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Abstracts

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Thursday, September 7th, 2017

Lawrence Solan (Brooklyn Law School, New York): Legal Linguistics in the US: looking back and looking forward

Until the mid-1990s, there was no recognized “field” of forensic linguistics in the US. Rather, a small group of linguists, whether trained in phonetics, phonology, syntax, morphology, or discourse analysis, believed they had something to contribute to the analysis of legal problems. On the Continent, Hannes Kniffka played a significant role in this regard. In the UK, Peter French and Malcolm Coulthard were major players. Diana Eades and John Gibbons were among the Australian leaders.

In early days, linguists entered the legal system only occasionally, when appeared that linguistic theory, as studied and developed by linguists, could make a contribution to legal analysis. Interventions included the comprehensibility of jury instructions (which were not, at the time, very easy to understand much of the time) and other documents, such as insurance policies; the identification of speakers by their voices; society’s prejudice against those who speak non-standard dialects of English, especially members of the African-American community; the validity of trademarks; and coercive questioning by the police. Much of this work is summarized in a 1994 article by Judith Levi in the initial article of the journal then called *Forensic Linguistics*, now the *International Journal of Speech, Language and the Law*.

In the realm of authorship attribution, several linguists hired themselves out as experts, but had no tested methodology. Carole Chaski introduced to the field the need for research methods that were validated by their success in solving problems in which the truth could actually be determined, and were based on actual linguistic research.

Beginning in the mid-90s, with the formation of the International Association of Forensic Linguists, whose first conference took place in Bonn, organized by Professor Kniffka, the field of Forensic Linguistics began to be “professionalized” both in the US and elsewhere. University programs were initiated. However, the students in those programs never studied linguistics as a discipline, learning only bits and pieces of linguistic analysis as suit the needs of particular forensic problems. Most of the linguistic focus was on discourse analysis, and still is.

Very positive developments have been taking place in recent years in the study of language and law. For one, work in authorship attribution is being tested, and reflects collaboration between linguists and computer scientists, using methods that were largely absent twenty years ago. Secondly, the legal world in the US has discovered corpus linguistics, and is using its methods to make arguments about ordinary meaning in legal interpretation. Even more encouraging, judges and lawyers have been taking the lead in this development, reflecting a new appreciation for legal linguistics. Other fields, including speaker recognition, have also become both collaborative and more scientific, and new research into confusability in trademark law looks promising. US scholars, judges and practitioners do not use the term “legal linguistics,” but this is a time to be optimistic about its future.

Anna Jopek Bosiacka (University of Warsaw): Legal theory and logic as prerequisites for (quality in) legal translation

The legal communication and legal discourse may be viewed from various research perspectives and studied with different methodological tools, such as those of philosophy of law (e.g. Hart 1961; Dworkin 1986), philosophy of language (e.g. Wittgenstein 1978; Austin 1962; Marmor 2014), sociology of law (Cotterrell 1992), theory of law (Wróblewski 1992; Zieliński 2012), or logic (Ziembiński 1995, Malinowski 2006a, 2006b). The methodological framework applied here is that of logic and legal theory as two most important preconditions for correct construction and interpretation of legal texts. By legal texts I mean legislative i.e. normative texts, which are read mainly as prescriptive texts (cf. Bocquet 1994, Šarčević 1997).

Following Carnap's Logical Syntax of Language of 1937, I treat logic as a meta-language, i.e. as a syntax of the language of law. The other component, the theory of law, is an inherent part of a legal system being the system of norms, system of knowledge and system of authority. The system as defined above constitutes the most important part of the context – institutionalized context – for legal translation.

My main research aim is to look at theoretical and logical prerequisites of legal translation. No systematic account of this relationship of legal theory and logic to legal translation in the Polish context has been achieved.

I hope my research into legislative/normative texts will be able to clarify the following questions:

- 1) Do formal principles of legal theory and logic affect legal translation?
- 2) Does national perspective in legislative translation exist?
- 3) What does a good legal translation mean in the ideal world of legal norms and rules?

In the analysed institutional legal context, official legislative drafting guidelines comprise the canon of good/quality legislation, universal and binding for each legal system (cf. Dickerson 1977; Kindermann 1979; Thornton 1987; see also Šarčević 1997).

One of my research tasks is to juxtapose Polish legislative drafting guidelines (amended as of 2016) with the European Union drafting guidelines as well as common law bill drafting manuals (American, British, Australian, Canadian) to see how certain parameters affect the way we process legislative texts in translation, how different legal cultures influence the way we interpret legal texts. The qualitative analysis would encompass the legislative recommendations as to the formulation of legal definitions, negation, theme-rheme structure and the sentence word order, as well as the use of deontic modalities and conjunctions. I also hope to search for any cross-cultural patterns of analysed parameters of normative texts. The qualitative analysis would be supported by the results of the quantitative analysis done in relation to the Polish legislative texts (cf. Malinowski 2006a, 2006b; Biel 2014).

My major assumption underlying the research is that legal communication is an instance of cross-cultural communication which rests on the corollary that law as a system of norms always actualizes in a particular language and a particular culture. This means that national languages and cultures have their own codes and systems of legal communication.

Thus, the comparison of normative texts between legal cultures should, first, allow to observe to what extent the legislative guidelines from various legal cultures differ with respect to the compared domains (i.e. legal definitions, conjunctions, deontic modalities, negation, themerheme structure and the sentence word order), and secondly, how these differences affect translated texts and the process of legal translation as such. [On the global scene, we also observe the processes of standarization, unification and integration, e.g. 'Europeanization' of laws within the framework of the European Union and hybridization of its national legal/legislative discourses.]

Given the existence of various legislative styles, we should be aware that a good legal translation is not possible without the knowledge of what a normative text should be like in a particular language, culture and system. The comparative investigation of institutional, legal and theoretical rules should reveal both substantial cross-cultural differences in drafting practices and modes of expressions affecting the translation standards as well as a common core of legal reasoning arising from the very nature of law.

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Sophie Boyron (University of Birmingham): The migration of constitutional concepts. Four ‘translation curios’

The migration of legal concepts has been the subject of numerous books and articles (Choudhry 2008). However, the intersection of the migration of legal concepts with the one of translation has not been studied much (if at all). Indeed, comparative lawyers have been accused repeatedly of not taking the issue of translation seriously. They are said to be unaware of the problems that translation throws up and to have a real translation blind spot (Glanert 2011).

While translation is pushed at the periphery of comparative law theory, comparative lawyers make ‘practical decisions’ on translation all the time and a number of calls for a conceptual framework in this area have been heard. While I do not aim to address all issues raised by the intersection between comparative law and translation, nor even all those raised between migration of legal concepts and translation, I wish to start this process by highlighting some of the issues. To do so, I will resort to a comparative law analysis [with comparative law understood as ‘perspective’ rather than ‘method’ (Legrand 2008: 788)] to identify and examine four case studies of migration of constitutional concepts. Then I will record, catalog and analyse the various patterns of ‘translated’ migration contained in the case studies. Finally, by relying upon the writings of comparative lawyers with an interest in legal translation such as Sacco (Sacco 1980 & 2011: 13), Francois Ost (Ost 2009) and G  mar (G  mar 2005: 5) and by confronting those with the translation experience unearthed in each case study, I will start to map a conceptual framework. This should help close the translation gap in comparative law.

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Aleksandra Cavoški (University of Birmingham): Interaction of law and language in the EU: challenges of translating in multilingual environment

Challenges of legal drafting and legal translation have existed for a long time in international law and international relations. As the process of globalisation relies on law and language, translators had to demonstrate attentiveness and creativity to rise to the challenge. The establishment of the European Economic Community (EEC) in 1957 and the subsequent deepening and widening of integration between Member States took this task to a completely different level. A new hybrid legal system was created in the EU, which is often described as “a new legal order of international law” (Case C-26/62 ECLI:EU:C:1963:1: para 3). It introduced new legal concepts and doctrines often not known nor recognized in some Member States. Equally, the new legal order was created under the influences of several legal traditions, in particular the German and French legal traditions at the very beginning of European integration. Subsequently, UK law had an impact after UK’s accession to the EEC in 1973. No less important is the impact of international law on the development of EU law, as the EU is a legal entity that frequently accedes to various international treaties which are then incorporated into the EU legal system. Very often treaty terminology is incorporated in EU secondary legislation and imposes obligations on Member States.

Legal translation in the EU is regarded as a challenge to the central concepts of translation studies and it is affected by a unique combination of political, ideological and procedural factors (Biel 2014: 335). As it is distinct from translation of national legislation due to its unique features and the requirement of multilingualism, there are submissions to treat it as a sub-genre of legal translation (Biel 2007: 144). In addition, Šarčević and Gotti (2006: 14) point out that the EU terminology is still in constant flux, which puts a great burden on EU translators. Their role is to find neologisms or select equivalents which will enable judges to differentiate EU and national concepts and ensure a uniform interpretation of EU law (Šarčević and Gotti 2006: 14). The institutional context also influences EU drafting and translation as translations are controlled and constrained by ‘translation institutions’ and translators have to negotiate their role and professional identity (Koskinen 2008: 2).

This paper exposes two important challenges of legal translation in the EU multilingual environment. First, it is argued that the choice of English in translation of EU law as a SL and in communication with the EU institutions exposes an inability to reconcile civil law traditions with common law traditions. This problem is particularly prominent in regard to administrative law concepts, as common law systems do not have a long tradition in developing this public law discipline. Similarly, translators may often identify the differences between legal traditions when it involves family law matters as legal concepts vary significantly between legal traditions.

Second, the translations of specific EU legal and expert terminology as well as the EU legal drafting and translation rules pose further challenges to legal translation. Many of those terms were created as a response to sui generis political and legal order which is founded on specific division of power between EU institutions and unorthodox voting procedures which had to be

made distinct from systems in Member States. The fact that the EU now legislates in a wide variety of policy areas renders the terminology in legislation more complex and demands a high level of technical expertise from translators. Another difficulty facing translation is the strict EU rules on legal drafting and translating from the original source language.

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Marie Bourguignon: The creation of laws in a multilingual environment. Case study of the 19th century Belgian situation

In many European countries, the nineteenth century was the scene of increased democratization. This evolution led to governance considering relations between the state and its citizens more consciously.

Given the strong link between governance and language, several states realized the importance of designing and, implicitly or not, applying linguistic policies. In this respect, the authorities have to indicate to citizens what they expect from them, and, at the same time, citizens have to be able to expectations about the role of the official institutions. However, the ideal conveyed at the dawn of the 19th century - one language for one nation state - hardly reflected the linguistic and cultural diversity that characterized the young Belgium of 1830. Since the very beginning, Belgium has consisted of multilingual populations, implying alongside language policy, translation policies (Meylaerts & Gonzalez Nunez 2014).

Article 23 of the 1831 version of the Belgian Constitution stated that, while citizens may use the language they wanted in private relationships, the right to regulate the use of languages in the public sphere, for acts of the public authorities and for judicial affairs, was reserved for the state (Willemyns 2002: 394). In Belgium, French was quickly established as the language of the official version of the legislation and consequently that of the central state. Article 2 of the Law of 19 September 1831 stated that “the law will be inserted in the Official Journal, as soon as promulgated, with a Flemish or German translation for municipalities where they speak those languages, the French text nevertheless remaining the only official text.” Can we already speak of an implicit recognition of a right to translation or is this more a case of pragmatism? In any case, the lack of elucidation on the circumstances in which translation had to occur engendered many other translations made by an emergent class of bilingual lawyers, writers, and journalists. For example, notaries who, forced to rely on a French law and perhaps on unofficial translations into Dutch did not only have to explain the content of the acts to their clients, but also provided them with a translation (probably oral) of the act. They thus behaved as intermediaries between the monolingual state and the Flemish citizens. Although those kinds of translations had no legal value and did not emanate from any administration, their influence on the legal practice and the evolution of the recognition of Flemish cannot be overlooked. However, the so-called “Equality” law of 1898 officially ended this francophone hegemony by stating that laws would be “voted, sanctioned, promulgated and published in French and Flemish” (Clement 2003).

Establishing equality between the two linguistic versions of legal texts has institutionalized the fiction of the simultaneous writing of the two texts. No text can be considered to be the translation of the other and both versions have the same legal value. However, how did legislation emerge in practice? How did parliamentary debates occur between Dutch and French-speaking politicians? By whom and according to which rules were proposals, projects and final legal texts translated? How were potential conflicts between the two linguistic versions resolved?

The approach chosen to address these research questions is interdisciplinary.

It borrows theoretical concepts from translation studies and mobilizes both legal and historical methods. This part of the research is rather descriptive than normative as it tends to depict the regulatory framework (and its evolution) of a situation (in this case the emergence of legal texts) (Kestemont, Schoukens, Hendrickx & Terryn 2012). Furthermore, the focus is not only put on the texts themselves but also on the actors of the regulation. The analysed sources can be divided in two categories, as it is usually the case in historical researches: the secondary sources (today's doctrinal work) and the primary data or various archival sources such as former legal journals, the minutes of parliamentary debates, petitions on language and translation issues and the internal parliamentary rules.

This kind of issues does also have implications today. The Belgian legislative process has experienced two linguistic and translation systems. The first one recognized the presence of Flemish citizens but did not give legal value to the translation from legal French texts into Flemish. The other conferred the same legal value to both linguistic versions of the laws. Both systems appear to reflect two positions in discussions on legal translations that are predominantly adopted within the European Union. On the one hand, the supporters of a *lingua franca*, according to which a single language version of the legislation should apply. This would avoid multiple translating errors and save a huge amount of money. On the other hand, the defenders of justice and linguistic translation minorities' rights. They evoke linguistic diversity, as enshrined in the Charter of Fundamental Rights of the European Union. This has been recognized as an essential European value that prohibits discrimination based on language (Van Parijs 2011, Meylaerts 2011). What lessons can be drawn from the analysis of the historical situation in Belgium? In the prototypical case of the European Union, are these two visions necessarily opposed? To answer those questions, doctrinal works and legislation on multilingualism, language and translation policies in the European parliament will also be skimmed through and the situation will be (to some extent) compared with the two systems Belgium has known.

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Stefan Höfler (University of Zurich): Coherence in legislative texts. Can it be done, and how?

Introduction

Clarity has long been identified as one of the objectives of legislative drafting. Nonetheless it continues to pose practical problems for those who are tasked with the composition of statutes and ordinances. One of the reasons for this state of affairs is that suggestions as to how the clarity of legislative texts can be improved often content themselves with addressing issues of terminology and sentence complexity. In doing so, they neglect some crucial findings of linguistic research on text comprehension. Such research has shown that while the use of familiar words and straight-forward sentences certainly facilitates the clarity of a text, it is even more important that the text enables its readers to construct a coherent model of its content: textual coherence (i.e. the semantic and pragmatic relations that hold between the segments of a text) and textual cohesion (i.e. the use of lexical items and syntactic constructions to express these relations) play a vital role in what makes a text understandable (e.g. van Dijk and Kintsch, 1983; Schnotz, 2000; Christmann, 2008).

The present paper is going to explore what this finding means for the theory and practice of legislative drafting. It thus addresses an issue that can be traced back to the fact that there are two different perspectives on what legislative texts are: (a) relatively loose collections of individual provisions that can be understood without recourse to context, or (b) coherent texts made up of normative statements that exhibit rich pragmatic and semantic interconnections (cf. Werlen, 1994, 76). If the practice of legislative drafting is to take into account the findings of linguistic research on text comprehension, it will have to unify these two perspectives. The paper will argue that linguistic discourse analysis can contribute to achieving this goal.

Main Questions

The main question to be addressed in the paper is how legislative texts can (and do) support their readers in constructing a coherent model of the normative content to be conveyed:

- What kind of semantic and pragmatic relations do legislative texts typically consist of (coherence)?
- How can these relations be made transparent to the reader (cohesion)?

The paper will draw attention to the discourse-related features of legislative language: it aims to demonstrate that the methods of linguistic discourse analysis (cf. Brown and Yule 1983; linguistische Textanalyse in German, cf. Brinker 2005) can inform and complement existing techniques of legislative drafting. Drafting techniques to be discussed in light of these methods will include the use of advance organisers and section headings, the structuring of paragraphs and sentences, the use of cross-references and the presupposition of norms.

Research to Date

While there has been a growing body of research into the language of law, the insights and models of linguistic discourse analysis, so far, have only rarely been applied to legislative texts (cf. Busse, 2000a), and even less so to problems related to legislative drafting. For one thing, general-purpose research into the language of law has mostly focused on the interpretation of specific terms and individual sentences (cf. Busse 2000b). For another thing, drafting-oriented studies have either resorted to developing rules of thumb dealing with issues of worduse and sentence construction (cf. Wydick, 2005; Höfler, 2012) or engaged in philosophical disputes over whether legislative texts can and should be written clearly in the first place (cf. Lerch, 2004; Wagner and Cacciaguidi-Fahy, 2008). The coherence and cohesion of statutes and ordinances and the specific linguistic constructions involved in these two phenomena thus still remain somewhat understudied, particularly from the perspective of legislative drafting.

Resources and Methods

The proposed paper will build on examples from German-language legislation in Switzerland and from the daily work of the Drafting Committee of the Swiss Federal Administration (cf. Nussbaumer, 2008).

It will show how a multi-layer approach to textual coherence (cf. Brown and Yule, 1983; Montsch, 1996; Stede, 2007) can help analyse the examples and unearth the problems they pose for the clarity of the text. Multi-layer approaches conceive textual coherence and cohesion as being influenced, among other things, (a) by the rhetorical relations that hold between the statements contained in a text and the way in which these relations are made transparent, (b) by the way in which a text develops a theme and guides the reader's attention from one topic to the next, and (c) by the way new objects are introduced into the discourse and referred to again later in the text. In the proposed paper, I will focus on these three levels of coherence construction, ask what barriers each of the levels can pose to the understandability of a legislative text and discuss what linguistic remedies are at hand.

Hypotheses

Legislative drafting guidelines frequently neglect the issue of textual coherence and cohesion. Usually they rather advocate a certain degree of de-contextualisation, stating that the individual provisions of a legislative text should, wherever possible, stand on their own, i.e. that they should be understandable and citable with as little recourse to context as possible. This view can be traced back to the manner in which lawyers typically approach and apply legislative texts: statutes and ordinances are rarely read from beginning to end, lawyers rather pick out the paragraphs and sentences relevant to the case at hand (cf. Nussbaumer, 1995, 96). The proposed paper will hypothesise that such an approach to legislative drafting, despite its merits, occasionally lures drafters into abandoning textual coherence and may thus result in provisions that, even though apparently “standing on their own”, are less accessible than if the authors had taken textual coherence into consideration.

Summary

The proposed paper will address the textual coherence and cohesion of statutes and ordinances from the perspective of legislative drafting. It will demonstrate how a multi-layer approach to linguistic discourse analysis can support legislative drafters in identifying wordings that infringe on readers' ability to construct a coherent model of the normative content and thus interfere with the clarity of the text.

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Lelija Socanac (University of Zagreb): Communicating Language Rights in a Diachronic Perspective

Introduction

In modern democratic societies the language rights are essential for ensuring that basic legal principles are fulfilled in the justice system. The paper will trace the historical development of language rights in Croatia and the ways in which they were communicated to citizens in the period spanning from the mid-19th century until the present. During this period, Croatia was part of different states and different political systems: the multilingual Austro-Hungarian Empire, which granted extensive language rights to its various nationalities after the introduction of the Nationalities Law (Nationalitätengesetz) of 1867; the centralized and autocratic Kingdom of Yugoslavia; the multilingual Socialist Federal Republic of Yugoslavia that granted the language rights to its “nations and nationalities” which were not always implemented; the Independent State of Croatia, which denied most rights, including language rights, to its citizens during the World War II; and finally present day Croatia as a member of the multilingual European Union and the Council of Europe.

The multiethnic Austro-Hungarian Empire is of particular interest due to multiple language contacts which had the potential for a wide range of social conflicts. This situation called for political and linguistic strategies to pacify the escalating inter-ethnic struggle. The implementation of the Nationalities Law of 1867 showed that the Habsburg political administration differed from dominant political strategies adopted in other European countries at the time. While the Habsburg administration allowed for the linguistic and cultural development of different ethnic groups within a supranational state, political strategies adopted in other European countries enforced the model of a monolingual nation-state.

The period under consideration starts from the mid-19th century, given that the Austrian Civil Code of 1852 and Criminal Code of 1853 already contained provisions on the right to translation and interpretation in court proceedings. Language provisions in selected legislative documents from different historical periods will be compared in light of their communicative functions.

Research Question

The main research question is: How are language rights communicated in regulative texts in different historical periods?

Research to Date

The author has done extensive research on language policies and multilingualism in Croatia in a diachronic perspective, including legislative provisions and their implementation with a particular focus on language rights of minority speakers.

Method

The methodological framework will be provided by the pragmatic concept of metadiscourse which studies “how writers seek to influence readers' understandings of both the text and their attitude to its content and the audience” (Salmi-Tolonen 2016: 63) Thus, metadiscourse refers to aspects of text which explicitly organize the discourse, engage the audience and signal the writer's attitude. (Ibid.) The paper will primarily focus on interactional devices such as hedges, boosters, attitude markers, references to self and engagement markers in selected legislative documents showing how the use of such devices changed over time as a result of changing power relations which will be explored in the light of Critical discourse studies.

Corpus

The corpus consists of the selected provisions concerning language rights from documents such as the Austrian Civil (1852) and Criminal (1853) Codes, the constitutions of the Kingdom of Yugoslavia of 1921 and 1931, the laws, regulations and decrees of the Independent State of Croatia of 1941, the Constitutions of the Federal Republic of Yugoslavia of 1946, 1963 and 1974, the Constitution of the Republic of Croatia (the consolidated version of 2005), and the Constitutional Act on the Rights of National Minorities (2002).

Hypothesis

My hypothesis is that the use interactional devices increased over the period under consideration due to the democratization processes and the impact of international human rights law.

Summary

The paper will explore the ways in which language rights were communicated in primary legislative sources applying to Croatia between the mid-19th century and the present focusing on the use of interactional devices in the context of changing power relations over time.

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Vilemini Sosoni (Ionian University): Translating in the EU. Investigating the effect of translation manuals and drafting style guides on legal language and translation practice

The aim of the paper is to investigate the use of translation manuals and drafting style guides in the context of the European Union (EU) and to highlight the implications that these have for legal language (and thought) as well as for translation practice.

Both translation and text production in the EU are inherently related to its policy of multilingualism which reflects its sociopolitical reality and its de facto supranational and multicultural discourse community (Coulmas 1991). Apart from the immense ideological and logistical implications that such a policy entails, it also creates a unique and unavoidably challenging working framework for translators as well as text drafters and law-makers. In practical terms, translations produced in this context are not ‘just translations’ but applicable law, i.e. equally authentic language versions of the law. What is more, given that EU law is a melting pot for national legal systems, languages and cultures and has often been labelled an – intentionally– hybrid legal system (cf. Biel 2014a, 2014b: 6; Mattila 2013: 138; Cao 2007: 150; Koskinen 2000: 63), supranational legal texts are often deliberately hybrid because their translation is to underscore the otherness of their origin and to “highlight linguistic differences” (McAuliffe, 2011: 101) between them. Within this context and in order to ensure ‘quality’ of legal drafting and translation, the EU’s institutions –in particular the European Commission’s Directorate General for Translation (DGT)– has issued specific guidelines in the form of guides, such as the Inter-institutional Style Guide (IISG), the How to Write Clearly guide, the Joint Practical Guide for the Drafting of Community Legislation and the various Style Guides drafted for individual languages – although it should be noted that these vary considerably in form, size and complexity. In addition to the above, external translators are required to comply with the Guide for External Translators which is only available in English, French and German, but its contents are binding for all, independent of language combination. When EU translators, both in-house and freelance, are assigned a translation job, they are required to comply with the contents of these guides. This requirement is made explicit in the translation brief provided to them. For instance, in the European Commission’s Directorate General for Translation (DGT) –which is the biggest translation service in the world– the brief bears the French title *Fiche de Travail* and the compliance of translators with voluminous style guides and phraseologies is highlighted as an absolute prerequisite (Svoboda 2013).

These guides, which Mason (2004: 473) calls ‘institutional doctrines’, are thought to pose significant constraints to translators, but more importantly to considerably affect the end products, i.e. the language versions and by extension the legal language used and the legal thought behind it. For example, one of the instructions expressly prescribed in the Joint Practical Guide for the Drafting of Community Legislation, is the use of country-neutral legal terminology, i.e. the avoidance of terms that are too closely related to a particular legal system, society and culture (e.g. the UK and Ireland).

In the present study we will investigate this hypothesis by analysing the DGT guides which are common for all languages, as well as the guides for English, French, Spanish and Greek, and by carrying out a qualitative analysis of the instructions provided. In addition, an error analysis of five legal EU texts translated from English into Greek and revised by the DGT will be carried out and an attempt will be made to map the errors – wherever possibly – to the instructions provided in the guides. It is hoped that the findings will help shed some light into the impact of these guides on translation and EU legal language and thought.

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Łucja Biel (University of Warsaw): Impact of institutionalization on translation quality. A corpus-based research of translation of EU law

The objective of the paper is to analyse to what extent and how the institutionalisation of translation process impacts the quality of legal translation. More specifically, we want to test the hypothesis that the institutionalisation of the translation process increases the textual fit of legal translations, that is reduces their distance to non-translated TL texts of a comparable genre.

One of the prerequisites for accession to the European Union (EU) is to translate the *acquis communautaire*, the existing body of EU law. This process is conducted by a candidate country itself. So was the case with Poland, which accessed the EU in 2004. The translation of *acquis* took place under significant time constraints and was badly coordinated by national authorities, which took its toll on the product. After the accession, translation of legislation was gradually taken over by EU institutions, e.g. the DGT. It is commonly believed that the quality of EU translations improved after the accession. Since quality is a subjective concept, we are interested in tracking down what ‘improved’ entails.

As noted by Mason, “[i]t is at least plausible to suggest that large institutions may develop translational cultures of their own”; the institutional nature of certain types of translation has been found to be “a neglected factor” (Mason 2003/2004: 470) and “a missing factor” (cf. Mossop, quoted in Koskinen 2008: 4) in translation studies. EU translation is a classic example of institutional translation which develops a distinct culture of translating and prepares dedicated resources for translators. The translator becomes part of “a situated institutional practice that has become routinized and habituated over time” (Kang 2011: 144). To rationalise the translation process EU texts are subject to extensive standardisation and formulaicity (Trosborg 1997: 151); adherence to in-house conventions is one of the translation quality criteria.

The study will be conducted in the comparable corpus methodology in the Wordsmith Tools version 7.0. It compares pre-accession and post-accession translations of EU regulations and directives into Polish against non-translated national law (the Polish Law Corpus). The preaccession corpus is based on the JRC *Acquis* corpus and contains translations up to 2004. The post-accession corpus was built as part of the PL EUROLECT project and contain translations of regulations and directives as of 2015. The study will investigate features which were identified in an earlier study (Biel 2014) as contributing to the low textual fit of translated EU law and will analyse their behaviour in the 2015 sample of translations, when the process is controlled by the institution. The study will also shed some light on the development of Eurolect as a hybrid variant of legal language — from the initial forming stage to the developed stabilised stage.

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Elpida Loupaki (Aristotle University of Thessaloniki): EU Legal Language and Translation. Dehumanizing the Refugee Crisis

Can language disguise agony, horror or violence? Can particular linguistic choices dehumanize a humanitarian crisis? The aim of this paper is to focus on the language used in the European Union (EU) in order to describe and/or regulate the socio-political phenomenon actually referred as “the refugee crisis”. More specifically, we intend to investigate the choices made by the translator when transferring EU legal texts.

To do so, firstly we are going to briefly report on the interconnection between language and ideology. As numerous studies in the field of Textual Linguistics and Critical Discourse Analysis (CDA) have already demonstrated, the relationship between language and ideology is hardly a new phenomenon. In fact, according to Fairclough (1989: 3) “ideology is pervasively present in language,” and as Hodge and Kress point out (1993: 15), “ideology involves a systematically organized presentation of the reality [...] and presenting anything in or through the language involves selection.” In this sense, various linguistic means, such as emotive words (positively or negatively charged) or lack thereof, syntactic choices controlling causality or modality, or any other form that a given speaker may select may communicate hidden ideological messages to the audience.

We will then discuss the special characteristics of EU legal language, if we assume that such a language variety does exist. As explained, among others, by Biel (2014: 19), the legal language “has a fuzzy rather than discrete boundary, shows high internal differentiation, and is to a certain degree system-dependent.” Moreover, EU legal language is influenced by several other factors, such as the multilingual/multicultural environment of its production – which is believed to lead to hybridity phenomena (Schäffner & Adab 1995; Trosborg 1997)–, by the fact that speakers/ writers of legal texts are not always native speakers of the language they are using (EUsociolect, Dollerup 1996) and by the need to reach a compromise (Europeak, Schütte 1993). More recent studies about EU translation have shed light on the normative character of translation choices and related them to the so-called EU culture or institutional translation (Biel 2012; Koskinnen 2014, 2008; Loupaki forthcoming, 2008, 2005; Sosoni 2012, 2003).

In the third part of our paper, we intend to present the actual case study we are working on. The motivation of this study has been both the historical circumstance of the refugee crisis and our previous research interests related to issues such as ideology, EU translation and terminology management. In our study “dehumanization” is understood as the process of undermining the pain, the human nature of a group of people and magnifying the trouble that this group may cause to the ruling group(s). It is a classic bipolar schema opposing us vs. them. The linguistic strategies used to this end are similar to the ones described as detachment strategies (Tannen 1989, 1993), i.e. extended nominalization, passive structures, choice of neutral or very formal words/ expressions, terminologization, etc. Dehumanization is studied on the basis of a corpus of EU legal acts; the analysis is qualitative as well as quantitative and the findings are compared and contrasted with the findings from the analysis of a corpus of

journalistic texts related to the refugee crisis and taken from the Greek daily newspapers Kathimerini, Ethnos and Avgi.

Our theoretical background is Descriptive Translation Studies, Critical Discourse Analysis as well as Corpus Linguistics.

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Jennifer Smolka (formerly University of Geneva); Benedikt Pirker (University of Fribourg): International Law, Pragmatics and Procedural Meaning. What is the Potential?

Theoretical background:

As previous research has shown, there is a lack of knowledge of linguistics and pragmatics in research on interpretation in international law.¹ Pragmatics² has hardly been relied upon so far,³ and even at the rare occasions it has been used, the approach has not necessarily been convincing in all respects.⁴ Part of the problem is the lack of more thorough knowledge of the variety of concepts with which pragmatics works. As an example, the distinction between

¹ Linguistics/pragmatics is used here in the sense of the scientific disciplines, especially contemporary pragmatic theory such as Relevance Theory (see the Stanford Encyclopedia of Philosophy on pragmatics at plato.stanford.edu/entries/pragmatics, section 3). Speaking of interpretation, we refer to the process of applying the legal methods of interpretation to the text of international treaties as opposed to oral or written translation and research on multilingualism in legal contexts. See for an example of legal research on multilingualism in international law *Gächter-Alge*, Mehrsprachigkeit im Völkervertragsrecht.

² Pragmatics is understood here in a Gricean rather than in a Wittgensteinian tradition (see *Sbisà*, Locution, in: *Pragmatics of Speech Actions*, 42 ff.). For an approach inspired by the Wittgensteinian tradition, see *Structuring Legal Theory* (e.g. *Müller*, Rechtslehre, or the recent overview in *Hamann*, Strukturierende Rechtslehre, in: *Handbuch Sprache im Recht*, in print) or the Heidelberg Group of Legal Linguistics (e.g. *Vogel*, Calculating legal meanings, in: *The Pragmatic Turn in Law. Inference and Interpretation*, in print). In other words, this presentation focuses not so much on the Wittgensteinian notion of language game and the related conception of speech as rule-governed behaviour, but rather on meaning as speaker intention (*Sbisà*, Locution, in: *Pragmatics of Speech Actions*, 45). Pragmatics is viewed here as situated within cognitive science, and thus aims at providing a cognitively plausible model of how hearers or readers bridge the gap between linguistically encoded meaning and communicatively intended speaker meaning (*Carston*, Canons of Construction, in: *Law and Language*, 9). This is not to suggest that these approaches are mutually exclusive. Although Relevance Theory considers conventions of language use to be sociological problems rather than issues of pragmatics (*Reboul/Moeschler*, La pragmatique aujourd'hui, 172), the Theory allows for an accommodation of social factors in the sense that our cognitive abilities allow us to mentally represent the related information which thus becomes part of cognitive context (*Smolka/Pirker*, *International Journal of Language & Law* 2016, 1, 29). *Structuring Legal Theory* appears to follow more of a conventionalist than an intentionalist trend (cf. *Sbisà*, Locution, in: *Pragmatics of Speech Actions*, 45) in its analysis of the process of taking a legal judgment/decision: the Theory observes the encounter of a lawyer with the facts (step 1), the reflection as to which norms could be applicable to the case (step 2), the step-by-step contextualisation of the norm text using the applicable means of interpretation resulting in the necessary degree of concretisation (step 3), and the last step of subsumption (step 4). In this last step, the decision is taken whether the case to be decided falls under the concretised norm and, as a consequence, the decision norm is handed down (this step-by-step process is called norm structure, see *Hamann*, Strukturierende Rechtslehre, in: *Handbuch Sprache im Recht*, preprint, 2-3). Using Relevance Theory to assess interpretation, we focus on the step (which appears to correspond to step 3 in *Structuring Legal Theory*) of decoding and drawing inferences necessary to “interpret a legal norm”, i.e. of giving meaning to it in the concrete context in which a decision must be taken. In this process, the legal expert uses information related to the relevant legal norm which is assumed to be part of their cognitive context.

³ See e.g. recently *Venzke*, Interpretation; for a standard approach to interpretation e.g. *Aust/Nolte*; see, however, on linguistics and pragmatics *Linderfalk*, Interpretation of Treaties; *Linderfalk*, *European Journal of Legal Studies* 2013/2014, 27.

⁴ *Smolka/Pirker*, *International Journal of Language & Law* 2016, 1, 15 ff.

conceptual and procedural meaning has not yet been made fruitful in the study of international law, e.g. in processes of interpretation.⁵

Against this background, the present paper suggests to examine – without prejudicing the results – interpretation in international law by means of examples, trying to find traces of the role played by procedural meaning. The focus of studies so far has practically exclusively been conceptual meaning, so that the potential impact of procedural meaning remains unknown.

To determine the relevance of procedural meaning for interpretation in international law, the paper draws on a relevance-theoretic framework⁶, i.e. a cognitive theory of meaning, communication and utterance comprehension in context, to explore the nature and defining properties of procedural meaning, its limits and status in current linguistic theory as well as the relationship between conceptual and procedural features.⁷

Research questions:

We draw on Relevance Theory to explore to what extent procedural meaning is semantically encoded/pragmatically inferred.⁸ Can a relevance-theoretic study of procedural meaning help to answer the question to what extent meaning is generally encoded in language, or, in other words, further explore the semantics/pragmatics borderlines?⁹

Turning to international law, how is this question relevant in the interpretation of international law, a field where many actors (academics and practitioners) adhere to the idea of a “literal meaning” that international treaty norms possess and that simply needs to be decoded?

Furthermore, are there clearly identifiable examples of procedural meaning playing a role in the interpretation of rules of international law?

Does procedural meaning play a preponderant role in these examples, i.e. does it influence the interpreter’s thinking and the outcome of the interpretative process?

If there are such influences, can they be categorised/put in a typology?

As an overarching question, does the example of this examination of procedural meaning in international law further the cause of integrating linguistic knowledge into the legal curricula of law schools (in order to spread knowledge about linguistics as a relevant skill for the good exercise of the profession)?

⁵ For a relevance-theoretic discussion of the conceptual-procedural distinction, see *Wilson*, *Lingua* 2016, 5. This distinction is, of course, closely related to the semantics/pragmatics distinction (for an overview see *Börjesson*, *Semantics-Pragmatics Controversy*).

⁶ *Escandell-Vidal/Leonetti/Ahern*, *Procedural Meaning*, in: *Procedural Meaning: Problems and Perspectives*, xix ff.

⁷ Cf. *Ibid.* at xxvi ff.

⁸ *Carston*, *Lingua* 2016, 154, *passim*.

⁹ *Börjesson*, *Semantics-Pragmatics Controversy*, *passim*.

Methodological approach:

In line with the conference topic, the paper uses a number of examples of norms and cases with a focus on globalisation and social conflicts. The focus lies on the role of procedural expressions, such as “and”, in norms of international law.

For example, norms on institutions and procedures for decision-making can contain such procedural expressions. Take Article 294 of the Treaty on the Functioning of the European Union, which lays down the central decision-making procedure of the European Union to create new legislation. Paragraph 2 of said Article states, “The Commission shall submit a proposal to the European Parliament and the Council”. The question is to what extent information is linguistically encoded by the expression “and”, to what extent inferences may legitimately be drawn from “and” in this context and whether these inferences are relevant for the outcome of the interpretive process of the norm at issue, e.g. does the Commission have to submit a proposal simultaneously or consecutively to the two other institutions? It is thus examined in a relevance-theoretic framework whether elements of procedural meaning can be distinguished and what their relevance is for the outcome of a given case. Based on these qualitative findings, some first conclusions can be drawn as to whether more research into the relevance of procedural meaning in the interpretation of international law is warranted.

Main hypotheses:

The central hypothesis underlying the paper is that there is currently a lack of understanding and knowledge among international lawyers with regards to linguistics and pragmatics,¹⁰ and that current pragmatic Relevance Theory can contribute to the understanding of how international law works in the field of interpretation.

Furthermore, based on earlier research, it is suggested and ought to be verified that to date, as far as Relevance Theory has been used to examine international law, only conceptual meaning has played a role, while procedural meaning has been neglected.

Third, procedural meaning arguably can influence the outcome of decisions, i.e. it plays a role in the methods of interpretation applied in international law. For instance, procedural expressions may impose constraints on inferences and/or contribute to determining propositional utterance content.¹¹ The systematic study of procedural meaning ought therefore to contribute to our understanding of how international law operates.

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Janet Giltrow (University of British Columbia): Linguistic-pragmatic perspectives on judicial reasoning in aboriginal law in Canada

In Canada, ‘aboriginal law’ most conspicuously refers to superior court decisions around a core set of legal genres: historical (or, less commonly, contemporary) treaties of different types; land claims; agreements for implementation or infringement of constitutional and treaty rights. In turn, these core genres are attended by supporting or elaborating genres, including oral narratives (Arnot 2010) and historical petitions recording the experience of indigenous peoples in their relations with the Crown. In Canada, indigenous peoples who are neither Inuit nor Métis are often referred to as First Nations, reflecting their unique status amongst Canadians; the term replaces ‘Indian’ in formal and media usage, although not in all legal usages.

As in other areas of law, in Canada and elsewhere, interpretations of these genres are more or less unforeseeable, even as trends develop and findings once implausible become feasible. And, conceivably, any area of law may open up to the uncertainties posed by “hard cases” (Dworkin [1975] 1977), where more than one good answer is possible; Poscher (2016) has recently argued that law as a way of speaking—its discursive resources and constraints—is uniquely adapted to the uncertainty of hard cases. Yet aboriginal law in Canada, deriving from mainly historical but also some contemporary genres, may be more emphatically framed by commentary as ‘uncertain’ than any other area of law. For example, in a book-length inquiry, Woolford (2005) examines historical and modern-day treaty making in British Columbia, Canada’s Pacific province, as being forced to privilege “certainty” over “justice”; certainty is highly valued insofar as the unforeseeable quality of aboriginal law disturbs non-aboriginal socio-economic assumptions. Equally alert to the disturbing effects of uncertainty, but taking a position reassuring to those non-aboriginal socio-economic assumptions, Isaac and Knox (2004) assess fears about uncertainty as “inflated”, and assert that aboriginal law is, in effect, foreseeable insofar as it is within, they say, the general law of Canada, particularly administrative law. Isaac and Knox confirm that, contrary to widespread perception, rights of resource developers are not at risk. In 2014, following a Supreme Court of Canada finding (*Tsilhqot’in v. British Columbia* 2014) that the Xeni-Gwet’in have title to 1750 square kilometers of British Columbia, Isaac (2014) continues to reassure investors, leading a team of writers from a business law firm to explain that “the sky is not falling”: despite appearances, business can go on if not as usual, at least with certainty within reach.

In each of the decisions which Woolford, on the one hand, and Isaac et al., on the other, have in mind, there was substantial foundation for reasoning about First Nations’ rights. Yet the Court’s reading of the materials excited sharp sensations of uncertainty, scarcely soothed by expert reassurances. Are these judicial actions of an order beyond that of the “hard cases” which law as a rule relishes?

This paper will suggest avenues for linguistic pragmatic inquiry into the nature of uncertainty in aboriginal law in Canada. On the face of it, pragmatic methodologies may seem particularly well suited to such inquiry, focussing on meaning’s being “vastly”

underdetermined by, as Sperber and Wilson (2002) say, “the linguistic meaning recovered by decoding”. But the pragmatic claim is for all interpretation, not peculiarly for utterances which are ambiguous, vague, or stranded by time in alien contexts of interpretation. Accordingly, this presentation will concentrate on exploring the potential contribution of linguistic pragmatics to understanding the qualities of inference which have led to the sensation of uncertainty. It will sample Supreme Court of Canada decisions which have

(1) notably introduced, advanced and/or cited vague terms for future inferences or further definition. Can the pragmatic concept of weak implicature (Sperber and Wilson 1995) guide analysis of the inferential processes which follow from the introduction of terms like “justifiable infringement” of aboriginal rights; exclusion of aboriginal land use which is “irreconcilable...with the ability of succeeding generations to benefit from the land”; “accommodation”; “duty to consult”?

(2) following instatement of the concept of the “honour of the Crown”, prohibited “sharp dealing” by the Crown in interpreting treaty rights. Are these prohibited interpretations typically those which are perversely literal readings, introducing as Carston (2002) says, in agreement with Recanati, a logical step which has no cognitive counterpart: it introduces, in effect, a cognitive counterfeit to the reading process;

(3) recognised evidence of deceptive practices amongst negotiators representing the Crown, to test the concept of false implicature for its utility in analysing courts’ interpretation of such double dealing.

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Sofiya Kartalova (University of Tübingen): The Strategic Value of Ambiguity for the Authority of EU Law in the Dialogue between the European Court of Justice and the National Courts

Keywords: *the strategic value of ambiguity - legal certainty – preliminary ruling procedure – constitutional conflict – the authority of EU law - ECJ – national courts*

I. Introduction

The EU legal order is driven by a profound desire for self-affirmation, encapsulated in the concept of *the authority of EU law*. With the exception of a few isolated contributions (Chalmers, Davies and Monti, 2010; Walker, 2005), the authority of EU law is a largely underdeveloped concept, lacking a universal and clear-cut definition, despite its tremendous importance for delimitation of competences. Nevertheless, the dimensions of this idea traditionally follow the lines of the expansion of the core doctrines of the ECJ – supremacy, direct effect and the preliminary ruling procedure. Further, the greatest challenge for the authority of EU law can be found in the notion of constitutional conflict between the ECJ and the national constitutional courts, the specific parameters of which were set by Kumm (Kumm, 2005; Chalmers, Davies and Monti, 2010).

II. Hypotheses

The effect of ambiguity on the EU legal order

This study understands ambiguity as a refined complement to legal certainty that stabilises this system through infusing it with flexibility. Further, if the innate ambiguity of linguistic arguments is mitigated by contextual and teleological reasoning, this aim may be achievable (Paunio and Lindroos-Hovinheimo, 2010). This entails an unconventional reading of ambiguity as a desirable quality of a communication system (Piantadosi, Tily and Gibson, 2012).

This study contends that the judicial dialogue between the ECJ and the national courts is reminiscent of Pickering and Garrod's interactive alignment model of dialogue (Pickering and Garrod, 2004). The effect of this process is fortifying and enhancing their "systemic compatibility" (Maduro, 2007) on the basis of shared values, i.e. "implicit common ground" (Pickering and Garrod, 2004), which is most apparent in the preliminary ruling procedure. Additionally, the effective resolution of constitutional conflict represents "interactive repair in cases of misalignment" (Pickering and Garrod, 2004). Thus, the intrinsic role of ambiguity is to act as the driving force behind this cyclical process of perpetuation of the authority of EU law through ambiguity perception, production and resolution in the context of judicial interpretation.

In this sense, the dialogue between the ECJ and the national courts strives to gradually mould "a shared legal paradigm through judicial reasoning" (Paunio, 2013), which increases the stability within the system (Paunio, 2013). Further, the process is also aimed at increasing

acceptability, and thus, at perpetuating the authority of EU law (Paunio, 2013) through judicial activity aimed at “system-building” (Leczykiewicz, 2008). Thus, the authority of EU law is derived from the observance of the rule of law and the coherence within the system (Leczykiewicz, 2008), which is heavily reliant on the creation and usage of legal concepts in the judicial reasoning of the ECJ (Leczykiewicz, 2008).

The strategic value of ambiguity

Hypothesis 1

The role of ambiguity may be construed as facilitating the transition “from a *horizontal* and *bilateral* to a *vertical* and *multilateral* relationship” between the ECJ and the national courts (Craig and de Burca, 2011). This trend confirms the apprehension expressed by Conway in terms of the inherent dangers in the ambiguous treatment of the boundaries of competence (Conway, 2010). Furthermore, judicial conflict is essential to EU law and it is both unavoidable and ever-present (Martinico, 2015). Additionally, the notion of interpretative competition may be reconciled with Mouffe’s theory of conflictual consensus (Martinico, 2015).

Hypothesis 2

Ambiguity may be wielded as a tool for maintaining equilibrium in dialogue through the empowerment of the national courts as part of the preliminary ruling procedure, especially under the *acte clair* doctrine. The ECJ is willing to use deliberately imprecise concepts to achieve this end (Leczykiewicz, 2008; Tridimas, 2015). Another relevant strategic scenario is when a national court issues a pre-emptive opinion to accompany the reference to the ECJ (Nyikos, 2006). Furthermore, the degree of specificity of ECJ judgments and the ECJ’s discretion to refuse to issue a preliminary ruling represent another strategic opportunity (Tridimas, 2011, 2015).

Lastly, ambiguity may be employed strategically in terms of the effective management of constitutional conflict through judicial co-operation, so that the authority of EU law survives the crisis at an acceptable constitutional cost for the parties involved. Ideas of particular importance here are judicial dialogue as an opportunity for judicial signalling (Kuo, 2013; Tridimas, 2015) and the non-hierarchical model of multilevel judicial cooperation (Voßkuhle, 2010).

III. Research question(s)

What is the strategic value of ambiguity for the authority of EU law in the dialogue between the ECJ and the national courts?

- (Hypothesis 1) **Ambiguity facilitates the perpetuation of the authority of EU law by enabling the transition towards a vertical and multilateral relationship between the ECJ and the national courts. The power balance between the ECJ and the national courts can only be achieved through greater specificity of norms and (a) direct conflict of norms or (b) conflictual consensus.**

- (Hypothesis 2) **Ambiguity facilitates the perpetuation of the authority of EU law by enhancing the coherence of the system in the following ways: (a) by increasing acceptability through promoting mutual understanding between the parties based on shared values, and (b) by effective constitutional conflict management through judicial co-operation.**

IV. Research methodology

This study is going to use the results of Derlen and Lindholm's empirical analysis of the characteristics of precedent to determine the clusters of case-law with the highest degree of persuasive and precedential power (Derlen and Lindholm, 2015). This work will allow the researcher to identify the most influential cases with the highest strategic value for the perpetuation of the authority of EU law within the preliminary ruling procedure.

Thereafter, the researcher must locate instances of ambiguity that speak of the true strategic value of the phenomenon. The problem of managing linguistic ambiguity in legal texts has previously found an innovative solution in applying corpus linguistics to statutory interpretation in the US Supreme Court (Mouritsen, 2011). Additionally, multilingual judicial interpretation may be greatly beneficial in terms of discovering and resolving divergence of meaning and discovering the intention of the legislator (Derlen, 2011). Therefore, the researcher will embark on constructing a semantically linked multilingual corpus (Zhang, Sun and Jara, 2015) out of the official translations of the judgments, as the intention behind conceptual translation is to steer clear from exact equivalence of terms and instead preserve ambiguity (Bengoetxea, 2011). This will allow the researcher to gain appreciation of the array of possible interpretations a particular instance of ambiguity offers, before contemplating the justifications and ramifications surrounding its strategic usage in judicial dialogue.

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Izabela Schiffauer (WSB University, Wrocław); Peter Schiffauer (FernUniversität Hagen): The Triumph of Law over Language? A Case Study of Multilingually Negotiated EU Law

In no way is the European Union more diverse than in terms of language (Creech 2005, p.3). Or is it?

The Union's principle of democratic multilingualism, preserved despite the ever growing number of Member States and official languages emanates desired cultural diversity of the integrated Europe, but not quite that of its law. The EU law-making, while being dependent on a multilingual drafting process, is oriented at creating a unique legal order setting up provisions which are identical or, more precisely, lead to the same legal effect albeit expressed in different terms. Still, the achievement of this objective is by no means evident given that language serves as a primary means through which culture is transmitted, of which legal culture is no exception. Conceptual differences in language versions may arise both intentionally, as well as unintentionally. As to the latter case, inconsistencies may emerge from inaccuracies stemming from translators and lawyers-linguists under the pressure of workload and time. Such inaccuracies are easier to amend if they are timely detected. In exceptional cases, where discrepancies come to light only in the context of a concrete lawsuit, the Court of Justice of the EU is vested with the authority to determine the legal effect that was to be achieved by a given EU law instrument. Much more controversial are cases where conceptual divergences emerge from the insistence of negotiating national representatives on a specific use of their own language. It may occur that such use is not fully in line with the terms used in other language versions, not infrequently due to veiled reservations against what constituted the record of agreement. Such use, or sometimes even abuse of language in the process of multilingual negotiation of EU law does not facilitate its uniform application at the level of Member States (see e.g. the judgment of the ECJ in Case 6/64 *Costa vs. Enel*, p. 594, where the Court stated that "[t]he executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws"). On the other hand, the negotiated legislation is somewhat 'bound' to fall short of the requirement of clarity and precision as a consequence of the very nature of the legislative process, the ultimate result of which may be described as *droit diplomatique* (Gallas 2001, 2005). In other words, the inherent tension between diplomatic methods of the law-making process on the one hand and multilingual character of the EU law on the other poses a real challenge not only with regard to consistency between multilingual renditions of the Union legislation, but consequently also the uniformity of its application. This contribution will attempt to analyse some instances where such tension comes into play.

At the same time the authors will argue that, in the contemporary age of globalization and multilevel governance, legal discourse must meet challenges which transcend the immediate horizon of the state and thereby it loses to some extent its quality of being bound to a single language community. Does it mean an immediate triumph of law over language? Language is first and foremost the tool of law, the consequence being that all (including law) concepts are

culture-bound and context sensitive. This does not change the fact that the integrated Europe resorts to and formulates its law by and large in terms of “shared concepts”. The very instance of national languages being potent to express such concepts points to their common European roots and tradition. May we say, following Von Wright (2000: 354), that in the valuations which are current in a given society there is an embryo of a legal order? Indeed, acting together, European peoples and States in the EU Founding Treaties elevated their most important and shared valuations to the rank of common norms. This kind of “*social contract*” which thus has been established amongst the peoples of Europe is, however, not given once and forever nor do the parties feel eternally bound by it. Meaning is not and cannot be anchored in a text of law, but is constantly reconstituted and renegotiated within a given community of law on the basis of “the positive legal material made up of legal provisions and judicial decisions” (Von Bogdandy 2010: 97). The difficulties of such redefinition of Europe and its law have recently been brought to light more evidently than ever before. The planned contribution will examine the text of EU legal provisions and the reasoning developed in relevant case-law on the grounds of a pragmatic conception of language and meaning (cf. Schiffauer 1979, Müller/Christensen 2003). At the present stage the results of such studies cannot be anticipated. They seek to accentuate some important turning points, with their long-term semantics being by and large indeterminate while the uncertainty of the outcome rather motivates to undertake them.

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Agnieszka Doczekalska (Kozminski University, Warsaw):

EU legal language and its influence on national legal languages and cultures of member states

Introduction

A legislative drafter of EU law faces challenges unknown to a national legislator. They result from the fact that supranational autonomous law of the European Union is drafted:

- in a way that it can be applied uniformly across the 28 Member States,
- in the 24 official languages of the European Union, which are also official languages of the Member States and are used for drafting of the national laws.

The research aims at analyzing how EU legal language develops and influences national legal languages and cultures of Member States.

Main Questions

Since EU law is drafted in languages that are also used to draft national law of Member States, the following research questions will be considered:

- How legal languages interact at national and EU level, especially:
 - does drafting of EU law influence the legal language of domestic legal acts?
 - is it possible to distinguish a national legal language from the EU legal language; e.g. English language of British or Irish law from English language of EU law?
- Does EU law have its own legal language? If so, what are the characteristics of this language?

In order to answer the aforementioned questions four processes are analyzed. For research purposes, it is assumed that the first two of them take place when EU law is drafted. They result from the requirement to draft EU law in such a way that it can be applied uniformly across the 28 Member States without violation of their national legal cultures. They are the following processes:

- 1) Hybridization of EU legal texts which results from the contact of several languages and legal cultures, and their blending during drafting of EU law;
- 2) Deculturalization of national legal languages of the Member States – necessary to ensure linguistic parallelism in all 24 language versions of EU laws and thereby facilitate its uniform application in the Member States.

Secondly, the study examines two reverse processes: (3) **dehybridization** and (4) **culturalization of EU legal language**, observed when EU law is applied in a Member State, which has its own legal culture, and thus, its own legal language distinct from the legal language used in EU legal texts. This is especially apparent during the transposition of EU directives, when a domestic legal act transposing the directive is not drafted in the culturally neutral EU legal language but in a Member States' legal language, which reflects the national legal culture.

Research to Date

Multilingualism of EU law is investigated and discussed in the field of legal science, linguistics, and translation studies. However, the research on this phenomenon rarely applies an interdisciplinary approach, combining methods of the abovementioned domains. Legal science focuses mainly on the interpretation of EU multilingual law (Sacco 2002, Derlén 2009, Schilling 2010). If multilingual legal drafting is tackled, the main concern is usually on the EU language regime (Coulmas 1991, Creech 2005). The corpus linguistics analysis of EU legal texts is conducted by linguists (Calliendo et al. 2005, Piehl 2013, Biel 2014). The challenge of the drafting of EU law in such a way that all language versions of a legal act render the same meaning is more often investigated according to the theory of translation than by legal science (Correia 2003, Cao 2007, Koskinen 2008). The research which examines interactions between languages used to draft and transpose EU law, from legal perspective is very rare (Kjær and Adamo 2011, Catenaccio 2008).

The phenomena of hybridization and the concept of a hybrid text have been discussed in **translation studies** since the 1990's (Trosborg 1997, Schäffner and Adab 2001). Some texts produced by EU institutions have been described as hybrid texts (McAuliffe 2011, Tirkkonen-Condit 2001). Whereas there is some literature dealing with the concept of a hybrid text in general and in the context of the European Union, **the concept of deculturalization** is merely mentioned by T. van Els (2001:323).

Resources and Methods

The study of both national and EU legal languages is based on:

- The analysis of the case law of the national courts and the Court of Justice of the EU dealing with interpretation of multilingual law, autonomous concepts of the EU legal system
- Comparative law methodology (micro-comparison of concepts);
- Corpus-based analysis of EU and national legal texts supported with WordSmith tools;
- Translation studies' methodology
- In-depth interviews with legal revisers, lawyer linguists, translators, and editors in the EU institutions and with national legal experts participating in the transposition process

Hypothesis and Summary

The investigation of the four processes and the legal languages of EU and national laws explains how legal languages interact and influence each other. The study on dehybridization and culturalization of the languages of EU directives in transposition process determines whether and how language(s) of EU legal texts influence national legal languages. The research results should make the answer to the question **whether EU autonomous law of the European Union has developed the distinct language of law (hypothesis)** achievable. This answer can **take the investigation on the legal culture of the European Union one step further**. Moreover, the theoretical analysis of the research outcomes provides better and

wider comprehension of the concept of “language of law”, especially in multilingual legal settings. It provides **implications for theory of law and theory of translation**.

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Werner Gephart (University of Bonn); Theresa Marie Strombach (University of Bonn): Relating Law and Language in light of the Law-as-Culture-Paradigm

The debate about relating law and language (in all its variants: law as language, language as law, etc.) may take a new turn by applying the “law-as-culture”-paradigm.

This paradigm has evolved during the first phase of the Käte Hamburger Center for the Humanities “Law as Culture” in the following ways:

1. Widening the concept of law by inserting a symbolic, ritual and organizational dimension beyond the normativity of norms as such.
2. Relating law to its brother sphere, religion, in all contexts: international law, local customs, religious law, etc.
3. Thinking of legal normative orders as being in tension between localizing and globalizing tendencies.
4. Taking the consequences of increasing conflicts between legal cultures seriously.
5. Looking at the intersection of law and aesthetics by avoiding the danger of legal kitsch on the one side and normative fascism on the other side.
6. Reflecting on the semantics of culture as defense as well as a constraint or genuine argument in the juristic discourse, thus pursuing the question of to what extent a culture matters in a normatively valid sense.

It is obvious that all these claims have repercussions for legal and linguistic issues:

1. Law as text, law as symbol and law as ritual form cannot be analyzed without linguistic reflections.
2. When speaking about the religious and the legal spheres, speech act theory may help to understand why the illocutionary effect of the oath needs a solid normative institutional framing, and why legal framing is poor without sacred procedures and symbols expressed in the language of religion.
3. Legal transplants, insertions, receptions and translations stem from the linguistic field (exemplified here by way of the German legal language in and for South Tyrol).
4. Deconstructing conflicts of legal cultures (such as child marriage).
5. A linguistically sensible reading might immediately deconstruct a discussion about human rights kitsch, and justifications of state of emergency might unmask themselves more easily as being of fascist origin with the help of linguistically inspired critique.
6. Whether a change from the age of natural law to historicism to a kind of “cultural law” has taken place requires a much more precise analysis of discourses in which this unknown lady “culture” leaves her ambiguous traces...

The talk will therefore on the one hand lead to some precision for the sake of reading law as culture, but it might also frame a “lingualization” of law in different cultural contexts.

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Gatitu Kiguru (Kenyatta University, Nairobi); Emily A. Ogutu (Kenyatta University, Nairobi); Martin C. Njoroge (Kenyatta University, Nairobi): Speech Act Functions in Direct and Cross Examination Discourse in the Kenyan Courtroom

Keywords: *speech acts, power asymmetry, CDA, direct examination, cross examination*

This paper focuses on the utterances by examiners in the direct and cross examination phases in trials in selected Kenyan courtrooms and seeks to show their use of speech act functions (other than questioning) to achieve various goals. According to Fletcher (2003) the law is the arena of speech acts par excellence because it is in law, probably more than anywhere else, that language can be seen so clearly as performing actions. Indeed, the centrality of the Speech Act Theory in courtroom discourse has always been acknowledged (Danet, 1980). Overall, the speech act functions in the courtroom setting are expected to be oriented to the overriding discourse functions of blame implicating and blame avoidance that dictate language use in this setting. With this in mind, the identification of other speech act functions in this paper has been tied to analysis of the intended function of specific utterances. This classification is based on the goal-orientation and the observation of the maxims of interpersonal pragmatics specifically those by Thomas (1985, 1986). She identifies speech acts, which she terms as pragmatic acts, which are characteristic of discourse of unequal encounters. These include metapragmatic comments, Illocutionary Force Indicating Devices (IFIDs), reformulations, appeal to felicity conditions and discoursal indicators. The other speech act function categories adopted are from Allan (1986) and include summon, encouragement, command, clarification and information.

The data are transcriptions of audio recordings of proceedings in sampled courts in Kenya specifically targeting a dichotomy of criminal and civil trials in which accused persons are represented by counsel and those in which the defendants appear pro se. The recordings were done over several months and transcribed to enable analysis. The discussion of the data is done within the framework of Critical Discourse Analysis to show how the various speech act functions in the direct examination and cross examination phases of trial are a reflection of the power asymmetry that holds among different participants in a trial. The discussion, further, shows that the use of the speech act functions is a factor of the divergent goals of examiners in the two phases of trial.

The direct examination phase provides opportunity witnesses to present testimony favourable to the party that calls the witness. The implication on the discourse is that the examiner and the witness, by and large, work together to develop a particular case theory through their question-answer interaction. It is for this reason that direct examination has been characterized as the phase of trial that is friendly to the witness (Danet, 1980; Lane, 1990; Luchjenbroers, 1993; Eades, 2000). As expected, the dominant speech act functions by the examiner will be questioning, but analysis will show that other speech act functions are

prevalent in this phase of trial and that their use further testifies to the friendly nature of direct examination.

In cross examination, the discourse goals of the participants are at a cross purpose. The divergent goals of the examiner and the witness in cross examination are a factor of the very purpose set for this phase of trial. The *Laws of Kenya: Evidence Act*, Part IV Section 154 (a)-(c) provides that in cross examination a witness may be asked questions ‘to test his accuracy, veracity or credibility’ and ‘to shake his credit, by injuring his character’ (p. E17-49 – E17-50). Further, Sections 128 and 155 of the same Act provide that a witness be compelled to answer the questions posed to him or her. Cross examination has been labeled as unfriendly to the witness (Danet, 1980; Farinde 2009; Luchjenbroers, 1993; Eades, 2000), and it could be argued that the provisions in the law are the foundation of the combative nature of cross examination. The purpose of this paper, however, is to show that this combativeness of cross examination is evident in the other speech act functions of the utterances of the examiners aside from questioning. Further, our discussion will show that pro se litigants face challenges utilizing various speech act functions to antagonistic ends when we compare their use of the same to that of defence counsel during cross examination.

The analysis reveals a total of 10 speech act functions featuring in the direct examination and cross examination phases of the sampled trials. Starting with the statistics on speech act functions in direct examination by police prosecutors, we note that commands were the most frequently occurring speech acts 32 (34.41%) followed by discursal indicators and encouragement at 18 (19.35%) and 17 (18.28%) respectively. Reformulation of witness testimony through restatements or summarizing the gist of what was said had an occurrence of 14 (15.05%). Turning to direct examination conducted by counsel, reformulation was the most frequently occurring speech act with a frequency count of 22 (30.99%). This was followed by command with 18 (25.35%) and metadiscursal comments with 14 (19.72%).

The cross examination phase offers a stark contrast with a marked increase in the variety of the speech act functions achieved by examiner utterances. In data set two the direct examination phases by prosecutors and counsel had a total of 164 speech act functions while cross examination phases of the same data set had a total of 255 speech act functions. Equally significant is the fact that out of these 255 speech act functions in the cross examination phases of data set two, 213 were to be found to be used by the counsel. For counsel, as cross examiners, reformulation of witness testimony had a frequency of 53 (24.88%) almost tying with discourse indicators whose frequency was 50 (23.47%). Closely following were commands 49 (23.00%) while metadiscursal comments were 38 (17.84%). These were the only speech act functions with a frequency above ten.

Comparatively, pro se litigants registered the lower use of speech act functions with only 42 speech acts identified for this group. According to distribution, commands and reformulation, with occurrence of 12 (28.57%) each, were the most frequent. Discursal indicator 8 (19.05%) was third followed by IFIDs with an occurrence of 5 (11.90%).

Thus, our analysis reveals that the use of the identified speech act functions clearly marks the divergent goals of examiners in the direct examination and cross examination phases of trial. Whereas the identified speech act functions serve witness support functions during

examination-in-chief, the same are used to diminish the credibility of witnesses and their testimony in cross examination. The findings are significant in that they reveal domination achieved through language and could therefore inform policy on management of language in the Kenyan courts.

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Karen Petroski (St. Louis University School of Law): A Metalanguage for Misrepresentation

Introduction

This paper is an initial installment in a planned project addressing the legal treatment of false statements and misrepresentations from an interdisciplinary perspective. The theoretical vocabulary used will come mainly from modern philosophy of language, and in particular from philosophers' analyses of linguistic reference, truth, and meaning (e.g., Gareth Evans, David Armstrong, Scott Soames). Some recent work in this area also draws on the vocabularies of philosophy of mind and cognitive science (e.g., Jody Azzouni).

The project will complement other work on legal issues from a philosophical perspective by addressing a theoretically neglected but pervasive class of legal rules, those sanctioning false statement and misrepresentation. To date, philosophers of language who study law have focused mainly on issues related to the interpretation of legal texts, such as constitutions, statutes, and contracts. Like the law (or informal rules) of legal interpretation, legal principles relating to the law of misrepresentation are widespread and part of lawyers' basic conceptual vocabulary. Unlike the rules of legal interpretation, however, the law of misrepresentation is seldom considered as a unified body of law by lawyers or at a theoretical level by philosophers.

Lawyers and judges already discuss certain areas of law using a quasi-philosophical vocabulary. Especially in the context of legal interpretation, but also in First Amendment law, intellectual property law, and the law of evidence, lawyers are familiar with such notions as the possibility of ambiguity and the influence of context on meaning. But although the law of misrepresentation deals with concerns similar to those arising in these areas—requiring lawyers to consider, for example, matters such as the force of speech acts and the stability of reference—there exists no standard theoretical or legal metalanguage for considering such matters.

The law of misrepresentation has been studied from some theoretical perspectives. But most philosophers addressing the subject have considered the normative implications of false statements rather than their linguistic features (e.g., Stuart Green, Seana Shiffrin). Philosophers of language interested in the mechanics of false statement have mainly focused on the practices in the abstract, rather than on how the law deals with them (e.g., Jennifer Mather Saul). A few linguists have considered language issues presented by the law of misrepresentation (e.g., Roger Shuy, Peter Tiersma), but their studies have been limited to subsets of the issues to be addressed in this project (e.g., oral communication, misrepresentation in the context of witness testimony).

Main Questions

What theories of language are presupposed by the Supreme Court's decisions in cases involving statutes or doctrines proscribing fraud and misrepresentation? In particular, what theories of reference, truth, and meaning are presupposed by the Court's analyses? Do

identifiable “schools” exist among the justices in this regard, à la textualism and purposivism in the statutory interpretation context? Are there any benefits to legal undertheorization of these issues?

Research to Date

From current projects, I am familiar with the philosophical and legal literature described above and below. This project will be my main project in 2017.

Resources and Methods

This paper will focus on opinions from the United States Supreme Court during its three most recent terms addressing legal rules governing misrepresentation or false statement. In the cases in question, the Court directly confronted the content of legal rules for assessing claims of misrepresentation or false statement. The cases thus involved use of a metalanguage (internal to legal discourse) for the analysis of such questions.

This paper will offer a description of this metalanguage, first by outlining the terms making up that metalanguage in the opinions in question, and then by considering the consistency of these terms with (a) the metalanguages used in other areas of law (such as statutory interpretation) and (b) the work of philosophers of language such as those discussed above. The paper will, for example, explain which labels used by nonlegal theorists are present in the legal metalanguage and which are not. This approach is inspired by the work of linguist-lawyers such as Peter Tiersma and Lawrence Solan, who have proposed linguistically informed internal critiques of legal metalanguage, but have not focused extensively on the law of misrepresentation.

In the order of issuance, the opinions to be considered include (1) *Air Wisconsin Airlines v. Hooper* (2014) (addressing exception to rule of immunity to defamation liability for certain false statements); (2) *Chadbourne & Parke v. Troice* (2014) (explaining circumstances required for fraud for purposes of state class-action preclusion under the Securities Litigation Reform Act); (3) *Abramski v. United States* (2014) (ruling on availability of criminal punishment for false statements regarding status of purchaser of firearm); (4) *Halliburton Co. v. Erica P. John Fund* (2014) (declining to overrule precedent concerning investor reliance on misstatements by securities issuers); (5) *Loughrin v. United States* (2014) (addressing burden of proof for conviction under federal bank fraud statute); (6) *Omnicare, Inc. v. Laborers District Council* (2015) (setting forth standards for liability for misleading statements of opinion and omissions by securities issuers); (7) *Husky Int’l Electronics v. Ritz* (2016) (addressing circumstances under which bankruptcy debtors may commit “actual fraud” without having made false statements); (8) *Sheriff v. Gillie* (2016) (considering application of Fair Debt Collection Practices Act provision banning “false, deceptive, or misleading” representations); (9) *Universal Health Services v. United States ex rel. Escobar* (2016) (addressing “implied false certification” theory of liability under federal False Claims Act).

Hypotheses

Different judges take identifiably different approaches to misrepresentation across different areas of law. Their approaches suggest particular theoretical presuppositions about linguistic and communicative reference, truth, and meaning. The approaches are, in some cases, inconsistent with the theories of language presupposed by the same judges in other legal contexts.

Summary

Much contemporary legal practice involves laws sanctioning or criminalizing misrepresentation and false statement, but this area of law is neglected both pedagogically and theoretically. This paper argues for greater attention to the topic by demonstrating the pervasiveness of these kinds of questions in contemporary litigation. It also begins to explore the possibility of a legal metalanguage for misrepresentation informed by the philosophy of language.

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Ninon Colneric (Former Judge of the Court of Justice of the European Communities; Hamburg, Germany): Multilingual and Supranational Law in the EU. 'United in Diversity' or 'Tower of Babel'?

In the world of international organisations, the highly developed multilingualism of the EU is unique. This contribution provides an overview of the rules about language governing the communications between the EU institutions and Member States or citizens on the one hand and the intra- and interinstitutional communications of the EU on the other. It looks at the working of this language regime in practice and at the difficulties inherent in drafting and interpreting multilingual supranational law. The status of English after the Brexit is investigated. The final part discusses a proposal to make the language spoken and understood by the greatest number of EU citizens the unique working language of EU institutions and to abandon the principle of equal authenticity of all 24 language versions of legislative acts of the EU in favour of just one authentic version (weak multilingualism).

Friday, September 8th, 2017

Svetlana Tachtarova / Diana Sabirova (University of Kasan): Juridical linguistics in Russia. traditions and prospects

Juridical linguistics is a fairly new paradigm of scientific research in the framework of a linguistic science. It lies on the intersection of language and law, and thus it is interdisciplinary. Interdisciplinary nature of this linguistic direction caused a variety of problems and tasks that it is intended to solve, such as linguistic expertise of legal documents, making recommendations on the drafting of texts of laws and other regulatory legal acts, theoretical and practical research in the field of legal translation, forensic investigation to determine language policy, and many others. The purpose of this report is to show the state of the Russian juridical linguistic as a science and to define the range of issues that are relevant today.

The first researches of legal language as exemplified in Russian language began in the last century, however, the original language of the legislation were investigated primarily only from the point of view of its special functional style, specially designed for the presentation and subsequent implementing law principles. General rules concerning the creation of normative legal text, namely the rules about the word order in the normative statement, about the syntactic structure of sentences of law principles, etc. was developed within the framework of the theory of functional styles. At the present stage in the Russian linguistic research in the field of law focus on the problem of creating a sufficiently high linguistic standards in the field of language legislation, with the aim of creating a clear text of the law. A great contribution to support and development of Russian juridical linguistic was made by N. D. Golev, under whose editorial Board has published several collections of scientific works, devoted to problems of existence of the Russian language in its legal existence.

The tasks of the modern Russian juridical linguistic in accordance with theoretical concepts of founders consist of the following research areas:

- the study of conflict (invective, manipulative, aggressive) language functioning;
- the development of uniform rules of forensic inquiry of various types;
- the study and practical development of linguistic and legal aspects of a state language, language policy;
- terminological, translational and lexicographical implementation of legal activities;
- the development of legal language (the language of law), capable of serving special legal communication and communication everyday (the subjects of the latter are the public and state authority);
- principles of legal regulation of linguistic conflicts;
- linguistic education of specialists in the field of law, linguistic and legal education of the population;
- the study of ordinary language and legal consciousness.

Russian juridical linguistic works closely with a number of scientific paradigms, first and foremost, linguistic: linguoconflictology, sociolinguistics, linguoecology, "linguistics of lies" and the linguistics of truth, theory of speech acts, theory of linguistic interpretation, terminology, and non-linguistic disciplines and Sciences: jurisprudence, total conflictology, communication science, hermeneutics, knowledge engineering, forensic psychology, and expertology, etc.

Russian juridical linguistic pays particular attention to the role of the interpreter in legal cases. Translators bring up a concern of adequacy and equivalence in legal translation and teachers interested in the linguo-didactic aspect of legal language as a language for special purposes. In addition, the Russian juridical linguistic is currently concentrated on the problem of linguistic expertise.

In conclusion, it is noted that juridical linguistic is a relatively new section of linguistic science, which is currently going through a period of active development. Recently most studies of the legal language gradually change their emphasis from a purely linguistic, formal studies of special language to the interdisciplinary studies of the legal communication.

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Meizhen Liao (Central China Normal University): Courtroom Interruption and Gender in China [canceled]

Keywords: *interruption, gender, courtroom discourse.*

Based on the author's previous research and study in courtroom interruption (2004, 2009, and 2013) this paper continues to explore the phenomenon by focusing on how interruption is related with gender in Chinese courtroom discourse as the number of lady legal professionals is very impressive. The question to be addressed is How is interruption related with gender in courtroom discourse? Drawing on the accurate and authentic transcripts of 10 situated tape-recordings of courtroom trials, this paper, empirical in nature, examines the interrelationship of interruption and gender in terms of number, causes, positions and patterns of interruption and arrives at the conclusion that there is a sharp contrast in interruption between gentlemen legal professionals and lady legal professionals in that ladies are more aggressive in courtroom discourse in the four aspects in interruption examined in the paper and a tentative explanation is also offered for the difference. It is hoped that the results and findings of the present study will contribute to a better understanding, as well as improvement, of Chinese courtroom communication among trial participants in court, provide implications for training of legal professionals so as to promote legal justice, as well as promote further study and research in interruption in general and in institutional discourse in particular.

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Luping Zhang (Beijing, China): A Probe into Testimony Styles in Chinese Criminal Trials: A Narrative Structure Perspective

The present study, based on Labov's narrative theory, focuses on how witnesses' involvement affects their narrative reconstruction of the criminal trial. Witnesses' involvement is first subcategorized and there are two circumstances concerning their involvements, one being single suspect versus victim(s) crime and the other multi-suspects versus victim(s) crime. The present study takes four witness statements from a single suspect assault case as data to further analyze the effects exerted by different witness involvements on witness testimonies and their corresponding representations. Results of the analysis indicate that how witnesses are involved in the criminal event exert different effects on their testimony styles in three aspects: narrative structure, participant distribution, and language strategies. The results of this study further reveal that the more legal responsibility a witness is likely to take for the criminal event, the more transformations he would make in his narrative reconstruction of the crime.

Magdalena Szczyrbak (Jagiellonian University, Kraków): *But*-patterns in confrontational talk. The case of oral arguments

The adversative *but*, it can be posited, is always argumentatively oriented, since it involves two incompatible situations. Subsumed under the notion of contrastive markers, it is linked both to concessive and adversative relations. In conversational English, *but* is the most frequent marker associated with Concession, defined as an interactional sequence of claims, acknowledgments and counterclaims (Barth-Weingarten, 2003). As such, it may justifiably be expected in confrontational encounters, where alternative views are challenged and defended. Oral arguments delivered before the Supreme Court of the United States are a case in point, as they involve communication, in which the conflicting interests of the respective parties are represented and the legal interpretations of significant social phenomena negotiated.

And yet, despite a large body of research into contrastive relations, including various uses of *but* across discourse types (see, e.g., Rudolph 1996; Couper-Kuhlen and Kortmann, 2000; Malchukov, 2004; Lewis, 2006; Toosarvandani, 2014), there seems to be less scholarly interest in the deployment of *but* in spoken legal genres such as, for instance, oral arguments. Likewise, there have been no studies into the pragmatics of *but* in legal genres which would combine the interactional model of Concession (Couper-Kuhlen and Thompson, 1999; Barth-Weingarten, 2003) with the CADS approach (Morley and Bayley, 2009; Partington et al., 2013).

In view of the above, adopting corpus and discourse-analytic perspectives, the current study aims to explore the role of *but* in the mutual positioning of institutional interactants and in the structuring of legal-legal communication, as evidenced by oral arguments. More specifically, the examination seeks to explain how legal professionals use *but* to negotiate the status of knowledge and to present conflicting views and interpretations in the courtroom setting. It also aims to compare selected *but*-patterns found in legal-legal interaction with those recognised in the reference corpus comprising adversarial trial data and representing various speaker configurations. As revealed by a preliminary analysis of this dataset, more often than not, *but* is deployed turn-initially in responses to the arguments advanced by the opponent. What is more, despite the adversarial context, (collaborative) *yes-but* patterns are clearly favoured over (less cooperative) *no-but* configurations, which are visibly less common. The examination also indicates that *but* tends to co-occur with modal adverbs of certainty, among which of course and certainly are the most common right collocates of *but*.

Drawing on these findings, in the current study attention will be drawn to similar patterns in oral arguments. Also, the following hypotheses will be verified with regard to confrontational legal-legal communication: 1/ *but* is found chiefly in dialogic Concessive schemata (unlike monologic ones produced by one speaker); 2/ *but* tends to occur in agreement-disagreement (*yes-but*) schemata, rather than disagreement-agreement (*but-yes*, *no-but*) patterns; 3/ modal adverbs of certainty which co-occur with *but* are more common in acknowledgments than in counterclaims; 4/ the deployment of *but* is linked to speaker status in interaction.

The corpus used for the analysis comprises transcripts of 30 oral arguments delivered before the Supreme Court of the United States in 2013 (approx. 400,000 words). All the arguments include the petitioner's argument and the respondent's argument (allotted 30 minutes each) and in some cases also the rebuttal arguments delivered at the end of the court session. The analysis will be carried out using WordSmith Tools: 1/ to explore the deployment of selected *but*-patterns within Concessive sequences in oral arguments (e.g. distribution of *but* in acknowledgments and counterclaims, *yes-but* and *no-but* configurations, co-occurrence patterns of *but* and modal adverbs of certainty); 2/ to compare selected *but*-patterns found in oral arguments with those found in the reference corpus comprising adversarial trial data. As is the case with every corpus-assisted discourse study, the quantitative stage of the analysis will be followed by a qualitative interpretation. It is believed that combining these two perspectives will provide more insight into the realisation of Concession in spoken legal communication as well as shed light on the pragmatics of *but*, depending, among other variables, on genre, speaker status and the syntactic environment.

In summary, taking the CADS approach, the analysis aims to draw attention to the role of *but* in structuring confrontational interaction and organising legal argumentation, in which conflicting views and interpretations are considered and defended. Basing on data from oral arguments, it seeks to determine how conflict and power are manifested in the courtroom setting and how the deployment of *but* contributes to a successful resolution of differing interactional goals. It is also intended to compare the current findings with the results obtained from adversarial trial data with a view to exploring the interactional mechanisms which underpin confrontational communication, including the discourse-pragmatic relation of Concession.

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Gustavo Just (Federal University of Pernambuco, Recife): Variations in objectivity-oriented interpretative legal discourse. Cartography and analysis of interpretative practices and strategies

The paper to be submitted is to be read as a programmatic essay, aimed at setting forth the outlines of what is expected to be a fertile research project at the intersection of linguistics and legal theory. The general topic of research can be defined as the *variations in the objectivity-oriented interpretative legal discourse*. A clearer idea of the issues to be addressed is reached through an explanation of the crucial concepts used in that definition: “interpretative legal discourse”, “objectivity-oriented” and “variations”. This explanation leads to the two major premises assumed by the project. The first is that interpretation is a form of power; the second is that this power is inseparable from a specific burden: a central commitment of those involved in the application of legal rules is to ensure that decisions taken on behalf of the valid law can be presented, justified and perceived as “objective”, meaning that they are the expression not of the arbitrariness or the “subjective” preferences of the one who takes that decision, but of neutral and impersonal criteria, i.e. criteria that are pre-existing and superior both to the contending parties and to the third person who applies them. This is why the discursive activity carried out by legal interpreters can be understood as a permanent production and maintenance of a “rhetoric of objectivity”, a concept inspired by Pierre Bourdieu’s view that, as a symbolic power, the strength and even the very existence of law rely on its capacity to disguise its part of arbitrariness, which it does primarily at the linguistic level, by resorting to the “rhetoric of autonomy, neutrality and universality”. That notion, combined with a historicist understanding of the theories of legal interpretation, can be considered the main theoretical background behind the project. The latter intends, as its most general purpose, to identify (and to understand the workings of) the different strategies, techniques and tools that make it possible for contemporary lawyers to produce objectivity-oriented interpretative discourse, thus honouring their commitment to the rhetoric of objectivity. It is then suggested to distinguish between four layers of discursive resources that can be studied either separately or conjointly: (a) the interpretative decision (ID), i.e., the ascription to the relevant normative text of an interpretation assumed to have general validity; (b) the interpretative models (IM), i.e., the justification of the ID by resorting to generally accepted forms of reasoning and argumentation. (Although a typology of such patterns would vary from legal culture to legal culture, a threefold classification comprising [i] the tradition of interpretative legal maxims, [ii] the classical methods of interpretation and [iii] the so-called “post-positivistic” methodology would be suited to most of the prospective contexts of research.); (c) the different kinds of legally non-codified arguments (LNCA), such as philosophical, political, economic or religious doctrines, literary examples, commonplace knowledge etc. to which legal interpreters can also possibly resort in their efforts to vindicate the correctness of their interpretative choices; (d) the discursive structure (DS) of the argumentation thus produced, enveloping and directing not only the resources mentioned previously, but also a complex set of linguistic and rhetorical mechanisms through which the

purpose of conveying certainty, neutrality and objectivity can be achieved. But the distribution of argumentative efforts between ID, IM, LNCA and DS, as well as the form each one takes, can vary significantly, which leads to the general question as to how, why and with what consequences they vary. The study of these variations can take two different approaches, which the project refers to as “cartography” and “analysis”. The first, rather observational approach, would aim at mapping in detail the different choices made by legal interpreters among the manifold hermeneutical, linguistic and rhetorical devices available in their discursive toolkit, as well as among the different possibilities of managing these different resources. Studies following this approach might be seeking to explore the possible association between those variations and specific factors to be considered relevant by the researcher. The question might then arise, for example, as to which of the interpretative models on offer in the contemporary market of legal hermeneutical ideas are actually more frequently used, or considered to be more acceptable, in a given court, or in a given national judiciary as a whole (as compared to the preferences identified in other legal systems), or as to whether and how they differ according to the hierarchical level of the court or according to the branch of the law involved etc. The paper briefly describes some rudimentary, exploratory research already carried out in this connection. Whereas the cartography seeks to identify lawyer’s interpretative practices, making them readable through their contrasts and variations, our second approach aims at analysing and understanding that argumentative behaviour. What factors might help explain the argumentative choices made by those engaged in the application of law? Conversely, what consequences do these choices have for the rhetorical objectiveness of the judgment then delivered? In which way do they affect, if at all, the conceptual and argumentative framework within which the acceptability of later rulings (to be taken either by the same interpreter or by any of the other members of the interpretative community) will have to fit? A first sample of a study produced within the project and adopting that second approach is an article recently published by the author about the ECtHR ruling on the French face veil ban, which posits and tests the hypothesis that one of the factors presiding over an interpretative choice would be a strategic reasoning taking into account, on the one hand, the benefits and the costs of each argumentative possibility for the persuasiveness and objectiveness of the justification to be given in the case pending before the Court, and, on the other hand, the corresponding possible losses and gains of future interpretative power.¹² The design of these two approaches stills lacks methodological refinement, as it will be discussed in the paper to be presented at the ILLA Conference. Concerning the cartography, one of the methodological issues to be addressed at that stage is the difficulty of *measuring* the presence of the discursive resource to be analysed. On the one hand it will be necessary to explore the possible application of quantitative methods to the analysis of legal discourse. On the other hand, the prior question has to be addressed as to how to deal with the lack of candour or of conceptual accuracy of the analysed discourse: in other words, how to distinguish the “real” argument behind its formal expression? Some attempts to address such methodological dilemmas have already been made by research

¹² Just, Gustavo. Interpretative Choices and Objectivity-Oriented Legal Discourse: A Strategic Analysis of the ECtHR Ruling on the French Face Veil Ban. *International Journal for the Semiotics of Law*, (2016) 29:577-594.

groups carrying out similar projects, as it is notably the case of the Conreason Project, hosted by the Max-Planck Institute for Comparative Public Law and International Law.¹³ As for the second approach, the central methodological task is to draft initial alternative protocols of analysis, which are likely to result from a linear or adapted application of general models. In this regard, the already mentioned pilot paper on the burqa ban case resorted largely to Discourse Analysis¹⁴, as well as to some notions of classical rhetoric and to Michel Troper's theory of legal argumentative constraints. Finally, despite its overall programmatic character, the paper will also describe some exploratory, very rudimentary, research that has already been carried out by the author and some of his students since the second semester of 2015, aimed at identifying variations in the use of IM and LNCA in recent rulings by the Brazilian Supreme Court.

¹³ See, for example, Dyeve, Arthur; Jakab, András. Foreword: Understanding Constitutional Reasoning. *German Law Journal*, vol. 14, n. 8, p. 989-1016, 2013; Jakab, András; Dyeve, Arthur; Itzcovich, Giulio. *CONREASON – The Comparative Constitutional Reasoning Project. Methodological Dilemmas and Project Design*. MTA Law Working Papers 2015/9, http://jog.tk.mta.hu/uploads/files/mtalwp/2015_09_jakab.pdf, accessed: 10 july 2016; Jakab, András. Judicial Reasoning in Constitutional Courts: a European Perspective. *German Law Journal*, vol. 14, n. 8, p. 1279-1296, 2013.

¹⁴ Discourse analytical notions like “thematic discursive formation” (Maingueneau), “oriented communication” (Guidère) and “argumentative scale” (Ducrot) were particularly taken into account and might inspire further efforts to conceive specific protocols of analysis.

Fabiana O. Pinho (University of São Paulo): Rhetorical rationality and construction of normative meanings in law

1. Introduction

Following a paradigm of problematic reasoning (Hartmann, 2014; Viehweg, 1974), this work discusses the construction of normative meanings by actors involved in the legal discourse. The problematic reasoning centers the legal argumentation on concrete issues faced by the interpreters, so that the solution proposed derives from the controversy itself rather than general propositions about the legal system. Our theoretical framework combines stances of rhetorical-dialectical analysis of law (Ballweg, 2009; Eemeren & Houtlosser, 2013; Goodrich, 1984; Schlieffen, 2008) and also the philosophy of language developed by the late Wittgenstein (Wittgenstein, 1997). We thus assume the argumentative process as a constitutive element of legal discourse, based also on contributions that endorse a pragmatist perspective in law (Müller, 1994) or in general (Wohlrapp, 1995, 2008). However, while not restricted to revealing the immanent sense of authoritative texts, the legal interpreters deal with normative meanings in a discursive practice that is far from arbitrary (Sobota, 1989).

2. Main questions

In this paper, we claim that, although the response to interpretive problems departs from the traditional systematic reasoning, the legal discourse does possess its own argumentative rationality and is structured by the rules applied to any rhetorical-dialectical disputation. The lack of explicit legislative provisions allows the interpreter to construe only normative meanings which are both rationally structured and subjectively constrained, so that the range of acceptable legal decisions is always limited.

From a theoretical perspective, this paper contributes to the philosophic literature that acknowledges the relevance of rhetoric and language studies for a better understanding of the law and legal methodology (Gröschner, 2013; Krawietz, 2011; Müller, 1994; Sobota, 1992a, 1992b; Struck, 1971). The rhetorical analysis, supported by the Wittgenstein's later linguistic theory, sheds new light on the constitutive dimension of the legal discourse. In so doing, we reject the naïve belief that language plays only an instrumental role in transmitting messages between participants of the legal discourse. Additionally, considering the active role of legal actors in the construction of normative meanings, this paper makes theoretically relevant assertions. Firstly, it concedes that the interpreter cannot completely innovate the content of authoritative text, since there are preexistent meanings subjectively constructed by the legal interpretative community. Secondly, the paper states that the interpreter does not identify meanings mechanically by framing facts to authoritative texts, for there is no automatic answer to concrete legal cases.

3. Research to Date

The main ideas to be presented in this paper have been already developed. In the last five years, I have been doing a theoretical research on the interface between rhetorical approach to law and philosophy of language of the late Wittgenstein. Most importantly, the claims made in this paper are supported by empirical study of legal decisions already concluded. And this qualitative analysis of judicial discourse adopted again a rhetorical-empirical method, which considers legal argumentation as problematic reasoning.

4. Resources and methods

From a rhetorical legal analysis perspective (Ballweg, 2009a; Goodrich, 1984; Sobota, 1992b; Viehweg, 1995), which includes the dialectical approach (Eemeren & Houtlosser, 2013; Gröschner, 2013; Hohmann, 2000) and the pragmatist one as well (Müller, 1994; Wohlrapp, 1995), and building on the late Wittgenstein's contribution to the philosophy of language (Wittgenstein, 1997), the main questions of this work are discussed in four sections. In the first section, the operative aspects of rhetorical analysis are presented (Ballweg, 1989; Sobota, 1992b; Viehweg, 1995). We define the nature of the problematic reasoning, as opposed to the systematic paradigm (Hartmann, 2014; Viehweg, 1974), and introduce the main rhetorical categories (i.e. logos, ethos and pathos) (Sobota, 1994; Schlieffen, 2005). These categories are essential not only for legal interpreters, while engaged in argumentative processes, but also for the very analysis of legal arguments. Indeed, as the problematic reasoning follows its own internal rules, it can be understood and evaluated by external viewers affected by the resolution of legal disputes. As we will justify, this evaluation requires plausibility criteria, which differs from the parameters utilized in a systematic reasoning focused on legal syllogisms (Bayer, 1975; Weinberger, 1973).

In the second part of the paper, we respond to a recurrent critique to rhetoric: that in the absence of systematic reasoning, the argumentative process becomes an irrational activity (Alexy, 1991). We defend that a formal logical approach cannot account for complexity of the legal discourse because that rationality ignores the deliberative essence of legal arguments. Resorting to Aquinas' typology of reason uses¹⁵, this paper addresses the kind of reason related to acts of will towards an end to justify the possibility of placing law inside the "order of deliberation". Thus, we reaffirm here that the legal phenomenon is correctly characterized by a practical rationality, instead of systematic one (Ballweg, 2009b; Koch & Neumann, 1994).

In the third part, we present the late Wittgenstein's perspective on meaning construction (Wittgenstein, 1997), as a further argument in favor of a rhetorical approach to law. This section also corroborate to justify that not any meaning is accepted in legal discourse, but only that ones, which are jointly built by a certain community and therefore are seen as acceptable. Based on the late Wittgenstein, this paper states that language, including the legal discourse, is taken as a collective enterprise that only supports senses constructed intersubjectively by practice and uses of competent speakers. In this regard, we reaffirm that only rhetorical

¹⁵ Cf. Question 92 of the *Summa Theologiae*.

categories, such as ethos and pathos, can capture the intersubjective dimensions of the legal meanings, which necessary escapes from the logical rationality derived from simple deductions.

5. Hypotheses

Therefore, our hypothesis is that the legal argumentative process evolves an exercise of problematic reasoning that is not at all irrational. Following the rhetorical approach to law, rhetoric should be taken as the art of finding plausible means to achieve the rational persuasion of a specific audience, not as mere oratory or a skill to deceptively convince a counter-part to a debate via any available means. The relationship between rhetoric and law would reveal itself within legal discourse, as a dialogical process through which parties construct plausible arguments that justify judicial decisions.

6. Summary

As a summary, this work makes the case for a practical rhetorical rationality in the legal discourse and justifies the claim on the intersubjective construction of normative meanings. Building on rhetorical analyses and the philosophy of the late Wittgenstein, this paper demonstrates that the legal argumentative process cannot be considered arbitrary or irrational. In point of fact, it is problematic instead.

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Stanislaw Gozdz-Roszkowski (University of Lodz); Monika Kopytowska (University of Lodz): Court, constitutionality and conflict in media representations. Poland's Constitutional Court as a case in point

Introduction

In late 2015 soon after the general election in Poland was won by the conservative Law and Justice party (PIS), five judges, members of the Constitutional Court (Pol. *Trybunał Konstytucyjny*), appointed by the previous government were sacked. Then the Law on Constitutional Tribunal was amended in December 2015. In March 2016, the Court found the law unconstitutional. In response, the Polish government banned the Court from publishing the judgment that criticised the new executive controls over judges, which were passed in a hasty parliamentary vote. In an unusual stand-off between the judicial and executive power, the Constitutional Court insists on operating under the earlier June 2015 law, while the Government refused to publish the Court's judgements requiring the Court to act in accordance with the amended law of December 2015. Other institutional interactants became involved in the conflict when the yet new law (passed by the parliament on 22 July 2016) on Constitutional Tribunal was challenged by the first President of the Supreme Court and the Commissioner for Human Rights. Amicus curiae briefs were filed by the Polish Bar Council and the National Bar Association. As part of an unprecedented investigation, the European commission announced that there was "a systematic threat to the rule of law in Poland". (Poland's rule of law under systematic threat, says EU executive, Guardian (2016))

Main Questions

This paper aims to report on a project which examines how *courts* and the related concepts of *justice*, *constitutionality* and the *rule of law* are discursively constructed in the news media. For the purpose of this presentation, we choose to analyse media data covering the conflict between Poland's Constitutional Court and the Polish government.

For the purpose of this paper, we undertake to carry out a case study in which we focus on linguistic evidence to uncover the ways in which the news media in Poland and abroad construct the conflict centred around the Constitutional Court. In doing so, we intend to address the following questions:

- How are certain fundamental legal concepts, such as constitutionality, rule of law, judicial independence, as well as the complex legal realities of the conflict mediated, evaluated and distorted in the media?
- How is the legal social and political conflict construed linguistically?
- How are the major institutional actors (e.g. judges, government, parliament) positioned with regard to each other and the key events of the conflict?

- How does the ideological and cultural embedding of the news media (national vs. international, right- vs. left-wing, conservative vs. liberal) impact on the discursive representation of the conflict?

Research to Date

The representation of legal matters in the media has not been extensively researched from the discourse analytical perspective (Breeze 2016). The relatively few existing publications tend to focus on crime and/or criminal justice (e.g. Schlesinger, Tumber and Murdock (1991); Haltom/McCann (2004). Yet, the news media, apart from informing, have always had an important role in persuading, i.e. shaping societal notions, deductions, attitudes and perceptions. They have influenced what issues people pay attention to, and determined the audience's judgments about politicians and policies as well as public problems and their remedies. Since, as pointed out by Cottle, in today's mediatized world, "politics and conflicts are often played out on the media stage" (Cottle 2006: 22), the role of the news media becomes even more significant in times of conflicts, when they play a major role in creating a sense of threat and axiological urgency and constructing *us* vs. *them* opposition (Kopytowska 2015b).

Resources and Methods

The analysis is usage-based. Drawing on a combination of quantitative and qualitative methods within the methodological frameworks of corpus-assisted discourse studies (e.g. Partington 2013), we apply the media proximization model developed by Kopytowska 2013, 2014, 2015a, b, c) explicating how various dimensions of distance (spatial, temporal, epistemic, axiological and emotional) are reduced in media coverage and how "proximizing dynamics" influence journalistic choices and are behind routines of covering events.

The data used to illustrate this process comes from the national and international online coverage of the post-election conflict in Poland between December 2015 and August 2016. The main source of data acquisition is the *Europe Media Monitor* (EMM) website¹⁶ providing easy access to media data and the search engines *frazeo.com* and *monco*¹⁷ which enable the researcher to construct ad-hoc corpora of Polish data and English data and then search them using complex query systems. We also use the *National Corpus of Polish*¹⁸ and the *British National Corpus* for the purpose of cross-referencing

The tools used in the study enable one to consider a wide spectrum of titles covering various stances and ideologies: from centre-left (e.g. *Gazeta Wyborcza*, *Newsweek*, *Guardian*, *Independent*, *New York Times*), liberal to centre-right (*Daily Telegraph*), right-wing and ultraconservative (e.g. *Nasz Dziennik*, *Gazeta Polska*, *Wpollyce*).

To be more specific, we combine the analysis of word frequencies, word keyness, and word combinations in collocations and clusters with the scrutiny of the contexts of relevant words,

¹⁶ <http://emm.newsbrief.eu/NewsBrief/sourceslist/en/list.html>

¹⁷ <http://monco.frazeo.pl/>

¹⁸ <http://pelcra.clarin-pl.eu/NKJP/>

their axiology (semantic prosodies; see Sinclair 2004) and figurative (metaphoric) meanings in order to uncover how selected concepts are *proximized* and, in consequence, opinions and attitudes are formed.

Main Hypothesis

While conflict in itself (due to its social, political and legal consequences) is attractive for the news media, its newsworthiness will be enhanced with the use of different discursive strategies depending on the ideological/cultural/geographical positioning of the media. Various aspects of it will be selected and made salient (proximized), resulting in varying assessment of the social/political and legal actors involved, character of the conflict and its socio-political implications and possible solutions to it.

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Jan Engberg (Aarhus University): Constructing Legal Knowledge on Institutions through Multimedia. Choice of Aspects and Complexity of Knowledge in Different Settings

Legal authorities like parliaments, ministries and courts have a privileged role in building and performing law. Their concrete role and importance are laid down in the respective constitutional texts and thus formally does not have to be socially negotiated. Despite this fact, the institutions typically see it as relevant to convey knowledge about themselves, their functioning and their decisions and thus about the role they are assigned in the legal and societal system. One reason for this can be that their functioning depends on members of society actually possessing knowledge about the role and functioning of legal institutions. But it may also be a perceived need to engage in an ongoing negotiation of their social roles in order to confirm their power and importance.

In my presentation, I want investigate this type of communicative attempt as knowledge communication in order to be able to assess the underlying intentions. By ‘knowledge communication’ I mean an instance of “intentional and decision-based communication of specialised knowledge in professional settings (among experts as well as between experts and nonexperts)”, investigated with a focus upon the coping with knowledge asymmetries (Engberg, 2016, 37). Typically, the communicative activity applied is that of popularizing, i.e., mediating parts of the specialized knowledge behind the institutions, their functioning and their results. This type of activity has not been studied in any great detail yet in the field of law (see, however, Engberg, 2017 and Engberg & Luttermann, 2014 for overview of recent examples). Investigating popularization as knowledge communication means that focus is upon mental processes of knowledge creation across knowledge asymmetries that are triggered by reading texts. As the internet as medium for public information is growing by the minute these years, I will concentrate upon texts presented in computer-mediated form. This medium has also been chosen because it opens up opportunities for the author (here: the legal institutions) to combine different modalities in order to overcome the knowledge asymmetries and thus potentially opens new avenues for inspiring the knowledge creation process on the side of the receiver (here: members of the society). Hence, Social Semiotics as treated in the framework of multimodality studies is central to the analyses to be presented here (Maier & Engberg, 2015; van Leeuwen, 2005). As focus is upon the knowledge that is intended to be constructed by the receivers on the basis of the textual input, I also include a theoretical approach to describing the complexity of knowledge, i.e., the level of detail in the descriptions of the functioning of the institutions (Keil, 2003; Rozenblit & Keil, 2002). By combining these approaches, a complex descriptive tool is put together in order to assess relevant similarities and differences between different attempts at the researched communicative task.

In the presentation, I have chosen to contrast the web-based knowledge communication texts of four institutions from two different contextual settings. The two contextual settings are a national (Danish) and a supra-national (European Union) context. Within these two contexts, I

compare website communication about role, function and results of two parliamentary (*Folketinget, European Parliament*) and two judicial institutions (*Danske Domstole, Court of Justice of the EU*). These four institutions have been chosen, because the challenges they are confronted with in their contexts differ in interesting ways. The authority of Danish legal institutions is not challenged in any general sense in the Danish national context, whereas the authority of European institutions is frequently challenged in today's ongoing debate (see, e.g., Brexit). We can therefore assume that we will find a more felt need among EU institutions than among Danish institutions to convey knowledge relevant to confirm their authority. However, we can also assume a difference between parliaments as representatives of the people, on the one hand, and judiciary institutions as controllers of societal developments, on the other, in the way that parliaments could feel a greater need to underline their authority, whereas the courts may rely upon their elevated positions as controllers as basis for their authority. In order to investigate these two assumptions, the following three questions will be especially prominent:

- What parts of the specialized knowledge about the four institutions are chosen for mediation in their website texts informing about their own functioning?
- What multimodal communicative means do the institutions choose to create input to the knowledge construction process?
- What level of detail in the understanding of their functioning do the institutions intend the receivers to reach?

Based on these questions, I will characterize the strategies the investigated institutions choose in the light of the knowledge asymmetry relations they are confronted with.

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Clara Ho-yan Chan (The Chinese University of Hong Kong): Misuse of Translated Legal Terms in Chinese Newspapers. Some Examples from Intellectual Property Law Illustrated

This paper sets out to discuss some misused terms of intellectual property law in media, identify possible causes and suggest solutions. The examples are taken from Chinese newspapers, primarily from various parts of Mainland China. At one level, most of the misuses are the result of lack of knowledge and research and the pressures of a tight work schedule, for example, the interchangeable use of “intellectual property right” and “copyright”; the translation of “validity” of the registration of a trademark as *hefaxing* (合法性) (legality) rather than *youxiaoxing* (有效性); the translation of “geographical indications” as *chandi biaoshi* (产地标示) (place of origin indications) rather than *dili biaoshi* (地理标示). Such mistranslated terms can mostly be considered “non-equivalents” (Šarčević 1989, 1997). At another level, some misuses may originate from the mistranslated terms when they are first translated into the country, that is, in the translation of the international agreement. This relates to the gap between international law and domestic law, and the openness of a legal system to foreign terms and their borrowing into domestic law. For example, the term “copyright piracy” in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is translated as *daoban* (盗版) (pirated copy) in PRC’s version and *qinhai zhuzuoquan* (侵害著作权) (infringement of authorship right) in Taiwan’s version. The translation of Taiwan *qinhai zhuzuoquan* (侵害著作权) (infringement of authorship right) is a term taken from their local law and has a much broader coverage than the original term that focuses on “piracy”. Such mistranslations can be considered “partial equivalents” (Šarčević 1989, 1997). It is said that legal translators must possess some basic legal knowledge as an important aspect of their professional competency, although they do not need to undergo full legal training (Cao 2002:337). Therefore, this study also attempts to introduce the use of illustrations to teach legal concepts to translators and journalists.

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Viktorija Osolnik Kunc (University of Ljubljana): Knowledge transfer with linguistic experts and expertly informed legal laymen

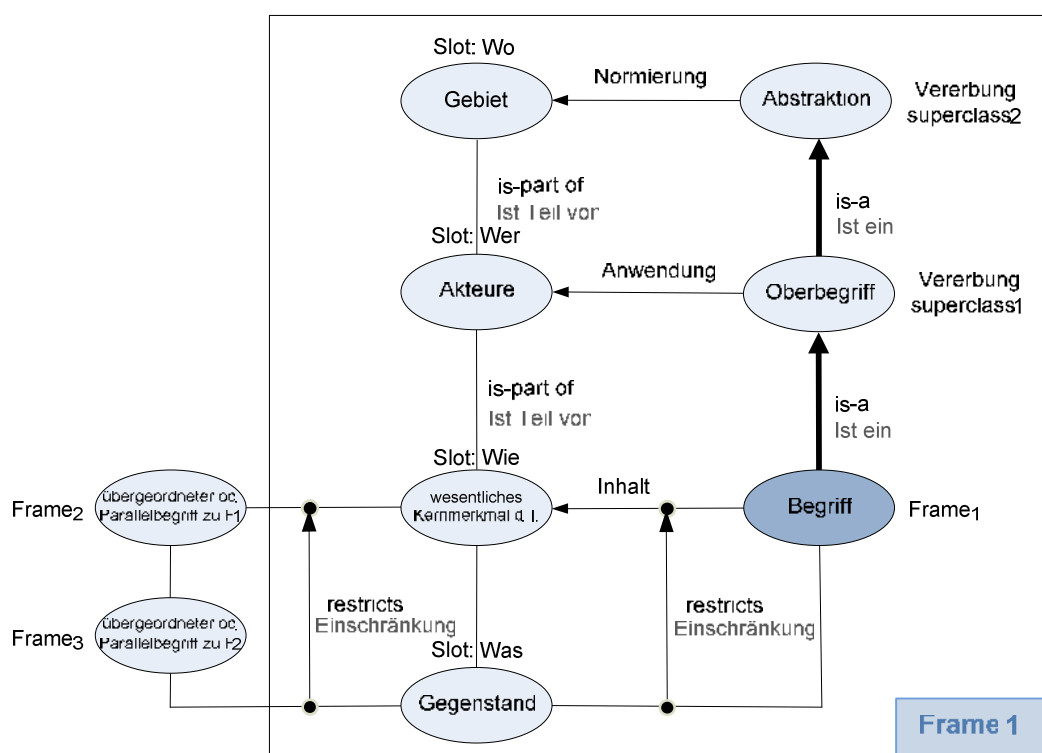
In general language keeps fascinating people from different educational backgrounds. Being accessible to ‘everyone’ language as a tool is handled by people from different fields of education differently. This can be nicely observed with legal language in legal translation.

In the translation process modern technology and advanced translation tools are widely understood as indispensable tools of translation that effectively support the translation process. They offer instantaneous information but not necessarily **satisfactory knowledge**. Although every translator not only needs to understand but also wants to understand the deeper legal meaning that is the legal concept, he has to find its own path. This will lead him to understand the cause-and-effect-cycle of general and legal language and the if-then-relationship of legal meaning. The goal here is to find the right access to knowledge in legal texts. The transfer of knowledge therefore is not understood as an object-oriented but as a subject-oriented process (cf. Antos 2001). Translators, in particular those with no professional legal background, struggle with identifying the underlying legal meaning in a text. My hypothesis is that with a well-developed knowledge frame, inspired by Marvin Minsky (1975), it should be possible to help the expertly-informed legal layman (a notion introduced by Wichter 1994:10, who distinguishes the expert from the expertly informed layman), that is the professional expert in translation and interpreting, to organize his obtained knowledge in a way as to transfer it through a specific frame model and make it useful for his own translation purposes. I shall help him uncover the underlying meaning of the legal notion on a higher, a lower and a parallel level.

Knowledge transfer is one of the youngest developing fields in applied linguistics. Since the early Eighties of the 20th century, the German speaking community of researchers and practitioners have importantly influenced the development of languages for specific purposes theories (Hoffmann 1984, von Hahn 1983, Möhn/Pelka 1984). Research was then directed towards the domain-specific communication (*Germ.* Fachkommunikation) (Baumann 2001, Engberg 2007) with some important, however not really noticeable attempts of text readability approaches in between (Langer/Schulz von Thun/Tausch 1993, Göpferich 2001). As domain-specific communication did not offer sufficient answers of how to access knowledge, research was focused more on knowledge and knowledge transfer (Budin 1994, Jäger 1996, Wichter/Antos 2001, Dam/Engberg/Gerzymisch-Arbogast 2005, Konerding 2009, Busse 2012).

The paper shall focus on knowledge and methods of knowledge transfer in legal communication among court interpreter and court translator candidates with linguistic or legal background education. The transfer of knowledge will be tracked in legal translations of eight Slovene civil and criminal law source texts (ST) (proposed indictment, summons, certificate of inheritance (2x), ruling regarding the entry in the commercial register, examining magistrate’s ruling (2x), invitation to the court interpreter). To conduct a survey on knowledge transfer among legal translators target texts (TT) examination papers produced by

linguists and lawyers were selected from the Slovene yearly court interpreter exams for German. Each ST was translated by a comparable number of linguists and lawyer who as part of the admission criteria had to deliver proof of knowledge in translation and in law, though only few of them actually had a degree in translation. The majority of them were practising legal or linguistic experts with a degree in law or German as a foreign/second language. The TTs were analysed on the terminological and the concept level by using the proposed frame model below. Their choices were also compared according to their formal education, their expected knowledge as well as their expected translation choices. The TTs reveal interesting findings in the choices made by the two translation expert groups and their decisions in the produced TTs. To make the transfer of knowledge visible, the following frame model in German has been developed.



The model was inspired by Marvin Minsky's ideas for knowledge concepts, as well as by different approaches to frames in Artificial Intelligence, like John Sowa (2000).

The hypothesis behind this is to help the linguistic expert find the right path within his existing knowledge, as well as to fill gaps with new information by using a frame model. This shall help him organise and understand legal meaning through cross-sections of notions.

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Tirza Cramwinckel (Leiden University): The legal status of tax (mis)communication in a multidisciplinary approach

This paper deals with the problematic legal status of communication of the Tax Authorities. It provides a theoretical analysis of the topic of tax communication whereby I use viewpoints from both a tax law perspective and a communication perspective to examine the legal status of tax communication.

Taxation can be interpreted as a ‘joint action’ (Clark, 1996) between the tax authorities and taxpayers. Tax communication involves two ‘participants’: (i) the tax authorities, guided by law, regulations and legal principles (Gribnau, 2015, 2014; DTA, 2014a, 2014b, 2011, 2007) and (ii) the taxpayer, guided by (different) communicative principles, expectations and a ‘life-event based’ perception of information (DTA, 2015, 2014a). I argue that these differences cause challenging ‘coordination problems’ between the tax law, the language and its users

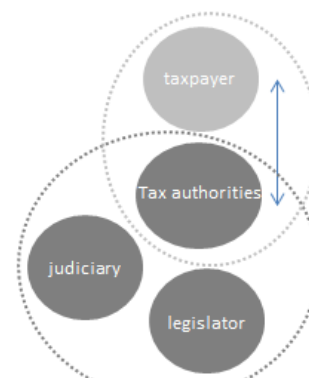


FIGURE 1: INTERACTING PERSPECTIVES

(taxpayers, Tax Authorities, tax legislator and tax court), whereby communication plays a critical role (cf. Clark, 1996). As Figure 1 shows, the perspective of the taxpayer and the perspective of the Tax Authorities (and the legislator and the judiciary) do interact.

Since tax laws and its system have become too complicated for most taxpayers, one of the most viable tasks of the Dutch Tax Authorities (DTA) is providing intelligible information for taxpayers (DTA, 2007). Out of necessity, the DTA functions as a ‘translator’ of the legal language of the legislator (cf. Melinkoff, 1963; Tiersma, 1999; Maley, 1994) into taxpayers’ language by comprehensible tax communication. Inevitably, in this process certain important legal aspects can get ‘lost in translation’, which could have severe legal consequences for taxpayers (Cramwinckel, 2016; 2014). Important questions that arise in this context are: What is the legal status of the information provided by the tax authorities? Can taxpayers rely on this as if it were the law itself? The answer from the legal perspective is obviously no. The Dutch Supreme Court decided yet in 1979 that information of the Tax Authorities in principle does not have a binding legal status. It is legally regarded as ‘service’.

The lack of legal commitment of the Tax Authorities to tax communication contrasts sharply with the taxpayers’ perspective. For taxpayers, tax communication is more than a service: It provides crucial guidance on how to fulfill their tax obligations (cf. OECD 2011; Gangl, K., et. al. 2015; 2013). Also the DTA broadly acknowledges the importance of its communication for taxpayers and their compliance.

Problematic is that if the communication ‘fails’ in respect to the tax law and the Tax Authorities are not bind to the communication and fall back on the law itself, this conflicts with the expectations of the taxpayer. However, the legal framework has no adequate answer on the taxpayers perspective wherein the DTA actually functions as *de facto* ‘legislator’ by prominently and persistently providing intelligible information. In the current legal framework, all different modern types of tax communication – from general utterances on social media to more specific information on the website, from topic specific brochures to

detailed flow diagrams in the tax return program, and from the prefilled tax return to communication by the telephone service of the DTA (*BelastingTelefoon*) – are all legally considered as a non-binding general ‘service’. This is based on key decisions of the Dutch Supreme Court from 1979 and 1988, although the communication types have significantly changed over the past decades. In this respect, the current legal approach of the Dutch Supreme Court to tax communication seems to be outdated. The mismatch between the legal status of tax communication and its status from a taxpayers perspective is currently up to (legal) debate, which can be illustrated by critics in the scholarly literature and even in the Dutch parliament (e.g. Ministry of Finance, 2014).

Tax communication and its legal status thus raises interesting issues, which cannot be adequately answered from an isolated legal perspective. The central research question in this paper is: What should be the legal status of tax communication, when also taking into account a taxpayers perspective? To answer this question, it is argued that a ‘paradigm shift’ is needed: this issue demands a multidisciplinary approach, in which the interaction between taxpayers and the tax authorities is not only seen as a legal relationship, but also as a *communicative relationship*. As I will demonstrate, the field of pragmatics takes both perspectives into account and therefore can offer inspiring viewpoints. Especially relevant here are Clark’s concept of Common Ground (Clark, 1996) and commitment (Clark, 2006), Searle’s Speech Act Theory (Searle 1969,1995; cf. Austin 1962), Grice’s General Communicative Principles (Grice 1975; Bach 2005) and the work regarding reliability in pragmatics of McReady (2015).

As illustrated by the application of these pragmatic theories on tax communication the linguistic approach acknowledges that taxpayers will – legitimately – rely on the quality of and commitment to the communicative act by the sender (DTA). However, commitment evidently is not legitimate under all circumstances. Relevant could be, for example, the nature and form of the communication, the level of detail of the information, the (non-)presence of a disclaimer in the communication, the degree of complexity of the tax law and the characteristics of the taxpayer, as both the legal perspective and the linguistic approach illustrate. It is unclear in tax case law and literature, however, how these aspects interact.

This paper provides a theoretical analysis of the legal status of tax communication in the Netherlands. The methodological approach is a multidisciplinary perspective on the dogma of tax communication in legal research. The used research methods are a combination of literature research and traditional legal jurisprudence research. The literature research is based on (mainly Dutch) scholarly tax law literature regarding the topic of communication of the Tax Authorities and (international) scholarly literature from the field of pragmatics (see theories above). The jurisprudence research is mainly based on the key decisions of the Dutch Supreme Court in respect of tax communication (1979, 1988, 1990, 2000, 2002, 2010). I will also address some examples from case law (period 1970-2016) to illustrate these decisions.

The main hypotheses are that the very different types of tax communication from a taxpayers perspective do not longer fit in the current overarching legal status of non-binding ‘service’; that the multidisciplinary perspective, by combining both legal and linguistic frameworks on tax jurisprudence regarding tax communication, can propose viewpoints for a reevaluation of the legal status of tax communication; that a more fine-grained approach of the different

communication types and their legal status is adequate, as pragmatics can illustrate; and that a communicative angle provides viewpoints for a normative framework on how to deal with commitment and expectations issues in tax communication. The possible result is a framework that consists of an exploration of circumstances (cf. above) which give guidance in the assessment of commitment of the Tax Authorities to their tax communication. This normative framework can be used by the tax court to decide under which circumstances the Tax Authorities should be bound to their information.

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Gianluca Pontrandolfo (University of Trieste): The JustClar project. Insights into judicial phraseology

Keywords: *justClar, simplification, legal phraseology, judgments, Tribunal Supremo, Court of Justice of the European Union*

Simplification of legal language is one of the most fashionable topics which has been gaining increasingly more attention throughout the last forty years.

The need to draw citizens closer to legal and institutional texts is now a global trend which has led to the launching of a huge number of initiative worldwide (see Asprey 2010). One of the first attempts dates back to the 1970s and was carried out in the Anglophone countries within the framework of the so-called ‘Plain Language Movement’ (see, among others, Tiersma 1999; Locke 2004; Mattila 2013: 328-331) whereas most recent initiatives can be traced both at a supranational (see the campaign ‘Write Clearly’/‘Fight the Fog’ by the European Union) and at national and federal levels. Many governments, public institutions, bodies and scholars, from different traditions, have attached great value to plain language (among the most important organisations advocating for and supporting plain language are: *Clarity, Plain Language Action and Information Network, Plain English Foundation, Plain Language Association International*; among the Governmental Committes: *Comité d’Orientation pour la Simplification du Langage Administratif, Comisión para la Modernización del Lenguaje Jurídico, Osservatorio legislativo interregionale* etc.).

As far as Spain is concerned, in December 2011, some of the most important Spanish institutions dealing with language and justice (the Real Academia Española, the Ministry of Justice or the State Attorney’s Office, among others) signed a Framework cooperation agreement to promote the clarity of legal language.

One of the dimensions in which clarification is particularly relevant is the language used in judicial decisions, given that judgments have a direct impact on the life of citizens. On the other hand, in the light of the growing European integration, the application of the EU law too now plays a pivotal role in the lives of Spaniards, as confirmed by the creation of a Technical Advisory Team of the Legal Language Modernization Commission in 2010 by the Spanish Ministry of Justice with the task of elaborating a diagnostic report about written judicial discourse (Montolío 2011a, 2011b, 2012a, 2012b).

In 2015, the Spanish *Ministerio de Economía y Competitividad* funded JustClar, an interdisciplinary research project aimed at analyzing, contrastively, the language used by the Spanish Supreme Court (*Tribunal Supremo*) and by the Court of Justice of the European Union.

The hypothesis upon which the project relies is that there are currently two varieties of judicial Spanish: the traditional one used in Spanish courts and a recent one corresponding to the language of the judgments written in Spanish by the Court of Justice of the EU. To verify this claim, a comparative study of the resolutions of both Courts is proposed from a linguistic and discursive viewpoint.

The results of the study will indicate whether an EU variety of judicial Spanish actually exists, and if so, how it differs from the national one. Moreover, the project seeks to determine to what extent this European variety of judicial Spanish or the judicial Spanish currently used in Spain meet the international principles of clear wording. Finally, the project aims at looking into the process of clarification of legal discourse, setting and evaluating what linguistic and discursive features of these two Spanish judicial modes make them more understandable to the average citizen. The results will allow to establish which linguistic and textual features make a legal text written in Spanish understandable in terms of legibility and readability.

Therefore, the general objectives of the project are: 1) describing the linguistic and discursive features which make the EU and the judgments more readable and more understandable; 2) assessing how these features contribute to the clarity of judicial texts; 3) providing judicial agents who write documents in legal Spanish with guidelines on how to write clearly and to make judicial language more comprehensible.

The specific objectives of the project are threefold: 1) analyzing and comparing the two judicial varieties; 2) studying the features of the Spanish judicial eurolect; 3) designing empirical evaluation tests to study clarity in legal communication settings.

In order to test the hypothesis and to meet the above-mentioned objectives, a monolingual comparable corpus of around 1 million words is being compiled with judgments concerning areas that the two jurisdictions (Spain and EU) share, i.e. civil, administrative and employment or social matters. Texts are being extracted from the CENDOJ and CURIA databases.

Within the framework of JustClar, this paper aims at presenting the methodological challenges of the project. In particular, it will present the results of a pilot study conducted on a smaller POS-tagged subcorpus and it will seek to investigate a specific element of comparison between EU and national language, i.e. legal phraseology (see Goźdz-Roszkowski & Pontrandolfo, 2015), one of the elements that most contribute to the “legal flavor” of judgments (Pontrandolfo, 2016). The hypothesis at the basis of the project will be tested by looking, quali-quantitatively, at the behavior of judicial phraseological units in the pilot subcorpus with a view to identify areas of similarity and differences between EU (translated) language and national (non-translated) language (Biel 2014, 2015, 2016).

From a strictly methodological perspective, the study will compare the frequency and typologies of phraseological units in both subcorpora and will test the role played by phraseology in increasing or decreasing the readability of judgments.

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The JustClar project

Legal discourse and clarity. Comparative analysis of national Spanish judgments and judgments in Spanish by the Court of Justice of the European Union

Reference: FFI2015-70332-P

Leading researcher: Prof. Dr. Estrella MontolíoDurán (University of Barcelona)

Aleksandar Trklja (University of Birmingham): A corpus-informed and cognitive-semantic view on legal language

Introduction

Following the assumption from cognitive linguistics that different uses of linguistic items reflects different types of conceptualizations the present paper demonstrates that a corpus analysis of judgments from two different legal orders can reveal favoured conceptualizations in the same language across these orders. The study¹⁹ discusses results of a fine-grained empirical investigation of the occurrence of linguistic expressions in textual context. These results reveal typical constructions associated with these expressions. The study compares the occurrence of various lexical items in judgments of the Court of Justice of the European Union on the one hand and the United Kingdom House of Lords and UK Supreme Court on the other.

Cognitive semantics

Two fundamental hypotheses in cognitive linguistics are that language is one of general cognitive abilities and that meaning-making is a conceptualization process or construal operation (Jackendoff, 1983; Langacker 1987; Croft and Cruse, 2004). In cognitive semantics, it is assumed that lexical choices provide different ways of framing the same situation. This means that within a language or across languages there are alternative construals for the same situation. It is not only that the same situation can be construed by means of different lexical items but also that different occurrences of the same lexical items reflect their use in different construals. Various types of construal operations are available (Langacker, 1987; Talmy, 1988, 2000) but in general construal operations are considered to be special cases of domain-general cognitive processes.

According to the usage-based cognitive semantics model which will be adopted in the present study “each time a word (or construction) is used, it activates a node or pattern of nodes in the mind, and frequency of activation affects the storage of that information, leading to its ultimate storage as a conventional grammatical unit” (Croft and Cruse, 2004: 292). In other words, construals are typically conventionalized and language specific and they cannot be automatically transferred to other languages or across different linguistic varieties.

Research aims

From the theory of cognitive semantics, it follows that the investigation of occurrence of linguistic expressions can reveal various ways of conceptualizations associated with those expressions. In the present paper, I will demonstrate that such an investigation can be carried out by means of corpus linguistics methods.

¹⁹ This paper reports results of a study conducted as part of the project ‘Law and Language at the Court of Justice of the European Union’ funded by the European Research Council.

I will show that differences in distributions of the same lexical items in EU and UK case law judgments can mirror differences in conceptualization frames. The research question that the present study aims to address is:

Are the same linguistic expressions associated with different distributions and thus different conceptualizations in EU and UK case law?

Corpora and methodology

Two corpora were compiled for the present study. The first corpus (ECJ corpus) was created by compiling all publicly available ECJ judgments produced in English. The second corpus contains all publicly available judgments of the United Kingdom House of Lords and UK Supreme Court which assumed the judicial functions of the House of Lords. For the sake of simplicity, I will refer to the latter as UKSC corpus. Both corpora have been annotated with parts of speech using TreeTagger (Schmid 1994) and indexed in CWB (Evert, 2005). In addition, British National Corpus (Lou, 1995) was used as a reference corpus to compare the distribution of study words with their use in general British English. Various tools available in CWB were used to identify typical distribution of lexical items across these corpora.

Analysis and findings

The present section discusses some of the findings that follow from the analysis of the occurrence of a range of lexical items in my corpora.

In general, ECJ judgments tend to be associated with the ‘objective language style’. This is reflected in the use of passive voice which is more typical of ECJ than of UKSC judgments and in avoidance in using personal pronouns. Despite this general tendency, ECJ judgments and UKSC judgments alike contain hedging devices but they have different distributions. For example, both ‘seem’ and ‘appear’ occur in the two corpora but ‘seem’ is more frequent in ECJ judgments and the opposite is true for ‘appear’. These two lexical items do not occur in the same subcategorization frames. In both corpora, both ‘seem’ and ‘appear’ take the infinitive + a noun or noun phrase complement. Only in UKSC corpus ‘seem’ can also select an adjective complement (e.g. ‘reasonable’, ‘clear’, ‘probable’, ‘appropriate’) or a preposition phrase to indicate recipient (most frequently ‘to me’). It can also be observed that different types of hedging devices occur in the two corpora. Only in UKSC corpus the verbs such as ‘suggest’, ‘believe’, ‘think’ that select first-person singular pronoun can be observed. On the other hand, evaluative reporting verbs such as ‘claim’ and ‘argue’ are more typical of ECJ judgments. They can colligate with either third-person singular nouns or pronouns.

Differences in distribution profiles can be observed with other types of linguistic items as well. For example, ‘freedom’ occurs in both corpora in the noun phrase of the type NOUN OF NOUN (such as in ‘freedom of expression’, ‘freedom of action’, ‘freedom of movement’) but only in ECJ judgments this noun also selects non-finite verbal constructions (e.g. ‘freedom to provide NP’, ‘freedom to pursue NP’, ‘freedom to supply NP’). Or to give another example, ‘effect’ in ECJ judgments can be pre-modified by adjectives (e.g. ‘direct’, ‘adverse’, ‘equivalent’), whereas in the UK case law judgments it occurs only as the head of the noun

phrases of the type NOUN OF NOUN or with the verb ‘give’ and the entire construction denote the meaning of an outcome or result.

Conclusion

The results presented in the current study indicate that there are language-internal variations across two legal systems. Because of the differences in frequency and in the types of constructions in which lexical items occur it can be concluded that even when the same lexical items from the same language are used in two legal orders these items can be associated with different conceptualisations.

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Anne Lise Kjær (University of Copenhagen): “Effectiveness” Patterns in the Case Law of the Court of Justice of the European Union and the European Court of Human Rights. Uncovering the Emergence of Neoliberal Discourse in European Law through Corpus Linguistics

The concept of “effectiveness” is widely used in the case law of international courts. In treaty-based international law, “effectiveness” was originally used to signify a principle of legal interpretation (*ut res magis valeat quam pereat* or *effet utile*) according to which “the task of the treaty interpreter is to ascertain and give effect to a legally operative meaning for the terms of the treaty. The applicable fundamental principle of *effet utile* is that a treaty interpreter is not free to adopt a meaning that would reduce parts of a treaty to redundancy or inutility.” (WTO Appellate Body in *Canada — Dairy*, para. 133).

However, from the use as a guideline for interpreting treaty provisions, the meaning and use of *effectiveness* has been extended, and it has become a principle of law in its own right. This change is evidenced especially in the use that the Court of Justice of the European Union (the Court of Justice, the Court) has made of the concept during the past 50 years. First, the Court developed the “direct effect” reasoning in the foundational cases, such as *van Gend en Loos*; second, it established principles that safeguard the “effective functioning of the internal market” (*Cassis de Dijon*, *Dassonville*); and third, it created principles that secure the “full effect” (or “practical effect”) of EU-citizens’ rights (*Factortame*, *Francovich*, *Zambrano*) and “effective national procedures”, through which these rights can be enforced in national courts (the principles of “effectiveness and equivalence”, *Rewe/Comet* case law).

A comparable development has taken place in the case law of the European Court of Human Rights (ECtHR). In the European Convention on Human Rights, the concept of “effectiveness” is used as a general description of the way the rights provided for must be guaranteed by the nation states. As stated in the Preamble they must ensure “the universal and effective recognition and observance of the Rights”, including famously the right to an “effective remedy” before national authorities (Art. 13).²⁰ But in its case law the ECtHR extended the use of *effectiveness* to other – often less predictable – contexts. Going beyond the rights stipulated in the Convention, the Court has coined two overarching principles which more fundamentally determine human rights reasoning and the way modern liberal democracy is conceptualized: the human rights of the Convention system are “rights that are not theoretical or illusory but practical and effective” (*Airy v. Ireland*, para 24) and the national constitutional systems are “effective and meaningful democracies governed by the rule of

²⁰ The Convention also obliges the member states to provide for the “effective exercise” of the right to individual applications to the Court for violations of the Convention (Art. 34), to assist the Court in carrying out the “effective conduct” of an examination of cases brought before the court (Art. 38), and upon request from the Secretary General of the Council of Europe to provide an explanation of how they have ensured the “effective implementation” of any of the provisions of the Convention (Art. 52). In the Preamble of Protocol 12 it was later added (with reference to the Framework Convention for the Protection of National Minorities) that member states must “take measures in order to promote full and effective equality”.

law” (*Hirst v. the United Kingdom*, para. 38). Furthermore, the “effectiveness” of the rights guaranteed by the Convention has been interpreted dynamically to imply a requirement on the part of the member states to undertake positive actions.²¹ Thus, in *Marcks v. Belgium*, para 31, the Court interpreted Article 8 to imply an inherent obligation of governmental authorities to ensure an “effective respect for family life”; in *Aksoy v. Turkey*, para. 98 the notion of an “effective remedy” was taken to entail “a thorough and effective investigation capable of leading to the identification and punishment of those responsible”; and in *Calvelli and Ciglio v. Italy*, para. 51, the Court found that Article 2 imposes a positive obligation “to set up an effective judicial system”.

But *effectiveness* has changed not only its meaning and scope, but also its relative importance among the lexical expressions used by the two courts. As illustrated in figure 1 the word *effectiveness* appears more and more frequently in the language of both courts over time.

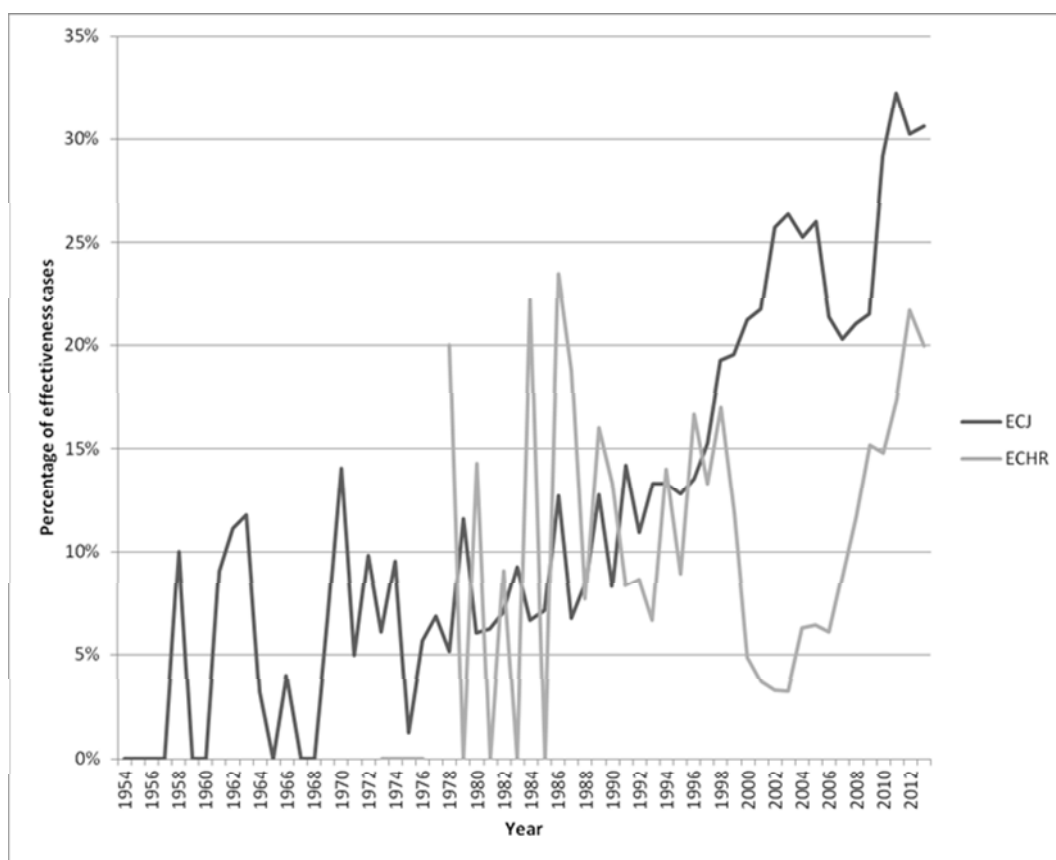


Figure 1 Effectiveness cases per year

Figure 1 above shows the percentage of the judgments of the ECJ and the ECtHR (vertical axis) which contain either of the words *effectiveness*, *effet utile* and *useful effect* (the latter two only relevant for the ECJ) compared to all judgments decided in a given year (horizontal axis). The ECJ had a peak in 2003 and a subsequent fall with a low in 2008 before the relative frequency of *effectiveness* judgments rose steeply again. As for the ECtHR we can observe a sharp decrease in 2000 followed by a clear upward trend after 2004. The dramatic fluctuations

²¹ Alastair Mowbray: ‘The Creativity of the European Court of Human Rights’, *Human Rights Law Review* 5:1 (2005), 57-79, at 72.

of the ECtHR curve in the early years is due to the fact that the total number of cases was very low at that time. In the 70s the total number of cases were between 1 and 5; in the 80s the number rose from 7 in 1980 to 25 in 1989, and not until the end of the 90s did the total number of ECtHR cases develop to a size which makes it possible to interpret fluctuations as more than just accidental, rising from 30 in 1990 to 177 in 1999. By 2000, in the wake of the change of the Court's organizational set-up in 1998 when the Court became a full-time legal institution, the number of cases increased steeply to 695. This probably accounts for the sudden decrease in the relative number of *effectiveness* cases around that time. Though both courts exhibit rises and falls in the relative frequency of the use of *effectiveness* a clear tendency is an overall increase.

Is the rising trend coincidental? An increasing use of *effectiveness* can also be identified in general language use, as documented by a search in Google Books for both American and British English books. Especially the British books manifest a clear and steady upward trend in *effectiveness* titles and content esp. from 1980 and onwards.

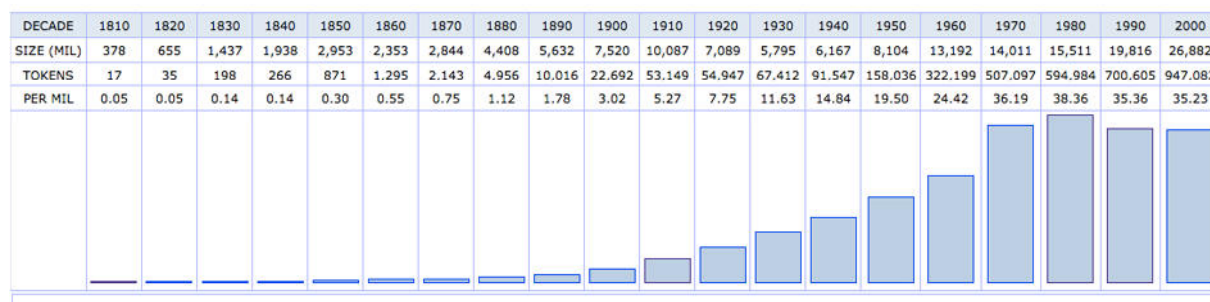


Figure 2 Development of the use of effectiveness in Google Books (American)

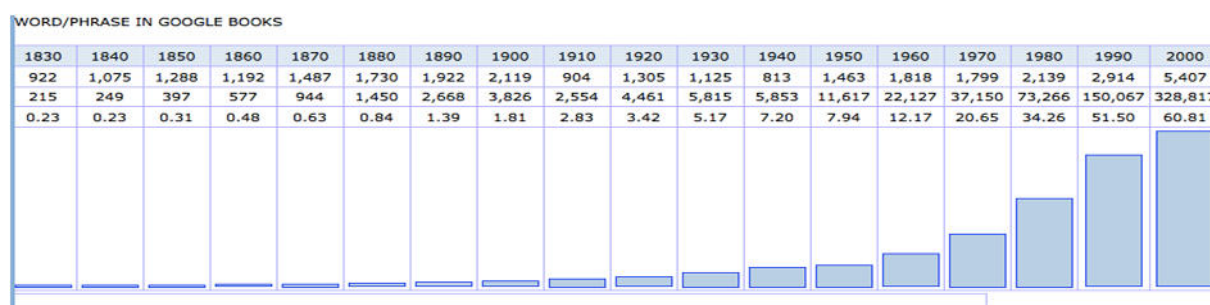


Figure 3 Development in the use of effectiveness in Google Books (British)

A peek into the books in which *effectiveness* is used reveals a recurrent context which seems to place *effectiveness* in a neoliberal, new public management (NPM) discourse, see e.g. the following examples from the 2000s: Sarah Cook: *Measuring Customer Service Effectiveness* (2004), Tony Townsend: *International Handbook of School Effectiveness and Improvement* (2007), Mal Conway & Michael F. Cassidy (2006): *Evaluating Trainer Effectiveness*, J.L. Leslie et. al. (2002), *Managerial Effectiveness in a Global Context*, Keith Tones & Sylvia Tilford (2001): *Health Promotion: Effectiveness, Efficiency, Equity*.

Given the parallel development in the judgments of two European courts and general language use, the question arises whether the increasing use of *effectiveness* in the judgments of those courts is also the result of the emergence and the rise of neoliberalist and NPM thinking of the late 20th century.

The increasing scholarly interest in international and supranational courts during the past 10 or so years has in fact focused on their functioning rather on than their substantive contribution to international and supranational law: are international courts “effective” at all? Shany (2014, 29), for instance, analyses international courts from a rational system approach and defines an effective international court as “a judicial institution that attains the goals prescribed to it within a predefined period of time.”²² Even more clearly does he address the effectiveness of international courts in terms of neoliberal language in the following quotation from a working draft of the book:

”The increased centrality of international courts in the life of the international community invites, however, a critical assessment of their performance: Are international courts effective tools for international governance? Do they in fact fulfil the expectations that have led to their creation and empowerment? ... Could results of equal value as those produced by international courts have been generated by other, less costly or time-consuming mechanisms?”²³

Two sets of questions arise on this background:

1. How do the ECJ and the ECtHR use *effectiveness* over time? Can we document an influence from neoliberal and NPM discourse in the Courts’ use of the term?
2. Is it possible to detect similarities both in terms of application of the term and development of the concept across the two courts even if different subject matters are treated at the two Courts) (primarily economic issues at the ECJ and human rights cases at the ECtHR)?

We answer these questions on the basis of corpus linguistic analysis and topic modeling of the courts’ judgments. More precisely, we create a corpus of 963 judgments of the ECJ and 1621 judgments of the ECtHR issued between 1954 (ECJ) and 1968 (ECtHR) and 2014. We then subdivide the corpus into subcorpora according to time periods which mark the advent and increasing impact of neoliberalism on world politics and economy in order to test the possible reflection of neoliberalism in the language of the two courts. To compile this dataset we query the publicly available databases of the ECJ (Eurlex) and the ECtHR (Hudoc) and check the results against the iCourts database of international courts. First, we query Hudoc for the judgments of the ECtHR, in which the phrase “and effectiveness of/ and,” appear in the text.⁶ Second, because the ECJ as a multi-lingual court that only began issuing judgments after the accession of the United Kingdom and Ireland in the 1970s, and traditionally also uses *effet utile* and *plein effet* as French synonyms of *effectiveness* in the English judgments, we also include those judgments, stored in the Eurlex database.⁷

²² Yval Shany: *Assessing the Effectiveness of International Courts*. Oxford University Press 2014, p. 29.

²³ Yuval Shany: *Assessing the Effectiveness of International Courts: Can the Unquantifiable be Quantified?* Working draft.

Isabelle Gauer (University of Freiburg); Yinchun Bai (University of Freiburg); Hanjo Hamann (Max-Planck-Institute, Bonn); Friedemann Vogel (University of Freiburg): Computer Assisted Legal Linguistics (CAL²)

Introduction

Computer Assisted Legal Linguistics (CAL²) (Vogel, Hamann, and Gauer, in press) is a novel approach that tries to combine legal studies with (computational) linguistics. In recent years, in linguistics as well as in law the purely introspective approach is revisited, and trends towards a more empirical and evidence-based practice can be found. A growing number of researchers and practitioners are acknowledging the merits of working with mass data and promote steps towards an evidence-based jurisprudence (Goźdz-Roszkowski, 2011; Mouritsen, 2011; Hamann, 2014; Fagan, 2016; Solan, 2016; Vogel, 2017). Additionally, digital sources and programmes for statistical analyses of large text collections have become increasingly available and offer new opportunities for linguistic research. CAL² aims to raise the transparency of the law by making the possible interpretations more visible. We propose an approach with which this can be achieved by algorithmically searching for and analysing recurrent speech patterns in large linguistic corpora of legal texts.

The application fields of the CAL² approach are manifold: For example, computer-supported analysis can be used to analyse legal semantics, language and sociosemiotics in different working contexts (judiciary, legislature, legal academia, etc.). It can offer practical insights in decision making, legal interpretations, and legislation. In general, it does not seek to replace hermeneutic procedures but to complement them. Empirical data and computer algorithms can support legal work, but the cognitive processes of contextualization cannot be left out.

The CAL² corpus of European law

The first step was to create a balanced specialised corpus that contains texts which exhibit the special properties of the legal genre. Currently, the corpus version 2.0 includes the following text types: 6,300 German federal statutes (~15 M words), 370,000 court decisions in German (~800 M words), 20,000 court decisions in English (~90 M words) and 43,000 German academic research papers (~200 M words), which adds up to over 1 billion words. All texts were converted to TEI P5 (www.tei-c.org/Guidelines/) compliant xml, which serves as a de facto standard for text structural annotation (Stührenberg, 2012). The corpus was enriched with part-of-speech annotation using the TreeTagger (Schmid, 1995) and the metadata were also documented in a relational database to gain a better overview of the corpus content. Error control and duplicate removal were applied to create a cleaner resource for the analysis.

CAL²Lab

In this current project phase a platform for specialised statistical processing is developed. The implementation of the platform will comprise three parts: Firstly, frequency lists for the

200,000 most frequent lemmata (nouns/verbs/adjectives) will be calculated. For each of these lemmata context profiles are compiled that contain co-occurrences and usage patterns according to the metadata. This will help to gain insight into how legal terms were used in the past and today, how often and by whom. Secondly, we attempt to measure the rigidity of expressions to display how semantically fixed or varied they are. Lastly, we examine semantic similarity in legal texts by clustering similar context profiles and visualizing the results as self-organizing maps.

Case study

To test the CAL² corpus in action and to explore its applicational possibilities and limitations, we conducted a case study, comparing the linguistic formulation of the “*employee*” concept in UK and EU court decisions. Our research material comes from the English part of the CAL² corpus. It consists of judgements made by the UK Employment Appeal Tribunal [UKEAT] and the employment law-related judgements from the Court of Justice of the European Union [EUECJ]. We aim to address the following research questions: (1) What are the central “*employee*” concepts and “*employee*”-related concepts within the labour law framework in the UK case law system? (2) How are the “*employee*” concepts addressed in UK court decisions in terms of frequent usage patterns? (3) How similarly and differently are the “*employee*” concepts linguistically formulated and presented in EU court decisions?

Results

In terms of the frequency distribution of various “*employee*” concepts and the usage patterns of the term, we found both commonalities and differences in UK and EU court decisions. This is achieved through analysing the compounding and phrasal structures, the genre-specific co-occurrence partners, and the predication patterns of the term “*employee*”. In both UK and EU court decisions the majority of compound nouns of “*employee*” concern the status of a person in an employment relationship, i.e. if a person can be classified as an employee at all (e.g. *ex-employee*), although the EU court decisions exhibit a much lower rate of using compound nouns in general. For noun phrases containing “*employee*”, we identified four phrasal structures, including modifier-noun phrases, noun-noun phrases, possessive-noun phrases, and *of*-possessive phrases. Generally speaking, the modifier-noun phrases either identify the types of an employee in relation to the employment relationship or describe aspects of the employee proper, such as “*full-time employee*” and “*female employee*”; the noun-noun phrases, possessive-noun phrases, and *of*-possessive phrases, on the other hand, mostly address the expansive aspects of an employee, including e.g. people related to an employee (“*employee representative*”), and external components and events involved in an employment relationship (“*employee’s contract*”, “*dismissal of employee*”). From the semantic perspective, the “*employee*” concept in both UK and EU legal cultures has a core semantic composition of “temporal specification of an employment relationship”, “discrimination between social groups (gender, age, etc.)”, and “rights and entitlement”, as reflected by the frequent co-occurring partners in phrasal structures, expanded contexts [+/-15], and predication structures. But the UK and EU court decisions do show different emphases on a few specific aspects of

the employee and the employment relationship. For example, the UK court decisions contain more predications describing an employee's conducts and conditions in an employment relationship, while the EU court decisions feature a slightly bigger percentage of notions that concern the support of an employee.

Conclusion

This paper introduces the interdisciplinary research group (cal2.eu), its Corpus of European Law as a comprehensive and sustainable source of legal texts, and the ongoing construction of the accompanying analytical tools – the CAL² Lab. Along with this, the first case study that explores the notion of “employee” in UK and EU court decisions is presented. It shows one of the practical uses of the CAL² corpus by experimenting on the possibility of identifying conceptual sediments that exist as constants in the European way of legal thinking.

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Victoria Guillén Nieto (University of Alicante): Impoliteness and the appraisal of intentional defamation in Spanish courts

The investigation of criminal language is one of the expert areas of forensic linguistics as a forensic science. This paper focuses on defamation, an offence that infringes the fundamental rights of citizens, contained in Article 18 of the Spanish Constitution, according to which the right to honour, personal and family intimacy, and self-image shall be guaranteed. According to the Spanish Penal Code, defamation can be either a criminal offence (calumny) (Article 205) or a civil offence (injury) (Article 208). In either case, defamation is a crime perpetrated primarily by means of language, either written (libel) or spoken (slander), involving intentional false communication aimed at damaging a person's honour and dignity. (Phelps & Hamilton, 1969; Haiman, 1970; Prosser & Keeton, 1988; Sack, 1999, etc.). In Spanish law, the victim (plaintiff) can bring a lawsuit against the offender (defender).

Since linguists are specialists in language, their expertise can be central to the analysis of the spoken or written material that caused the alleged defamation. Over the last three decades, language experts have tried to shed light on different aspects of criminal language from various linguistic theories and disciplines, such as speech act theory, pragmatics and discourse analysis, as shown in the works by Hancher (1980, pp. 245-256); Tiersma (1987, pp. 303-350); Pullum (1991, pp. 92-99); Durant (1996, pp. 195-210); Kniffka (2007, pp. 113-148); Shuy (2010); Tiersma & Solan (2012, pp. 340-353), etc.

This paper explores the language crime of defamation within the theoretical framework of socio-pragmatics, with especial reference to impoliteness linguistic theory. Intentionality, offence and face-attack are key elements that bring together impoliteness and defamation. Impoliteness provides the language expert with a number of functional working tools with which to explore the language of defamation cases, such as culture and identity, schema, attitude and ideology, face, social norms, intentionality, and emotion (Spencer-Oatey 2005, pp. 95-119; Bousfield 2008; Culpeper 2011).

The main objective we pursue is to determine the effects of conventional, direct formulaic impoliteness and nonconventional, indirect impoliteness in verdicts for defamation cases in Spanish courts.

The study addresses the following research questions:

- a) How do Spanish courts appraise intentional defamation and offence?
- b) In guilty verdicts for cases of defamation, do Spanish courts resort to conventional, direct formulaic impoliteness or to nonconventional, indirect implicational impoliteness?
- c) In acquittals for cases of defamation, do Spanish courts resort to conventional, direct formulaic impoliteness or to nonconventional, indirect implicational impoliteness?
- d) Can indirect implicational impoliteness be an elusive defamatory strategy?

Answering the above research questions will allow us to make a general statement about the effects of conventional, direct formulaic impoliteness and nonconventional, indirect impoliteness in verdicts for defamation cases in Spanish courts.

In order to avoid building a castle in the sky, the research grounds in empirical data, particularly in judgments for the crime of defamation searched with CENDOJ, a free-access Spanish case-law browser. A total number of 150 cases were selected randomly, and conveniently classified into different functional categories: (a) type of defamation (calumny vs. injury), (b) publicity (present vs. absent), and (c) verdict (guilty vs. acquittal). Subsequently, the socio-pragmatic examination of the defamatory messages contained in the judgments was done. The linguistic working tools used for the analysis were: (a) context, (b) intentionality, (c) offence, (d) face attack, (e) malicious language, and (f) conveyed defamatory meaning. Finally, the Pearson chi-square test performed revealed whether, or not, there is a significant difference in relation to the presence or absence of direct or indirect impoliteness in acquittals and guilty verdicts for the 150 defamation cases examined.

The hypotheses raised are:

The null hypothesis: If the alleged defamation contains conventional, direct formulaic impoliteness, this will promote a guilty verdict.

The alternative hypothesis: if the alleged defamation contains nonconventional, indirect impoliteness, this will promote an acquittal.

The conclusions reach in this piece of research may contribute to a better understanding of the socio-pragmatic foundation of defamation, as well as of the effects of conventional, direct formulaic and nonconventional, indirect implicational impoliteness in the appraisal of intentional defamation and offence in the Spanish legal culture.

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Mami Hiraike Okawara (Takasaki City University of Economics): Japanese Authorship Analysis Studies

1. Earlier Studies

Japanese authorship analysis has been conducted for the identification of authors in literary work. One traditionally used approach is to consider contents as well historical facts relating to the composition of work (Jin & Murakami (1993:63)). However, with the advances in computers and the development of techniques of statistical analysis, more attention has been paid on the quantitative characteristics of literary work (Jin & Murakami (1993:63)).

Language Structure Analyses have examined data on sentence structure, grammar and vocabulary. More concretely, examined elements are frequency of use of certain words, the ratio of different vocabulary items to total number of words, frequency of synonym use, average word length, average sentence length, frequency of occurrence of each part of speech and frequency of color terms, frequency of simile (Jin & Murakami (1993:63), Kim (1997:357)).

Japanese words are not separated by spaces as in English. It is therefore difficult for computers to recognize word boundaries, which constitutes a serious obstacle to handling data in Japanese language (Jin & Murakami (1993:63)). Moreover, the Japanese writing system shows considerable variety, *kanji* (Chinese characters), *hiragana*, *katakana* and Roman letters, which requires a complex task to computers. Furthermore, there is a problem of selecting which of various readings, several Chinese readings (*on*) or a Japanese reading (*kun*) may be applicable in each context.

2. Commas

Because of these factors, the positioning of commas in sentences has been examined as an effective tool to authorship attribution analysis of Japanese language since early 1990s. As Japanese commas, unlike English commas, do not have a definite rule of usage, the analysis of comma usage is highly evaluated in the study of authorship analysis in Japan. The most prominent advocate for comma usage research is Mingzhe Ji. For example, Jin and Murakami (1993a) examined the characters that precede commas of nine literary works by four modern authors. They concluded that the placement of commas differs from writer to writer and is considered as one of the features that make up an individual literary style. Kim, Kabashima and Murakami (1993) also found that a Japanese writer called Umetaro Hasegawa (1900-1935) who wrote three different genres of novels such as historical fictions, crime stories and American experience stories under the three different pen names showed similarities in the usage of commas of three different genres. In short, the comma usage is an appropriate tool for authorship studies because different writers may locate these semantic pauses in different places.

Kim and Murakami (1993) furthermore analyzed 33 academic papers of science with the focus on comma usages. Their finding regarding science papers also supports that comma usage is an effective tool to identify authors of science papers. As commas are used more than

several dozen times in literary works and science papers, the analysis of comma usage of a short text such as a diary might be difficult for the conduction of an analysis (Kim et al (2003:18)). However, Kim et al (2003:14) indicated that the high frequency of particle uses make up for the weakness of a short text.

3. Particles

Japanese authorship studies may be different from those of English language in terms of comma usage. However, function words such as articles, prepositions and conjunction can be common tools for authorship studies between English and Japanese languages. One example study from English language is that Burrows (1987) found that as function words consist of the third of fictional works, their frequency and use can tell us characters who speak them. This means that Japanese function words such as particles can be used as a tool for authorship studies (Kim et al (2003)). Binongo (2003:11) also stated that function words are of interest to researchers because they are not easily affected by a writer's conscious use of the language.

Kim et al (2003) also pointed out the high frequency of particles in Japanese language. Among all parts of speech in Japanese language, particles are used most frequently, which account for 35~40% of all words of Japanese language. The second highest is nouns, which account for 25~30%. The third one is verbs, which account for 15~20%. Particles, nouns and verbs cover 90% of the total parts of speech of Japanese (Kim et al 2003:14). Particles are used subconsciously while verbs or nouns are used consciously. This is because particles are simply 'function' words, which have less lexical meanings and express grammatical relations with other words in a sentence, just like English prepositions or grammatical articles.

Kim focused on attention the nature of particles. Kim emphasized that the use of particles varies among writers and can be a good tool for authorship distribution (Kim (1997), Kim (2002)). More importantly, Kim et al (2003:14) indicated that the high frequency of particle uses make up for the weakness of a short text.

4. Current Studies

As a result, the recent authorship studies include comma usages concentrating on particles. In other words, particles followed by comma are the subject of authorship attribution studies in Japan. Most commonly used methods for the analysis are statistical approaches: cluster analysis and principal component analysis. Cluster analysis is a method of grouping objects into similar categories. Using cluster analysis, researchers can classify vast amount of information into manageable and meaningful piles of information for the analysis. Principal component analysis is a method of identifying patterns in data and expressing the data in such a way as to highlight their similarities and differences (Smith 2002). Patterns in data can be hard to find in data of high dimension because graphical representation is not possible. Principal component analysis is therefore a powerful tool for analyzing data. Principal Component analysis is effective to find similarities between samples and dissimilarities from the major trends in the data.

There are some previous researches on author attribution studies. Jin and Murakami (1993) classified literary works by Yasushi Inoue, Atsushi Nakajima, Yukio Mishima and Junichiro Tanizaki, using cluster analysis and principal component analysis. They examined the characters, some of which include particles, which precede commas. Jin and Murakami (1993:63) concluded that the placement of commas differs from writer to writer and may therefore be considered as one of the features that makes up an individual literary style, thus providing valuable information for verifying authenticity and speculating on question of authorship. Kim, Kabashima and Murakami (1993) also showed, using cluster analysis and principal component analysis, that science papers also supports that the use of commas preceded by characters including particles is an effective tool to identify authors of science papers. Both cluster analysis and principal component analysis are used for author identification studies with focus on comma usage preceded by characters. Such a method has been closely watched by other computation linguists as well as forensic linguists in Japan.

Outside of literary works and academic papers, Kim (2011: 173-176) analyzed an authorship study in murder-for-insurance case (2004), based on comma usage coupled with cluster analysis and principal component analysis. The questioned documents in this case were short texts: a witness note consisting of 1,500 characters regarding the case; a suicide note consisting of 3,400 characters allegedly written by the victim; and two short documents regarding the suspect's prior traffic accident submitted to the police. Kim contrasted these four documents with four external writings, using cluster analysis and principal component analysis of commas preceded by particles. The witness memo, the suicide note, and the two documents were found to be located in closer groups in these analyses. The suspect eventually made a confession with this analysis and other analyses shown and got life imprisonment.

In conclusion, quantitative analyses using cluster analysis and principal component analysis of commas usages have been used as a reliable tool in Japanese authorship analysis.

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Campos Miguel Angel (University of Alicante): Creativity in the Terminology of Cybercrime

The advent of the Internet has brought about a drastic revolution in the history of human beings and in the way they live, interact and communicate, but has also created an instrument and a field for the commission of crimes. The nature of these crimes is a wide one (Jar, 2005): in some cases, previously existent acts, such as financial crimes, some scams, or vandalism have taken on a new dimension, both by crossing borders (Goodman, 2010) and by developing at a very large scale (see Banks 2011, regarding hate speech, or Button, 2012, for fraud). Other crimes are completely new and dependent on the medium, such as phishing (with its manifold varieties, including smishing and vishing). As with other areas of human activity, new referents demand new labels (like the term “cybercrime” itself; see, amongst others, Wall 2001), and languages have rapidly adapted to the new scenario, sometimes by coining terms *ex novo*, others by re-using previously existent terminology and adapting it to the new criminal actions (a variation on “skeumorphism”, as identified, for instance, by Larsson, 2013). An interesting feature of this new criminal activity is the fact that perpetrators and victims often come from different languages and cultures, and, as a result, English, the lingua franca of the Internet, is the means of communication, both for the commission of the crimes themselves and for the fight against such crimes.

In this respect, the English terminology of cybercrime becomes especially attractive for a number of reasons: first, the way in which all forms of lexical creation are present, from the more “classical” compounds and derivations, to other more “modern” word formation patterns such as acronyms (DDoS, APT), and, especially blending (“sextortion”), and even combinations of various processes (e.g. clipping and compounding in “botnet”). Secondly, from the semantic point of view, the new meanings attached to already existing words or expressions (for instance, “piracy” now describing something not done in the high seas, or “dumpster diving” no longer meaning physically searching into household or business waste) and the abundance of metaphors, some of them already existing in legal language, but others, pertaining to the digital world (“traffic”, “router”, “logic bomb”; see Meyer et al., 1997). Thirdly, the fact that English is both the prevailing language on the Internet (Crystal, 2001) but also the lingua franca in the world of law (Drolshammer & Vogt, 2003; Gotti, 2009), has caused this terminology to become the referent in other languages. These have either directly borrowed this terminology with no adaptation, or imitated these word-formation patterns (see, for instance, Piñol, 1998, on English-modelled acronymy and clipping in NetSpanish). Fourthly, as is the case with other very specialized areas of law, legal practitioners have decided to accept the terms created by non-lawyers in their expert communication (legal instruments, judgments, academic papers), which gives this area of law a specific “progressive” flavour, since very recent and colloquial Internet terminology coexists with very traditional legal English vocabulary, but also syntax.

In our study, we will attempt to provide an answer to the general research question “What are the main features of the terminology of cybercrime?” On the basis of the glossary of cybercrime terms used by the European Judicial Training Network for its training courses (drawn from various sources and endorsed by legal experts in cybercrime, judges and

prosecutors) we shall try to verify the following hypotheses: (1) the terminology of cybercrime has a distinct nature due to its close relationship with new technologies; (2) one of its distinct features is the presence of the vocabulary of computing and the Internet coexisting with traditional legal terms; and (3) some of the terms are of a highly metaphorical and colloquial nature. We believe that our analysis of the terminology of cybercrime can be beneficial to all stakeholders, from internet users and security experts to legal professionals (judges and prosecutors) and law enforcement agencies, but also to legislators and translators, both at an international level (UN, Council of Europe, European Union) and at a domestic one (especially when transposing international instruments). An awareness of the mechanisms underlying this terminology in English can help to take informed decisions which will undoubtedly cause a great impact on their respective languages, either through direct, unadapted borrowing, adaptation or the usage of word-formation mechanisms proper to recipient languages

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Alexander Lorz (Minister of Education, Hesse/Germany): Creating Law with Language – Insights from the Perspective of Legislative Practice

The creation of a law is inevitably intertwined with the use of language. The call for more, better and especially earlier linguistic contributions to that process is therefore fully understandable. However, a closer look at the legislative process reveals that things are much more complicated than they seem at first sight. The decision whether any law shall be made, for instance, which logically precedes any attempt at linguistic perfection, is already extremely intricate and brings legal and political considerations into play. At the stage where the law is formulated linguistics can certainly add a helpful dimension - but linguistic experts should not be too much frustrated if their ideas seem to go unhonored; here again political aspects brought about by the need to accommodate quite different philosophies and value orientations can step in and brush aside finely tuned linguistic differentiations. When a law has started to apply and the courts join the fray in working with it, another layer of possible intricacies is added - but nevertheless linguistic assistance should always be sought when laws are drafted.

Saturday, September 9th, 2017

Frances Olsen (UCLA Law School, Los Angeles): Social Conflicts and Legal Linguistics

Drawing on the work of James B. White, Thucydides, Gregory Vlastos, and Harold Pinter, I explore the importance of language to social and political conflict. Language is not stable but is a site of conflict and change; as we continually challenge and remake language, it remakes us as individuals and as political communities. Decades of U.S. led wars in the Middle-East have affected the U.S. (and other countries) in many of the ways described by Thucydides in his *History of the Peloponnesian War*; and Gregory Vlastos offers insights into the relationships between the intellectual's individual search for truth and our responsibilities to the corporate struggle for justice. In his Nobel prize acceptance speech, Harold Pinter illustrates how, as White puts it, "character is formed – and maintained or lost – by a person, a culture, or a community." Legal linguistics traces how words lose their meaning; and it deals, among other things, with the relationship between speech and conduct and between language and facts.

Ruth Breeze (University of Navarra): The practice of the law across modes and media: Challenges and opportunities for legal linguists

The impact of the digital revolution on legal practice has been a constant theme in recent years, although discussion tends to centre on practical applications (Internet searches, online legal education, productivity devices, international outsourcing) and issues with complex legal repercussions (confidentiality, privacy, plagiarism, security against cyberattacks) (Marcus, 2008). Aside from their obvious interest in digital resources as a way of obtaining authentic texts, particularly for building corpora, legal linguists have generally been slower to respond to these ongoing changes (Breeze et al, 2014). This paper presents an approach to studying the practice of the law across modes and media, drawing on Van Leeuwen's (2005, 2013) understanding of social semiotics as a multimodal, multimedia phenomenon which can be studied using linguistic tools in combination with other analytical affordances.

Law is often conceptualised as consisting principally of concepts materialised in language. However, building on Halliday's (1978) idea that language is only "one of the semiotic systems that constitute a culture" (p. 2), we can observe that law is a form of communication that is fundamentally multimodal and has always been communicated through a variety of media. Van Leeuwen's approach to studying semiotic resources, practices and changes involves considering how people use semiotic resources and technologies in specific socio-historical contexts, and how they talk about and justify these practices. Kress and Van Leeuwen (2006) show that modality in a multimodal context is realised not only through words, but also through other affordances (e.g. aspects of visual semiotics) which interact in complex ways. As linguists, we are uniquely qualified to examine both the semiotic practices themselves, and the discourses about them (Van Leeuwen, 2005), and to explore the norms by which people use and make sense of these practices.

This paper explores three approaches to understanding legal practices as semiotic systems in a process of transformation. With a view to achieving a more unified focus, I will concentrate on the area of alternative dispute resolution (ADR), looking at three areas in which recent transformations offer an opportunity to legal linguists.

The first example centres on the familiar concept of genre, applied to the legal blog, considered as a multimodal and multimedia phenomenon. I look at three ADR blogs (Kluwer Arbitration Blog, Herbert Smith Arbitration Notes and Young ICCA Blog), to see to what extent these exploit the affordances of online media to transform the genres of professional news and updates. Although these three blogs adopt a conservative approach, there are some signs that the potential of online media for multimodality and interactivity is gradually being explored.

My second example centres on interaction, focusing on how the roles and types of interaction experienced in face-to-face interaction change when internet platforms are used for ADR. Early research in this area focused on the quantity and quality of activity that takes place in Online Dispute Resolution (ODR) environments, and the participants' own evaluation of this

experience (Hillis, 1999; Katsch & Rifkin, 2001). However, to gain deeper knowledge of interactions within ODR, researchers should explore how people interact in and with online environments and how they construct meaning interpersonally within these constraints (Poblet & Casanovas, 2007). Using the example of the Virtual Mediation Lab, I present a visual breakdown of the mediator-party interactions produced during a session through Virtual Mediation Lab, using the coding system available in the Interactional Discourse Lab (IDL), and making comparisons with face-to-face mediation (Gotti, 2014). I explain how the interactions are influenced by the affordances of the platform, bringing both loss and gain.

The third example looks at the notion of interactivity, taking ODR systems as an example of how computer mediated communication can be designed to simulate human intervention. Commentators have noted that interaction is subtly changed by the presence of a theoretical "fourth party": the software tools that structure the process. This fourth party is the result of a consensus among professionals as to how the dispute resolution process should be shaped and guided. In the words of Gaitenby (2006), it is the product of "individual and collective consciousness empowered by a multitude of social, cultural, and technical tools". Early research in this area focused on the quantity and quality of activity that takes place in ODR environments, and the participants' own evaluation of this experience (Hillis, 1999; Katsch & Rifkin, 2001). I provide an analysis of the relationships constructed between the four parties in the course of this type of ODR, paying special attention to the way the "fourth party" itself plays a mediating role.

In my conclusions, I will show how the approaches illustrated here could be applied to other areas of law, and how legal linguists are uniquely situated to understand the transformations that are currently under way.

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