

Area 3. Experimental approaches to language, law and human rights

Argumentative bases for the justification of the human right not to emigrate

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Abstract

As a final result of the Post-doctorate in Fundamental Principles and Human Rights we have conceptualised the human right not to emigrate from theoretical aspects based on the facts and philosophical constructions exposed in the work (Banchio, 2020). This initial formulation is too abstract to derive from its specific duties and obligations and the identification of its foundation can help its practical construction. In human rights issues theoretical reflection is not only the problem itself as it also has empirical consequences (Hapla, 2018). In its construction we have brought the concept of the human right not to emigrate closer to the basic needs of forced migrations and the political structures involved. However, the very idea that rights derive from them may seem intuitive and arouse some intellectual scepticism. There are several possible ways to address this justification deficit. Among them, the main objective of this paper is to explore through 'existential explanatory justification' the following research question: Can the concept of 'basic existential needs' applied to the supreme principle of justice, way of life, and life project used in the theoretical formulation be a credible basis for the justification of the human right not to emigrate and its subsequent realisation? We pursue two objectives: 1) to demonstrate the validity of the human right argumentatively not to emigrate from the theories of argumentation, foundationalism and the concept of basic needs. And 2) to face the usual epistemic problem presented by any novel formulation. We use as instruments: 1) Robert Alexy's explanatory-existential justification, which deserves a prominent place among the justification of human rights theories with a close connection to discourse theory (Alexy, 2006). And 2) Alan Gewirth's 'foundationalism' approach of basic needs and necessary capacity for human action (Gewirth, 1978). The mere inclusion of legal norms in legal documents is not sufficient to put them into practice. The effective functioning of law is linked to the successful functioning of normative systems and the successful functioning of the concepts (understandable to most people) that legitimise the norms. One such concept may be various forms of basic existential needs on which we can successfully base the formulation of human rights (not in theory) but in practice. The human right not to emigrate can be adequately justified from theories of argumentation.

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Keywords: human right; non-migration; basic needs; argumentation; existential explanatory justification

Biodata

Pablo Rafael Banchio holds a PhD in Law—Private Law (UCES). He is a Post Doctor in Fundamental Principles and Human Rights (UCES). Besides, he holds a Magister in Business Law from Universidad Austral (UA) and its equivalents to Laurea in Giurisprudenza and Biennale University Master, qualifying all'insegnamento di Diritto Impresariale in Italy (MAE.IT). Dr Banchio directs the Masters in Business Law at the University of Business and Social Sciences (UCES) and lectures in several graduate and postgraduate programmes. He is also an External Researcher in Economic Analysis of Law and the Judicial System in Argentina (UNLaM) and has published extensively in law.

Migration in translation: A corpus-based study of terminological variation in EU law

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Abstract Text:

This research uses an empirical approach to explore how terminology in EU legal texts on migration has changed over recent decades across English, French and Italian and to what extent legal translation influences such variation. Nuances in terminology have significant legal effects on the lives of migrants, influence how they are perceived by others and have a broader impact on the language used by general speech communities (Bauder, 2014). It is therefore critical to understand the scale and causes of terminological variation in this area. Previous research points to terminological instability and variation in EU legal texts (Peruzzo, 2013) and new approaches to studying terminology provide greater insights into the dynamics of terminological change over time (Picton, 2014). Studies also show how translation plays a role in propagating language change and can even significantly affect non-translated texts (Bisiada, 2016). With this previous research in mind, this study seeks to answer the following questions: 1) what degree of terminological variation can be observed among key migration-related terms (e.g. migrant workers, irregular migrants) during the period in question? 2) What is the nature of this terminological variation? 3) Is there convergence in terminology across the three languages that indicates translation's influence on terminological change?

This research uses innovative experimental methods from corpus-based translation studies to provide a deeper insight into the use and evolution of legal terminology across different languages. It involves a diachronic analysis of two multilingual thematic corpora spanning two time periods, which were particularly significant in developing immigration law in the EU: 1992-1998 and 2015-2018. The research adopts quantitative and qualitative methods to examine both the extent of variation across languages and periods and the nature of the changes which have taken place. This study reveals the significant extent of inter- and intra-lingual terminological variation in EU texts in the field of migration. The number of terms used in each language to refer to the same concept reduces, suggesting growing terminological stability over time. The results also point to increasing influence from English in translation since French and Italian legal terminology used in this field appears to converge towards English models. This influence, however, is not uniform and influence from French legal terminology remains present.

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Keywords: translation; corpus linguistics; terminology; migration

Biodatal

Edward Clay is a postgraduate researcher and Wolfson Foundation scholar at the University of Birmingham, UK. He holds a BA degree in French and Linguistics from the University of Sheffield and an MA degree in Interpreting and Translation (French and Italian) from the University of Bath. His research interests include the interaction between law and language, linguistics, corpus-based translation studies and experimental methods in analysing terminological change. He is interested in migration and how the rhetoric and terminology used to address it can shape perceptions, policy and the treatment of migrants. His research seeks to apply emerging methodological approaches from translation studies and corpus linguistics to provide deeper insights into key issues in different areas of law. He has published articles in academic journals focusing on law and language and has also worked as a translator specialising in legal and environmental texts for several years, working with various international organisations.

Witnessing a crime and thinking about it in different languages: Language effects on witness memory and jury judgments

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Abstract

In today's increasingly multilingual world, justice systems are faced with a steeply rising number of non-native speakers in all domains of the judiciary process, as suspects, witnesses, victims, or jurors. In this talk we focus on grammar and use in different languages that create differences in the interpretation of events, affecting memory, judgement and the quality of elicited evidence. We will show, showcasing various experimental methods, how different languages encourage encoding some aspects of witnessed events in memory while some other languages prevent those same features from being habitually expressed and remembered. Our results from three experiments on recognition memory, recall memory and jury judgement will illustrate the impact of language contrasts on the legal process. The possibility that different languages impact speakers in different ways follow the well-known linguistic relativity hypothesis (Whorf, 1956), whereby different ways of carving up the continuum of reality via language may result in different views about the world, in this case differences in the understanding of what happened, how and why. Several studies across different disciplines have shown that there are language-specific effects on how events are remembered (Fausey & Boroditsky, 2011; Filipović, 2011, 2013, 2018, 2019). The two studies on witness memory discussed in this talk, which used video clips depicting different types of motion events as stimuli, examined how mock witnesses who were speakers of either English or Spanish think and talk about how somebody—e.g., a suspect— moved. We discovered that English speakers have a better memory than Spanish speakers for the manner of motion, which is relevant for police investigation— if somebody was running, they are likely to be further away than if they were limping. In contrast, Spanish speakers have better memory for causation, also fundamental—e.g., for the establishment of guilt—they recall the difference between intentional and non-intentional events better than their English peers. We explain these disparities and their consequences using extensive previous research on language typology and speaker usage habits, as well as examples from real-life police and court examinations. Finally, in our third experiment, on jury judgments, we show that people who speak the relevant language of the country as an L2 have a very different understanding of certain meanings compared to L1 speakers, which, in turn, can lead to differences in the judgments they make in legal contexts. Namely, we observed a difference between judgments about witness certainty between speakers of English as a first language and those that spoke English as a non-native (second) language, and we proved empirically that this difference was due to the way English had been acquired. This work from our lab has an attested practical value when applied to questioning in any legal context, in the training of legal and language professionals, and in supporting efforts to achieve equality in access to justice for disadvantaged minority speakers.

Reference

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Keywords: English; jury judgments; language effects; Spanish; witness memory

Biodata

Luna Filipović (PhD Cantab) is a Professor of Language and Cognition at the University of East Anglia, UK. Her specialisation is in experimental psycholinguistics, bilingualism, and semantic and syntactic processing of typologically different languages. Her recent research examines language effects on memory, verbalisation and translation of witness' accounts of events. She has conducted experiments showing how a specific language spoken by a witness or suspect can affect the quantity and quality of information given and explaining how, why and when this information can be distorted in translation, impacting witness memory and jury judgment. She has studied multilingual police interviews in both the UK and the US for 20 years and discovered important problems in police communication and police interpreting, and some solutions for those are proposed within the TACIT Project that she leads (<https://www.tacit.org.uk/>). For more details, please check out Professor Filipović academic webpage: https://people.uea.ac.uk/l_filipovic and the recent newsletter by the Leverhulme Trust (page 15) which recently awarded Professor Filipović a prestigious Research Fellowship for her work on the TACIT Project (https://www.leverhulme.ac.uk/sites/default/files/2020_09.pdf).

A cross-linguistic study on perceived offensiveness of swearwords in British English and European Spanish

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Abstract

This study aims to contribute to the translation of swearwords in interpreted-mediated police interviews. This study stems from a collaboration with police officers who raised our attention towards the inappropriate translation of insults and their consequences. The police officer perception of the severity of the punishable offence and judgement about what kind of action is appropriate can be affected by the translation of the insults used. In legal contexts, using an insult can be crucial. Rassin and Heijden (2005) found that the inclusion of swearwords increased the believability of court statements. This problem can be more complex when two languages are involved in the communicative situation. Perceived offensiveness is key when swearing in the L2, as most bilingual speakers prefer to swear L1 (Mohammadi 2020). Furthermore, decisions made using L1 are more based on emotion than those made using the L2, which are more rational (Costa et al., 2014). Therefore, the interpreter's decision to translate an insult can be crucial, as it has been seen for other cross-linguistic differences in police interpreting (Filipović, 2007; Filipović & Hijazo-Gascón, 2018). The study hypothesises that the perceived offensiveness of the swearwords under study will vary depending on the gender of the participants and depending on whether they have suffered any discrimination. The methodology involves two tasks. First, a pilot was carried out with 14 interpreting students who translated 30 insults in three contexts: domestic violence,

homophobic aggression and insults to a police officer. The lack of training in this area showed how proficient students raised or lowered the level of offensiveness of the insult. Second, a survey was distributed among more than 200 native speakers to rate the offensiveness of each of these lexical items. The results show variation in the degree of offensiveness by Spanish and British speakers relating to two variables: gender and prior experience of discrimination. Together with the cultural contexts, these represent the three crucial variables that affect the interpretation of the insults. Finally, we found that the gender and previous experience of the interpreter may also play a role in how the insults are translated. We argue that learning insults needs to become part of interpreting training in legal contexts.

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Keywords: swearwords; police interpreting; perceived offensiveness; hate crime

Biodata

Dr Alberto Hijazo-Gascón holds a Spanish Language and Hispanic Literature degree from the University of Zaragoza, Spain. He has a Masters degree in Applied Linguistics and Teaching Spanish as a Foreign Language from Nebrija University in Madrid. He completed a PhD in Hispanic Linguistics at the University of Zaragoza in 2011. During his doctorate, he made several research visits to the University of Southern Denmark, the University of Lund (Sweden), the University of California Berkeley (USA), and the Max Planck Institute for Psycholinguistics (Netherlands). He worked as a researcher and associate tutor for General and Comparative Linguistics at the University of Zaragoza in 2012. He has been working as a Lecturer in Intercultural Communication and Spanish at UEA since September 2012. His latest research involves analysing interpreted-mediated police interviews, looking into how the specific typological differences among languages pose challenges for interpreters and their potential impact.

María Gómez-Bedoya is an Associate Professor of Spanish Language and Director of the University Language Programme at the University of East Anglia since 2015. She holds a degree in English Language, Communication and Marketing from Nebrija Universidad, Madrid, and two Masters in Spanish Teaching and Hispanic Linguistics. She has completed several Personnel Management and Professional Training courses and is currently working towards a PhD in Empathy and Communication. She has an international background and has worked in several countries as a teacher, teacher trainer, and team manager, bringing her intercultural experience and enthusiasm. Before

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Luna Filipović (PhD Cantab) is a Professor of Language and Cognition at the University of East Anglia, UK. Her specialisation is in experimental psycholinguistics, bilingualism, and semantic and syntactic processing of typologically different languages. Her recent research examines language effects on memory, verbalisation and translation of witness' accounts of events. She has conducted experiments showing how a specific language spoken by a witness or suspect can affect the quantity and quality of information given and explaining how, why and when this information can be distorted in translation, impacting witness memory and jury judgment. She has studied multilingual police interviews in both the UK and the US for 20 years and discovered important problems in police communication and police interpreting, and some solutions for those are proposed within the TACIT Project that she leads (<https://www.tacit.org.uk/>). For more details, please visit Professor Filipović's academic webpage: https://people.uea.ac.uk/l_filipovic and the recent newsletter by the Leverhulme Trust (p. 15) which recently awarded Professor Filipović a prestigious Research Fellowship for her work on the TACIT Project (https://www.leverhulme.ac.uk/sites/default/files/2020_09.pdf).

Debiasing the hindsight bias

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Abstract

In virtually every legal system, the decision-maker is sometimes forced to evaluate a certain action without knowing its outcome normatively. The problem might arise when the decision-maker ought to discern the situation's outcome to make the "objective" and unbiased decision. However, this situation is problematic for the decision-maker because of the well-known cognitive bias known as the hindsight effect. An example of that situation is when the decision-maker is forced to judge the situation in which the standard of a reasonably prudent person ought to be applied (Tobia, 2018). Experimental research demonstrates the effect of outcome-severity of reasonableness judgements when a particular decision is deemed more reasonable by the decision-maker in retrospect when it produces beneficial consequences rather than harmful consequences (Kneer, 2021). This paper's primary research objective is to empirically assess how the debiasing strategies against hindsight bias might work with professional judges and laypeople - which often serve injuries (Kneer & Bourgeois-Gironde, 2017). The primary field to which the paper might contribute is institutional design, which creates effective measures to counter the possibility of biased legal decisions. As the hindsight bias affects every legal system, which employs the reasonable person standard (or other standards connected with the discerning the information ex-post), the creation of effective debiasing measures is one of the focal points connected with this legal decision-making. What is more, the proper understanding of the desired decision-

making process free of hindsight bias might be useful in creating artificial systems designed to aid (or possibly replace) the legal decision-maker.

After the initial assessment of the hindsight bias among the professional judges, this paper will focus on the possible debiasing strategies that might mitigate this effect. The paper's primary aim will be the theoretical assessment of the possibility of creating successful debiasing strategies that will be congruent with the hindsight bias. As a result, experimental studies will be conducted to assess the debiasing's measures in the context of hindsight bias. In particular, it will be assessed which effective ways of debiasing judges (Bystranowski et al., 2021), as identified in the experimental research, could be applied in common and continental legal systems in conformity with legal principles governing legal procedures, be it civil, criminal, or public.

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Keywords: hindsight bias; experimental jurisprudence; debiasing

Biodata

I received a PhD in Law from Jagiellonian University in 2019. My PhD dissertation explored whether the relation between legal facts and social facts could be explained by supervenience or grounding relations. I am currently preparing a PhD dissertation in philosophy of mind at Jagiellonian University concerning the doxastic status of delusions. I am currently working at the University of Silesia in Katowice where I am researching hindsight bias in the context of legal decision-making.

Modeling Repressive Policing: Computational analysis of protocols from the Israeli State Commission of inquiry into the October 2000 events

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Abstract:

The paper addresses the gap between the ideal of protests as a defining and enabling element of liberal democracies and the continued reality of repressive protest policing. While academic literature has identified a variety of factors that explain repressive policing—ranging from the state's perceived legitimacy (macro level explanations) through organisational factors relating to the culture and policy of the police force (meso level), to the ratio of police to protesters and other factual parameters (micro level)—it currently provides only a static, fragmentary analysis. We argue that filling the gap between norm and lived reality is necessary to listen to the plurality of legitimation narratives used by all the actors involved, police and protesters alike. An untapped source of such narratives is found in the Or State Commission of Inquiry protocols investigating the clashes between Israeli police and the Arab minority in October 2000. In order to encompass the multiple perspectives and narratives in the protocols and the final report of the Or Commission without losing sight of the singular point of view of specific actors, we developed a novel methodology of scaled reading that brings together textual practices and computational techniques in order to process and analyse the multitude of narratives from the level of the entire corpus to the level of the single document and to offer a dynamic and integrative view of the phenomenon of repressive policing. The scaled reading model moves between three scales of reading: large-scale analysis at the corpus level using algorithmic topic modeling (LDA); mid-scale analysis at the topic level classifying speaker groups and topics leveraging semi-automatic labeling; and small-scale analysis at the document level focusing on computationally selected 'most representative' documents. By moving back and forth between large-scale computational analyses and small-scale qualitative analyses, we combine their strengths to identify large-scale and long-term trends and tell individual stories. To the best of our knowledge, it is the first attempt to examine protocols of an official inquiry into repressive policing in this comprehensive manner: capturing the corpus as a whole without losing sight of individual testimonies using advanced computational methods. Our findings from the large-scale reading show that as a whole the proceedings before the commission of inquiry were not thematically constrained to a specific level of explanations for the use of force. In the mid-scale reading, we find that despite the expectation that a single group of speakers, the Arab witnesses, the Police and even the Commissioners, will cohere around a single level of explanation, each group invokes several, sometimes competing, legitimations of repressive policing. Lastly, our small-scale reading reveals that within a single testimony, officers, witnesses and commissioners alike dynamically shift between levels of explanations in their attempts to make sense of the violent clashes between citizens and police. Ultimately, we conclude that the plurality of legitimation narratives used interchangeably and dynamically by all speaker groups is what enables the continued reality of repressive policing.

Keywords: repressive policing; right to protest; computational text analysis; natural language processing

Biodata

I am an Assistant Professor in the Faculties of Law and Humanities at the Hebrew University of Jerusalem. My research examines institutional and cultural responses to mass atrocity and systematic human rights violations from an interdisciplinary perspective. In my research, I develop and apply novel computational text analysis methods to study narratives in legal processes, from testimonies to transcripts to judicial

decisions. I am the director of the LexText Lab for the computational legal analysis and head of the new teaching program in digital humanities. Before I obtained my PhD, I studied law and political science, and also worked as an advocate in the Israel General Attorney's Office. After receiving my PhD in comparative literature from Stanford University, I was a postdoctoral fellow at the Minerva Center for Human Rights and fellow Martin Buber at the Hebrew University. I am affiliated faculty in the Center for Interdisciplinary Research in Data Science at the Hebrew University and a visiting researcher in the Center for Digital Humanities at Stanford University.