Language and Legal Interpretation: How Flexible the Law Can Be

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Abstract

What is the relationship between language and interpretation of the law? How can the law be affected by different cognitions and understandings? The concept of linguistic relativity suggests that a particular speaker's language influences their cognition or their worldview. While this concept has been adopted and widely applied in other domains, relativism in law has never been adequately outlined and described, even though this hypothesis is more applicable in the legal profession than in any other field. This paper uses the concept of linguistic relativity and sees legal language as a special language game in order to demonstrate that the law is an interpretative discipline.

The theory of language game—including Wittgenstein's notion that words can take various interpretations and meanings in different languages—will be taken into account. In practice, particular laws can be interpreted differently in different jurisdictions. This paper discusses cases that support the validity of this perspective. In the conclusion, the lessons learned from the cases will be presented. It is clear that both linguistic relativity and theory of language games influence interpretation of the law in some ways.

Keywords: linguistic relativity, theory of language games, law, legal interpretation.

1. Introduction

The influence of language on cognition or the world view of humans can be traced back to the beginning of thinking. Because language and

thought are intimately related, some close connection has been suggested.[1] This concept inspired many thinkers to consider whether manipulating language could influence thought. Does language have its own meaning, or is it just a tool? While the concept of linguistic relativity has been adopted and widely applied in other domains, relativism in law has never been adequately outlined and described, even though this hypothesis is more apt in the legal profession than in any other field. This omission is regrettable because the rules concerning legal interpretation are an assorted mixture of authority principles, maxims and conventions, creating sets of complex dilemmas.[2] Therefore, it is intriguing to explore the relationship between language and interpretation of the law.

Here are some points presented on the relationship between language and interpretation of the law:

- Poscher asserted that ambiguity and vagueness are the major challenges of legal interpretation.[3]
- Holmes wrote that a word or a phrase contains several meanings, as evident in dictionaries. He notes that one has to consider the sentence in which the word or phrase stands to determine which meanings can be applied to a given situation.[4]
- Smits claimed that the law, just like religion and literature, is an interpretative discipline; for example, written contracts, treaties, and legislative statutes can be ambiguous or vague so that room for interpretation is guaranteed. Furthermore, interpretation usually occurs implicitly in contract laws, even without the associated parties to the contract realizing it. Parties to a contract may differ explicitly on what they agreed on.[5]

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[1] Jordan Zlatev and Johan Blomberg, "Language may indeed influence thought," *Frontiers in psychology*, 6, 1631 (2015), 1.

[2] Christopher Hutton, *Language, meaning and the law*, (Edinburgh University Press, 2009), 1-81.

[3] Ralf Poscher, "Ambiguity and Vagueness in Legal Interpretation," *Oxford Handbook on Language and Law*, eds. Lawrence Solan and Peter Tiersma (Oxford University Press, 2011).

[4] Oliver Wendell Holmes, "Theory of Legal Interpretation," *Harvard Law Review*, 12 (1899), 417.

[5] Jan M. Smits, "The Law of Contract," *Introduction to law*, eds. Jaap Hage and Bram Akkermans (Springer, 2014), 62.

- Vermeule argued that in institutional legal interpretation, the question should never be: how should a word or a phase be interpreted? Instead, the question should be: what procedures could an institution use to interpret the text?[6]

In the following sections, the concept of linguistic relativity will be introduced first, and then the meaning of language in law will be explored. Also, the idea of legal language as a special language game will be discussed. Lastly, as evidence, several cases will be brought up for the analysis.

2. Concept of Linguistic Relativity

The concept that language influences how people perceive the world has historically been referred to as the theory of linguistic relativity, the Whorfian's or the Sapir-Whorf hypothesis.[7] According to Everett, the linguistic relativity hypothesis refers to a principle suggesting that a particular language a speaker uses influences their cognition or their worldview.[8] In other words, patterns of thought or people's views vary and are relative to the language they use. For instance, Whorf claimed that the Hopi language has no words that describe time (such as months or days), and thus the natives perceive the concept of time differently from English-language speakers. Similarly, the English language uses a similar term for wind-driven snow, slushy snow, on-the-ground snow, melting snow, and snow that resembles ice. In contrast, the Eskimos have different words for all the many forms of snow, suggesting that their perspective of snow is different from English speakers.[9]

Duranti writes that linguistic relativity began as a concern for proper grammatical system representation that could not be described

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[6] Adrian Vermeule, *Judging under Uncertainty an Institutional Theory of Legal Interpretation* (Harvard University Press, 2006), 1.

[7] John A. Lucy, "Sapir-Whorf Hypothesis," *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), ed. James D. Wright (Oxford: Elsevier, 2015), 903-906.

[8] Caleb Everett, *Linguistic Relativity Evidence Across Languages and Cognitive Domains* (Walter de Gruyter, 2013), 1-8.

[9] Benjamin Lee Whorf, Language, *Thought and Reality: collected papers of Benjamin Lee Whorf*, eds. John B. Carroll, Stephen C. Levinson and Penny Lee (The MIT Press, 2012), 14.

using various European languages.[10] From his point of view, linguistic rules and guidelines are often unconscious, and it can be a challenge to exploit the logic of linguistic frameworks and change it to one's liking.[11] In this regard, linguistic relativity can be viewed as a way of evaluating the power that words have over people or groups. People rely largely on public code to express their unique experiences that they have zero or little control of. This view is shared by Everett. He first asserts that it is often challenging to transfer a thought or a concept between languages even if a person can speak all languages fluently; one or two concepts will be missed even if the translation is carefully deliberated.[12] Also, he noted that even a single phrase might be a daunting task to translate into many languages, as certain dialects tend to lack certain words.[13] The notion that language influences thought is evident in attempts to translate a joke. Attempting to translate a joke is a near-impossible task, as it is difficult to capture the foundational concept of humor interaction in a target language; a joke ceases to be funny if it must be explained. This alone implies that the satirical facets of each interaction's context cannot be fully interpreted since translation usually involves explaining a set of lexical elements in relation to other sets.

According to Boroditsky, humans interact using an immense variety of languages. Each dialect varies from the others in countless ways (from apparent variations in vocabulary, semantics, and pronunciation to more nuanced variances in grammar and syntax).[14] For instance, to assert in English the sentence, "The goat ate the banana leaves," would require the speaker to include tense in constructing the sentence to provide the concept of time. In Indonesian and Mandarin, providing the concept of time is often optional. Conversely, in the Russian language, the speaker must include the tense, the gender of banana-leaves-eater, and the size of the banana leaves eaten. On the other hand, in the Turkish

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[10] Alessandro Duranti, *Linguistic Anthropology (Cambridge Textbooks in Linguistics)* (Cambridge University Press, 1997), 51-64.

[11] Ibid, 30-33.

[12] See note 8, Everett, *Linguistic Relativity Evidence Across Languages and Cognitive Domains*.

[13] Ibid.

[14] Lera Boroditsky, "Does language shape thought? Mandarin and English speakers' conceptions of time," *Cognitive psychology*, 43(1) (2001), 1–22.

language, the speaker would have to indicate whether eating banana leaves was hearsay or witnessed.[15] In the examples Boroditsky presented, it is evident that every language is guided by specific rules that the speaker must abide by, subsequently influencing thought. In other words, these quirks of language influence cognition.

Furthermore, Bowerman argues that languages vary greatly in their description of spatial relations. Such differences have been observed in Spanish, Korean, Finnish, and English. In English, there is a difference between placing objects into vessels ("putting a cup inside the closet" and "placing a lid on the pot") and placing items on surfaces ("putting a cup on the floor" and "placing a magnet on the ground"). Additionally, the Korean language distinguishes between attachment, loose and tight.[16] A study explored whether such linguistic relativity is reflected in the way Korean and English speakers describe spatial relation by showing scenes involving loose or tight containment to English- and Korean-speaking adults.[17] After examining few examples of both loose fit and tight fit, the participants were provided with an example of loose fit on a screen and tight fit on another. The English-speaking participants could not distinguish between loose- and tight-fit scenes, while their Korean counterparts easily identified the differences.[18] This study demonstrates that language influenced how the participants perceived spatial relations.

Everette also states that linguistic relativity could be observed in the way languages describe time.[19] Boroditsky holds the same view in this aspect. She asserts that while languages employ spatial terms to describe time ("completed ahead of schedule," "fall behind schedule," "looking forward to the meeting"), different dialects employ different

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[15] Ibid.

[16] Melissa Bowerman, "Learning how to structure space for language: A crosslinguistic perspective," *Language, speech, and communication. Language and space*, eds. Paul Bloom, Merrill F. Garrett, Lynn Nadel and Mary A. Peterson, (The MIT Press, 1996), 385-436.

[17] Laraine McDonough, Soonja Choi and Jean M. Mandler, "Understanding spatial relations: flexible infants, lexical adults," *Cognitive Psychology* 2003 May 46(3), 229-259.

[18] Ibid.

[19] See note 8, Everett, *Linguistic Relativity Evidence Across Languages and Cognitive Domains*, at 16, 109-139.

spatial terms. For instance, English-speakers mostly use "back/front" terms to describe time. English speakers can talk about the difficult times "behind" them to the challenging times "ahead" of them. They can also push deadlines "forward" and move meetings "back," and eat breakfast "before" their morning run.[20] Similarly, back/front spatial terms for defining time are often used in Mandarin. For example, morphemes like ho'u (back) and qia'n (front) are used to describe time. Mandarin speakers also employ vertical terms to describe time. The spatial morphemes xia`(down) and sha'ng (up) (loosely translated into English as "next" and "last") are often used to describe the order of events.

In addition, there are linguistic differences in the degree to which language differentiates substances and objects. For instance, substances and objects are distinguished in the English language in counting. While an English-speaker can say "one chair, two chairs, three chairs," and so forth, counting substances is more challenging. Rather than say one wax, two waxes, speakers are required to indicate the unit of measurement (for example, one ounce of wax). [21] Other languages lack grammatical boundaries between substances and objects.[22] In Yucatec, for instance, nouns function as if they refer to substances. When counting, such nouns require unitizers to specify form or shape and do not need to take plural and singular forms (e.g., one short, thin unit). In other words, three candle waxes in English may sound more like "three short units of candle wax" in Yucatec.[23]

3. Language in Law

The meaning of language in law can be seen as the accepted language employed by attorneys in a particular law jurisdiction. Legal language may be in English and include distinctive terms, modes of expression,

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[20] Lera Boroditsky, "Linguistic relativity," *Encyclopedia of cognitive science*, ed. Lynn Nadel (Wiley, 2006).

[21] See note 8, Everett, *Linguistic Relativity Evidence Across Languages and Cognitive Domains*, 200-206.

[22] John A. Lucy and Suzanne Gaskins, "Grammatical categories and the development of classification preferences: A comparative approach," *Language Acquisition and Conceptual Development*, eds. Melissa Bowerman and Stephen Levinson (Cambridge University Press, 2001), 257-283.

[23] Ibid.

phrases, and meanings.[24] Another view, however, describes language of the law as a formalized language that differs from ordinary English in semantics, syntax, morphology, vocabulary, and other linguistic features. This implies that lawyers do not often use plain English; they use dull, pompous, unclear, and wordy sentences.[25] Additionally, the language in law often encompasses certain compositional mannerisms which are not unique to the legal profession but are sufficiently prevalent to establish a defined affiliation.[26]

A notable characteristic of legal language is the prevalent utilization of common words that often mean something normal to a non-lawyer, but refer to something else to a lawyer.[27] According to Tiersma, the language of the law contains a syntactic structure creating ambiguity and differentiates it from ordinary usage.[28] Also, Charrow, Crandall, and Charrow suggest that some ambiguity and vagueness in legal language is intentional. From their point of view, statutes are often passed as a result of compromise and discussion. Lawmaking is not always a process of reconciling and integrating divergent ideas; instead, it is usually a process of choosing language carefully to find the best balance.[29]

Another notable characteristic is lexical borrowing. According to Richard, legal English has mainly been borrowed from "old Norse" (Middle and Old English, mainly spoken by Vikings), Latin, and French.[30] Haspelmath called this process "loanword adaptation."[31] In

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[24] David Mellinkoff, *The language of the law* (Wipf and Stock Publishers, 2004), 4-7.

[25] Richard C. Wydick, *Plain English for lawyers: Teacher's manual* (5th Ed.) (Carolina Academic Press, 2005), 10.

[26] John Peter Gibbons, *Language and the Law* (Routledge, 1994).

[27] See note 24, Mellinkoff, *The language of the law*, 11-12.

[28] Peter M. Tiersma, "Some Myths About Legal Language," *Law, Culture and the Humanities* 2(1) (2006), 29–50.

[29] Veda R. Charrow, Jo Ann Crandall and Robert P. Charrow, "Chapter 6. Characteristics and Functions of Legal Language," *Sublanguage*, eds. Richard Kittredge and John Lehrberger (De Gruyter, 2015), 175-190.

[30] Isabelle Richard, "Is legal lexis a characteristic of legal language?," *Lexis – Journal in English Lexicology*, (11) (2018), 2-6.

[31] Martin Haspelmath, "Lexical borrowing: Concepts and issues," *Loanwords in the world's languages: A Comparative Handbook*, eds. Martin Haspelmath and Uri Tadmor (De Gruyter Mouton, 2009), 42-43.

other words, legal English is known for its mass borrowing of words and phrases from other languages such as French and Latin.[32] Today, Latin words crowd many law vocabularies.[33] Additionally, Charrow, Crandall, and Charrow point out that the legal language largely relies on precedent in the common law. They claim that in legal language, words, phrases, and a whole discussion often mean what the judges decide.[34] For instance, the legal definition of the term "heir" differs significantly from meaning in ordinary language. An "heir" is an individual entitled by the law to the property of a person who dies without a will—intestate. This implies that an individual who receives property as stipulated in a will is not defined as an "heir" under the law.[35] Moreover, an individual who receives property under the intestate succession law is not defined as an "heir" if the deceased has drafted a will; instead, such a person is referred to as a "next-of-kin" or a "distributee."[36] Another example of a legal language defined by the court is when a layman drafts his own will, using the term "bequeath": "I, John Doe, bequeath everything to my mother." In this statement, if the judges stick to the strict legal definition of the term "bequeath," the mother will only receive her son's personal property, because in law, real property cannot be "bequeathed."[37] This example illustrates the difference between legal and ordinary language.

Solan holds that the most basic principle of interpretation of the law's language is based on the "ordinary meaning" of a word in question, assuming that such basic interpretation has a good chance of falling

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[32] See note 28, Tiersma, "Some Myths About Legal Language".

[33] John Hudson, *The formation of English Common Law: Law and society in England from the Norman conquest to Magna Carta* (Routledge, 2018), 2-5. The examples of often-used Latin words are: "quasi, quorum, bona fide, alias, ad hoc, and affidavit".

[34] See note 29, Charrow et al., "Chapter 6. Characteristics and Functions of Legal Language".

[35] Charles P. Kindregan Jr, "Dead dads: thawing an heir from the freezer," William Mitchell Law Review 35(2) (2008), 433-447.

[36] See note 29, Charrow et al., "Chapter 6. Characteristics and Functions of Legal Language".

[37] Robert Lamb, "The power to bequeath," *Law and Philosophy* 33(5) (2014), 629-654.

within the intended meaning of the law's drafters. However, even this basis is controversial and has been refuted by scholars who believe that moral reasons determine the law in regard to what liabilities, power, duties, and rights people in society have given the legal history and practice.[38] An example of controversy over the use of language is evident in Garner v Burr (1951).[39] The law made it illegal to drive a "vehicle" without pneumatic tires. In this case, Lawrence Burr, who pulled a chicken coop fitted with iron wheels down the road with his tractor, was prosecuted under the law. The question in the case is whether a chicken coop using an iron wheel is indeed a "vehicle." The courts ruled in favor of Burr, as a chicken coop did not fit the definition of "vehicle" under the law.[40] In line with this perspective, Marmor notes that in most cases, the meaning of a statute is literally the same as the meaning communicated by a legal authority. Besides, philosophers and linguists believe that the meaning of sentences and words does not determine the content of the law completely. He further mentions that semantics and syntax are essential elements for delivering communication contents; however, such content is usually enriched pragmatically by other factors like context and implied and implicated content. Such factors influence the interpretation of words and phrases.[41]

4. Legal Language as a Special Language Game

As discussed above, language is a crucial element that enables effective communication amongst human beings. Individuals affiliated with specific sectors have developed specific languages that suit their operations and are exclusive to their field.

Ludwig Wittgenstein, an Austrian-British philosopher, developed a theory about using language as a tool for communication between people. He alleged that humans use words as tools and equipment to engage

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[38] Lawrence M. Solan, "The Interpretation of Legal Language," *Annual Review of Linguistics* 4 (2018), 337-355.

[39] Garner v Burr [1951] 1 KB 31.

[40] Timothy Endicott, "Interpretation and Indeterminacy: Comments on Andrei Marmor's Philosophy of Law," *Jerusalem Review of Legal Studies* 10(1) (2014), 46-56.

[41] Andrei Marmor, "The pragmatics of legal language," *Ratio Juris* 21(4) (2008), 423-452.

in different games compelled by diverse patterns of intention.[42] The philosophy of language has been influential in guiding the evolution among populations in various sectors due to the notion that words can be used as measures to comprehend the private lives of individuals. The legal sector has developed a complex language used in the effective implementation of the law. Judges and lawyers have mastered the legal language they use to understand the texts presented in their line of duty and argue their cases based on their interpretation of the law. Can legal language be a special form of language game based on the theory of language developed by Wittgenstein?

Law and language have an interdependent and complex relationship.[43] Legal language plays a crucial role in driving the course of proceedings in a legal platform since it is the primary element used in interpreting the law by the parties involved in the process. The legal language contains a unique set of words sharpened to enhance the awareness of certain elements and broaden the scope of interpretation of diverse laws pertinent to the case presented. Wittgenstein maintained that ordinary language involves the expert use of words to present a personal understanding regarding an issue.[44] Based on this theory, a language game involves the diversity of various instruments of language, where they can be used as the primary objects or channels of representing other elements.[45] Moreover, an instrument of language will only be used to represent another if it in fact exists. This illustrates how legal language presents a unique language game. In the legal field, litigating parties use legal language to influence the decisions made by judges. An argument can only be effective in influencing the course of activities in court if the judges determine that it has the logical ability to exist validly. The choice of words used by lawyers aims to prove the possibility of a legal victory for their representees based on existing data and develop diverse scenarios explaining the nature of the actual events involved in the case. Wittgenstein also stated that ordinary language aims at developing mental images of how

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[42] Ludwig Wittgenstein, *Philosophical Investigations*, 4th edition, eds. Peter Michael Stephan Hacker and Joachim Schulte (Wiley-Blackwell, 2009), 29.

[43] Michael Freeman and Fiona Smith (eds.), *Law and Language: Current Legal Issues Volume 15* (Oxford University Press, 2013), 2.

[44] See note 42, Wittgenstein, *Philosophical Investigations*, 28.

[45] Ibid, 29.

diverse events took place in the world.[46] Litigating parties maximize this feature in arguing their cases in court, where they aim to establish images of the contentious events in the minds of judges in their attempt to influence the judgments to favor their representees. This means that legal language is a unique type of language game where the litigating parties use words to execute their desired patterns of intention.

Legal interpretation can be defined as the means used to develop the meaning of a text, statute, will, policy, or law that identifies with the intentions of the legislature.[47] This definition reveals that language in the legal context is an essential factor used to define the specific meanings of diverse elements of the law. According to Wittgenstein, since words are used to play different language games, effective communication will be achieved if the involved parties can define the individual language games played by each party involved in the communication process.[48] Based on the theory, litigating parties use the unique words present in the legal language to engage their audience in their intended language games. For instance, the prosecution relies on legal language aiming to prove the defendant is guilty. On the other hand, the defense also creates its "language game" to exonerate their clients and prove their innocence. This factor highlights both how Wittgenstein's language theory applies in the legal sector and the conflicts in the implementation of the law.[49] The verdict developed by the judges will depend on the ability of each party to influence the legal interpretation of the jury and engage them in their developed language games. This shows that legal structures mainly operate under the language games established by the parties involved in diverse processes. Litigating parties rely on their proficiency in the legal language to affect the judgements made by the jury. In the legal sector, the interpretation of the law by all parties involved is based on the words used by others, which illustrates how the legal language is a special language game.

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[46] Ibid, 31.

[47] Aharon Barak, *Purposive Interpretation in Law* (Princeton University Press, 2005), 4.

[48] See note 42, Wittgenstein, *Philosophical Investigations*, 31.

[49] Ailan T. Arulanantham, "Breaking the Rules?: Wittgenstein and Legal Realism," *The Yale Law Journal* 107 (1998), 1854.

According to Markell, legal language has evolved to become one of the dialects relying on jargon to influence proceedings in legal corridors.[50] Participants in legal proceedings rely on the effective understanding of legal policies, laws, and statutes to argue their cases and influence the decisions made to favor them. This is the main reason why many people often seek the services of competent professionals in various fields who have a proper understanding of the policies and language used in the legal sector. Lawyers compensate for the litigants' lack of knowledge of jargon in the field and use their proficiency in legal language to represent their clients. Individuals seeking to specialize in the legal sector need to gain knowledge of legal jargon to be competent in developing effective language games that influence the interpretation of laws. This can be explained by the theory of language games—that is, the legal language is a unique language game in legal interpretation.

To sum up, Wittgenstein's language theory has been crucial in shaping the evolution and use of language in diverse fields. For him, the use of words in communication results in the development of mental images regarding occurrences in the world. Ordinary language leads to the development of language games, where effective communication is achieved if all parties determine the intended games played by the user. Legal language contains a unique use of specific words and jargon affiliated with the legal profession, and legal language is a special form of language game.

5. The Application: Case Study

In practice, both the concept of linguistic relativity and theory of language games can be seen in the interpretation of the law and, more specifically, in the difference in the interpretation of a particular concept or term of the law.

The first example is different interpretations of punitive damage in US and European tort law. Magnus maintains that US tort law differs significantly from the EU equivalent in many aspects.[51] One of the most dis-

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[50] Bruce A. Markell, "Bewitched by Language: Wittgenstein and Practice of the Law," *Pepperdine Law Review* 32(4) (2005), 803.

[51] Ulrich Magnus, "Why is US tort law so different?," *Journal of European Tort Law* 1(1) (2010), 102.

tinctive US tort law features is the courts' ability to award punitive damages.[52] Koziol asserts that Europeans are astonished that US tort law allows plaintiffs with dubious petitions to blackmail corporations with lawsuits and allow the claimants (victims) to receive insufficient justice because they are required to pay large sums to their attorneys and the court.[53] Behr argues that there is a huge gap between the approach of Germany and the US toward the concept of punitive damages. In US tort law, recoverable damages for losses incurred include punishment of the wrongdoer and loss of profit.[54] This allows the claimant to recover exemplary (punitive) damages as well as compensatory damages if the accused has damaged the claimant "oppressively," "wantonly," "willfully," "consciously," "maliciously," or "intentionally."[55] This is evident in BMW v. Gore (1996).[56] In this case, the claimant, Dr. Ira Gore, discovered that the new BMW he bought had been repainted to cover a scratch before acquiring it. Dr. Gore brought a lawsuit for fraud against BMW of North America and received $4,000 in compensation for the vehicle's lost value and an additional $4 million in exemplary damages.[57]

By contrast, in Germany, damages are restricted to compensation (compensatory, not punitive, damages).[58] This is evident in a 1992 German case where the German Federal Supreme Court (BGH) had to rule on whether a US court's decision can be enforced in Germany. In the case, a US court awarded a juvenile $750,260 for damages (sexual

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[52] Ibid., 104-107.

[53] Helmut Koziol, "Punitive Damages-A European Perspective," *Louisiana Law Review* 68 (2007), 741-764.

[54] Volker Behr, "Punitive Damages in America and German Law-Tendencies towards Approximation of Apparently Irreconcilable Concepts," *Chicago-Kent Law Review* 78(1) (2003), 105.

[55] Klaus J. Beucher and John Byron Sandage, "United States Punitive Damage Awards in German Courts: The Evolving German Position on Service and Enforcement," *Vanderbilt Journal of Transnational Law* 23 (1990), 967-971.

[56] BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). https://supreme.justia.com/cases/federal/us/517/559/

[57] Douglas G. Harkin, "BMW of North American, Inc. v. Gore: A Trial Judge's Guide to Jury Instructions and Judicial Review of Punitive Damage Awards," Montana Law Review 60(2) (1999), 367-414.

[58] Markus A. Petsche, "Punitive Damages in International Commercial Arbitration: Much Ado about Nothing?," *Arbitration International* 29(1) (2013), 89-104.

abuse), of which $400,000 was punitive damages. The BGH stated that the courts could not enforce the punitive damage compensation in the country because it would be against "public policy" (ordre public).[59] Looking at the two cases, it would be reasonable to believe the EU and the US laws are contradictory. In the BMW v. Gore (1996) case, the Alabama Supreme Court disagreed with the jury and decreased the amount awarded in punitive damages to $2 million.[60] The opinion of United States Supreme Court stated that the amount awarded to Dr. Gore was unreasonable because there should be a balance between the compensatory damages and punitive damages. In the end, the Alabama Supreme Court decreased the amount to $50,000.[61] Indeed, the two cases evidently demonstrate that the two jurisdictions take different approaches to punitive damages. The difference lies in the cultural differences between common law, civil law, and national traditions. Legal practitioners who have undergone civil law training learn that one fundamental function of civil law is to uphold the formal distance between public and private realms for reasons of public policy. On the other hand, the tradition of common law is one of constant invention and incorporation of modern concepts and does not draw a clear line between public and private realms.[62] In civil law, there is no punishment in cases between private parties because, in European traditions, punishments are used to convey the public's disdain of certain behav-

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[59] California Superior Court (County of San Joaquin) 24 April 1985, John Doe v. Eckhard Schmitz, no.

168-588, unpublished.; Bundesgerichtshof [BGH] [Federal Court of Justice] June 4, 1992, 118 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 312 (F.R.G.).; See also Cedric Vanleenhove, "A Normative Framework for the Enforcement of U.S. Punitive Damages in the European Union: Transforming the Traditional '¡No Pasarán! ," *Vermont Law Review* 41 (2016), 347-403.

[60] See note 57, Harkin, "BMW of North American, Inc. v. Gore: A Trial Judge's Guide to Jury Instructions and Judicial Review of Punitive Damage Awards," 379-384.

[61] BMW of N. Am. v. Gore - 701 So. 2d 507 (Ala. 1997).

[62] Michael L. Wells, "A Common Lawyer's Perspective on the European Perspective on Punitive Damages," *Louisiana Law Review* 70(2) (2009),557-577, at 560.

iors.[63] This suggests that cultural values influence the interpretation of the law.

Another example is how the good faith doctrine in UK and US contract law is implemented. The acceptance of the doctrine of good faith as a central principle of English private law has been consistently omitted by UK contract law.[64] Markovits notes that, in the US, the Uniform Commercial Code (UCC) enforces a mandatory obligation of good faith in all contract negotiation and performance under its scope.[65] Dubroff also mentions that the implied covenant of fair dealing and good faith is especially fundamental in US contract law, as it was included in the UCC and was also codified in the Restatements of Law.[66]

Mid Essex v Compass Group (2013) is a case that demonstrates English law's reluctance to adopt the good faith doctrine in both negotiation and performance of contacts.[67] Clause 3.5 of the agreement between Mid Essex and Compass Group (a cleaning service company) required both entities to cooperate in good faith to allow any beneficiary or the trust to obtain the full benefits at issue in the case. The trial judge opined that Clause 3.5 carried an objective meaning and that the conduct of Mid Essex amounted to breach of contractual duty (to cooperate in good faith with each other). The Court of Appeal, however, ruled that the obligation of good faith was not an objective requirement and that English contract law lacks a clear concept of good faith.[68] Similarly, in Hamsard v. Boots UK (2013), the court argued that the duty of good faith could not be implied in the relational contract.[69]

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[63] See note 53, Koziol, "Punitive Damages-A European Perspective," 748-758.

[64] Christina Perry, "Good Faith in English and US Contract Law: Divergent Theories, Practical Similarities," *Business Law International* 17 (2016), 27.

[65] Daniel Markovits, "Good faith as contract's core value," *Philosophical Foundations of Contract Law*, eds. Gregory Klass, George Letsas and Prince Saprai (Oxford University Press, 2014), 272.

[66] Harold Dubroff, "The implied covenant of good faith in contract interpretation and gap-filling: Reviling a revered relic," *St. John's Law Review* 80(2) (2006), 559.

[67] Compass Group UK and Ireland Ltd (t/a Medirest) v Mid Essex Hospital Services NHS Trust
[2012] EWHC 781 (QB) 23.

[68] See note 64, Perry, "Good Faith in English and US Contract Law: Divergent Theories, Practical Similarities," 34.

[69] David Foxton, "A Good Faith goodbye?: Good Faith Obligations and Con-

The Yam Seng v. International Trade Corporation (2013) is an example of a UK court case implying the duty of good faith into a contract. In this case, Justice Leggatt stated that the English law's animosity toward the idea of good faith arose from a concern that recognizing this term in contract execution and negotiation would result in uncertainties.[70] This perspective indicates that interpretation of the law is largely influenced by a country's values.

The following situation of Singapore, which adopted the English common law, does not imply the doctrine of good faith. In Ng Giap v Westcomb Securities (2009),[71] the Singapore Court of Appeal (SGCA) refused to sanction an alleged good faith doctrine into a deal between a stockbroking firm (the defendant) and a dealer agent (the plaintiff). Ng Giap Hon, the plaintiff, alleged that Westcomb Securities' director intercepted the account-opening documents he sent to two of his clients. Without interception, the client would have opened an account with the plaintiff rather than Westcomb Securities. The plaintiff claimed compensation from the defendant for the lost commission, arguing that the contract between them included an obligation of good faith. The plaintiff indicated that the contract included a clause that stated that Westcomb Securities would not do anything to prevent him from receiving his commission. The sitting SGCA judge, Andrew Phang, opined that it was important for the courts to be careful implying a term in Singapore contract law because it would entail broader policy, which would create precedent. The SGCA preferred to avoid discussing the function, purpose and duty of good faith in the execution and negotiation of contracts.[72]

The HSBC Institutional Trust Service v. Toshin Development (2008) also demonstrates an important difference in the interpretation

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tractual Termination Rights," *Lloyd's Maritime and Commercial Law Quarterly* (2017), 360-384.

[70] Andrew Taylor, "A Comparative Analysis of US and English Contract Law-Interpretation and Implied terms," *International In-house Counsel Journal* 9(33) (2015), 1-12, at 9.

[71] Ng Giap Hon v Westcomb Securities Pte Ltd and Others [2009] SGCA 19. https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/2009-sgca-19.pdf

[72] Colin Liew, "A leap of good faith in Singapore contract law," *Singapore Journal of Legal Studies* (2012), 416–440.

of the law.[73] The question at issue was whether a provision that required both sides to endeavor to agree in good faith could be implied.[74] The case involved a dispute between the plaintiff, a landlord, and the respondent, the tenant, over the contractual mechanism of rent review. The contract required review of rental terms to be determined by agreement between both parties. In this case, the SGCA ruled that the doctrine of good faith could be implied. The SGCA held that while the doctrine is not supported in Singapore's contract law, it is consistent with the cultural values of the Asian community (the value of promoting discourse and consensus as much as possible).[75] This perspective is consistent with McConnaughay's observations. He noted that the key term of commercial contracts in Asia ("confer in good faith" or "friendly negotiations") demonstrates the significance of contractual obligations in their traditions. Such provisions explicitly state that if conflicts or differences occur over the duration of a mutual relationship, the parties can address their differences amicably.[76] This perspective is also shared by Derk Bodde, who argued that Asian communities prefer traditional values over law to a significant extent, and regard the involvement of the law in private affairs with "overt hostility."[77] In summary, Asian traditional values play an important role in the subordination of contract laws.

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[73] HSBC Institutional Trust Services (Singapore) Ltd (trustee of Starhill Global Real EstateInvestment Trust) vToshin Development Singapore Pte Ltd [2012] SGCA 48. https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/2012-sgca-48.pdf

[74] Joel Lee, "Agreements to negotiate in good faith: HSBC Institutional Trust Services (Singapore) Ltd v. Toshin Development Singapore Pte Ltd,", *Singapore Journal of Legal Studies* (2013), 212–222.

[75] Ibid.

[76] Philip J. McConnaughay, "Rethinking the role of law and contracts in East-West commercial relationships," *Virginia Journal of International Law* 41 (2000), 427-479.

[77] Derk Bodde, "Basic Concepts of Chinese Law: The Genesis and Evolution of Legal Thought in Traditional China," *Proceedings of the American Philosophical Society* 107(5) (1963), 375-398.

5. Conclusion

This paper explored the relationship between language and interpretation of the law. The concept of linguistic relativity refers to the notion that language influences how people perceive the world. In other words, people's perspectives or patterns of thought are relative to their language. If a word can have multiple meanings in different languages, a certain law can be interpreted individually in different jurisdictions.

The language game theory of Wittgenstein holds that ordinary language leads to the development of language games, where effective communication is achieved if all parties determine the intended games played by the user. The legal language contains a unique use of specific words and jargon affiliated with the legal profession, and a legal language is a special form of language game based on the stipulations of the theory established by Wittgenstein.

The US tort law differs significantly from the EU equivalent in its approach to the concept of punitive damage. The US tort law includes them, while Germany excludes them. There is also a difference in interpretation of the good faith doctrine in English contract law and US contract law. More specifically, US contract law allows the doctrine of good faith to be implied in contracts while English contract law does not. This paper presents cases that outline the different interpretations of the good faith doctrine between Singapore and UK contract law. Even though Singapore adopted English contract law, the doctrine of good faith is not required to be explicitly stated because of cultural values.

What can be observed from these cases? The first point is that civil law, unlike common law, draws a clear line between private and public law. This takes interpretation of the law in completely different directions. The second point is that cultural values play an important role in the interpretation of the law (good faith doctrine), which could mean Asia's cultural values influence the courts' interpretation of the law. This is not entirely distinct from, and is related to, the concept of linguistic relativity. Legal interpretation is never an easy task, and the theories of language games and linguistic relativity are certainly applicable to legal interpretation.