



Inside the treaty interpreter's mind – An experimental linguistics approach to international law

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Motivation: the pragmatic typology

A pragmatic typology (Ariel 2016; Sternau et al. 2015):

explicature	It is raining [in London].
Strong implicature	A: What if the company director buys shares? B: That's a criminal offence. A: Well, he's got a mother-in-law... B: For this you go to jail.
Weak implicature	A: Are you hungry? B: I have just had breakfast.

Can this kind of typology also be applied to interpretation in international law?

Morality and interpretation

Legal Interpretivism: moral factors influence the perception of legal rules (theoretical: Dworkin, 1977, experimental: Struchiner, Hannikainen & Almeida, 2020).

Moral Reasoning

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Pragmatic Reasoning

Opposite claim: linguistic pragmatics influences moral judgments (Adams & Steadman, 2004; Nichols & Ulatowski, 2007; Driver, 2008).

Pragmatic Reasoning

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Moral Reasoning

Our hypotheses

Main question: how do moral reasoning and the level of explicitness of a legal rule affect the assessment of interpretations (statements about a legal rule)?

Reliance on actual elements of the case law of the ECtHR and of the text of the ECHR for our scenarios/statements

Hypothesis 1: The less literal the interpretation of a legal rule, the less confidence about the interpretation.

Hypothesis 2: The less literal the interpretation of a legal rule, the more easily deniable the interpretation.

Hypothesis 3: Morality influences the patterns of interaction in H1 and H2.

The experiment

We ran two between subjects experiments: one with the participation of laypeople (N=1432) and one with the participation of Experts in International Law (N=163) recruited through online blogs.

The elections scenario

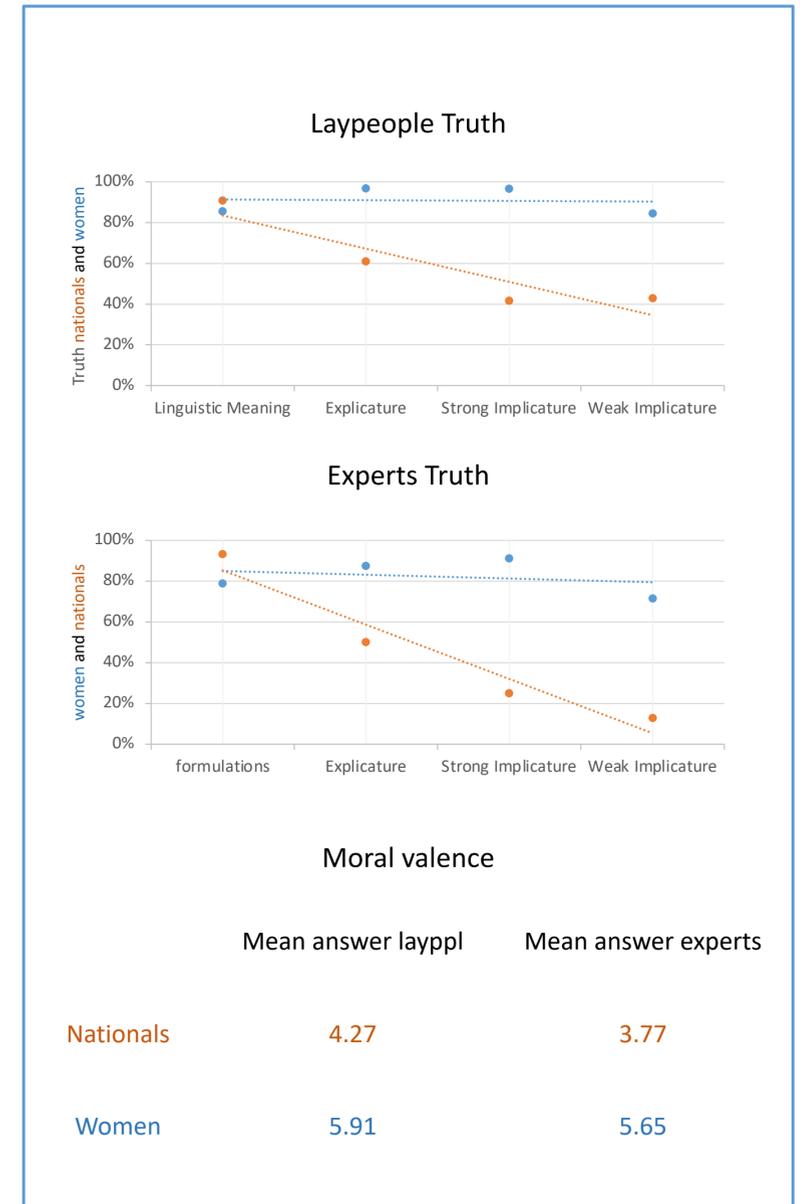
An international treaty on human rights provides that the Signatory Parties shall guarantee the rights established in the present Treaty. Any restriction of rights has to be justified by an important public purpose and has to be proportionate. The same Treaty also contains the following legal rule:

Linguistic meaning	The Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature. Free elections mean that nationals including women shall be able to vote and run for office unless they spent 15 years or more abroad.
Explicature	The Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature. This means that all nationals shall be able to vote and run for office without discrimination based on sex or any other impermissible grounds unless they spent a substantial amount of time abroad.
Strong implicature	The Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature as well as guarantee protection against discrimination and increase the influence of active participants in the country's civic life.
Weak implicature	The Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions that will ensure the free expression of the opinion of the people in the choice of the legislature as well as guarantee protection against discrimination and increase the influence of active participants in the country's civic life.

Based on this legal rule, an international lawyer draws the conclusion that **nationals/women** shall be able to vote and run for office [unless they spent 15 years or more abroad].

Questions: Truth + Moral Valence

Results



Conclusion

Pragmatic typology applies to legal interpretation.
Morality influences truth assessment of interpretive statements.