Area 7. Pragmatics of legal discourse

Popularising legal institutions by disseminating legal knowledge - the case of migration laws in Germany

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Abstract

The purpose of the research project in this presentation is to investigate relations between the dissemination of legal knowledge by legal institutions and the intended relation to different target groups of the dissemination. Disseminating legal knowledge means inserting it in a new context with influencing factors different from how the knowledge was first created and communicated. Knowledge dissemination aims to inform about the knowledge in a relevant level of detail and level of explanatory depth (Engberg, 2020b). In parallel, however, knowledge dissemination often establishes an expert position and includes co-communicators in an expert group connected to the position (Engberg, 2020a). The focus of this research is to investigate the relations and interactions between these two aims. Research in this field has been rather upon the intelligibility of normative texts and linguistic features rather than upon the representations of knowledge involved. However, a growing literature is interested in the knowledge and the relation and image building aspects of this type of communication (e.g., (Engberg, Luttermann, Cacchiani, & Preite, 2018). This presentation will draw upon the last-mentioned line of research. Research questions: 1) What developments are visible in the knowledge selection and the complexity of legal knowledge disseminated on the website of the German Bundesamt für Migration und Flüchtlinge in 2015 and 2020? 2) Do the difference indicate differences in the popularisation strategies pursued in the dissemination effort? The object of study are texts from the websites 2015 and 2020 of a German administration popularising legal knowledge on migration and refugees. Methods will be oriented towards the qualitative description of knowledge and its complexity, based upon a frame approach and studies of multimodal knowledge communication (e.g., (Engberg & Heller, 2020). Building upon the previous work by myself and different colleagues, I will assess the dissemination strategies of a societally disputed legal area and its impact on communication partners' intended relations.

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Keywords: popularisation; knowledge structures; image building; knowledge dissemination; legal institutions;

Biodata

Jan Engberg is a Professor of Knowledge Communication at the School of Communication and Culture, Section of German Business Communication, University of Aarhus, Denmark. He has, among other topics, taught legal translation in Aarhus and at different European universities since 1995. His main areas of research interest are the study of texts and genres in the academic field, cognitive aspects of domain-specific discourse and the relations between specialised knowledge and text formulation, and basic aspects of communication in domain-specific settings. His research is focused on communication, translation and meaning in the field of law. Within this framework, Jan Engberg especially works in three related directions: - Investigating the practical and didactic consequences of conceptualising legal translation as communication of specialised knowledge. - Developing a concept-based approach to translation-relevant methods of comparative law. - Investigating instances of national and international statutory interpretation and its consequences upon legal meaning. He has published widely in the field and co-edited some books and special journal issues, especially on legal communication and translation topics. Finally, he is co-editor of the international journal Fachsprache and a further member of the editorial or advisory boards of a substantial number of international scholarly journals.

#IhrRassisten: Pragmatics of hate speech markers on social media and their relevance for legal linguistics

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Abstract

Due to its various technicalities, access to legal language - which, given the variety of legal systems and subtleties, has emerged as a separate research area - is often difficult for laypersons and even legal experts are often faced with misunderstandings within the legal communication process. Legal discourse, however, does not only come in the form of highly specialised texts which can be found in typical examples such as contracts, statutes and judicial decisions, for instance, but can also refer to any statement or

expression that is somehow relevant for legal procedures or administration and that can be reasonably subjected to legal, linguistic analyses. This inclusion plays a fundamental role in the current Digital Age marked by social media hashtags that allow categorising and accessing mass content or making quick and succinct statements of personal opinions (Bernard 2018). During the last two decades especially, given an increase in migration, freedom movements and activism as well as an uprise in right-wing populism all around the world, hate speech is encountered regularly to manifest discrepancies in opinions regarding racism, sexism or homophobia, among others (Meier 2007, Meibauer 2013, Finkbeiner et al. 2016,). On this basis, the question arises of whether and how hate speech condensed in hashtags can be recognised from a legal, linguistic point of view and distinguished from a simple statement of opinion, a right guaranteed under freedom of speech (Kopytowska 2015, Scharloth 2017). Our paper addresses this research question based on a corpus composed of hashtags retrieved from German tweets showing the STRUCTURE PRONOUN 1ST/2ND P. SG.PL + CATEGORIZING/STIGMATIZING NOUN as in #DuSchwuchtel or #IhrRassisten. Here, the formation of hate speech hashtags will be analysed from a construction grammar (CxG) perspective, aiming to show how they become a matter of pragmatics when actively used in social media posts or comments. Assuming the function of a legally relevant text, as it is subjected to legal analysis, this proposal for the determination of hate speech in hashtags may contribute to the fact-finding process in a legal procedure when it comes to legal actions brought before a court on the grounds of defamation or insult and to a clearer and a more consistent distinguishing between the colliding right to freedom of speech and the right of a person not to be defamed and insulted.

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Keywords: legal discourse; pragmatics; construction grammar; hate speech; hashtags

Biodata

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linguistics) and Applied Linguistics (terminology, corpus linguistics, professional communication, variational linguistics). Supervision of PhD students in General and Applied Linguistics.

Doctoral Student (thèse en cotutelle) at the University of Mainz (Germany) and the University of Burgundy (France).

Arbitrators Don't Speak Esperanto: English and the Illusion of Consensus in International Arbitration

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Abstract

Just as English is - or is perceived to be - the language of international commerce, so too is it the language of choice for much international arbitration, the preferred means of resolving international commercial and investment disputes, and as such, the law of the global nomad. From a practitioner's perspective, this paper examines peculiarities of English as close to being a lingua franca in arbitration and argues that the common terminology that it provides, on occasion, obscures differences in understanding. Arbitration is effectively private litigation, whereby parties opt out of the court system, albeit with legislative approval and judicial support, and appoint private tribunals to decide their disputes and render binding decisions. Arbitration allows parties, their counsel and the arbitrators considerable choice as to the language of the proceedings, the procedure and applicable law. In practice, arbitration brings together lawyers from different legal cultures and has developed procedures that draw on different civil and common law practices. Few would go as far as Berthold Goldman and other proponents of a lex mercatoria who viewed arbitration as distilling disparate legal concepts into a transnational volonté générale. However, it gives practitioners unique exposure to foreign law and provides a vital forum for migrating commercial travellers of globalisation. The way that the arbitral melting pot blends legal concepts from different cultures and sometimes produces its own has received extensive attention from practitioners and scholars alike; for example, in the writings of KP Berger on procedural rules, Silja Schaffstein on res judicata, and Christiana Fountoulakis on set-off. However, the role of English in formulating international legal concepts has been comparatively overlooked. This paper examines two facets of English in arbitration. First, whereas the accurate translation of legal terms is notoriously difficult, if not impossible, in arbitration, the need to establish a simple, common terminology has led users to adopt terms that may elude precise definition and refer to different ideas using them. Differences in doctrine across legal languages are thus obscured in favour of common terminology and an impression of common understandings. The evolution of arbitration English has outpaced that of a common legal approach. Second, the major English-speaking jurisdictions are mostly common law, with a rigorous doctrine of precedent. Technical legal terms evolve using transmission from judgment to judgment. Terms in English law, such as "equitable", are redolent with historical meaning. In contrast, in arbitration, that terminology becomes deracinated in a break with its legal heritage. The break is, however, not complete. Associations and connotations remain a shadowy

presence formed not by a uniform transmission process but rather framed in an expatriate discourse that looks at anglophone legal culture from an outsider's perspective. The resultant terminological limbo has left an approximate language, evocative in its associations, yet lacking precision.

In conclusion, it will be argued that uncertainties of English usage in arbitration facilitated the development of an arbitral lingua franca, although also at the expense of doctrinal rigour.

Keywords: Arbitration; lex mercatoria; legal terminology; international legal practice; English as a legal language

Biodata

Daniel Greineder is a Partner at Peter & Kim in Geneva. He trained at the London Commercial Bar and practised international commercial dispute resolution in Geneva and London. He has advised and represented parties to institutional and ad hoc arbitrations, English court proceedings, and contractual price reviews and mediations. His practice focuses on technically complex cases across different industry sectors, particularly disputes arising out of M&A transactions, construction projects, JVs and supply agreements in the energy industry. Daniel Greineder has often worked with lawyers from different common and civil law backgrounds, and many of his cases involve the application of foreign law. He is an English-qualified barrister and a Registered Foreign Lawyer in Geneva and was called to the Bar of England and Wales in 2005. Before entering the legal profession, he completed a doctoral thesis at Oxford University on the discourse of mythology in late eighteenth-century German literary theory.

The discursive management of disclosure within legal service provision for asylum seekers

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Abstract

Research has shown that asylum narratives have a mediated character: throughout the procedure, the asylum seekers' experiences are shaped, moulded and co-constructed by the participants of the asylum procedure (Maryns 2006; Bohmer & Shuman 2008) but also by those involved in preparatory meetings, which often take the form of legal consultations (Jacobs & Maryns 2020; Smith-Khan 2020). This latter context of immigration legal advice communication has been characterised as underexplored (Reynolds 2020), and the role of language assistance within these encounters remains particularly invisible. Our paper will address this gap by turning the analytical lens to the co-construction that happens "backstage", as we analyse the interaction between the participants in legal consultations. In doing so, we will draw on ethnographic data

(observations, audio-recordings and field notes), which were gathered in 2018-2019 at two Belgian law firms, specialised in immigration law. This paper will specifically focus on a mediated legal consultation that deals with a sensitive gender-related issue.

The sociolinguistic analysis exposes how the interpreter functions as an active interactant who takes on different roles, determines the process of turn-taking and heavily influences disclosure. The interpreter can also be seen to align with the authorities' viewpoint - or rather with the viewpoint of the asylum lawyers who anticipate the authorities' perspective for purposes of familiarising the client with this adversary stance (Smith-Khan 2019; Author & Maryns 2020). The local interactional dynamic echoes translocal categorisation practices at play in the asylum procedure through this alignment. Government officials often directly and repeatedly ask about sexual orientations, a practice that is bureaucratically motivated as gender-based cases require distinct institutional measures. A similar need for explicitness is tangible in the discursive moves of the interpreter, who aims to elicit unambiguous information. The analysis leads us to conclude that there is a certain vulnerability within the (interpreter-)mediated character of the legal consultation. This observation is counterproductive to the idea that an interpreter is used to overcome the linguistic vulnerability of asylum seekers who do not speak the institutional language. However, this is not a plea for minimising the use of interpreters within asylum encounters - as research has shown that a lack of linguistic support can have dire consequences. We do, however, want to highlight the importance of a) meta-communication about the role and responsibilities of the interpreter during the legal consultation and b) educating (future) lawyers on how to incorporate linguistic support into their interactional practices.

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Keywords: linguistic ethnography; legal consultations; asylum seekers; interpreter-mediated; interactional management

Biodata

Marie Jacobs is a sociolinguist and a member of the MULTIPLES Research Centre for Multilingual Practices and Language Learning in Society and the CESSMIR Centre for the Social Study of Migration and Refugees at Ghent University. She holds a master degree in Literature and Linguistics (also from Ghent University) and is currently writing a PhD under Prof. dr. Katrijn Maryns' supervision. Her project investigates the role of language in legal assistance for asylum seekers. More specifically, Jacobs

focuses on the interactional management of linguistically diverse lawyer-client consultations in the field of asylum law. She uses a linguistic ethnographic approach and has gathered authentic interactional data at law firms in Belgium. At the conference, she will present an analysis of the interpreter-mediated data from her corpus. Jacobs is also interested in the methodological aspects of qualitative research and pragmatic concerns about societal relevance and how to report back to research participants.

Digital tool kits for pragmatic analysis of legal language and the law

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Abstract

Based on the concept of the rule of law, the essence of Western legal traditions lies in the neutrality and generality of the scope of its system and legislation. The law is justified if it is verifiably general, neutral and impartial; it must be perceived as rational and meaningful. To that extent, it is governed by the concept of objectivity, the character of which lies in the ability to consider or represent facts, information, among others, without being influenced by subjective elements such as particular perspectives, value commitments, community bias or personal interests, among others. This aspect is particularly relevant concerning politically sensitive issues, such as migration. Traditionally the analysis of legal texts has focused primarily on a content-driven approach. Adopting linguistic methodologies rooted in pragmatics mark out a research field that goes beyond mere context analysis. This paper discusses the use of digital corpus/concordance based methodologies that enable us to gain a deep level understanding of the origins, evolution and change of legal thinking, the law and its terminology. These methodologies and tools allow us to examine the legal language in its textual context by making it possible for detailed searches of words, phrases and lexical/grammatical patterns in multiple contexts and among a large amount of electronically held texts, providing information on the data that is both quantitative and qualitative, empirical rather than intuitive. Corpus/concordance-based work can be purely descriptive and can also be used in discourse analysis (including critical approaches), particularly if combined with a diachronic linguistic and semantic analysis. It also has a heuristic function to the extent that the analysis of the material systemised in a corpus generates new knowledge, and algorithm-based analytical tools may bring up unexpected results. The study of legal language reveals the etymological, semantic and historical aspects of terms. This aspect equips us with a better understanding of how to adapt and use it differently in the present and future, which may be relevant, for example, in the context of legal language reforms, newly emerging bodies of law (e.g. environmental law) and judicial interpretation. A linguistic and terminological approach also contributes to a better comprehension of the law's conceptual evolution and socio-cultural content. This approach represents an important contribution to the study of the differences or similarities between legal systems. A better grasp of the origins and evolution of specific aspects or elements of the law or a legal system can contribute to a contextual approach for, among others, comparative law, legal translation or legal harmonisation projects.

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Keywords: Digital humanities; corpus linguistics and concordance methodologies; pragmatics; diachronic semantics; legal meanings.

Biodata

Caroline Laske holds graduate and post-graduate degrees in law from the University of Cambridge, linguistics and translation studies from the University of Birmingham, and a PhD in legal history from the University of Ghent. Her research activities as a university researcher and her work as a legal expert and specialist consultant for EU and international agencies have taken her across several fields. Today her interdisciplinary research lies at the intersection of law, history and language, applying linguistic analysis to study legal history & concepts, comparative law and translation. She currently holds a Heinz Heinen Fellowship at the Bonn Center of Dependency and Slavery Studies (D) within the Cluster of Excellence "Beyond Slavery and Freedom. Asymmetric Dependencies in pre-modern societies". She is also a research fellow at the Ghent Legal History Institute (B) and a lecturer at the UCLouvain (B).

Politeness on Trial: How differences between English and Japanese impact on court interpreter's choices of honorifics and polite expressions

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Abstract

Court interpreters are often compared to and expected to serve as `conduits', turning the source text into the target text in a simple `word-for-word conversion without any alterations. Many scholars have largely debunked this myth, and yet it still seems to prevail among (at least some) legal practitioners. Alterations by interpreters, however, are an indisputable fact and may be caused by a myriad of factors. Some of these may include something as obvious as differences between the source language and the target language, and some language pairs may require more alterations than others. Politeness may be an instance where such differences, and as a consequence, interpreter's alterations, are most visible. The Japanese language boasts a significantly complex system of honorifics (Keigo), which can be largely divided into three categories:

teineigo (`polite expressions,' used mainly by speakers is not too formal interactions), kenjogo (`humble expressions,' whereby the speaker talks humbly about themselves and people in their circle) and sonkeigo (`honorific expressions,' whereby the speaker talks with a higher level of respect about their interlocutor and those in the interlocutor's circle). This aspect also extends to the `regular expressions' (futsutai) used in less formal situations. Politeness in Japanese can be manifested in a plethora of syntactical and lexical spheres, such as verbs and verb forms (i.e. `taberu' [to eat] vs `meshiagaru' [honorific] and `itadaku' [humble]), nouns (`haha' for `mother' [neutral or humble] or `okasama [honorific]), or even personal pronouns (`watakushi,' `Watashi,' `boku' or `ore' among others for the first person singular, and `anata,' `Kimi,' or `omae' among others for the second person singular). However, the rules of usage of all these forms are not as rigid and give speakers, including interpreters, a significant level of flexibility on which form to use in a given situation. This discussion means that, when dealing with different realities of the courtroom discourse, the interpreter needs to choose the form which would be most appropriate in a specific situation, taking into consideration the persons involved in the discourse and the relationship between them, the age, gender and social status of the speakers, as well as many other factors that can impact on the courtroom discourse. Therefore, this paper will examine what forms court interpreters in Japanese criminal court proceedings choose in the English-to-Japanese rendition when interpreting the defendant's or a witness's testimonies during court hearings. Reasons behind such choices and their potential impact on the recipients of the target text (i.e. judges, lawyers and jurors) will also be discussed. The data presented will include my findings in interpreter-mediated criminal trials observed across Japan, including district courts in Chiba, Naha, Tokyo, and Osaka. One of the main issues discussed will be the agency of the court interpreter, based on the argument that in the case of English-to-Japanese translation, not making a choice is not a viable option.

Keywords: court interpreting, politeness, Japanese-English translation, equivalence

Biodata

Jakub E. Marszalenko is an assistant professor at the Department of International Japanese Studies, Nagoya University of Foreign Studies (NUFS), Japan, researching legal interpreting and translation. In his research, J.E. Marszalenko focuses on the use of English in interpreter-mediated criminal proceedings in Japan. His latest research project zeroes in on discretionary choices inevitably made by court interpreters working between Japanese and English. J.E. Marszalenko's conviction dictates this focus that court interpreting is a highly complex process, and accuracy and equivalence cannot be viewed in simplistic "literal translation" terms. J.E. Marszalenko also serves as a legal interpreter at district courts, prosecutors' offices, police stations and bar associations. He has interpreted in numerous criminal trials (including 'saiban'in,' or lay judge, trials dealing with graver crimes) as well as multiple police and prosecutorial investigations. He has also worked as an interpreter for Japanese-speaking witnesses giving testimony in an arbitration held at the International Chamber of Commerce (ICC), Singapore.

In Search of the basic unit of a legal practice

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Abstract

The paper aims to address a `basic unit' of the legal domain described as linguistic `practice'. Hence, it tackles what a research object is when analysing legal practice in pragmatist terms. As a response, the authors refer to the notion of a legal situation. The research includes metatheoretical remarks on the consequences of committing to legal analyses and comments on the fruitfulness of discussing what a `basic unit' of the legal practice is. In the recent philosophy of law, there is a shift in perceiving law as a linguistic practice, tending to give primacy to the pragmatics of law over the semantics. However, there is no agreement as to what exactly the object of such analyses is. Since Hart (1961), attention to the first-order theories of law has been shifted to the practice of what a group of legal officials does (a `practice theory of rules). However, it is unclear whether these acts are understood as mental states, facts, plans, conventions, or specific utterances, emanated in legal text. The hypotheses and research questions are as follows: RQ1: What would be a basic phenomenon of law understood as a linguistic practice? RQ2: What are the methodological consequences of committing oneself to the specific answer to the RQ1? H1: Particular instance of the legal practice - a legal situation - is to be identified by a class of practical reasons available to the participants of this situation within a specific time and space, as a complex of normative attitudes and facts. H2: Standpoint as to the unit of legal practice implies a certain standpoint as to the existence or character of the normativity of law (robust or formal). The authors introduce a reasons-oriented method of analysing legal situations. Following Brandom (1994), the legal practice is to be understood as a particular instance of autonomous discursive practice [first proposed by Dybowski (2018)]. In this view, participants of the legal practice are viewed as reasonable, intentional, and equipped to use legal concepts to form their beliefs or motivate actions. Summary of the main conclusions: 1) Legal situations enable linking the concepts of reasons and legal norms, situating them from an acting agent's factual perspective. 2) The pragmatist thread of the paper exposes the fact that the participants of a legal situation remain in relation with other participants of the practice, belonging to the network of normative social relationships construed by other legal situations. 3) Normativity of law rests on the mutual normative attitudes of the participants of the practice.

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Keywords: legal practice; legal situation; legal norms; reasons; normativity

Biodata

Wojciech Rzepi'nski is a PhD candidate in the Department of Legal Theory and Philosophy at Adam Mickiewicz University in Poznan, where he completed his master's degree in law (2018). His master's thesis in law, entitled "The problem of the linguistic meaning of the legal norm in Polish jurisprudence" (supervisor: Professor Marek Smolak), discussed the legal norms' semantics. From 2020, he is a Principal Investigator in the National Science Center's (Narodowe Centrum Nauki) grant PRELUDIUM 17 2019/33/N/HS5/01418. Wojciech Rzepi'nski has attended several national and international academic conferences (including the 29th World Congress of the Association for the Philosophy of Law and Social Philosophy) between 7th and 13th July 2019 Lucerne, Switzerland). He co-founded the Zygmunt Ziembi'nski Law Theory and Philosophy Students' Association at his Alma Mater and from 2015 to 2018, he served as the President of the Association.Weronika Dziegielewska is a Ph. D. candidate in the Department of Legal Theory and Philosophy at Adam Mickiewicz University in Poznan, where she completed her master's degree in law (2018). Her master's thesis in law, entitled "Contemporary concepts of the normativity of law versus the notion of validity in Poznan school of legal theory" (supervisor: Professor Marek Smolak), was a discussion regarding the issue of the normativity of law, presented in the perspective of its contemporary interpretations. In 2019, she finished her bachelor's studies in philosophy at Adam Mickiewicz University with a BA thesis concerning the relationship between normativity of law and intentionality. Weronika Dziegielewska has attended several national and international academic conferences (including the 29th World Congress of the Association for the Philosophy of Law and Social Philosophy, which took place between 7th and 13th July 2019 in Lucerne, Switzerland). From 2020, she is a Co-investigator in the National Science Center's (Narodowe Centrum Nauki) grant PRELUDIUM 17 2019/33/N/HS5/01418.

The need for caution in trusting folk intuitions about perjury

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Abstract

Purpose statement: I investigate: (i) to what extent do folk ascriptions of lying differ between casual and courtroom contexts? (ii) to what extent does motive (reason) to lie influence ascriptions of trust, mental states, and lying judgments? (iii) to what extent are lying judgments consistent with previous ascriptions of communicated content? Research problem: Do laypeople think that we communicate different contents with the same utterance in casual and courtroom contexts? If yes, what impact does this have on perjury ascriptions? Juries should assess what is a lie in a courtroom setting rather than a casual context. State of the art: Marmor claims that, roughly, implicatures are not inferred in courtroom contexts. By contrast, Bianchi claims they are inferred but disbelieved. The Supreme Court in the Bronston judgment claims that implicatures are not inferred, yet juries mistakenly treat these not inferred implicatures as lies. Who is right? I perform an empirical investigation. Hypotheses: Following the Supreme Court's Bronston judgment, I expect: (i) averaged lying judgments to be similar in casual and courtroom contexts; (ii) motive to lie to influence levels of trust, mental states ascriptions, and patterns of lying judgments; (iii) retrospective judgments of lying after being presented with the state of the world, to be inconsistent with previous judgments

of communicated content: participants hold the protagonist responsible for content she did not communicate. Description of the methods and tools: I performed a survey experiment on the Qualtrics platform. Participants Ire recruited through Amazon Mechanical Turk (N = 630). I employed standard Likert scales and forced-choice questions.

Results: I found that: (i) average lying judgments are similar in casual and courtroom contexts; (ii) motive to lie decreases trust ascription and increases lying judgment; (iii) judgments of lying are inconsistent with previous judgments of communicated content: participants hold the protagonist responsible for the content they did not communicate (effect size of the differenced = .694). Conclusions: Perjury ascriptions are inconsistent. The Supreme Court's worries expressed in the Bronston judgment are well-founded.

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Keywords: perjury; trust; indirect answer; witness cross-examination; scalar implicature

Biodata

Izabela Skoczen obtained her PhD from the Faculty of Law and Administration at the Jagiellonian University in Krakow. In 2017 she took up employment with the Krakow Faculty of Law and Administration. She is the author of some papers on the intersection of legal theory and philosophy of language, some of which have been published in journals such as the International Journal for the Semiotics of Law. Her book entitled 'Implicatures within legal language' appeared in the Springer Law and Philosophy series in 2019. She is currently cooperating on two projects connected to legal interpretation. The first project is in cooperation with Francesca Poggi from the University of Milan. The second project is in cooperation with Dr Benedikt Pirker. It investigates experimental accounts of interpretation in international law. The project is held at the University of Fribourg (Switzerland). Izabela is a member of the interdisciplinary Jagiellonian Centre for Law, Language and Philosophy and the Guilty Minds Lab at the University of Zurich.

How and why do courts quote? Quotations and References in the verdicts of the federal constitutional court (BVerfG) and the Supreme Court of Canada (SCC)

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Abstract

Verdicts include numerous references and quotations of different sources - for instance, verdicts of hierarchical superior courts and literary texts. Including the contents of the former may not astonish since courts strive to demonstrate their integration in legal dogmatics and the coherence of their decision-making. In contrast, the use of other sources than legal texts may indeed surprise: A significant proportion of the quotations found in verdicts refer to sources that have neither any legal authority nor are legally binding in any way. Jestaedt (2009, 150) considers the quoting custom of courts a substitute for case-appropriate processing: Using someone else's words can, among other things, economically borrow reasonings (see also Holzleithner & Meyer-Schönberg 2000) and also the source's authority. The current research canon offers (more juridical than linguistic) functional perspectives based on source qualifications - mainly following the question, who is quoted and what motivation can be concluded from the choice of a source. Assumptions about the functionalisation of quotation and references have not been linguistically anchored yet. The present study offers a focus shift and analyses the How of Quoting: Can quotation and reference embedding structure give linguistic cues about their functionalisation? Although it has not been proven for the text type of verdicts, state of the art suggests strong indications for that: Different quoting types and their structures are related to different functions - in other words, a direct quotation has other functions than, e.g. an indirect quotation. The instrumentarium used to approach the research question includes semantic criteria (as in the citation analysis of Muravcsik & Murugesan 1975) and syntactic criteria to analyse transformation processes of original wordings into re-using (see also Partee 1973). The semantic analysis puts the content of the quotation and the quoting text into relations and situates the semantic relation on dichotomous poles such as "evolutionary and juxtapositional" (Muravcsik & Murugesan 1975). The syntactic analysis applies a structural typology - showing the different rhetorical effect of different quotation structures. As the current results demonstrate, the manner of quoting does not only depend on different speech acts in the verdicts but also varies depending on the legal form: While civil law verdicts (BVerfG) prefer condensed references, common law verdicts (as the SCC) tend to integrate foreign contents literally and extensively. The study, therefore, offers a comparative legal perspective using linguistic tools. With quotations being one of the most explicit expressions of textual linkages, the study provides an analysis towards an understanding of the development towards a globalised transjudical communication: The increasing use of quoting is a tangible manifestation of the increasing relevance of a transjudical cross-fertilisation (see also Slaughter 1995, 99f.). Analysing the structural manner of how courts integrate other sources by quoting gives indications about how they are self-positioning in the legal network.

Keywords: Verdicts; Quotation Analysis; Transjudical Communication; Legal Comparativity

Biodata

Joy Steigler is a last year PhD candidate at the WWU Graduate School for Empirical and applied linguistics. In my PhD project, I am analysing the impact of language attitude on credibility attribution in written witness statements. Parallel, I am a research assistant in the interdisciplinary DFG collaborative research project "Law and Literature" in the subproject "How and why do courts quote?". Within this project, I i.a. authored one encyclopedia article about legal linguistics and another about "quotations" combining a legal and a linguistic view. (Both will be published in Mai 2021 https://www.uni-muenster.de/Promotionskolleg-Sprachwissenschaft/Personen/Promovierende/Steigler.html; https://www.uni-muenster.de/SFB1385/personen/steigler.html

The Pragmatics of evidence discourse: arguments from ostension

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Abstract

The theory of legal argumentation traditionally focuses on the arguments given by decision-makers to justify their decisions. Some arguments concern the interpretation of legal provisions (Walton et al. 2020), other arguments concern the evaluation of evidence (Anderson et al. 2005). These arguments are typically found in the written opinions of judges. There is less attention, in the literature, to the arguments that parties advance in vivo, that is, at trial or in some part of the proceedings. These arguments present some particular features that are worth studying. The first feature is that they are usually presented orally in the interaction between participants. I propose to call the "Pragmatics of Evidence Discourse" to study such arguments when related to evidence (cf. Tiersma & Solan 2012, part VI). The parties argue, before the decision-makers, about the evidence and the inferences they wish to draw from it. The second particular feature is that such arguments about evidence often refer to something present in context. Parties present evidentiary items to the fact-finders by exhibiting things, showing pictures, displaying data, introducing witnesses, among other things. Fact-finders are supposed to look at what is shown, hear testimonies and the like, and draw the appropriate inferences. These inferences are often suggested by using arguments from ostension as "invitation to inference" (Marraud 2018), by showing the relevant items to the fact-finders and suggesting how to process them. The use of indexicals and demonstratives, as belonging to deixis more generally speaking (Levinson 1983, ch. 2) is instructive in this respect. In those legal contexts, ostension is not performed for definitional purposes (as "ostensive definitions" are) but for probatory purposes. The litigated facts can be proven by presenting evidence that supports the relevant factual claims. This aspect is not just a possibility: the process of juridical proof typically requires some ostensive act, consisting of the presentation of evidence to prove the

relevant claims. In this sense, evidentiary items are susceptible to being shown, exhibited, or indicated by the parties to the fact-finders in the relevant context. Nevertheless, evidence by itself does not prove anything. From the evidence presented to the probatory conclusions one wants to draw, one has to construct evidentiary arguments. Evidence without inference is blind, and inference without evidence is void. The present work is about the structure and justification conditions of arguments from ostension in such contexts. My working hypothesis is that they always have some implicit premise that leads to the relevant inference. In order to assess them, one must identify that premise.

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Keywords: argumentation; deixis; evidence; indexicality; ostension

Biodata

Giovanni Tuzet is a Full Professor of Philosophy of Law at Bocconi University in Milan, Italy. He studied law and philosophy in Turin and Paris and wrote his PhD dissertation on C.S. Peirce's theory of inference. His areas of interest include evidence, epistemology, pragmatism, argumentation theory, philosophy of law and economic analysis of law. His publications include: La prima inferenza. L´abduzione di C.S. Peirce fra scienza e diritto (2006), Dover decidere. Diritto, incertezza e ragionamento (2010), La pratica dei valori. Nodi fra conoscenza e azione (2012), Filosofia della prova giuridica (2013, 2nd ed. 2016), La giustificazione della decisione giudiziale (2019, 2nd ed. 2020, with D. Canale), The Planning Theory of Law. A Critical Reading (2013, co-edited with D. Canale), The Italian Pragmatists. Between Allies and Enemies (forthcoming 2020, co-edited with G. Maddalena) and numerous articles in international journals. He is of the editors of Philosophical Foundations of Evidence Law (Oxford UP, expected 2021, co-edited with C. Dahlman and A. Stein).

Pragmatic features of Italian court proceedings

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Abstract

Clarity of court proceedings is an essential tool for both the efficiency and the quality of a modern judiciary. However, the language in court is often obscure. This issue can

probably be referred to any legal system (cf. e.g. Kimble 2006), but it is particularly problematic in Italy due to a longstanding tradition that encourages unduly verbose texts (cf. e.g. Mortara Garavelli 2001). For purposes of addressing this complex question, a group of experts was appointed in 2016 by the Italian Minister of Justice to improve clarity and concision in court proceedings (cf. for the outcomes Mura and Visconti in press). A further national project, the ClearAct PRIN, was funded in 2018 by the Ministero dell'Università e Della Ricerca to create a new resource for clear and effective writing of court proceedings. The specific objectives of the project are: (i) the collection, for the first time in Italy, of a database of counsel documents, relating to proceedings both by the Italian Supreme Court (Corte di Cassazione) and by a set of local Courts and Courts of Appeal; (ii) the qualitative study of the pragmatic features and the rhetorical and argumentative structure of these texts. The purpose of the present paper is to report on the first results of this project. Firstly, using the database specifically designed for the project, a ricorso in appello (appeal) will be examined in its pragmatic functions; this is a complex document, written by the council, starting with the exposition of the factual and legal background for the case and concluding with a request to the judge. The interplay of narrative, argumentative and persuasive functions is studied concerning the composite nature of these documents: Who are the recipients? How are the many voices rendered that echo in these documents? Secondly, the subsequent judgment of the appellate court is examined in its narrative, argumentative and performative functions. The comparison highlights how, in any trial, each act produces effects on the subsequent phases, with consequences on the speed and effectiveness of the hearings: thus, a reasoned decision usually carries clear appeals and clear appellate judgments. Avenues for further research are highlighted, such as an enlargement of the scope of the investigation to other judicial systems and international courts, as clarity and concision have bearings also in the realm of international judicial cooperation.

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Keywords: Court proceedings; pragmatic features; clarity; concision

Biodata

Jacqueline Visconti is a Professor of Italian Linguistics at Genoa University and Honorary Research Fellow of Birmingham. Her main area of research concerns comparative analysis of legal texts and legal translation within the EU context, as reflected in her participation in the Rete di Eccellenza dell'Italiano Istituzionale (European Commission), the Società Italiana per la Ricerca in Diritto comparato, the Verein Zur Förderung der Europäischen Rechtslinguistik and her publications in the

past twenty years (cf. e.g. her editing of the Gruyter Handbook of Communication in the Legal Sphere in 2018). Her research programme has attracted large-scale funding, notably by the Fonds National pour la Recherche Suisse, the European Commission, the British Academy, the Accademia dei Lincei, the Deutscher Akademischer AustauschDienst, the European Science Foundation. At present, she is Principal Investigator in the Italian MUR Ministry funded project "Clarity in Court Proceedings (ClearAct): a new database for scholars and citizens". In 2016 she was appointed by the Italian Minister of Justice as the only linguist in a commission for improving clarity and concision in court proceedings.

Legal Translation: Pragmatic Instrumentality of Grammatical Equivalence or Are 'Misfeasance' - 'Malfeasance' - 'Nonfeasance' Semantic Identities?

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Abstract

The report features various contexts of legal negation that are law-wide and unrestricted by any legal genre, mode, or settings starting from the administration of justice to the implementation of international accords. To this end, sets of English legal terms are provided whose negative meanings are shaped by prefixes, i.e. morphologically, such as `misfeasance - malfeasance - nonfeasance'. The negative terms are cognate and thus could be expected to have similar, if not identical, meanings. A cursory glance cast at such rows of cognate negative terms will surely attribute them to semantic identities since negative prefixes they are shaped with belong to common means of expressing negation in general English. However, resultant meanings for each of them turn to be deviating from the anticipated ones. Therefore, this irregularity in what grammatically would be expected to be synonymic identities stipulates morphosemantic and contextual analyses of the negative prefixes studied. A research problem is centered around challenges of reaching equivalence in legal English-Russian translation where the semantic potential of cognate technical terms of law from current legal usage conveying negation via negative prefixes overlaps with that of legal concepts turning nontransparent for meaning. Such a combination of paired semantic overlaps can generate blurred meanings causing legal translation hurdles. The state-of-the-art in the legal, linguistic studies of negation is by far not advanced. Negation as a lexical and grammatical category has always drawn many language philosophers, logicians, comparative linguists, and grammarians. Many scholars sought to describe negation forms in English diachronically and synchronically. However, the synonymic relations among prefixal negation forms lack scholarly attention, specifically the negative forms shaped by prefixes used across the bulk of technical terms of the law. The research questions are largely centred around the question `Does prefixal negation negate in legal texts?' An attempt is made to explore cases of cognate lexemes like the above mentioned plus other pairs such as `unstatutory - nonstatutory'; `misdo - undo' and, specifically, triplets such as `inadvisable - unadvisable - ill-advised' used throughout legal texts. Research findings indicate partial synonymic relations or the lack thereof in

the cited examples marking high technicality - both linguistic and legal - of decoding the conveyed sense where negative meanings fluctuate from rejecting, banning to disapproving and further within the negation range. The semantics of negation in the legal languages are believed to represent a multidimensional research topic whose challenges overlap with pragmatics, grammar semantics and syntax-semantics.

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Keywords: pragmatics; legal translation; semantic identity; grammatical equivalence; prefixal negation

Biodata

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