Introduction: The Contribution of Empirical Approaches to Law and Language Studies

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Abstract

Based on a thematic area that examines empirical approaches in law and language studies, the present special section assembles three exemplary contributions outlining the possible dimensions of how empirical work can contribute to language and law. Some authors of these contributions explore cross-linguistic empirical work on communication between police and victims, witnesses and suspects, and the impact that linguistic and cultural differences can have; other authors utilise a corpus-based approach, which is combined with terminology studies to gain robust empirical data on terminological variation both within one language and inter-lingually; and yet other authors do experimental research, testing the claims of different theories on legal interpretation as to whether legal interpretation fundamentally differs from the ordinary understanding processes of language. These contributions thus illustrate the various ways in which all of these lines of research are able to complement existing research, open up new lines of inquiry and question or confirm existing assumptions.

Keywords

empirical research, language and law, corpus linguistics, experiments, translation

1. Introduction

In September 2021, the 5th General Conference of the International Language & Law Association (ILLA) took place in Alicante. As part of the various thematic areas represented at the conference, the present authors convened a panel for two half-days on "Experimental approaches to language, law and human rights." We had already received a broad variety of submissions during the call for papers, and so we eventually decided to be inclusive rather than exclusive, or to put it differently, to pragmatically enrich the term "experimental" in our title to encompass broadly "empirical" approaches. The resulting sessions in Alicante were intriguing and, after subsequent discussions with participants, ILLA colleagues and the editors of the *International Journal of Language & Law*, the idea of the present special section was born. In this section, we want to showcase selected reflections on and applications of empirical approaches to law and language studies. The goal is not to present these approaches as a panacea or a revolution, but rather to show how they can provide new tools to examine old questions and enable us to question or confirm our existing assumptions.

In this brief introduction, we first set out the context of how various empirical approaches emerged and what role they play in law and language today. Subsequently, we introduce Filipovic's article on cross-linguistic empirical work, Clay's paper, which relies on corpus work and terminology studies, and Domaneschi, Poggi and Marocchini's article, which presents a study in the area of experimental (pragmatics) approaches, all in the context of law. We do not pretend that this special section has (or even should have) achieved exhaustiveness with regard to the multitude of possible empirical approaches in language and law studies (our frequent switching between "language and law" and "law and language" is deliberate). Nonetheless, we hope that it has achieved exemplariness – in that it presents to its readers interesting examples of what can be done and how it can be achieved. Ideally, it might even inspire thoughts about how it could be done differently in the future.

Our particular thanks go not only to the authors of this special section and the editors of the *International Journal of Language & Law*, but also to the three peer reviewers we asked for support in the preparation of this special issue – we greatly appreciate your diligent work, which has been tremendously helpful in the production thereof.

2. Context

Each of the papers included in this special section represents an existing tradition of research, although they may showcase a new method of using existing methodology or a new question tackled using existing tools. Let us briefly provide some examples of the context in which these studies can be placed.

As a first example, cross-linguistic empirical work in the field of language and law has already been undertaken for decades. In a seminal study that appeared twenty years ago, for example, Berk-Seligson (2002) looked at the impact of court interpreting on witness testimony and found a strong influence regarding features such as hesitations or hedges. Interpreters, as could be shown, were able to change the characteristics of the original speech, making it appear powerless or powerful, in contrast to the original. Filipovic's work broadens these reflections to include, for example, effects on witness memory.

Corpus-based work has made a prominent entrance in the 2000s in United States law. After scholars begun to explore the potential of corpus linguistics to provide supportive arguments in the interpretation of legal texts (Solan, 2005; Mouritsen, 2010), a 2011 judicial opinion relied for the first time directly on corpus linguistics, at least in part, with a judge putting forward an alternative reasoning for the majority's holding in the case based on corpus work.[1] Ever since, there has been vivid debate about the possible uses and limitations of corpus linguistics in the courts (see, for example, Solum, 2017; Lee & Mouritsen, 2018; Goldfarb, 2021); indeed, even the Supreme Court had reflected on whether it should use corpus linguistics (and to what extent it had already done so) to assess how the term "foreign tribunal" had previously been interpreted (Philipps & Egbert, 2022). Of course, there are many more potential uses of corpus-based work in legal contexts, as Clay's article illustrates.

Finally, experimental work in law in general (which is not limited to language-related questions) has only emerged in the last decade and has typically been given the label of experimental jurisprudence (Solum, 2014). A variety of topics have been covered, such as mental states like recklessness, consent or causation (Tobia, 2022). With specific regard to language and law, research on "ordinary meaning", a key concept in many if not all legal orders for the purposes of legal interpretation, has taken an experimental turn. What ordinary meaning signifies is far from uncontroversial, with a variety of competing legal theories in existence. The most common justification for ordinary meaning relates to rule-of-law concerns, namely – put simply – that the words on the page constitute what a legislature has enacted, so that judges should not be allowed to alter these words through interpretation at their own discretion. Survey experiments have emerged in this context as a valuable tool. Despite this, even scholars relying on such surveys caution that such surveys – which will, for example, ask participants about the ordinary meaning they ascribe to certain words – cannot easily tell us what the law should be, but rather constitute a tool to gain insights into the truth of empirical claims made by legal theories (Tobia, 2022, 791). For example, experimental approaches have been used to assess the reliability of claims about the ordinary meaning of words based on expert intuition, dictionaries or even corpus linguistics (Tobia, 2021). Moreover, they

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[1] *In re the Adoption of Baby E.Z.* 266 P.3d (Utah 2011).

have been used to test the applicability of pragmatics-based typologies to legal interpretation (Smolka & Pirker, 2021; Pirker & Skoczeń, 2022). Domaneschi, Poggi and Marocchini follow up on the latter type of questions with their pilot study in this special section.

3. The Articles

Having set out the theoretical background, let us briefly introduce the studies explored in this special section.

In her article "From the Crime Scene to the Language Lab and Back: Cross-Linguistic Empirical Research on Language and the Law and Its Practical Applications", Filipovic aims to show how different theories and methodological approaches within linguistics and translation studies can support our understanding of when and for what reasons problems in legal communication and translation arise. The focus lies on empirical studies of communication between police and victims, witnesses and suspects and the impact that linguistic and cultural differences can have. By means of examples, the author demonstrates that translating the description of an action from Spanish to English can, for instance, lead to a denial of intentionality being lost, or that the memory of witnessed events may be affected by a specific language. As a practical consequence of her research's findings, the author suggests, as an example, improvements in the training of interpreters regarding insults that can play a crucial role in police investigations. Indeed, the author provides a fascinating scenic tour from the crime scene to the (language) lab and back with many interesting takeaways for research as well as practice.

A very different quantitative approach is presented by Clay. In his paper "A Corpus-Based Approach to Examining Terminological Variation in EU Law", Clay works with corpus linguistics and terminology studies to develop a novel approach. The goal is that observers can gain robust empirical data on terminological variation both within one language and inter-lingually. In his field of research, EU (migration) law, he presents a pilot study that focuses on migration terminology in English and Italian EU legal texts. The author aims to capture synchronic and diachronic terminological variation and relies on a purpose-built, sentence-aligned parallel corpus in both languages of around 1.5 million tokens. He develops his own measurement of weighted terminological distance. As a result, the author notes a great deal of variation and instability within both languages at the intralingual level, despite a reduction in the mean number of terms per concept for each language over the years. In his inter-lingual assessment, the author reaches the conclusion that there has been significant terminological convergence between the languages, and increasingly so over recent times. Clay provides several potential explanations for this development, such as the lack of effective efforts to ensure con-

sistent terminology or the increasing maturation of the field of EU migration law. Overall, it is a fascinating and novel use of a quantitative, corpus-based approach to provide empirical evidence that can be used to question or confirm existing assumptions about the development of terminology in a given legal field.

Domaneschi, Poggi and Marocchini conclude the special section with yet another fundamentally different empirical approach in the form of experimental research. They present a range of theories on legal interpretation, which make different claims as to whether legal interpretation fundamentally differs from the ordinary understanding processes of language, and what this means for pragmatics and pragmatic knowledge in studying interpretation. Against this backdrop, they design a pilot study to compare the way in which people with legal training at university level and people with nonlegal training at university level interpret both nonlegal and legal text regarding pragmatic meanings. Their key research question ponders whether legal experts will be more cautious than other participants in interpreting texts. Put simply, participants had to rate to what extent they agreed or disagreed with texts paired randomly with different (more or less pragmatic-infused) interpretations. The result is somewhat surprising: the authors note that legal experts do not exhibit more caution to ascribe pragmatic meanings to legal texts than laypersons, but do so in the context of non-legal texts. The authors provide certain caveats and limitations to their research design, but nonetheless argue that at least the provisional conclusion can be drawn that legal training does not seem to make one less likely to attribute pragmatic meaning to legal texts. Overall, this would support the case that pragmatic theories of ordinary communication are useful to explain and predict legal interpretation, as it appears that legal experts approach legal interpretation much in the same way as ordinary interpretation. The article is an important demonstration that empirical methods can also be used to bolster theoretical claims in a way that other methods perhaps cannot.

With this, we leave you to further explore the variety of empirical approaches presented in this special issue, as well as their contributions to language and law studies, and hope that we have kindled your interest in this area of research.

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