

Bringing linguistic research into legal scholarship and practice

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by Alexandra Grey

May 7, 2021

Language and law

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Together with another *Language on the Move* regular, [Laura Smith-Khan](#), I have just published a new article about 'bringing linguistic research into legal scholarship and practice'. It is an effort to redress the lack of recognition within the law of relevant linguistic research. The article forms part of our pursuit of an alternative and more collaborative approach to legal scholarship and law reform that addresses issues of communicative barriers and linguistic injustice.



(Image credit: Grey & Smith-Khan, 2021)

In the article, Laura and I propose a cohesive articulation of the shared basis upon which the interdisciplinary research field of law and linguistics is developing. We do this because:

The lack of a cohesive articulation of how (or whether) there are shared bases upon which this interdisciplinary field is developing also creates challenges for collaboration and for the accessible and impactful dissemination of findings. There is, therefore, a need to apply an over-arching critical analytical perspective to the emerging field to more cohesively articulate its shared basis, to make it more accessible and to identify pathways forward for research. (Grey and Smith-Khan 2021: 2).

Specifically, we propose an organisation of the research literature around the familiar three branches of the state: the legislature, the executive, and the judiciary. This, we hope, provides a map of the research literature for non-linguists and legal practitioners. This tri-partite organisation of the field also invites interdisciplinary scholars to critically reflect on future directions for law-and-linguistic research. It may therefore spark discussion and debate from a range of perspectives, leading to refinement.

The idea of dividing the research literature into these three branches – or around these three nodes if that metaphor works better for you – came to us from [Professor Peter Gray](#). Peter was the discussant on our panel 'Linguistic Diversity as a Challenge to Legal Policy' at the Australian Linguistics Society Annual Conference just over a year ago, in December 2019. His use of these three themes to organise the discussion of that panel caused Laura and I to rethink the tentative conceptualization of the field which we had proposed at the 2019 (inaugural) [Law and Linguistics Interdisciplinary Researchers' Symposium](#) at Sydney Law School, then developed in a speech at the symposium dedicated to [Sharing Knowledge in the Spirit of Humboldt](#). and an article based on that presentation ([Smith-Khan and Grey 2020](#)).

Our earlier proposal had been to organise the burgeoning language and law research field

around three main subject matters/research questions. The first was 'language in legal or bureaucratic processes', the second 'language-related social justice'; and the third 'regulation of language'. There were a few reasons to replace this heuristic with the legislature, executive, judiciary tri-partite structure. Not only is the newer structure more familiar and navigable for lawyers and legal scholars, but we also found once we started organising the literature around the three original themes that most of the research related to the theme of 'language-related social justice', and much of it split out of the categories of 'language in legal or bureaucratic processes' or 'regulation of language' as well.

The three branches of the state is, we accept, also a heuristic and so, as in our former model for organising the research literature, not every study will fit neatly into just one branch. Nevertheless, "We believe these three branches, based on the field's major concerns, organise the research literature's connections and complementarity in ways that may not otherwise have been obvious" (Grey and Smith-Khan 2021: 6).

It was important to us, in developing this proposal, that we model how to organise the research literature in a way that does not categorise studies by their methodologies or theories, because that, we thought, would reinforce the disciplinary boundaries which already limit the engagement between linguists, on the one hand, and legal scholars, legal practitioners and policy-makers, on the other.



Parliament House in Canberra

In the article, we explain the theoretical gap between a social constructionist view of language

which is common in Linguistics and a static, objectifying view of language, as well as the real-world high stakes of this gap. We illustrate this with the murder conviction, then acquittal of Mr Gene Gibson based on a guilty plea that resulted from mistaken assumptions about language, which *Language on the Move* has [covered](#), and with some of Helen Fraser and her collaborators' work on the misuse of covert audio recordings in criminal trials. (You can read more about such work on the website of the new [Research Hub for Language in Forensic Evidence](#) at the University of Melbourne.) Then we describe the research concerns of each of the three branches, as follows, and cite examples.

The judiciary: Research around this branch is concerned with identifying, understanding and resolving unequal or simply inefficient court processes where the way language is used, and/or the beliefs people have about how language is used, are problematic. //Problems in judicial settings are especially common starting points for studies in the sub-field 'Forensic Linguistics'. This research almost always analyses court processes, most often criminal proceedings. It includes research about preparing and giving expert linguistic evidence (eg, about who is likely to have written a particular ransom note or how consent might be expressed in a particular dialect). It also includes research on how mis-interpretation, mis-translation, priming, and racialised or prejudicial assumptions about language can affect justice. [...]

The executive: Non-court legal processes – the executive/administrative/bureaucratic processes of the state, including pre-trial processes – form a significant portion of people's

interactions with governments, and disputed executive processes are often litigated. These processes are consequently another significant subject of interdisciplinary law and linguistic research. Thus, judges; barristers; socio-legal scholars; public and administrative law scholars; educators in courses on civil and criminal procedure, ethics and professional practice; migration lawyers; and even political scientists are likely to be professionally interested in legal processes of governance beyond courts, and language-related problems/injustices within them. //Linguistics-related research about administrative processes problematises, among other topics: intercultural communication; the role of interpreting and translation; the language and discourse of bureaucratic texts (decisions, procedures, submissions, application forms, etc.) and the interpretation and application of laws or guidelines about bureaucratic processes. [...]

The legislature: The most obvious topic here may seem to be language use within parliaments. While this is not actually a prolific area of research, there is an emergent strand of research in Australia about the equally emergent practice of using Indigenous languages in parliaments. The language of legislative drafting is a more prominent focus in research about language and legislative settings; this branch is therefore the home, in our model, for the

well-established research strands on Plain English legislation, and on legislative translation between jurisdictions. //There is also significant empirical and philosophical research examining what constitutes a linguistically just state. Other such research is more applied, for example studying actual policies about Indigenous, minority or migrant languages and those policies' impacts on inequality. //This branch is also the home for research about laws which govern language use. (Grey and Smith-Khan 2021: 4-5)

Of course we could not fit all the law-and-linguistics research out there into our article. The *Alternative Law Journal* runs 4,000-word articles and its editors were rightly aghast when we turned in a 7,000-word draft at one point, so some of the footnotes had to go! Therefore, we welcome responses to our proposed three branches by way of publications or emails, or as comments below.

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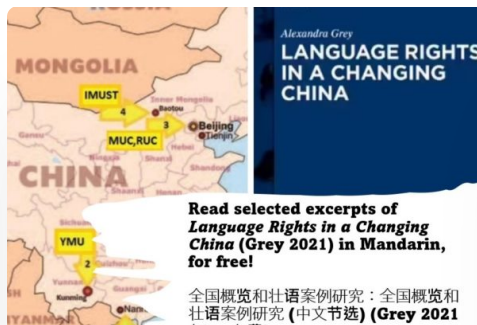
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Language and law

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Language and law

Language learning is integral to practice-based legal education



Alexandra Grey
October 15, 2020



Author

Alexandra Grey

Alexandra is a Chancellor's Postdoctoral Research Fellow at the University of Technology Sydney, in the

Faculty of Law. She researches governments' responses to linguistic diversity, including in relation to multilingual, urban Australia and Australian Aboriginal language renewal. Her first book, "Language Rights in a Changing China: A National Overview and Zhuang Case Study" (De Gruyter, 2021), builds from her PhD thesis in sociolinguistics, which was supervised by Professor Ingrid Piller. Alexandra also teaches law and was formerly a legal researcher and advocacy trainer at a Chinese not-for-profit organization in Beijing.

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Robert Phillipson

May 7, 2021 at 3:49 pm

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This is important work. One of the goals of the four volumes on Language Rights that Tove Skutnabb-Kangas and I edited for Routledge in 2017 was to bring disciplines together that seldom are integrated. Unfortunately the books only exist in hardback, are outrageously priced, and were poorly marketed. Many of the texts, including out Introductions to each volume, and a General Introduction are available on Academia and ResearchGate, possibly more easily accessed via Tove's website, <http://www.tove-skutnabb-kangas.org>. The final extract of the 98 (!) selected texts is of immediate relevance for you. This

is the way we summarise it in the Introduction to Volume 4. Kirsten Anker's book. *Declarations of interdependence. A legal pluralist approach to Indigenous rights*, (4.28), deals with related issues to those emerging in Latin America. The interdependence referred to in the name of the book is the relationship between the legal positivism of Western judicial systems in their encounter with the cosmologies of Indigenous peoples. Fundamentally the book is an exploration of incompatible understandings of law, a Western tradition that seldom explores its limitations and origins, rooted in physical and symbolic violence, and its encounter with radically different understandings of territory, property, culture, and language. The book is an inter-disciplinary exploration of discursive incompatibilities in legal process and its application, and the tension between Western legal monism and the possibility of law that is sensitive to all aspects of Indigenous cultures. Anker's project is to show that 'law's structure of fact and law, property and sovereignty, traditional and modern, Indigenous and Australian and Canadian, are made not of concrete but of the dynamic interplay of human discourse: symbolic and embodied exchanges on which we act, and acts which make our world meaningful' (p. 5). We include the first 5 pages of chapter 1 (Introduction), which presents Anker's project, and the final paragraph of the concluding chapter (7). These extracts sum up a subtle analysis of a core aspect of how legislation and court cases deal with existential issues in Europeanised states and the administration of social justice, including linguistic justice.

The book is published by Ashgate.



Alexandra Grey

May 12, 2021 at 2:21 pm

[Reply](#)

Thank you, Robert (and Tove) for making these parts of your compilation available. Very useful!



Alexandra Grey

[Reply](#)

May 7, 2021 at 10:53 am

For anyone interested, the article's reference list is below (alphabetical by family name) and see also: Eades, D. (2016). 'Theorising language in sociolinguistics and the law: (How) can sociolinguistics have an impact on inequality in the criminal justice process?' In Nikolas Coupland (ed.), *Sociolinguistics: Theoretical Debates*, 367–90. CUP.

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