

Legal terminology as the basis for the accuracy of legal norms

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Abstract: The purpose of the article is to analyze the essence of legal terminology and the peculiarities of its formation, mechanisms of its unification and standardization, as well as to identify the key factors influencing its application. The methodological basis of the work is a set of techniques and methods of scientific cognition: terminological approach, hermeneutic method, method of comparison, method of abstraction, and empirical analysis. The use of these research methods made it possible to carry out a systematic analysis of legal terms and to determine their place in jurisprudence. The authors of the article characterized the essence of legal terminology and the principles of its formation. The authors emphasized that a well-developed conceptual and categorical apparatus is a necessary element of high-quality legislation in the country. It was noted that the meaning of a term should be clearly defined when using legal terminology, because that term may significantly differ in its orientation and scope. The term should also be used depending on legal systems. Particular attention was paid to the comparative analysis of legal terms in different legal systems, which allows for revealing the problems of their translation and adaptation in the international legal space. Several areas can be singled out within the approaches to the formation of legal terminology: own legal terminology, classical legal terminology, and borrowed legal terminology. The regulation of legal terminology requires, first of all, regulating the terminological base on the basis of a preliminary analysis of concepts, their in-depth scientific development, classification and differentiation, and precise definition. Formal certainty allows us to avoid ambiguity, synonymy, duplication, variability, homonymy, and expressive and stylistic tinge of legal terms in regulatory legal acts.

Keywords: *European Union, Legal terminology, Legislation, Language of law, Legal system, Legal text, Norm drafting.*

1. Introduction

Activation of integration processes of the late 20th – early 21st centuries in the world and, in particular, on the European continent, in order to develop unified legal standards that meet the modern needs of civilizational social development, requires the ordering and normalization, and possibly restructuring of national legal terminological systems. In this regard, in the depths of modern linguistics, a new direction has arisen – terminological studies, which gradually specifies its independent

functions at the intersection of several sciences – linguistics, logic and relevant industry specialties, in our case – legal and, accordingly, legal terminology as a subsystem within the general lexical system, which is at the stage of its development.

The study of the patterns of legal terminology formation, its structure and development prospects are of particular importance in the conditions of dynamic development of law and social relations. This is justified by the fact that legal terminology serves as the basis of legal regulation: its accuracy, logic, and systematicity directly affect the effectiveness of law enforcement, ensuring legal certainty, and the accessibility of legal norms for citizens.

The characteristics of the patterns of legal terms formation allow us to understand the principles of their formation, the influence of linguistic, social and legal factors on their evolution. This contributes to the development of methodological approaches to the systematization of the legal terminological system, which is necessary for the improvement of the norm-setting technique, the prevention of terminological confusion and the elimination of legal conflicts and gaps in the law.

The issue of legal terminology is an integral part of a more general problem – the problem of the language of law. Today, the role of language in jurisprudence is increasingly becoming the subject of wide discussions and scientific research. In the minds of lawyers, language is primarily a way of materializing the thought and will of the legislator. Language is considered only as a tool of thinking. However, the essence of the role of language in law is much broader.

Language acts as the basis of law, law is considered as a linguistic phenomenon, language is its flesh and blood. Increased attention to legal terminology and its development on its own national basis, the degree of development and systematization, the state and depth of its scientific study are indicators of the level of development of the state, society, nation, national and legal consciousness.

A legal term is correlated with a legal concept as the primary element of legal knowledge and serves as its sign (linguistic) model, represented in sound and letter forms. The concept, its internal content, scope and structure are the logical and semantic basis for constructing a terminological meaning in the form of a definition, which summarizes the most essential features and relationships of a legal phenomenon. The conceptual essence determines the place and status of a legal term in the terminological system, its categorical and classification features.

A term of law can be characterized as general legal (common in all branches of law), sectoral (present only in a certain branch of law), inter-branch (known in two or more branches of law), adjacent to other branches of activity. A term is a norm, a standard for use in all subsequent legislative and regulatory acts, business documentation and the sphere of oral legal communication. A term that is created and functions in legal science may not be fixed in laws, but have a scientific nature (norm-making, legal consciousness, legal system, disposition of a legal norm).

In the scientific literature, which reflects the process of formation of legal knowledge, a legal term may have several scientific definitions, which present different scientific approaches and schools, different aspects of the study of the same legal concept. A legal term is a unit of the terminological system of law, through which it enters the general terminological fund of the national language. Belonging to the literary part obliges it to comply with the rules and norms of a certain language. Modern terminology defines specific features of a term, which together distinguish it from commonly used words: systematicity, accuracy, striving for unambiguity, relative independence from context, the presence of a definition, functional stability, conventionality, officiality, standardization, laconicism, strict normativity, stylistic neutrality, lack of expressiveness, correctness. It is important to take them into account to form an idea of normative and non-normative terminological use in legal speech.

That is why we must state: at the current stage of development of the rule of law, one of the most important problems facing society is the issue of studying legal terminology, its correct use by lawyers, as well as the need for its rational application.

Legal terminology is the basis of the legal system, because it is through legal terms that the norms of law are formulated, the rights and obligations of subjects of legal relations are fixed, and law enforcement is carried out. At the same time, it is worth noting that the correct use of legal terminology

plays an important role during lawmaking. Thanks to which a regulatory legal act is prepared qualitatively. Therefore, the accuracy and correctness of the use of legal terms are of paramount importance for ensuring legal certainty, as well as for avoiding legal conflicts and ambiguous interpretation of norms.

So, at the current stage of development of society, a comprehensive study of legal terminology and the language of law, their correct use by lawyers, as well as determining the conditions for their rational application is one of the key tasks of legal science and practice. This will contribute to raising the level of legal culture, improving the rule-making process, and ensuring a more effective functioning of the legal system.

2. Literature Review

Legal terminology is constantly in the field of researchers, which confirms the relevance of the issue we are studying. In particular, referring to the developments in the field of legal terminology, we can note that Peruzzo [1] and Peruzzo [2] in her works examined English and Italian legal terminology related to the observance of the rights of persons who have suffered from crimes. The researcher insists that legal language is inherently characterized by terminological dynamism, which arises both at the linguistic level – with different terms used to denote individual legal concepts – and at the conceptual level, where different conceptualizations of the same legal sphere are reflected. Chromá [3] focused on synonymy and polysemy in the legal language of English-speaking countries. She considered approaches to the traditional understanding of the concept of “term” and the features of its application in jurisprudence. Genew-Puhalewa [4] attempted to characterize the unification of terminology in European Union legislation both in terms of content and form. Kościalkowska-Okońska [5] examined the peculiarities of translating legal terminology and texts related to European Union legislation. The researcher drew attention to the fact that the language used in documents is specialized and, at the same time, specific due to terminology. The problems that lawyers may encounter are largely focused on the impossibility of translating certain terms, ambiguity of linguistic or textual coherence. Chiochetti and Ralli [6] outlined specific issues related to the creation of legal terminology. Bednarek [7] investigated the problems of translating legal concepts, which include translating terminology not only from one *legal language* to another, but primarily from one *legal basis* to another.

Regarding Ukrainian research in this area, we can state that Liubchenko [8] at the monographic level investigated the general theoretical foundations of legal terminology and revealed the role of legal terminology in the functioning of law. Yatsyshyn [9] and Shestakova [10] investigated the features of legal terminology from the point of view of legal categories system functioning, which are aimed at ensuring proper communication of legal science and practice. Herhul [11] comprehensively analyzed the requirements for the term “words” and “concepts”. Pakhomova [12] analyzed the multicomponent nature of legal terminology. Sydoruk [13] analyzed the ways of reproducing the semantics of foreign terminology when translating it from one language to another. Also at the dissertation level, Kaleniuk [14] investigated the features of the formation and development of Ukrainian legal terminology in the period from the end of the 19th to the beginning of the 20th century. Teremetskyi, et al. [15] paid attention to the correlation between legal norms, institutional structures and axiological foundations of the EU legal system. Lazariiev [16] reviewed the conceptualization of legal terminology [16] the language of law as a unique area of human communication [17]. The purpose of the research Kozar, et al. [18] is a comprehensive analysis of approaches to the legal terminological use in the modern world, highlighting legal terminological peculiarities. Teremetskyi also raised the issue of legal terminology in terms of law enforcement [19] and legal regulation [20].

As we can see, in scientific works a lot of attention is paid to the study of legal terminology, however, the issue of legal terminology as the basis of the accuracy of legal norms in various branches of law is considered in passing. In particular, in jurisprudence there are no comprehensive studies that cover the relationship between terms used in various branches of law.

Most scientific works focus on individual aspects of legal terminology, such as the etymology of terms, their comparative analysis in different legal systems or the problem of legal definitions in legislation. At the same time, there is a lack of a holistic approach that would allow studying legal terminology as a fundamental element of legal science and practice, which directly affects the accuracy and clarity of legal norms, the effectiveness of law enforcement and legal certainty.

Therefore, the need to conduct comprehensive research into legal terminology as the basis for the accuracy of legal norms is an urgent task of modern legal science, the solution of which will contribute to the improvement of legislation, increasing the level of legal culture and the effectiveness of legal regulation.

3. Methodology

The methodological basis of the work was a set of techniques and methods of scientific knowledge.

The terminological approach allowed for a deeper understanding of the essence of legal terminology through a systematic analysis of its components. In particular, this approach allowed to define and refine the meanings of terms used in jurisprudence, taking into account their semantics, contextual content, as well as the relationships between various legal concepts. This made it possible not only to establish clear definitions of legal terms, but also to distinguish similar concepts, eliminate ambiguities and contradictions in the legal terminology system. In addition, the terminological approach contributed to the streamlining of legal terminology, which is important for ensuring the unity of law enforcement and interpretation of legal norms.

The hermeneutic method allowed us to understand the essence of legal terminology more deeply, based on its connection with the general context of legal science, the regulatory and legal framework and legal practice. This method involves analyzing the meaning of legal terms in a broad sense, taking into account their historical evolution, socio-cultural background and the features of their use in different legal systems.

The use of the hermeneutic method made it possible to determine the place of each legal term in the system of jurisprudence, to explore its content in the context of legal norms, doctrinal provisions and general legal principles. This made it possible to identify not only the literal meaning of the terms, but also their deep essence. Also, the hermeneutic method contributed to the awareness of the features of the legal terminology using in different legal contexts, which is important for the correct interpretation of legal norms in order to avoid conflicts and gaps in the law. Thanks to this method, it became possible to identify the details of legal language, which, in turn, contributes to increasing the accuracy of the formulation of legal norms and their effectiveness in law enforcement activities.

The comparative method was useful in obtaining new information not only about the properties of legal terminology, about its relationships in different branches of law, about the general trend of their functioning and development.

The comparative method allowed not only to establish common and distinctive characteristics of legal terms in different branches of law, but also to identify patterns of their evolution, functioning and interaction.

Thanks to this method, it became possible to analyze legal terminology through the prism of their application in different legal systems, to find out how the same concepts can acquire different meanings depending on a specific legal tradition or sphere of use.

The comparative method also contributed to the study of direct and indirect relationships between legal terms, which made it possible to trace how legal categories influence each other in the process of lawmaking and law enforcement. This, in turn, helped to identify problems of terminological consistency between different branches of law.

The comparative method allowed us to identify general trends in the development of legal terminology, such as: harmonization of terms in international law, unification of the language of law within the framework of integration processes (for example, in the law of the European Union), as well

as the expansion of the legal term system under the influence of new social challenges and technological progress.

The method of abstraction allowed us to identify the essential features of the category of “term” and formulate approaches to its understanding within the framework of legal science. The use of abstraction helped to identify the main characteristics of the concept of “term”, in particular its systematicity, unambiguity within a specific legal context, normativity and specialized function in the legal sphere. At the same time, the method of abstraction allowed us to consider a legal term not only as a linguistic unit, but also as an element of the legal system that performs communicative, regulatory and cognitive functions. Thanks to this method, the main approaches to understanding the category of “term” in legal science were determined.

Empirical analysis played an important role in the study of legal terminology, as it allowed not only to get acquainted with the system of approaches to its use in legislation, but also to identify patterns, trends, and features of the formation of the legal language.

4. Results and Discussion

The development of a legal state requires not only such global changes as the transformation of the legal system, and also, at first glance, smaller, but not less significant actions. First of all, this concerns ensuring formal certainty in law, which is achieved by eliminating conflicts in law, ensuring the accuracy and consistency of legal terms for the purpose of their further application in regulatory legal acts. This is necessary for building a system of effective legislation. To date, these changes are accompanied by resolving problematic issues of the functioning of legal terminology in the legal sphere, which is due, first of all, to the need to provide all branches of law with an appropriate language based on modern methodological principles [10].

The effectiveness of solving the tasks set for it depends on how well the conceptual and categorical apparatus in the country is developed. However, it should be noted that its low quality becomes an obstacle to the objective understanding of the phenomena under study, the level of their subjective perception decreases and, as a result, they are deprived of the opportunity to represent them at the proper level in the appropriate language formulations [10] which is a significant gap in a clear and unambiguous understanding of the text essence of a regulatory legal act. That is why the issue of legal terminology is an integral part of a more general problem – the problem of the language of legislation [21].

Investigating the issue of legal terminology, we fully share the opinion of Gozdz-Roszkowski [22] that the law does not exist without language, since legal provisions in the state are implemented using language. Legal concepts and legal processes are accessible only thanks to language. If a legal text is criticized for being abstract and incomprehensible to the entire public, then the problem, as a rule, lies in the language component. The meaning of “legal language” tends to emphasize the sphere in which the language is used. This can create a false impression of the language of law as a homogeneous phenomenon. In fact, the expression “legal language” conceals a huge number of specific classes of texts (genres) created and used by different professional groups working with different legal categories.

Today, the role of language in jurisprudence is increasingly becoming the subject of wide discussions and scientific research. In the minds of lawyers, language is primarily a way of materializing the thought and will of the legislator. Language is considered only as a tool of thinking. However, the essence of the role of language in law is much broader [21]. Language and law are intertwined: the law is expressed through language, in particular through its own legal “slang”, is characterized by specific mental categories and concepts. It can differ significantly between individual legal systems. Thus, the use of a legal text, or even just the search for an equivalent term, consists not only in a simple search for a linguistic equivalent and, therefore, in the transition from one language to another, but also in the need to take into account the peculiarities of different legal systems. Therefore, understanding legal texts requires not only linguistic and cultural knowledge of the source language of the legal term, but also knowledge of the legal context (where the terminology of the language sources acquires a certain

meaning) and the legal system in which the target text will be used [6] which imposes additional linguistic tasks on the specialist.

As Jopek-Bosiacka [23] notes, legal terms are vital for the functioning of legal instruments. Most legal terms are aimed at the unambiguous and subsequent interpretation of legal texts. However, we should also take into account the fact that the meaning of legal categories can differ significantly in their focus and scope. In addition, as Kischel [24] notes, the interrelationships within each legal system, as well as the legal culture in general, affect the meaning and practical application of legal categories. This, in turn, is reflected in the possibility of correct use of a certain legal category in another legal system.

The process of legal terminology formation can occur in various ways. According to Jopek-Bosiacka [23] most legal terms are abbreviations – adaptations of the English language to meet the functional needs of lawyers to denote new categories, doctrines and problems.

Some of them are adaptations of commonly used words in a specialized meaning, conceptually related to the basic meaning of the word in everyday speech, such as “offer” and “acceptance” in contract law. Some of them are developed by lawyers and drafters specifically to reveal the essence of a new concept, especially when developing branches of law, as in the case of tax or banking law. Many of these terms are used by lawyers for the sake of brevity and efficiency, despite the fact that a layperson understands and knows the basic concept of these provisions.

Jopek-Bosiacka [23] also notes that another type of term is “technical”; they refer to certain concepts and institutions that do not exist outside the law. Their examples are endless: easement, negligence, legal capacity, joint-stock company, etc. Their use is natural and inevitable for the legal profession, like the use of the concepts “calcium fluoride” or “semiconductor” in other fields, which demonstrates the exceptional importance of using specialized terminology for the correct understanding of the essence of a legal document. According to Jopek-Bosiacka [23] the terminology used in the exact sciences is the same, that is, each term refers to only one object, while legal terms are characterized by polysemy. The phenomenon of polysemy requires, on the one hand, the need to determine the intended meaning from the context. On the other hand, it is necessary to take into account the fact that most legal terms borrow their essence from a certain legal system, making legal terminology, in essence, congruent, which serves to build the formal certainty of legal language.

In order to find the correct category that we will study and compare, we need to find an equivalent word (corresponding term) for it in another language. The term should be clearly translated into another language if both describe the same concept or idea [24]. Since it is the accuracy of the translation that gives us the correct understanding of the essence and features of the use of this legal category.

The presence of a significant number of legal systems existing in the world leads to a situation where a concept (term) in the legal language of one country does not have a corresponding equivalent for another country, not because the concept does not exist in several legal systems, but because it denotes different legal realities. In other words, the inadequacy of equivalents or their absence, together with ambiguity, can be considered a major obstacle to achieving accuracy in legal language, especially in the context of translating texts or using a system of legal terms contained in different languages of the world. Due to the normative function of legal discourse, legal concepts automatically imply certain legal consequences within a given system [23] but they may not necessarily apply to another legal system to the same extent.

At the same time, the problem of “untranslatable” terms is the dilemma of “untranslatability”. Legal transplantations, i.e. borrowing legal institutions from other legal systems, have imposed this phenomenon on us. Most legal cultures have grown due to the absorption of foreign ideas and borrowing foreign experience [24] which is directly related to their historical development.

To date, according to Jopek-Bosiacka [23] many attempts have been made by linguists and philosophers to define the concept of meaning in such a way that the meaning would be objective, supra-contextual, independent of any circumstances. Such attempts to form a non-contextual meaning were often associated with the so-called literal meaning, i.e. the meaning defined in a zero context (zero

context, neutral context). Although researchers have not managed to model the meaning without context.

The construction of a legal text, according to Jopek-Bosiacka [23] imposes certain restrictions on the interpretation of the text. The meaning of a legal text depends less on the parameters of communication, and more on the principles of interpretation generally recognized by legal sciences. In addition, the explicit nature of the legal text, as well as the semantic precision in the system of the legal text, minimizes the possible ways of interpretation. It is assumed that in any legal text, the same words have the same meaning, and if there are different words, then they were intentionally used to give them different meanings. The preparation of bills and drafts of other regulatory legal acts is carried out as correctly and accurately as possible. The rules for the proper use of legal terminology play a significant role in this.

Within the framework of our study, we can note that a mandatory requirement for legal language is the accuracy of its lexicalization (formal certainty) in order to achieve its highest goal – comprehensiveness. According to Jopek-Bosiacka [23] it is the precise use of the meaning of legal terminology that facilitates the use of regulatory legal acts. Regarding the semantic level, lawyers make attempts to apply precision of expressions by carefully selecting words and phrases. Indeed, “precision is a prominent virtue of the language of law”. In order for the language of jurisprudence to function, the principle of semantic precision or consistency should be observed. It should also be noted that if a technical term is used, it should be repeated over and over again, instead of using synonyms. The use of synonyms is not recommended in legal texts, since the user may think that a reference is made to a different concept. Today, legal definitions are mainly considered as aids to interpretation, contributing to the clarity of their implementation by reducing uncertainty.

It is also necessary to agree with Sandrini [25] that descriptive multilingual terminology involving two or more legal systems is not intended to be a decision-making tool, as would be the case with normative terminology or translation. The descriptive approach is limited to providing an idea of how concepts and terms are used in the relevant legal environment. It should provide information, but without forcing it into an artificial one-to-one equivalence. Information is obtained through definitions and contexts, as well as from legal sources in which the concept plays a central role. It is worth noting that legal terminology should focus on elements of a legal solution to a single real-life problem, although thermographic research may cover more than one legal solution for a broader subject. This emphasis on one specific legal context is important in order to create a set of coherent concepts rather than separate subjects. It would be easy to combine the terminology of several such legal settings or related settings into a larger thermographic product. Terminological work should cover small and very specific subject areas in order to achieve high quality. It would be difficult to carry out a thermographic study on criminal or labor law; rather, one should start with special branches of these disciplines, such as, for example, protection against dismissal or immigration offences, etc. In a second stage, these can be expanded to include other specific topics, and such small glossaries can be combined to obtain larger collections covering a wider subject area, such as criminal law. But it is absolutely necessary to keep alive the systemic aspect of the concepts that contribute to the same goal.

Focusing on common features between two independent national legal systems, that is, on a certain aspect of life as an object or regulatory effort, can also be a starting point for the analysis of text types from different legal systems. As in terminology, the analysis should first of all identify the communicative situation independent of the legal systems.

Text types should be considered as specific to a national legal system until comparative analysis proves that corresponding text features and text types exist in both legal systems, in which case an abstract text type can be defined.

Therefore, the use of legal terminology should ensure the accuracy and effectiveness of regulatory legal acts. But when using legal terminology in a regulatory legal act, some features of its use should be taken into account. This applies in particular to the use of legal terminology depending on the method of its origin, since, in a number of cases, it is necessary to take into account the essence of a certain legal

system from which this term is taken. It should also be taken into account that the use of legal terminology when drawing up a regulatory legal act imposes certain restrictions on the interpretation of the text.

Paying direct attention to the features of the formation of legal terminology, we can note that in jurisprudence there is no single approach to the formation of legal terms. There is a point of view that in approaches to the formation of legal terminology, several directions can be attributed: own legal terminology, classical legal terminology, borrowed legal terminology from other legal systems.

5. Conclusions

Legal terminology is a historically formed set of terms that expresses a system of legal concepts and is designed to meet the specific needs of communication in the field of legislation, legal science and practice. This set is a special object of study in both jurisprudence and linguistics (primarily in its new branches – terminology (theoretical foundations of the doctrine of the term and the terminological system of law) and lexicography (the science of the theory and practice of compiling dictionaries).

Legal terminology as a linguistic sign system has been developing throughout the history of the state and legal development of mankind and reflects various ways of understanding, nominating, defining, classifying legal phenomena and categories, the ways of evolution of legal knowledge, national-linguistic traditions of term formation. The features of the legal term system are determined by the specificity of the designated legal phenomena and concepts, their unique history of development in the system of national law and the national language.

The formation of a legal dictionary in the language system occurs under the influence of external and interlinguistic factors. The nature and dynamics of its development are influenced by specific socio-historical conditions: the type of production relations, the ratio of class forces, changes social and state structure, international relations, language policy, etc. The level of development of the legal terminological system depends on the experience accumulated by the state (nation) in the legal regulation of social relations, lawmaking and law enforcement, the depth of scientific study of legal phenomena and categories, measures to organize, systematize and lexicographically describe the legal terminological system. Like any historically formed terminological system, legal terminology is characterized by both universal linguistic regularities and nationally specific ones. After all, each national language has its own terminological system for nominating legal concepts, the expression plan of which is inseparable from the expression plan of a given language.

Developed languages have a rich terminological and legal fund with ancient genealogical roots, which, under favorable historical conditions and a wide territorial and temporal area of functioning, reached a high degree of development. It is quite fully represented in legal dictionaries of various types. In the process of evolution, terminology is not only enriched with new terms to denote new legal realities and concepts, but also the established conceptual apparatus and its verbal expression are constantly deepened and improved. Each historical period has its own system of concepts and terms, adequately reflecting a certain stage of development of state and legal phenomena, the volume of knowledge and productive models and methods of term formation at that time. The formation of legal terminology in each language was influenced by international and, accordingly, interlingual ties. Borrowing and linguistic interference are important factors in the term formation process. The expansion of the sphere of legal regulation, the emergence of new branches of law at the junction of sciences cause the active creation of a legal terminological system by involving terms from related fields.

The systematic nature of legal terminology is based on a system of correlated legal concepts, but is not an identical reflection of it. The absence of a terminological unit to denote a legal reality or concept may also indicate the presence of a gap in the terminological system. At the same time, the same concept can be transmitted by different terms, which causes synonymy of terms; one term can denote different concepts, which indicates its polysemy; one sound complex transmits different concepts, which leads to homonymy. The lack of a one-to-one correspondence between the plan of expression and the plan of content (one term – one concept), the high frequency of this phenomenon in the terminological system

indicates the state of its formation and the disorder characteristic of this stage of its development. Undesirable phenomena in legal terminology are: ambiguity, synonymy, doublet, variability, homonymy, expressive-stylistic coloring. Since legal terminology is not a rationally organized, semiotically flawless system, in terminology there is a constant problem of ordering terminology, primarily in legislation. The task of ordering legal terminology requires, first of all, organizing the terminological base on the basis of a preliminary analysis of concepts, their deep scientific development, classification and differentiation, and precise definition.

Transparency:

The authors confirm that the manuscript is an honest, accurate, and transparent account of the study; that no vital features of the study have been omitted; and that any discrepancies from the study as planned have been explained. This study followed all ethical practices during writing.

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