in the EU instructions for drafting texts in Finnish, it is suggested the verb *tulee* should be avoided, but no reason for this is given (EU 2015).

#### 4 Data and method

Our data are drawn from the online repository of Finnish legislation (Finlex), published by the Finnish Ministry of Justice, and from the Edilex portal. The Finlex collection has all current legislation in the two official languages of Finland. It also contains much data on previous stages of statutes and decrees. Our starting point in collecting the corpus was the entirety of English translations available online in September 2015.<sup>10</sup> The corresponding Finnish source texts were selected and both language versions were downloaded as text files in a semi-automated process. The English texts amount to approximately 4.2 million words (altogether 714 files, each containing a single act or decree), while the Finnish source texts number 3.1 million words. The difference in word counts is mostly due to the typological differences between English and Finnish. Previous studies of modality in Finnish legislative texts rely on small corpora of hand-picked individual acts, so our approach gives a more general view.

In its current form, there are some usability issues with the data. Firstly, the English source files were in pdf-format, and the result of conversion into text left some parts garbled, while approximately 10 % of the files could not be converted and will need to go through OCR at some later stage.<sup>11</sup> Given the amount of data available, however, we have not focused our efforts on corpus building at this stage, but have rather used the parts that are usable now. Eventually we hope to develop the data into a trilingual parallel corpus, but one of the purposes of this study is to explore the data and find the most urgent points of further development.

<sup>10</sup> We would like to thank Ms Veera Saarimäki, MA, who assisted us in compiling the corpus. Her contribution was financially supported by Academy of Finland project 258434.

<sup>11</sup> Some of the pdf files are poorly scanned copies of obviously photocopied originals. They are legible to the human eye, but not good enough for OCR and need to be keyed in eventually.



Another issue related to the dataset is the unsystematic way in which Finnish laws are translated into English. The translations are produced for whatever need appears, but there is no effort to cover e.g. specific topic areas. In our data, only 4 % of the translations were made before the Finnish EU membership in 1995. The bulk of them, 55 %, are from 2000–2009, and a further 29 % later than 2010. This means that the existing guidelines for translation are well applicable to our data. It should be noted, however, that the dates of translations are not consistently recorded in the Finlex database, and some of these datings are based on the date of the statute itself. When no date of translation is given, an act passed in parliament in 2003 is considered translated in 2003 or later. Undated translations only make up 10 % of the data, so this is not a major issue.

Table 1: Frequencies of English modal auxiliaries in the translated Finnish acts and decrees

Auxiliary	Frequency	/ 1,000 words
<i>shall</i>	45,291	10.9
<i>may</i>	21,749	5.2
<i>must</i>	8,143	2.0
<i>can</i>	4,420	1.1
<i>will</i>	2,727	0.7
<i>would</i>	1,299	0.3
<i>should</i>	888	0.2
<i>could</i>	428	0.1
<i>might</i>	116	0.0
<b>Total</b>	85,061	20.4

An initial analysis of modal auxiliaries in the English translations, presented in Table 1, showed that the most common auxiliary used was *shall*. The normalised frequencies per 1,000 words, when compared to the results for present-day British statutes, resemble those found in the 1980s (Garzone 2013). Given the dates of the translations for our corpus, it would seem Finnish statutes are not translated with the Plain English principles in mind.

Foley has looked at a small corpus of Finnish legislation translated into English, which he has used, in addition to American, British and Canadian English corpora of legislation as comparative material to his EU texts. In these comparison corpora, Foley (2001: 193) finds that the Finnish corpus has the highest frequency of *shall* (approximately 15/1,000 words, based on his Figure 5; unfortunately Foley does not give the frequencies in any other form). It can also be noted here that Foley's data shows the lowest frequencies of *shall* in Canadian and British legal texts (seemingly half the frequency in Finnish), while US legal texts and the EU texts are only slightly lower than the Finnish corpus in their observed frequencies. This would seem to indicate that EU texts are an important model for Finnish translators working from Finnish to English.

Because our corpus is unannotated, we could not in any meaningful way identify potential Finnish expressions of strong obligation.<sup>12</sup> We therefore decided to make the English modal

<sup>12</sup> Annotation is hindered by the poor availability of Finnish POS tagging and parsing software.

*shall* our starting point. It should also be noted that we have not yet made an analysis of the time of publication of the translations. It is possible they may reflect an earlier norm of expressing legal obligation. Newer translations may show a change in the use of the modals, but that remains the topic of a further study.

A random sample of 100 instances of *shall* were chosen for further analysis: every 500th example from the WordSmith results was included. As mentioned above, there were some problems with garbling of corpus texts and matching source and target texts, in which case the next line in the database containing all instances of *shall* was chosen instead. When two – or in one case three – instances of *shall* appeared on the same KWIC line, we included all in our study, making the total number of instances 103. These were matched with Finnish source text equivalents by searching the corpus files for specific paragraphs and sections. The Swedish samples were collected from the Finlex and Edilex data with the help of the legal references identified for the Finnish matches.

### 5 Strong deontic modality in Finnish

When interpreting the results obtained from our corpus, there are some further points to consider. First, Finland and Sweden have fairly similar legal systems, and the legal Swedish used in Finland – as the Finnish legal system itself – has its roots in the time of the Swedish rule of Finland. As languages, Finnish and Swedish are not, however, cognate. Regarding legal translation from Finnish into Swedish, it can be assumed that problems are caused by the language differences between Finnish and Swedish, not the legal system. Second, English and Swedish are cognate languages, but the legal systems in Finland and in English-speaking countries are different. Finland has adopted Romano-Germanic law, while English-speaking countries follow common law. Therefore many aspects of English legal language are hard to reconcile with the Finnish legal system (Landqvist et al. 2016).

Below, we discuss the results of our corpus study. First, we look at the expressions of modality identified in Finnish source texts (cf. Table 2), then the Swedish translations and finally some trends in the English translations.

Table 2: Finnish source text and Swedish translation equivalents of English *shall*

Finnish		Swedish	
Structure	N (%)	Structure	N (%)
VA participle	49 (48)	<i>ska/skall</i>	63 (61)
indicative	39 (38)	indicative	34 (33)
<i>tulee</i>	7 (7)	<i>får inte</i>	2 (2)
imperative	4 (4)	optative/conjunctive	2 (2)
<i>ei saa</i>	2 (2)	<i>skyldig</i>	1 (1)
infinitive	1 (1)	preposition	1 (1)
<i>velvollinen</i>	1 (1)		
<b>Total (N)</b>	<b>103</b>		<b>103</b>

## 5.1 Finnish source texts

In the Finnish source texts, the main variant (48 %) corresponding to *shall* in the English translations was the VA participle construction in the original (9)–(10). This agrees with the trends identified in previous research (cf. Section 2.1).

- (9) Tuomio *on perusteltava*. Perusteluissa *on ilmoitettava*, mihin seikkoihin ja oikeudelliseen päättelyyn ratkaisu perustuu. (4/1734 Oikeudenkäymiskaari)  
The judgment *shall be accompanied with reasons*. The statement of reasons *shall indicate* the circumstances and the legal reasoning underlying the judgment. (4/1734 Code of Judicial Procedure)
- (10) Porovahinkojen osalta myös asianomaisen paliskunnan edustajalle *on* hyvissä ajoin etukäteen *ilmoitettava* maastotarkastuksesta. (105/2009 Riistavahinkolaki)  
In the case of damage to reindeer the representative of the relevant reindeer herding cooperative *shall also be notified* of the field inspection well in advance. (105/2009 Game Animal Damages Act)

Somewhat unexpectedly, almost as frequent as the VA participle is the use of indicative in the source texts (38 %). In (11), there is clearly an obligation that is to be borne by the plaintiff (“that person” in the English translation), and the Finnish use of the indicative communicates this unequivocally. In (12), the obligation is aimed at a public body, a municipality or a region responsible for drawing up plans for land use. Here the use of the indicative could arguably be in line with the suggestions for drafting EU legislation and translating EU texts into Finnish: a municipality could be seen as the equivalent of EU organs on the level of Finnish legislation. (Cf. also Attila 2017.)

- (11) Sen jälkeen syntyneistä kuluista uusi kantaja *vastaa* yksin. (4/1734 Oikeudenkäymiskaari)  
That person *shall alone be liable* for legal costs incurred after he or she assumed the pursuit of the action. (4/1734 Code of Judicial Procedure)
- (12) Maankäyttösopimuksesta *tiedotetaan* kaavan laatimisen yhteydessä. (132/1999 Maankäyttö- ja rakennuslaki)  
A land use agreement *shall be publicized* in conjunction with drawing up the plan. (132/1999 Land Use and Building Act)

There are some less frequent expressions of obligation or direction in the Finnish source texts. These are modal verb *tulee* (7 %), imperative (4 %), negated structures with the modal verb *saada* (2 %), and one instance each of the adjective *velvollinen* and the E-infinitive. Of these forms, all but the E-infinitive are mentioned in descriptions of Finnish modality. Rydzewska-Siemiątkowska (2016b: 66) has found *tulee* to be the second most frequent expression of obligation in her corpus. In (13), the verb *tulee* has a clear sense of obligation. It is possible the VA participle has been avoided here in the source text because in the passive voice the structure would have had two successive forms of the verb *olla* (‘to be’).

- (13) Ampuma-asetta laatikkoon asettaessa ase<sup>n</sup> lipkaan *tulee olla irrotettuna* ja ase<sup>n</sup> olla varustettuna sen tavanomaisella tähtäinlaitteella ja kahvalla tai perän sivulevyillä. (1/1998 Ampuma-aselaki)

When placing a firearm in the box, the magazine *shall be detached* and the weapon shall be equipped with its ordinary sighting device and grip or with the side plates of the butt. (1/1998 Firearms Act)

- (14) Muuten *noudatettakoon* näihinkin viranomaisiin nähden, mitä 5 §:n 1 momentissa ja 6 §:ssä on säädetty. (148/1922 Kielilaki)

The provisions of section 5(1) and section 6 *shall* also *apply* with regard to these authorities. (148/1922 Language Act)

The imperatives (passive imperative in (14)) represent archaic Finnish legal language. These instances highlight the fact that there are still some rather archaic pieces of legislation in force in Finland. The formulations of the English translations of both examples are much more modern than the Finnish source text. The example of negated modal verb *saada* in (15) expresses denial of permission. Here it could be argued that the English translation with *shall* is more archaic than the fairly recent (2004) Finnish original. In (16), the adjective *velvollinen* appears in conjunction with the verb *olla* ('to be') and the English translation has a similar solution with *be* and the adjective *liable*, just adding *shall* to make the obligation explicit and the structure grammatical. Finally, in (17) the second E-infinitive in the Finnish text (*ottaen huomioon*) has been transformed into a finite structure in English, which explains the use of *shall*. Here again the Finnish has the same strong deontic force as the finite indicative forms, so the translation is well in line with the source text.

- (15) Luottolaitos *ei saa kuitata* saatavaansa varoilla, jotka velallisella on konkurssin alkaessa luottolaitoksessa olevalla tilillään [...]. (120/2004 Konkurssilaki)

A credit institution *shall not set a claim* off against funds that the debtor has on deposit in an account with the institution at the beginning of bankruptcy [...]. (120/2004 Bankruptcy Act)

- (16) Toimeksiantaja *on* 1 momentissa säädetyllä tavalla *velvollinen* maksamaan 8 §:n 1 momentissa tarkoitetut kustannukset. (55/2001 Työsopimuslaki)

The contractor *shall be liable* to pay the costs referred to in section 8, subsection 1, as provided in subsection 1. (55/2001 Employment Contracts Act)

- (17) Kunnan rakennusvalvontaviranomainen voi myös olosuhteiden muuttuessa päättää johdon tai laitteen poistamisesta noudattaen soveltuvin osin kiinteistönmuodostamislain 161 §:n 1 momenttia, *ottaen* kuitenkin sanotun lain 156 ja 157 §:n sijasta *huomioon* tämän lain 161 §:n säännökset. (132/1999 Maankäyttö- ja rakennuslaki)

The local building supervision authority may also decide on the removal of a service conduit or piece of equipment in the case of a change in circumstances, observing the provisions of section 161, paragraph 1, of the Partition Act, as appropriate; it *shall*, however, *observe* the provisions of section 161 of this Act rather than sections 156 and 157 of the Partition Act. (132/1999 Land Use and Building Act)

The most surprising result of the study was the high frequency of just two constructions, the VA participle and the indicative. It can be argued that in studying Finnish legal texts in comparison with their translations it might be possible to identify deontic structures more clearly than in studying them in isolation.

As to the guidelines for translation provided by the Ministry of Justice (2010), the English translations of the Finnish statutory texts studied here seem to follow them for the most part. All instances where Finnish indicative was translated by *shall* were clearly expressing an obligation. Whether that obligation is in the future is difficult to ascertain, as most statutory texts are timeless, expressing an obligation in the present but including the future. As the current guidelines from the Prime Minister's Office have no detailed instructions for the use of modals, and as all the data studied here precedes those instructions, it is difficult to say how the practices of translating modals may be changing. It will be interesting to see whether the Plain English movement will find a foothold in future English translations of Finnish legislation.

### 5.2 Finnish into Swedish

It seems that the translations from Finnish into Swedish mostly follow the instructions provided by the Prime Minister's Office. The frequent forms of obligation in Finnish, i. e. the VA participle construction and the modal verb *tulee* are always translated with the Swedish verb *ska*. When a Finnish statute has *ei saa* ('is not allowed to'), the Swedish counterpart is *får inte*. Example (18) illustrates the Finnish VA participle construction and its translation into Swedish.

- (18) Asekeräilijän on viipymättä ilmoitettava ampuma-aseiden ja aseiden osien säilytystiloja koskevista muutoksista säilytystilojen sijaintipaikan poliisilaitokselle. (Ampuma-ase-laki 1/1998)

Om ändringar sker i förvaringslokalerna för skjutvapen och vapendelar, *skall* vapensamlaren utan dröjsmål *underrätta* polisinrättningen på den ort där förvaringslokalerna är belägna om ändringarna. (Skjutvapenlag 1/1998)

A weapons collector *shall*, without delay, *notify* the police department for the area in which the storage facilities for firearms and firearm components are located of changes. (Firearms Act 1/1998)

As can be seen in (18), the Swedish verb *ska* can also be spelled in the data with the older form *skall*. From 2008, the recommended form is the shorter *ska* (SLAF 2017: 59). This shows the complex nature of the data: some parts of laws in Finnish and Swedish go back decades. The corresponding English translations are typically much more recent.

As mentioned above, the indicative can be used in definitions and qualification rules, but should be avoided in binding regulations. Indicative is frequently used in the Swedish translations, though. In 33 of 39 cases, there is an indicative in the Swedish translation when there is an indicative in the Finnish source text. Only 6 of 39 indicatives are translated by the modal verb *ska*. In the Swedish translations, indicative appears in main clauses and in active voice, which can be related to the fact that indicative is used in definitions and qualification rules. On the other hand, the same verb can be used in indicative and in combination with *ska*, with no apparent difference in meaning or use. The use of Swedish verb *tillämpa* ('apply') in two contexts is illustrated in (19) and (20).

- (19) Adoptiotoimiston ja palvelunantajan palveluksessa olevaan henkilöön sovelletaan rikosoikeudellista virkavastuuta koskevia säännöksiä [...]. (Adoptiolaki 22/2012)

På den som är anställd hos en adoptionsbyrå eller ett adoptionstjänstorgan *tillämpas* bestämmelserna om straffrättsligt tjänsteansvar [...]. (Adoptionslag 22/2012)

Liability for acts in office Provisions concerning criminal liability for acts in office *shall*

*apply* to persons employed by an adoption agency or service provider [...]. (Adoption Act 22/2012)

- (20) Edellä 1 §:n 5 momentissa säädetystä riippumatta tässä pykälässä tarkoitettuun ilmoitusmenettelyyn *ei sovelleta*, mitä sijoitusrahastolain 130 §:n 1 momentissa säädetään. (Laki ulkomaisen rahastoyhtiön toiminnasta Suomessa 225/2004)

Oberoende av vad som föreskrivs i 1 § 5 mom. *skall* på det anmälningsförfarande som avses i denna paragraf *inte tillämpas* 130 § 1 mom. lagen om placeringsfonder. (Lag om utländska fondbolags verksamhet i Finland 225/2004)

Notwithstanding the provisions of section 1, subsection 5, the notification procedure referred to in this section *shall not be governed* by the provisions of section 130, subsection 1 of the Act on Common Funds. (Act on the Operations of a Foreign Management Company in Finland 225/2004)

Both (19) and (20) deal with applying regulations. One could thus assume that there is no difference in how this is expressed linguistically. However, this is not the case. In (19), the verb *tillämpa* is in indicative, while it is combined with the modal verb *ska* in (20). The use of *ska* in (20) may be explained by the fact that the verb *tillämpa* is negated. Linguistically though, it is acceptable to use the negated form in indicative, too.

Overall, the results meet the expectations of how the instructions for translators should be followed. The frequent use of indicative in the Swedish translations, however, is somewhat surprising. It raises the question whether the indicative in Finnish differs from the indicative in Swedish, and whether the use of indicative in Finnish has influenced the use of indicative in Swedish. Nordman (2009: 162) has noticed the same trend of translators preferring indicative not only in cases where there is an indicative in Finnish but also where there is no indicative in Finnish. She explains the use of indicative by interference from Finnish and the influence of general language on legal language. This clearly calls for a study comparing Swedish statutory translations in Finland and Swedish statutory texts in Sweden with the help of a linguistically annotated corpus.

## 6 Conclusion

This study has looked at Finnish statutory texts and their Swedish and English translations. Our goal was twofold: to identify the range of Finnish expressions of strong obligation and to establish how far translators of Finnish laws follow the instructions provided for them by the Prime Minister's Office and the Ministry of Justice. Given the current status of our corpus, this was of necessity a study of limited scope. Nevertheless, our findings give some indications for further studies.

In our data all studied instances identified through the use of *shall* in English express prescriptive force: even the Finnish present indicatives prescribe the actions of official bodies. It can be argued that in some cases the prescriptive force is quite mild. When the text of an act describes how further details shall be issued by a government decree, it predicts the behaviour of the government which presented the bill to the parliament, but as the act was passed in parliament, it also creates an obligation to produce a government decree concerning the details. In this respect, using English translations to identify prescriptive passages of Finnish legislation can be considered a success.

The use of the indicative mood in both Finnish source texts and their Swedish translations was unexpectedly frequent. It seems the strong deontic force of the indicative in Finnish is recognised by the writers of statutory texts, as they often do not feel the need to use any more explicit markers of obligation. The role of the indicative in Swedish translations is perhaps more of a puzzle, and would merit further study, comparing the Swedish translations of Finnish legislation to statutory texts written in Sweden, perhaps also taking into account EU legislation in Swedish versions. This might give some indication of whether the use of the indicative in our data is Finnish interference in Swedish or a feature of Swedish statutory texts more generally.

The role of time in the development of translations would be useful to pursue. Given that the modal use of English-speaking nations is in flux, in general but also in legalese, a diachronic trend in English translations might be possible to establish. One indication of the diminishing role of *shall* in the English translations of Finnish statutory texts is the loss of instructions concerning its use in the updated guidelines for translation. Another possible avenue of influence comes from the Finnish translations of EU texts, where specific instructions have also been offered on the use of *shall*.

Whatever happens to the individual expressions of modality in statutory texts and their translations, it is clear that this is one consistently central feature of legal writing in all languages. In order to train future translators, exploring language pair specific practices and their developments would seem to be not only valuable but downright vital. The use of corpora can support us in these approaches, but the limited availability of annotation tools for all languages can be considered a clear disadvantage for pursuing all relevant research questions.

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