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To my family, who mean everything to me.

To my late grandfather.

Peace of the quiet earth to you.

Peace of the shining stars to you.

Peace of the gentle night to you.

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List of abbreviations

ABGB	Allgemeines Bürgerliches Gesetzbuch / Austrian Civil Code
ACS	Act of Civil Service
APA	Act of Public Administration
ASS	Act of Social Security
BNC	British National Corpus
CLAT	Common Law Admission Test
LNAT	Law National Aptitude Test
POS	Parts Of Speech
USAS	UCREL Semantic Analysis System

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Introduction

This is an interdisciplinary paper written with the intention to show how insights from applied linguistics can be of use in the domain of law and legislation. It is indeed hard to deny that the rule of law is in fact the rule of language. It seems that there cannot be law without language. Kelsen (1945: 161) wrote that “[j]ust as everything King Midas touched turned into gold, everything to which the law refers becomes law, i.e. something legally existing”. The concept of law is conveyed and mediated entirely through the structures of human language and it is thus plausible to assume that everything the law touches is therefore also touched by language. This is particularly evident in the fact that all processes of legal meaning-making and meaning-seeking are inextricably tied to the language system. For the purpose of this paper, law is defined as a set of linguistic signs which is ascribed the societal power to control human conduct.

The investigation of legal norms as a linguistic category is relatively new to the field of applied linguistics. This paper aims to examine the most recent English translation of the Austrian Civil Code (henceforth ABGB) with respect to the phenomenon of adjectival vagueness, employing a quantitative and qualitative analysis of the normative text. It will be discussed how the various kinds of adjectives contribute to vagueness in the ABGB and which linguistic patterns can be observed. This paper will identify the distribution of the most frequent adjectives attested in the ABGB, and elaborate on the question as to which adjectives lead to which forms or degrees of indeterminacy.

The first chapter sets out to discuss the main epistemological assumptions on the relationship between law and language. It aims to provide alternative perspectives on the question as to what may be understood by the concept of law from a linguistic point of view. I will argue why the rule of law is not immediately perceivable without the structures of language and that language is not merely a medium of the law, but that linguistic structures are the very basis of the normative space. The existence of norms entails the emergence of the normative space (Ewald 1991: 153), which may be conceived as a space where social prescription is operative.

The second chapter discusses the relationship between linguistic meaning and language interpretation, specifying concepts such as indeterminacy, vagueness, ambiguity and indefiniteness, which are oftentimes not clearly defined and which are prone to lead to considerable confusion. However, this chapter is not intended to be an exhaustive discussion of these concepts, but aims to raise awareness of the difficulties to distinguish between them.

The third chapter aims to discuss the role of legal interpretation and linguistic meaning, with a specific focus on legal meaning-seeking techniques under Austrian Law. Some might not always agree with my conceptualization of interpretation as they might be of the view that there are plenty of legal solutions to the linguistic problems described in this paper. However, this paper does not seek to provide legal solutions, but rather explore the law from a linguistic perspective. Legal interpreting techniques such as the various types of literal, systematic, historical and teleological interpretation will be introduced and discussed with regard to their pragmatic relevance.

The fourth chapter discusses the relationship between adjectives and vagueness, and elaborates on the general properties commonly ascribed to adjectives in particular. It will also be explained why this particular part of speech may be a suitable object of study in the investigation of indeterminacy in normative texts.

In the fifth chapter the normative text under investigation will be introduced, taking into consideration a number of different perspectives. After a short discussion of the historical background of the ABGB, it will be outlined why the translation of the ABGB is of particular relevance from a legal and a linguistic perspective. Moreover, the chapter presents some general background information of the code's legal structure and the three main parts of which it consists. It also serves to provide the reader with a first quantitative distribution of the provisions encoded.

After a general introduction to the data and methodology of the study, chapters 6 to 8 will present the empirical analyses of the adjectives in the ABGB. First a quantitative overview of the different types of adjectives will be displayed. This is a replication of a study conducted by Fjeld (2005: 170), which has shown that different types of adjectives lead to different types or degrees of vagueness. Then

the results will be examined according to their contribution to adjectival vagueness in the text.

Finally, in the ninth chapter, the findings of the study will be discussed with regard to a number of different aspects, one of which being the question as to whether future research should focus on the investigation of semantic or pragmatic meaning in legal interpretation. It will be argued why semantic analyses can only constitute a first step in an inquiry which is seemingly far more complex due to the individual's agentive role in the process of language interpretation. Subsequently, the notion of legal aptitude is scrutinized and related to the concept of linguistic aptitude, with the aim to show how an understanding of linguistic indeterminacy may be utilised in the construction of legal aptitude tests. After a short discussion of the relationship between linguistic meaning and the evaluative concept of truth, the chapter will outline the need for future research on a national and international level, calling for legal linguists to step into the courtrooms and police stations.

1. Language and the law

Law is communicated solely through human language, regardless of the political system or the social structure of the society in which it is in force. The only immediate extralinguistic aspect of the law that is visible is the professional and civil stakeholders and the institutions involved. In this chapter, I attempt to briefly discuss some of the epistemological problems which arise in the process of differentiating between law and language. If, as suggested in the introduction, the law is conceived as a set of linguistic signs, one may assume that language is a necessary prerequisite for the construction of the normative space. This assumption rests on the proposition that individuals would not have been able to construct this normative space with its institutions and stakeholders without the capacity for language. It thus seems indubitable that language has played and will continue to play a crucial role in the cultural evolution of the law.

Human beings can act with language (Austin 1962). They claim, defend, accuse, appeal etc. and in doing so they always refer to other legal texts and prescriptions. Allan (2011: 1) states that the practice of reading may be subsumed as a "process of

moving between texts". Adapting this approach, I argue that legal uses of language tend to be particularly intertextual. Thus, the law cannot exist without language, as it is language which enables humans to refer and relate to other texts.

Individuals often speak of the law as something they can directly perceive or that can be changed. However, on closer inspection what is perceived as the law does not regulate human conduct. It is individuals' understanding of what they perceive to be the meaning of the linguistic structures of the law upon which they act and with which they do or do not abide. Statutes, judgements, contracts, wills and other legal instruments are communicated by means of linguistic signs. Very similar to mediators in other normative systems, e.g. the role of clerics in religion, the power of the judge is visible in their right to speak, to discipline and reprimand, to agree and disagree and to determine the meaning of linguistic signs. In the common law tradition, the distinguishing of any two similar cases means to encode linguistically the divergence between two legal narratives. It is thus sound to argue that written and spoken legal discourse may indeed be understood as a vast corpus of speech acts (Tiersma 1986; Schane 2012). Most speech acts realised in legal settings are imperatives through which the imposition of certain obligations is expressed. Within the normative space, social prescription is communicated by means of locutionary, illocutionary and perlocutionary acts (Austin 1962). Penal law, for instance, consists of numerous illocutionary acts which are intended to prevent undesired behaviour (Andenaes 1966: 949). The language of the law thus doubtlessly shapes society, and this constitutes one of the most prominent intersections between legal linguistics and legal sociology.

In legal sociology, the impact of law is inextricably bound to the question as to how the law is mediated in a given society (Edelman 1992). In legal linguistics and legal sociology, the impact of law must necessarily be rooted in the domain of language and its functions. However, it seems as though the epistemological discussion of the linguistic quality of the law is yet insufficient. The law is not only a set of linguistic signs, it is ascribed socially-binding significance, that is the social power to control what is considered acceptable or unacceptable in a given society. The democratic societies in which a number of individuals are said to live today are based upon the concept of political and legal participation, namely the right to at least indirectly influence the creation of a legal norm. In the narrowest sense of this

idea, neo-republicanism seeks to establish a society without domination or power structures citizens did not bring upon themselves (Lovett 2014).

It was stated earlier that the law is invisible without the structures of language. The notion of political, social and personal freedom is also heavily dependent on and only visible through language. The layperson who has not undergone any form of legal education often feels excluded, overlooked, overreached (Wodak 1986: 115). This is not a paper on political theory or legal sociology. The linguistic necessity and interdisciplinary relevance of the aspects addressed may however serve as valuable insights into the development of legal linguistics. It seems important to present the epistemological problems linked to the relationship between law and language since, despite its status as an established field, legal linguistics is still excluded from academic introductions or course books in legal studies, e.g. Perthold-Stoizner (2015) and Struck (2011). Generally, the relationship between the study of language and legal studies has been portrayed as not particularly symbiotic, as Schroth's (1998: 28) criticism on the role of linguists in legal research seems to confirm:

scientific linguistics has very little assistance to offer to statutory construction. If the linguists conclude that the lawyers and judges are doing something other than, or in addition to, objectively determining the meaning the relevant expression has for the educated native speaker, and the lawyers and judges conclude that the linguists offer almost nothing helpful on questions of law, then both will be correct.

It is hoped that from the subsequent chapters, which are all related to language interpretation, it will be clear why legal studies can indeed benefit from linguistic models and observations on language meaning.

2. The indeterminacy of interpretation

If human language as a system enabled its users to specify the meaning of all linguistic categories completely, this paper would be superfluous. Solan (2005: 72) has drawn attention to the underdetermination of meaning in language, which is evident since "some linguistic structures simply do not specify particular information". Solan's general observation does not provide any clues as to how and in which contexts meaning is underdetermined in language. It is thus necessary to

revisit the questions as to what may be understood by the notion of language meaning, which is also studied in various other academic disciplines such as semiotics, philosophy, neurology and psychology (Cruse 2000, cited in Cummings 2005: 38), and which processes underlie language interpretation more generally.

Chierchia and McConnel-Ginet (1990: 11) relate the meaningfulness of language to “aboutness and representational components”, pointing out that theorists show disagreement on how much weight should be placed on each of the two aspects and how exactly these are linked. They argue that whereas “*informational significance* is a matter of aboutness, of connections between language and the world(s) we talk about”, “cognitive significance” may be understood as the “links between language and mental constructs that somehow represent or encode speaker’s semantic knowledge” (Chierchia & McConnel-Ginet 1990: 12). Building on Chierchia and McConnel-Ginet’s (1990) work, Cummings (2005: 40) proposes the phrase “meaning in the world” to describe the relationship between aboutness as informational significance and the entities in the world to which linguistic items can refer. The relationship between linguistic signs and objects in the outside world is in some cases far from straightforward, which is why language users must be competent in language interpretation. The study of meaning, it seems, is a study of boundaries, which particularly holds true in the context of vagueness as a source of linguistic problems (Channel 1994; Wierzbicka 1986; Klein 1982; Lakoff 1972; Sadock 1972). Problems of linguistic reference are indeed likely to lead to problems in language interpretation generally and in legal interpretation particularly. However, referential approaches to linguistic meaning such as truth-conditional semantics struggle to account for the mental representations which may reside in individual language users. Lyons (1977: 4), for instance, has contended that human communication

presupposes the notions of significance and intention; and what the words and sentences of a language mean is, in the last resort, both theoretically inexplicable and empirically unverifiable except in terms of what the speakers of that language mean by their use of these words and sentences.

Quine (1961: 47) formulated this relationship between language as the subject of study and the medium of description more provocatively, stating that “linguists in semantic fields are in the situation of not knowing what they are talking about”. It appears as though the field of study that is concerned with the conventionalised

language code indeed shows a considerable degree of undecidedness when semanticists embroil in disputes on how and where to draw the boundaries of linguistic reference. A psychologicistic approach to meaning, in contrast, emphasises the role of mental representations residing in the individual's mind when making use of or understanding linguistic symbols (Cummings 2005: 40). The idea of the "cognitive significance of language" (Chierchia & McConnell-Ginet 1990: 15) is also taken up by Cummings (2005: 41), who refers to it as "meaning in the mind". In this framework language interpretation is understood as the process of matching mental representations of the speaker and the listener when the referent of a linguistic item is recognised (Cummings 2005: 40). Nevertheless, neither referential nor psychologicistic theories of meaning are fully satisfying since they do not explain all possible meaning intuitions (Cummings 2005: 41).

A pragmatic understanding of meaning assumes that "at least part of the meaning of a sentence consists in the use to which a sentence is put" (Cummings 2005: 41). Whereas the semantic meaning of an utterance is always based on the linguistic code that is known to the proficient language user, the pragmatic meaning of the same utterance may remain unclear due to an uncertainty arising from the context. The context in which an utterance is produced has been described by Widdowson (2011: 19) as "the features of the situation that are taken as relevant" which he refers to as "an abstract representation of a state of affairs" in the human mind. Szabó (2009: 378-379) claims that the interpretation of language is not only bound to the encoded semantic meaning, but that, provided the context is sufficiently rich, individuals "could *in principle* bypass all semantics". This view emphasises the social context in which linguistic meaning is created and the agentive role of the language user. Cummings (2005: 41) refers to this activity-oriented conceptualisation of linguistic meaning as "meaning in action" which seems crucial for any language interpretation.

The ubiquity of vagueness in language use is the reason as to why individuals need to engage in the interpretation of linguistic content with regard to its semantic, cognitive and most importantly pragmatic meaning. All language interpretation, it seems, is based on the knowledge individuals possess of the world. Widdowson (2011: 28) describes the interpretation of text as a process in which "language triggers off the recall of some familiar state of affairs". At this point it is important to

distinguish between the notions of text and discourse. Widdowson (2011: 6) argues that texts themselves do not carry meaning, but that every text was produced with a certain intention, that is, “to get a message across, to express ideas and beliefs, to explain something, to get other people to do certain things or to think in a certain way”. The various communicative purposes that underlie the text itself and its production have been referred to as discourse (Widdowson 2011: 6). Accordingly, there is a primary or intended discourse in the time or place the text was produced. In order to make the text “a communicative reality” other individuals need to engage in a meaning-making process in which they “interpret the text as a discourse that makes sense to them” (Widdowson 2011: 6). One may thus assume that texts themselves do not carry meaning, but that meaning is given to texts when they mediate the discourse individuals derive from them (Widdowson 2011: 6). It seems that a common misconception of the relationship between text and context is related to the role of the former in the construction of the latter. Widdowson (2004: 23) contends that “the text does not in itself establish context but serves to activate it in the reader’s mind”. Hence, the meaning of linguistic text cannot be found in the semantic code itself, but is inextricably linked to the mental construct of context that is evoked in the mind of individuals. Instances of vague or indeterminate language use could thus be treated as a phenomenon that arises from semantic as well as pragmatic aspects in language interpretation.

Indeterminacy can be assumed to originate from various sources, the most obvious being when the relationship between a linguistic sign and a referent in the external world is indeterminate. Channell (1994: 199) has drawn attention to the relationship between vagueness and categorization, which she places in proximity to the notions of conceptual edges. The study of vagueness and the processes which underlie human cognition and categorization inevitably lead semanticists, cognitivists and pragmaticists to the heart of their research. The study of meaning is thus necessarily also a study of indeterminacy, which poses a considerable challenge for the semantic, cognitive and pragmatic theories since it reveals the edges and limitations of these approaches. As Widdowson (2011: 4) points out there is a distinction to be made between what a certain linguistic structure denotes and what it is intended to refer to. In his view, reference is established “by relating the text to the context in which it is located”, which does not only include the context

arising from the immediate situation, but also a more abstract cultural context (Widdowson 2011: 5). In the following chapter, the notions of indeterminacy, indefiniteness, vagueness and ambiguity will be presented. I will then provide a critical discussion of these terms and relate them to various legal aspects.

2.1. Indeterminacy

It is indeed difficult to define or to specify the notion of indeterminacy since vagueness, ambiguity and indefiniteness seem all to share the property *indeterminate*. An attempt to undertake this could possibly start with the etymological relationship between the lexemes ‘definite’ and ‘define’, which are both derived from the late 14th-century Old French noun *definicion*, denoting the “setting of boundaries” (definicion, Dictionary.com). It is reasonable to argue that the notion of definiteness relates to the semantic meaning of an item, whereas determinacy describes “linguistic units like words in respect to the entities in the real world they refer to” (Bhatia *et al.* 2005: 11). In other words, whereas indefiniteness relates to the boundaries between individual linguistic categories, indeterminacy appears to be linked to degrees of lexical accuracy (Pinkal 1981), namely whether the referential relationship between the signifier and the signified is clear.

There is an important distinction presented by Endicott (2000) which has also been recently taken up by Bhatia *et al.* (2005: 12), that is to say, the conceptual difference between legal and linguistic indeterminacy. The phenomenon of indeterminacy is ubiquitous in language, be it in rhetoric figures such as *pars pro toto* and *totum pro parte* or in everyday discourse. Generally, it may be assumed that vagueness, ambiguity and indefiniteness may all be understood as forms of indeterminate language use. Endicott (2000: 9) convincingly argues that linguistic indeterminacy does not necessarily lead to legal indeterminacy since not every utterance that is linguistically indeterminate is also legally indeterminate. It is a well-known process that certain lexical items are semantically adopted by certain professional communities and then pragmatically specified so as to facilitate communication between professionals. However, what may be perceived as largely indeterminate by a client might be perfectly clear to a solicitor.

Kinship terms in the discussion of same-sex adoption may be an appropriate example to show that the distinction between legal and linguistic indeterminacy is indeed sound. Whereas the term *parents* may display a considerable degree of indeterminacy, also with regard to the family relations which are socially accepted, in Austrian Law the word *mother* is defined as “the woman who has given birth to the child” (§ 143 ABGB, Eschig & Pircher-Eschig 2013). The *father* of a child is not determined by the biological process of birth, but by legal requirements specified in § 144 ABGB. Thus, the meaning of certain legal concepts may differ considerably from the everyday understanding of the majority of the speech community. The problematic relationship between the legal lexicon and other systems of categorization will be later discussed in the context of literal interpretation and the Austrian Tree Protection Act.

2.2. Vagueness

Despite the great interest in the phenomenon of vagueness from multiple academic disciplines, it seems no common definition of the concept could be found to the present day (Schöne 2011: 14). Channel (1994: 1) observes that, to some, “clarity and precision” are features of ‘good’ language usage, whereas “vagueness, ambiguity, imprecision and general wooliness are to be avoided”. In legal linguistics, it has been argued that the problematic relationship between linguistic vagueness and law should be investigated with regard to how vagueness is conceived of. Solt (2015: 109) describes vagueness as a phenomenon that is related to the “lack of sharp boundaries and the existence of borderline cases” in language.

Bhatia *et al.* (2005: 13) have drawn attention to the discussion as to whether vagueness “is a global or a local characteristic of legal writing”, stating that the global approach entails the assumption that all legal writing is both vague and indeterminate. In contrast, the approach of local vagueness assumes that only some aspects of legal language show the phenomenon of vagueness (Bhatia *et al.* 2005: 13). Following Fraser (2010: 25), I assume that a large number of expressions are vague or imprecise. In fact, communication between any interlocutors would indeed be very time consuming and inefficient if every piece of information touched upon were to be specified. Fraser (2010: 25) also provides a suitable example which

shows why it is adjectival vagueness in particular that should be investigated further:

- a) John is bald [on top but has a fringe around the edges.]
- b) John is bald [for one so young.]
- c) John is [completely] bald.

The kind of baldness described in the sentences above is determined by the language user's communicative intention and the context of the utterance. In oral communication, however, there is a set of additional features which may guide the interlocutor so as to avoid misunderstandings, e.g. intonation or metalinguistic features. In legal contexts, most forms of interpretation are based upon written texts as oral accounts need to be put into writing for reasons of evidence. Following Widdowson's (2011: 22), one may argue that in legislative drafting particularly individuals produce a normative text which then "keys the second-person party [...] into a context assumed to be shared." Adjectival vagueness in normative texts is thus treated as a phenomenon that tendentially occurs in the interpretation of written language, e.g. the ABGB. The following examples all comprise evaluative adjectives which display a considerable degree of vagueness.

- d) a reasonable manner
- e) a reasonable level
- f) a reasonable period of time

The interpretation of such adjectives "is dependent on information provided by the context in order to give any kind of precisification of the noun qualified" (Fjeld 2005: 164). In order for legal professionals to understand the legal quality of reasonable in the three phrases above, it is also necessary to consult other legal sources of reference to establish a common ground between the text and the interpreting individual. One may thus assume that all interpretation of adjectives is related to context-dependence and intertextuality.

Jucker, Smith and Lüdge's (2003) conception of "common ground exploitation" is also referred to by Fraser (2010: 25) as describing individuals' tendency to "reduce [their] requirement of precision to accommodate the hearer". Common ground exploitation may be especially relevant to genre-related discussions of

normative texts as legal writing certainly deviates from other forms of linguistic participation. In legal writing, the product of the writing process is intended to last (Asprey 2003: 125), which shapes both the author's and the product's communicative intention and also their identity. It is plausible that the notions of ambiguity, indefiniteness and indeterminacy are merely different perspectives on related phenomena. Rather than introducing finer and finer shades of conceptual differences, it might be more fruitful to accept that vagueness can take different forms and that these forms are always tied to specific instances of language use.

Vagueness is not a threat to the legal order, but it is ubiquitous; it cannot be avoided or banned from language use. Most linguists today would probably agree with Zadeh (1965: 338) that "[m]ore often than not, the classes of objects encountered in the real world do not have precisely defined criteria of membership". In the legal domain, one encounters a rule of language and more specifically a rule of terms and concepts, which are hierarchically organized (Tiersma 2005: 111). Legal practitioners consequently "perceive of the world, as well as language describing the world, as consisting of categories that were, in turn, subcategories of a larger category" (Tiersma 2005: 111). The referential relationship between the outside world and a legal term is commonly referred to as subsumption, namely "the application of a norm to a specific case, i.e. "the subsumption of facts under the premises of the norm" (Wissenschaftsrat 2012: 33). Whenever a court faces difficulties in making a decision on the criteria of membership of certain linguistic categories, interpretative solutions are ways of dealing with vagueness. After all, in some contexts winning or losing a legal case may depend on whether or not the court shares a party's view on the applicability of a given linguistic item. Consequently, vagueness in a legal context may be specified as the fuzzy relationship between the outside world and legal categorization.

2.3. Ambiguity

The term ambiguity is not only familiar to linguists. Webster (1832: 12) defined the term in his *Dictionary of the English Language* as follows: "Doubtfulness or uncertainty of signification, from a word's being susceptible of different meanings ; [sic] double meaning. Words should be used which admit of no ambiguity". This 19th-

century perspective of the phenomenon reflects the opinion also encountered today according to which ambiguity present in linguistic structures is something undesirable, something to avoid. In *Patent and Latent Ambiguities in Written Instruments* (S. H. O. 1866), the term is specified according to the mode of how this uncertainty of signification is displayed. “By the term patent ambiguity [...] may be understood an ambiguity appearing on the face of an instrument” (S. H. O. 1866: 140). Thus, in the case of patent ambiguity, it is the linguistic text itself which leads to an uncertainty in meaning, lexical and structural ambiguity being the most prominent examples.

It seems an important distinction to be made here is that between ambiguous and vague language use. Tuggy (2006: 167) points out that while ambiguity relates to the separation of two or more meanings, vagueness corresponds to unity between them. A well-known example for ambiguity provided by Tuggy (2006: 167) is that of the distinction between *riverbank* and the bank as a financial institution. However, this is an entirely different form of underdeterminacy as present in the vague expression *my aunt*, which leaves the interlocutor uninformed whether reference is made to the speaker’s father’s or mother’s sister.

Latent ambiguity on the other hand “is that which seems certain and without ambiguity, for anything on the surface of the instrument, but there is some collateral matter out of the instrument that breeds the ambiguity” (S. H. O. 1866: 142). Widdowson (2011: 15) states that while an utterance may be fully grammatically well-formed, it can still display a lack of feasibility when it allows for two entirely different readings that appear to be equally acceptable. The construct of patent ambiguity may hence be related to forms of contextual or pragmatic ambiguity in which the context of an utterance does not resolve the uncertainty in reference. Discussing the challenge of arbitrariness in the application of the law, Endicott (2014: 59, my emphasis) provides two scenarios which serve as suitable examples of latent or pragmatic ambiguity:

- 1) [Y]our mom says ‘*you can have half the dessert in the fridge*’ and you open the fridge and find a piece of chocolate cheesecake and a pot of yogurt.

As Endicott points out the easiest way to solve this uncertainty in signification is to ask the other language user whether *dessert* refers to the chocolate cheesecake or the yogurt. While this solution to the problem is most-likely to result in a successful

disambiguation of the term, written text seems to pose an even greater challenge which is evident in Endicott's (2014: 59, my emphasis) other example:

- 2) [Your mom] wrote '*you can eat half the dessert*' on a sticky note on the fridge and went out to visit your aunt.

Here the language user is compelled to arrive at an interpretation, running the potential risk to make a wrong decision. The latent or pragmatic ambiguity which arises in the two scenarios also illustrates the tendency amongst legal practitioners to view ambiguity generally as an obstacle in the process of applying a concept which, due to an uncertainty relating to the context, might not be applicable without doubt (Schane 2002: 1).

It has been established that while some forms of ambiguity such as lexical or structural ambiguity indeed arise directly from the conventional semantic code of language, others are related to the way individuals exploit linguistic resources pragmatically. Legal conceptualisations of ambiguity seem to be merely terminological variants of the ones found in theoretical linguistics. However, as the law always adopts a normative stance, it does not tolerate judges who refuse to pass judgements as a result of linguistic imprecision. In this paper, I assume that ambiguity is not only a result of "the very fabric of language, irrespective of anyone's usage or understanding" (Schane 2002: 1), but also an inevitable consequence of the context-dependence of all language use. Ambiguity can thus not be avoided or excluded. The following sample taken from the translation of the ABGB comprises an instance of patent or structural ambiguity in a normative text:

7. By an animal

Whoever discovers someone else's livestock on his land is, for this reason, not yet entitled to kill it. He can chase it away with reasonable force or, if he has incurred damages as a result, exercise the right of a pledge with respect to as much livestock as is sufficient for his compensation. However, he has to reach an agreement with the owner or to file a claim with the judge **within eight days**, otherwise he has to return the pledged livestock. (§ 1320 ABGB, Eschig & Pircher-Eschig 2013, my emphasis)

The prepositional phrase *within eight days* is in this case a form of patent ambiguity or structural ambiguity as it is not clear enough whether the deadline of eight days is also applicable to the agreement with the owner. Accordingly, it could be argued that the provision shows a form of patent ambiguity with regard to the deadline set. To conclude, instances of lexical and structural ambiguity are related

to the legal construct of patent ambiguity, whereas latent ambiguity very often arises from an uncertainty about context. Thus, the legal concepts of patent and latent ambiguity are merely a legal perspective on the established linguistic phenomena of semantic and pragmatic ambiguity.

2.4. Indefiniteness

Indefiniteness can be considered an umbrella term which has undergone a variety of conceptual changes. Pinkal (1995: 18) describes indefiniteness as “the typical case for many sentences”, placing semantic indefiniteness in the domain of vagueness and ambiguity. Pinkal (1995: 15) provides a definition for the concept, stating that “[a] sentence is semantically indefinite if and only if in certain situations, despite sufficient knowledge of the relevant facts, neither ‘true’ nor ‘false’ can be clearly assigned as its truth value”. In other words, an utterance may be considered indefinite if the linguistic structures under inspection do not allow for a decision as to whether its truth value is *true* or *false*. In the sentence *He can chase it away with reasonable force* (§ 1320 ABGB, Eschig & Pircher-Eschig 2013, my emphasis), the adjectival phrase ‘reasonable’ may be considered epistemologically indefinite. Unlike in the case of ambiguity, the utterance does not provide two or more equally possible options, but it displays an undetermined truth value (Pinkal 1995: 15) and consequently the range of *true* and *false* is extended by the category *indefinite*. Thus, whereas ambiguity refers to two equally possible readings, indefiniteness may be related to a degree of imprecision residing in a certain linguistic item. The perceived imprecision in *reasonable* is relatable to the established distinction between gradable and ungradable adjectives. One is thus safe to assume that the gradability of adjectives indicate different degrees of indefiniteness.

Instances of indefiniteness occur frequently in language use, but they do not lead to serious legal problems as often as might be assumed. Fjeld (2005: 158) has drawn attention to the adjective *married*, whose “meaning is fixed through a legal act of marriage”, but which, in a colloquial context, may be understood as a specification of the spouses’ fidelity, e.g. to be more or less married. There is no clear distinction between vagueness and indefiniteness, but it appears as though both of these phenomena are bound to contextual parameters. In other words, regardless

whether an utterance is classified as vague or indefinite, it is the context that provides whatever definiteness or precision is required in the communicative process. It goes without saying that gradable adjectives lend themselves as examples, as the above mentioned shows. Reasonable, faithful, appropriate, acceptable, good and many others are all adjectives which have a potential to lead to indefiniteness in a given utterance. In order to overcome these linguistic problems, legal language use has developed strategies to counter the intrinsic indefiniteness of certain linguistic items. The meaning of a word is thus defined with respect to its desired use in the legal system. Potential problems in the domain of legal definitions and authentic interpretations will be discussed extensively at a later point in this paper.

3. Legal interpretation

In the last chapter, I focused on possible demarcations of the notions of indeterminacy, vagueness, ambiguity and indefiniteness. The academic discussion of these concepts reflects a considerable degree of undecidedness, which also reveals how much the study of meaning in legal linguistics is in need of a comprehensive framework that achieves a unification of terms and concepts. This chapter sets out to answer the question as to which exegetical methods legal professionals apply in Austria to offset the natural indeterminacy of language. It does not contain any imperatives as to how and why legal interpretation ought to be undertaken. It is simply intended to describe language as a medium of interpretation and legal meaning-making processes with a particular focus on the Austrian legal system.

Legal philosophy deals with vagueness in various ways. Whereas theorists in the tradition of natural law assume that there are norms in existence which are natural and should therefore be considered good. Vagueness and interpretation necessarily go hand in hand and that the acceptance of “vagueness and indeterminacy as inherent features of normative texts therefore has an impact on the position to be taken regarding the ideas of good law” (Bhatia *et al.* 2005: 14). The conflict between natural law theorists and legal positivists also has implications for the linguistic

description of this phenomenon. In the tradition of natural law, vagueness may be perceived as an obstacle to find out what the right, correct, perfect norm is supposed to mean, whereas in legal positivism the 'true' meaning of a norm seems to be always subjected to a general relativism of values. The ubiquity of vagueness is a challenge in both schools of legal thought and there have thus been various attempts to provide descriptive accounts of the processes of legal meaning-seeking. Though often used in reference to religious texts, it may be assumed that all processes of legal meaning-seeking are forms of exegesis which aim to recover a text's intended meaning (Encyclopædia Britannica, 'exegesis', 28 January 2009). The concept of eisegesis, in contrast, refers to "the art of reading into a text more or less whatever one wishes to find" (Newport 2000: 4). Teleological approaches to legal interpretation, in particular, are often confronted with the criticism that they are more prone to wishful eisegesis rather than what is perceived as 'objective' exegesis.

The former president of the Supreme Court of Israel Aharon Barak (2006: 122) asserts that "interpretation constitutes a process whereby the legal meaning of a text is 'extracted' from its semantic meaning", and introduces the argument that there is a transfer of meaning taking place between 'human' language into 'legal' language. Barak's approach also assumes that there are two types of law, namely static law and dynamic law. It is the transformation of linguistic text into legal norms which in his approach describes the change from 'static law' into 'dynamic law' (Barak 2006: 122). Barak's distinction of 'human' and 'legal' language is not fully convincing since the transfer he refers to seems to apply to a common communicative process that also occurs frequently outside the legal domain. Nevertheless, he addresses a significant aspect in the conceptualisation of legal interpretation. It may be argued that the notions of static and dynamic law, as used by Barak (2006), correspond with the distinction between semantic and pragmatic meaning of legal provisions. In this view, while static law could be conceived as the inert legal code, dynamic law may relate to the text's activation in the process of discourse interpretation (Widdowson 2004). Based on the assumption that the law displays a static and a dynamic element, it appears to be a relevant question as to what is actually interpreted. In other words, it should be inquired what may be understood by a 'legal norm'.

Kelsen (1941: 50), who was doubtlessly one of the most influential Austrian writers on legal positivism, portrays the law as “an order by which human conduct is regulated in a specific way”. In order for the law to regulate human conduct it needs “provisions which set forth how men ought to behave” (Kelsen 1941: 50). This description of legal norms is still an accepted view amongst positivist theorists. According to Kelsen (1941: 50) the source of such legal norms is either custom or through an agentive “law-making capacity”. The descriptive construct of legal norms that permit, prohibit or obligate appears sound indeed, but does not provide any clues as to which connections exist between the normative space and the linguistic space.

Widdowson’s (1996) observations on the nature of language shows strong parallels to the relationship between law and language. Widdowson (1996: 17) argues that “[l]anguage is so intricately and intimately bound up with human life, and is so familiar an experience, that its essential nature is not easy to discern”. Following this view, I assume that the practice of interpretation generally and legal interpretation specifically are so dependent on the language system that its profound role is often overlooked since it is so entwined with human life. While most legal practitioners intuitively acknowledge the profound importance and utility of language in their profession, linguistic problems are hardly addressed in the course of law degrees in Austria. One may thus argue that the legal profession displays a considerable degree of numbness to a number of linguistic problems, which is astounding considering language is essentially at the very heart of the subject-matter. At this point reference should be made to Klinck (1992: 34) who raises a fascinating yet empirically unattested point, when relating “the effect of [...] legal language habits on [...] thought and [...] sensibilities”. Wittgenstein (1922) presents in his *Tractatus* the argument that the boundaries of logic are determined by the boundaries set by the world. It remains unknown whether language (co)-determines human thought, but one is safe to assume that legal norms can only perform a regulative function and thus build the normative space if they are linguistically mediated. The birth of a norm, be it a religious or a legal norm, is the moment when it takes on the shape of language. It may thus be helpful to distinguish between abstract mental representations of normative constructs on the one hand and the linguistic embodiment of such metalinguistic categories on the other hand.

3.1. Nomemes and norms

Before discussing various different legal meaning-making processes and the inventory applied by legal professionals to offset the indeterminacy in language use, this section will introduce a new metalinguistic category I refer to as the nomeme. It should be noted that the use of this term is completely unrelated to the terminology used in the discussion on nomemes and allonomes, which revolves around proper names and their typology (Haas 1996: 1233). I conceive of the nomeme pool as a set of abstract units of social prescription, that is to say, non-linguistic abstractions of normative expectations towards the behaviour of individuals within a given community. Derived from the Greek expression νόμος (law), nomemes may be understood as a set of general social principles of what is considered acceptable or unacceptable within the normative space. Following Ewald (1991: 153), I assume that every space can be considered normative if social prescription is operative.

At this point one may ask how this construct is purposeful to account for the relationship between law and language. Kelsen (1941: 62-63) argues that in every normative system legal norms are organized hierarchically and that the highest positive norms depend on an even higher norm which he refers to as the basic norm. However, this basic norm does not have a specific linguistic content. In fact, it appears as though the basic norm was only introduced to stabilize and maintain the positivist notion of the interdependency of all legal norms. One may thus refer to the basic norm as “a logical necessity” in Kelsen’s theory (Raz 1974: 95) without which any normative system would be reduced to absurdity. Linguistics is not concerned with a prescriptive evaluation of norms and the hierarchy that may exist between them. However, the distinction between nomemes and norms may prove useful in the description and analysis of the normative space and the phenomenon of vagueness in language. Whereas nomemes are an abstract category of human thought, norms correspond to the actual linguistic realization of these socially-constructed abstractions and are subjected to the structure and the limitations of the language system. The following example of a well-known religious norm may be helpful to illustrate this argument further:

THOU SHALT NOT KILL

The prohibition of killing is an integral imperative in most human societies. One could hence assume that a nomeme may exist that killing is to be prohibited, or rephrased more positively, that human life should be protected. The various different norms which then linguistically realise the abstract content of this nomeme may differ greatly from each other, but are nevertheless derived from the very same nomeme. Accordingly, while regulations on murder and manslaughter commonplace in a large number of legal systems would relate to the same nomeme, they certainly do not constitute one and the same norm. This is not to say that there are no intertextual links between these norms. In fact, the normative space displays a very high degree of intertextuality as will be later discussed in detail.

Norms are linguistic realizations of a given nomeme. Vagueness could in this view be understood as a by-product of the conversion process from nomemes to norms, from abstract concepts to their various linguistic realisations. It could be hypothesised that today's multipluralist societies functionalise vagueness or imprecision to ensure and maintain coherence in the law. Here critical readers may raise the question as to whether the term nomeme is not merely another word for value. It is true that nomemes may be related to the concept of values as they too are intrinsically normative. Values are however not necessarily connected to legal imperatives as not everything that is valued is legally codified. In turn, everything that is legally codified is the linguistic realization of an abstract concept and has thus undergone this conversion process. In the context of legal prescription, it appears as though this dual theory of language in the normative space could be helpful in the analysis and description of legislative drafting processes. Figure 1 shows a visual representation of the normative space as previously discussed:

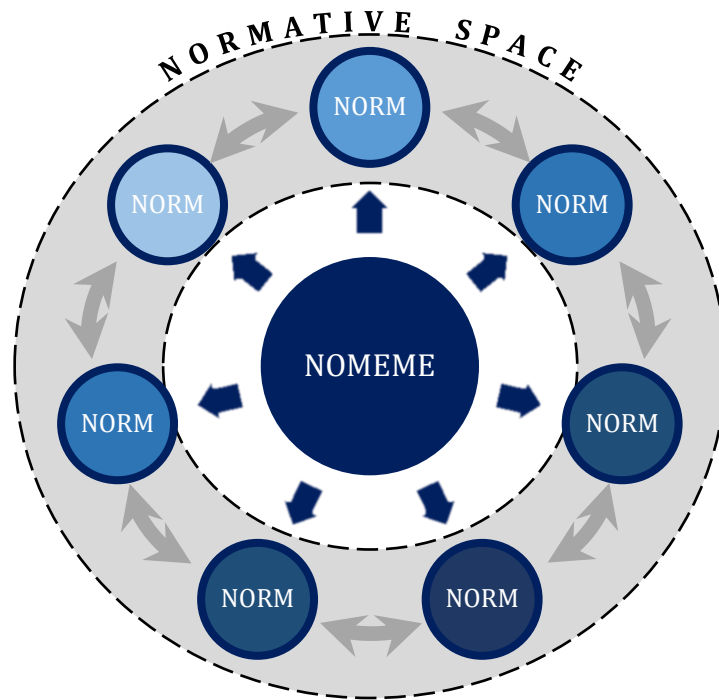


Figure 1 Nomemes & norms

The distinction between nomemes and norms may also prove useful with regard to the interpretation of linguistic content in general. Whereas legal practitioners' main focus of attention rests on the regulating force of legal norms, linguists and cognitive psychologists may investigate the processes how nomemes are linguistically realised, that is, how individuals make use of the language system to express highly complex circumstances in the future. It may be argued that without displacement in language, the deontic stance the law adopts could not be constructed since norms would remain a virtually ephemeral reaction to social reality without any future consequences. This would not hold true for legal norms only, but, taking into account the diversity of normative systems, would also apply to religious or moral norms. The distinction between nomemes and norms seems of particular relevance in the event that two normative systems collide as a consequence of normative pluralism, e.g. state authority and religious authority. Normative systems are very likely to contain nomemes which relate to the protection of certain individuals, e.g. women. The use of the niqāb in Western societies may be an example of a collision between norms that derive from one and the same nomeme, i.e. the protection of women; some jurisdictions linguistically realise a prohibition of the veil, yet the wearing of the veil is explicitly prescribed among certain religious schools of thought. This is partly due to the divergence in

how nomemes relating to women's social status are linguistically realised. In contrast, one may assume that the convergence between norms originating from different normative systems may increase the effectiveness of these norms. One may also consider an even finer distinction relating to the various differences between norms themselves, that is, between conceptual and encoding norms. As fascinating a comparative analysis of religious and legal norms may appear, this paper is predominantly concerned with legal rather than religious norms. Thus, the following discussion will mainly focus on legal interpretation as an institutionalised process. Presenting an interpretivist view on the notion of truth in interpretation, the following chapter will mainly revolve around two questions, namely how meaning is conveyed in legal interpretation, and which meaning-seeking processes are found in Austrian law.

3.2. Interpretation as institutionalized pragmatics?

Is there truth to be had? Are we contesting what the truth is? That is certainly, to use a grand phrase, the phenomenology of most lawyers. We read, we puzzle, we puzzle again, then we come to a judgement. And it's a judgement not a choice. It doesn't feel like a preference. It feels like a judgement about what the truth is. Imagine a judge who's just sentenced a villain to jail or perhaps worse and then says at the end of his opinion. Of course that's the way I see it, that's my opinion, that's the way I read it, but there are other interpretations and they are equally good. (Dworkin 2009)

This famous perspective on legal interpretation which Dworkin shared with the audience in the inaugural Frederic R. and Molly S. Kellogg Biennial Lecture on Jurisprudence leads to a number of questions that necessarily arise from the context of his own interpretivist position. Interpretivism is relevant to this discussion of interpretation for two main reasons. Firstly, it is not rooted in the positivist tradition in that it accepts moral considerations (Stavropoulos 2014), which entails the essentialist assumption of the existence of truth in language and interpretation. This approach necessarily leads to an absolute rejection of all value relativism. Secondly, Dworkin (2009) refutes the allowableness of the relativity of judgement, placing upon the judge the sole responsibility to find out "what the truth is". Denying the omnipresent relativity in legal assessment seems particularly problematic as the practice of interpretation itself has been described as "encompassing both a backward-looking conserving component, and a forward-looking creative one" (Dickson 2010). Dworkin seems to entirely neglect the pragmatic dimension of

language interpretation and emphasises the view that the authority of the judge lies in the exegesis of a particular normative text. Here, judges and clerics share the same role in their respective normative systems which empowers them to fix the meaning of linguistic expressions to maintain social coherence and unity. The absolute concept which Dworkin repeatedly discusses is that of truth.

It seems the fundamental question is not whether there is truth in language, but whether truth can be reliably conveyed in the process of language interpretation. However, this is too deep an epistemological problem to be discussed here in detail. In this chapter, I assume that the interpretation of normative texts could be described as a practice that rests on the assumption of the completeness of the legal system (Alchourrón & Bulygin 1971: 167). The tendency to perceive the legal system as complete links to what I have written on the relationship between nomemes and norms. On the abstract level, every legal system may be considered complete as the notions of completeness and incompleteness only seem to occur when the abstract is linguistically realized, that is encoded in norms. The process of interpretation after all is a practice intended to fill cognitive gaps with linguistic signs. The thought which separates common law systems from those in the continental European tradition is whether a judge's interpretation of the law can create new law. Barak (2006: xv), as a proponent of the common law tradition, argues for the creative and modelling features of legal interpretation:

The meaning of the law before and after a judicial decision is not the same. Before the ruling, there were, in the hard cases, several possible solutions. After the ruling, the law is what the ruling says it is. The meaning of the law has changed. New law has been created.

In Austrian law, this approach towards interpretation is diametrically opposite. Chromá (2005: 379) points out that "the common law refuses existence of a single and exclusive source of law, such as legislation". In contrast, the ABGB determines that "[c]ourt orders in relation to individual cases and decisions rendered by courts relating to specific lawsuits never have legal effect" (§ 12 ABGB, Eschig & Pircher-Eschig 2013). Therefore, legal methods regularly employed in the common law such as the distinguishing of cases are simply not permissible. Malleson and Moules (2010: 69) provide a legal definition for this entirely linguistic process in the common law:

In practice, no two cases will have identical facts and a case is only applicable if the material facts are the same. The key question is whether the differences between the present and previous case have a bearing on the outcome of the case. If there are materially different facts, the court may distinguish the case.

In other words, the majority of the court's investigations is based upon linguistic evidence provided by the stakeholders involved. Should the case display sufficient original divergence in comparison to previous cases, it may be distinguished. This corroborates the argument that the rule of law is in fact the rule of language, or at least made visible through linguistic signs entirely. It is evident that in both legal traditions, language plays an integral role as the subject and medium of interpretation. It should however not remain unmentioned that the position which interpretation has in the respective legal system largely depends on the expectation towards the outcome of the interpreting process. While the preceding discussion has focused on the main aspects of interpretation in both civil law and the common law systems, the remainder of the paper will exclusively be concerned with the former. In the following chapter, I will introduce and discuss the various methods as to how meaning is negotiated in Austrian Civil Law and emphasize the linguistic relevance of these procedures.

3.3. Methods of legal interpretation

In the last chapter, it was established that there is a stark contrast between the two most frequent legal systems, that is the common law system and the continental European law system, with regard to the functions of and expectations towards legal interpretation. Whereas the opinions of common law judges create new law, the interpretation of the law by Austrian judges can theoretically never result in a change of the legal provisions codified. In Austrian Civil Law, legal practitioners encounter a variety of different methods to obtain tenable interpretations of the legal texts with which they engage. According to Wendehorst and Zöchling-Jud (2015: 9), there are four main methods by means of which the meaning of a legal text may be recovered, namely literal, systematic, historical and teleological methods of interpretation. In this chapter, I will attempt to first provide the legal perspective on the each of the meaning-seeking strategies, and then discuss and

criticize the underlying propositions and possible problems which may arise in the process of interpretation.

3.3.1. Literal interpretation

The first method of interpretation to be discussed is commonly referred to as literal interpretation and is largely concerned with the semantic decoding of normative texts. Wendehorst and Zöchling-Jud (2015: 9) state that this form of interpretation aims to provide the meaning of a word, a sentence or a sequence of sentences by virtue of the logical relations between them. They point out that depending on the terms under consideration, common language usage, jargon or specific legal register may be taken into account (Wendehorst & Zöchling-Jud 2015: 9). Finally, they also draw attention to external sources of semantic reference, e.g. dictionaries such as thesauri. Literal interpretation is used in all domains of Austrian law, e.g. penal law, where the construct of *äußerst möglicher Wortsinn* [utmost possible literal sense] of a given norm must not be exceeded to ensure that individuals are not punished beyond what has been codified. Generally, in Austria all forms of interpretation start at the exact wording of the law (Rummel & Lukas 2015: 70). However, this view assumes that the meaning of a text is at least partly recoverable by a decoding of its semantics and completely neglects the diversity of discourses derivable from the one and the same text. The notion of legislative intent shows how the discourse underlying legislative drafting processes and the various discourses derived from the text after its creation may differ considerably.

Rummel and Lukas (2015: 71) argue that legislative intent can only be conveyed through the instrument of language. They go on to state that every form of interpretation should start with the literal wording. The concept of literal interpretation seems to be a very attractive one and is found in most legal systems today. In common law systems the literal rule is related to this approach of interpretation, which presumes that the norm under investigation is possibly explicit enough to make a decision in a given case. In Austria, it is an established view that if the wording of a given law is explicit enough all other attempts of interpretation should be considered superfluous. In this case, the literal reading of the text is to be favoured over any other forms of interpretation (Rummel & Lukas 2015: 71). Finch and Fafinski (2009: 60) criticize that this approach “assumes

perfection in parliamentary draftsmen and ignores the natural limitations of language". This criticism leads to the paradox of the law as "a profession of words" (Mellinkoff 1963: vii) and the occasional inability of individuals to make sense of these words without taking into account external linguistic evidence.

In normative texts, one encounters a considerable discrepancy between common language usage and legal terminology. In Austrian public law, the Tree Protection Act (2013) may be a suitable example to illustrate this divergence in language usage. The act protects the tree population of the City of Vienna, irrespective of whether a given tree is classified as public or private property. The Act defines the tree population under protection as all deciduous trees (*Laubhölzer*) and conifers (*Nadelhölzer*) whose trunk circumference is at least 40 centimetres measured at the height of 1 meter from the root branching. The Encyclopædia Britannica ('tree', 20 November 2015) defines the lexeme 'tree' as follows:

Tree, woody plant that regularly renews its growth (perennial). Most plants classified as trees have a single self-supporting trunk containing woody tissues, and in most species the trunk produces secondary limbs, called branches.

It appears as though the question as to what may be considered a tree is reformulated in literal interpretation, namely what is considered a tree according to this particular act. This divergence in language usage is a result of the conventional 'normalisation' of the underlying nomeme. Legal definitions are therefore intended to create highest-possible certainty on the application of a term to guarantee that the law is enforced according to the same linguistic criteria. It seems, legal certainty is inextricably bound to linguistic clarity. In the United States, the highly political idea of strict constructionism is possibly the narrowest approach to literal interpretation. Strict constructionism as a movement in the context of literalism assumes that judges should conduct "literal rather than purposive interpretations of the constitutional text" (Solum 2016, Legal Theory Lexicon). It should however be noted that a literal reading of any text is always related to the receiver's understanding of it and thus the discourse derived from it.

The purposive interpretation, which strict constructionism so fiercely opposes, will be discussed in the chapter on teleological interpretation. In the context of literal interpretation, however, this view on exegetical processes must evoke disbelief about the structure and cognitive limitations of language. Can language as

a communicative system ever provide its users with the necessary tools to fully grasp the literal meaning of a given text? This is highly doubtful for a number of reasons. Every so-called literal understanding of a text calls on individuals' conceptual and encyclopaedic knowledge (Croft & Cruse 2004; Kiefer 1990). Kiefer (1990: 3) elaborates that "[l]exical items may differ as to how much linguistic knowledge they contain in their descriptions and how much conceptual information they need for being fully specified". However, full specification is not necessarily always the legislator's intention as the idealised prototype of a normative text shows a maximum of determinacy and precision to ensure that every lexical item is clear (Bhatia *et al.* 2005: 10), but also "cover[s] every relevant situation, i.e. it has to be all-inclusive" (Bhatia 1998: 117). The literal approach to interpretation is therefore to a large extent concerned with strategies to deduce the clear meaning of a norm, which in some cases seems almost impossible to determine.

Liebwald (2013: 408) states that "[v]ague legal concepts combined with the elasticity of legal interpretation can lead to astonishing meanings or changes of meaning of legal terms, concepts and rules". This presumed elasticity seems to hold true for literal interpretation in particular. After all, on a semantic level every stretch of language displays a complex pattern of meaningful relations. Widdowson (2004: 166) points out that there is semantic potential in every text to mean many things. He goes on to argue that "[n]o matter how detailed the analysis of a particular text might be, the textual features that are activated in interpretation are only those which are perceived, consciously or not, to be contextually and pretextually relevant". As it is difficult to determine where to draw the line between the literal co-text of a legal norm and the rest of the legal corpus, legal practitioners distinguish between literal and systematic interpretation.

3.3.2. Systematic interpretation

On an abstract level, every legal order appears as though it is a complete system. This illusion is of course contradicted by the fact that new law is constantly made based on the experiences of social reality and the limitations or insufficiencies of the law. In this sense, the law may be conceived as a vast linguistic corpus that shows a considerable number of intertextual references with regard to the meaning of

linguistic units. Intertextuality is thus an essential component of most legal meaning-making processes, which, in the context of systematic interpretation may be referred to as the conventionalisation of specific meaning by precedence. Systematic interpretation seeks to decode a given norm according to its position in the entire legal system (Wendehorst & Zöchling-Jud 2015: 10). In legal theory, a legal proposition would thus be deduced by the combination of various orders found in the normative body. Wendehorst and Zöchling-Jud (2015: 10) state that it is the legislator's intent to create a meaningful system. Due to the assumed meaningfulness of the legal system, the overall structure of the law is expected to serve as a source of reference with which linguistic units can be assigned their correct meaning.

Systematic interpretation as a form of exegesis is based on an institutionalised contextualisation of legal norms. However, the question remains as to how it is defined what can or cannot be contextualised. Wright's (1975) precisification interdiction may indeed be helpful in order to understand the differences between legal language use and how individuals use language every day. The precisification interdiction has been thus described by Wright:

It is not generally a matter simply of lacking an instruction where to draw the line; rather the instructions we already have determine that the line is not to be drawn. (Wright 1975: 330, cited in Fjeld 2005: 159)

As mentioned earlier, individuals do not specify all information there is about a given linguistic item; they only provide as much information as necessary in order to ensure smooth communication with their interlocutors. Wright's (1975) precisification interdiction and Grice's (1975) cooperative principle seem to be observations of the same phenomenon from different theoretical perspectives. Both Grice and Wright assume that in language use generally some vague linguistic structures are simply not to be specified. The interpretation of linguistic expressions thus certainly relies on what individuals assume to be the purpose of the discourse derived from them.

In a legal context, a key concept for a systematic understanding of a given norm is consistency. Lenaerts and Gutiérrez-Fons' (2013) description of the principle of consistent interpretation in European Law shows that legal norms are never isolated linguistic units, but that they are always related and relatable. The

question as to where to draw the line is indeed one of institutional power rather than that of empirical linguistic research. Prost (2012: 71) argues that in the Western tradition the systematicity of the law is widely accepted. He addresses two main questions which must inevitably arise in the discussion of the nature of law and which are of paramount importance for a linguistic understanding of legal orders, namely 1. “what makes law a system” and 2. “what sort of system [is it]”? Earlier I argued for the intrinsically linguistic nature of every legal system. The practice of systematic interpretation is unthinkable without the consideration of the linguistic structures in which it is rooted. The law itself is not only built with language, it is language as a referential system with which the meaning of a given norm is determined.

Whereas in literal interpretation legal practitioners have to decide whether or not a certain legal construct is included in the linguistic structures of a given norm, the systematic approach aims to establish justifications as to why a certain reading is in concord with or supported by other legal norms. In other words, the systematic validity of a given reading is a matter of legal and thus linguistic context. Widdowson (2004: 19, original emphasis) argues that “[c]ontext [...] is not what is *perceived* in a particular situation, but what is *conceived* as relevant”. In legal interpretation, linguistic context is indeed conceptual rather than perceptual. This also holds true for the consideration of evidence in court as the weighing of witnesses’ testimonies is primarily evaluated on grounds of their assumed relevance. It is then the task of legal practitioners to relate these renderings of reality along with other kinds of evidence to one or more legal norms according to their role in the legal proceedings. Whether or not the court follows this proposal may also depend on the construct of legislative intent or purpose.

The processes by which new law is created are inextricably bound to the construct of the legislative intent, which also reflects the political system of a state. In *The Nature of Legislative Intent*, Ekins (2012: 1) starts his discussion as follows:

Legislatures enact statutes, the enactment of which (somehow) changes the law. Judges and lawyers, in interpreting a statute - adjudging its meaning and determining its lawmaking effect - very often try (and say that they are trying) to identify the legislature’s intention in enacting it.

This observation shows that it is often difficult to clearly distinguish between the different forms of interpretation since in the systematic approach every attempt to

relate one norm to another is driven by the intention to justify human conduct. It is again a question of institutionalised power-relations where the legal corpus ends in a given case and when it is not possible to relate two or more norms. According to Wendehorst and Zöchling-Jud (2015: 10), the interpretation of constitutional and European Union law displays special forms of systematic interpretation. They state that in Austria acts must not contradict Constitutional Law, whilst the Austrian legal system as a whole must not be in discord with European Union Law. In order to gain more knowledge about the legislative intent of a given legal norm, legal practitioners also take into consideration historical sources of jurisdiction. It may be assumed that the norm's primary discourse, and other discourses derived from its contextualisation in the normative space, may diverge considerably. A method of interpretation which is also closely linked to the systematic approach is the practice of historical interpretation. The following section serves to discuss the question as to how historical linguistic evidence is essential in systematic meaning-seeking processes in the law.

3.3.3. Historical interpretation

The language of the law is subject to diachronic language change. Legal interpretation may in some cases involve the consideration of historical linguistic evidence from the legislative procedures leading to the creation of a law. Historical interpretation serves to answer the general question as to which subjective legislative understanding underlies historical law-making processes (Wendehorst & Zöchling-Jud 2015: 10). In Austria, legislative documentation (*'Gesetzesmaterialien'*) may for instance include stenographic minutes of the National Council and their supplements (Wendehorst & Zöchling-Jud 2015: 10). To interpret a legal norm according to its historical legislative intent means to find out why exactly the legislative body introduced a norm and which circumstances made this introduction necessary, also taking into account the living conditions at the time (Wendehorst & Zöchling-Jud 2015: 10). Thus, legal practitioners may be assumed to derive various discourses from the normative text which draw on a contemporary understanding of the primary or intended discourse. According to Herzog (2014: 10), the historical element in legal interpretation may be understood in a broad and a narrow sense. Whereas the broad approach may include the overall development

of a legal institute, the narrow approach only aims to investigate the immediate legislative history (*occasio legis*).

In the United States, the 1980s saw an interesting discussion over the term originalism, which was put forward by Brest (1980: 204, my emphasis):

By “originalism” I mean the familiar approach to constitutional adjudication that accords binding authority to the text of the Constitution or the intention of its adopters.

The main challenges legal practitioners encounter when employing the method of historical interpretation are closely linked to the questions as to what is regarded historical evidence and where to draw the line. Brest’s (1981) approach expresses the tension between textual evidence (binding authority to the text of the Constitution) and intentional assumptions (the intention of its adopters), which is clearly related to the distinction between text and discourse referred to earlier. Similar questions arise in the domain of contract law where it is discussed whether there has to be “*a meeting of the minds*” in a given agreement or whether “the words used in an agreement by themselves are sufficient for interpreting the contract” (Schane 2002: 11, original emphasis). In the case of law-making procedures, the meeting of the minds within the legislative body is in some political systems a prerequisite for the lawful creation of a new law. Therefore, the normative construct of legislative intent is used to describe the collective consensus within a legislative body.

Earlier I argued that the assumption that every legal order is complete is nothing but an illusion. This illusion of unity may indeed be the source of a variety of problems especially in the context of systematic and historical interpretation. Prost (2012: 74) compares Kelsen’s and Hart’s approach, stating that both legal theorists “conceptualise the legal order as a system in which the lifecycle of certain norms is governed by other norms”. If it is at all adequate to metaphorically conceive of a legal norm as a living organism, the problems that accompany the change of a norm is the change of its linguistic form and function. If the normative space in past and present is thought of as a vast linguistic corpus, it is clear that changes in language entail changes in the law. From a socio-linguistic perspective the question remains as to which medium is consulted in order to arrive at a possible reading of the contextual or ‘original’ meaning of a legal norm. Indeterminate language use is also evident in

historical linguistic evidence. The ABGB also contains a number of instances of imprecise language use which will be discussed in the empirical part of this paper.

3.3.4. Teleological interpretation

This section sets out to discuss what may be understood by the philosophical term of teleology and how this popular concept is applied in the context of legal interpretation. The Encyclopædia Britannica provides the following definition for the concept of ‘teleology’:

teleology, (from Greek *telos*, “end,” and *logos*, “reason”), explanation by reference to some purpose, end, goal, or function. Traditionally, it was also described as final causality, in contrast with explanation solely in terms of efficient causes. (‘teleology’, 20 April 2015)

Accordingly, in the context of legal interpretation the teleological approach aims to find out the purpose of a legal norm. Since opinions may differ greatly on what is considered relevant from a teleological perspective, it could be argued that the construct of purpose in this approach regulates the attention individuals pay to a norm’s semantic meaning. To answer the question as to what a purposive approach to legal interpretation may include, it must first be determined what purpose it seeks to discover. Wendehorst and Zöchling-Jud (2015: 11) distinguish between two forms of teleological interpretation, namely the subjective-teleological and the objective-teleological approaches. They argue that a subjective understanding of teleological interpretation is in close proximity to historical interpretation as the purpose of a legal norm is identified as the historical legislative intent. Accordingly, a subjective-teleological interpretation of a text always relates to the discourse originally intended by the legislator.

In contrast, the objective-teleological approach may be described as the death of the legislator since this method seeks to find out what the reasonable purpose of a certain legal norm may be (Wendehorst & Zöchling-Jud 2015: 11). The dynamic element of the objective-teleological approach (Wendehorst & Zöchling-Jud 2015: 11) is primarily discussed from the perspective of legal theory. From a linguistic perspective, it may be assumed that this variant of teleological interpretation is an entirely pragmatic process since the discourse that is derived

from the normative text relates to what the contemporary reader identifies as its function or purpose. This may certainly apply to all forms of legal interpretation. Nevertheless, a teleology of law must necessarily include the ability of individuals to recognise what they believe to be the purpose of a norm, that is to say, the purpose of the discourse derived from it. The argument for the central position of language in this context does not have to be repeated. However, what is understood as the purpose of a norm inevitably depends on its internal linguistic structure and the pretext with which it is approached.

Describing the teleological method as employed by the European Court of Justice, Fennelly (1996: 664) states that the Court considers “the spirit, the general scheme and the wording” as well as “the system and objectives of the Treaty”. Potacs (2009: 465-467) draws attention to the controversial decisions made by the European Court as a result of the application of the teleological method, which in this context is better known as *effet utile*. According to Potacs (2009: 667), this concept can be traced back to Julian’s ancient Roman principle “ut res magis valeat quam pereat”, which means that the words in a legal text ought to be understood in a way that retains their sense and does not destroy it. Crema (2010: 691) argues that “the best interpretation is the closest to the object and purpose of a treaty”.

Chromá (2005: 380) correctly distinguishes between the diverging perspectives and motivations of lawyers, linguists and translators when approaching legal texts in general. In the context of teleological interpretation, however, applied linguistics can serve as a valuable discipline to spot the participatory gap between an everyday understanding of a norm and the discourse the Court derives from it, that is, what is perceived as its purpose, spirit and general scheme (Fennelly 1996: 664). In Austrian private law, it is possible to take into consideration the notions of justice, social balance, legal certainty and the general principles of the legal order (Wendehorst & Zöchling-Jud 2015: 11). Every single one of these concepts displays a high degree of vagueness, as do all other basic principles of the legal order. To discuss in detail the fact that this school of thought may lead to various different readings of one and the same norm is superfluous. The ubiquity of vagueness in normative texts is in the case of the objective-teleological approach more a chance than a challenge. A purposive approach to legal meaning may also entail a rather reserved consideration of the linguistic features that constitute a legal

norm. In some cases, however, the degree of uncertainty is too high to be ignored by the legislator, which is why in Austrian law there is a special institutional mechanism in place to specify such provisions. This mechanism will be briefly addressed in the next section.

3.3.5. Authentic interpretation

In the previous sections, the four main methods of interpretation have been introduced and described with the intention to show their relevance in both theoretical and applied linguistics. A detailed discussion on interpretative procedures is essential to develop a deeper understanding of how vagueness functions as a connector between the various fields of legal conduct. At times, however, social reality shows that an area of the law is in need of further clarification. In Austria, the legislator then provides what is referred to as authentic interpretation, which is in principle the creation of another legal norm that explains how an earlier norm ought to be understood (Perthold-Stoitzner 2015: 94). This practice, which is also in use in Catholic Canon Law, is not a method of interpretation *per se*, it is more the legislature's response to occurring misunderstandings. The authentic interpretation of a previously enacted norm may thus be conceived as a discourse draftsmen derive so as to bring the norm to the much desired effectiveness by creating another normative text with another primary discourse. The language of the law is therefore highly productive and it may be argued that every legal norm that comes to existence is the linguistic source of other norms to be created in the future. The next chapter will discuss the challenges that arise from the indeterminacy of adjectives in interpretation and elaborate on the general properties commonly ascribed to this part of speech.

4. Adjectival vagueness and legal interpretation

Legal interpretation may be a judgement and not a choice (Dworkin 2009), but the judgement at which the judge arrives is primarily a judgement on language. Bhatia *et al.* (2005: 14) get to the heart of the subject matter when they ask "how can we have 'the rule of law' if the law is only communicated via texts containing at

least partially vague language?”. In chapter 4, I described the study of ‘meaning’ as a study of boundaries. Legal interpretation may be understood as a methodological framework that seeks to establish institutionalised boundaries between lexical items, permissible intertextual references and the various constructs of purpose. Lawyers and linguists have different conceptualisations of the word meaning, which is the main reason for interdisciplinary misunderstandings. In Scalia’s (1997: 24) opinion, “words do have a limited range of meaning, and no interpretation that goes beyond that range is permissible”. In contrast, Christensen and Sokolowski (2002, cited in Fjeld 2005: 15) argue for the inherent vagueness of all textual elements. According to their view, it is the judge’s responsibility to provide a suitable argumentation as to why they interpret language a certain way.

4.1. Adjectival vagueness

It has been established that vagueness is a ubiquitous phenomenon in language use and that all linguistic units have the potential to be vague. In this paper, focus is placed on the role of adjectives in the ABGB. Before the empirical project is introduced, I will present Pinkal’s (1995) and Fjeld’s (2005) approach to vagueness and why adjectives may be a suitable object of investigation that is also practically relevant for legal interpretation. Pinkal (1995: 43) argues that “[s]emantic indefiniteness appears in all areas of the lexicon”, but that the adjective lexicon shows such forms of indefiniteness “more clearly than anywhere else”. He provides the following sequence of examples:

[S]mall elephants are large animals, large frogs are small animals; a very old student, when he gets a little older, can become a young deputy; the brightness of a full moon does not necessarily contradict our conviction that it is dark at night, and when the sun is darkened by a small cloud in the afternoon summer sky, it remains relatively bright. (Pinkal 1995: 43-44)

The relativity Pinkal describes is evident in the vague expressions that he provides. He concludes that “it makes little sense to talk about the set of ‘large objects’”, which is clearly visible in the following examples:

- (a) Bruno is large.
- (a1) Bruno is a large elephant.
- (a2) Bruno is a large frog.
- (a3) Bruno is a large animal (Pinkal 1995: 44)

The meaning of *large* is vague, heavily context-dependent and has the potential for precisification. The ideas of both precisification and specification are crucial for the understanding of vagueness. According to Pinkal (1995: 52), “[p]ossible precisifications provide internal structure to the meanings of indefinite expressions”. Specification, however, describes the phenomenon that “[t]he sense of an expression appears to be more precise whenever the context in which it is uttered is more specific” (Pinkal 1995: 57). Adopting Pinkal’s (1995) terminology, I will investigate the role of adjectives with regard to their precisification qualities in the ABGB. I assume along with Fjeld (2005: 158) that successfully interpreting normative texts, such as the ABGB, also depends on the degree of knowledge individuals possess of the “precisification strategies” employed. Legal interpretation is conducted between the space of precisification and deprecisification of all linguistic units. According to Fjeld (2005: 159), the vagueness that resides in adjectives is “used on purpose, to open up the text for legal assessment”. Before I describe the phenomenon of adjectival vagueness in detail, I will discuss the properties of adjectives from a syntactic and a semantic perspective.

4.2. General properties of adjectives

In *The Cambridge Grammar of the English Language*, Huddleston and Pullum (2002: 526-527) state that “[t]he words used to modify nouns are typically adjectives” and that they “almost always denote states”. Adjectives occur very frequently in the English language, but not as often as nouns and verbs (Biber *et al.* 1999: 504). They show a high tendency to gradability (Aarts 2008: 31), that is, they mostly express a degree of comparison (Biber *et al.* 1999: 505), and accept degree modifiers, such as *very*, *too* and *enough* (Huddleston & Pullum 2002: 528). They may also be syntactically classified according to the three main functions in which they occur, namely attributive, predicate and postpositive use (Huddleston & Pullum 2002: 528). Another distinction made by Biber *et al.* (1999: 506) is that between central and peripheral adjectives. Whereas central adjectives describe colour, size, dimension and time, other adjectives appear more peripheral “in that they do not have all of the central defining characteristics above” (Biber *et al.* 1999: 506). This approach may be in need of adaptation as far as the investigation of adjectival vagueness is concerned. It seems as though there is a close correspondence between

the concepts of central and peripheral adjectives and those of descriptive and defining adjectives, e.g. *clean* pan and *frying* pan respectively.

According to Pinkal (1985), the classification of adjectives should be based upon their precisification qualities. Revisiting Pinkal's approach (1985, 1995), Fjeld (2005: 158-160) refers to five different types of adjectives, namely restrictive and non-restrictive adjectives, precise adjectives, indefinite adjectives and evaluative adjectives. Fjeld (2005: 158) goes on to observe that non-restrictive adjectives, such as *former* or *possible* "have little or no clarifying force, since they do not specify the determined entities at all, but only their epistemological status". Restrictive adjectives, in contrast, may either be classified as indefinite or precise. Whereas indefinite adjectives seem to contribute considerably to vagueness in expressions due to their "referential relativism" (Fjeld 2005: 158), precise adjectives, such as *square* or *married*, show a strong tendency to occur in formal contexts or as technical terms (Fjeld 2005: 158). Indefinite adjectives such as "*a good idea, very bad relations, the right person, in proper condition*" are inherently vague since it is not possible to "determine or control [their] interpretation" (Fjeld 2005: 159). Sometimes linguistic expressions remain vague despite the fact that the contextual information needed is provided. According to Pinkal (1985: 83, cited in Fjeld 2005: 159), this phenomenon is called "pure vagueness". This form of adjectival vagueness, which was already introduced in Fjeld's (2005) examples, may reflect the high degree of semantic gradience present in both the outside world and the language system. Fjeld (2005: 159) points out that expressions which include pure vagueness "denote phenomena that are often vague in the real world and therefore also have to remain vague as linguistic expressions".

Vague adjectives are sometimes included intentionally in normative texts so that there is sufficient space for legal assessment (Fjeld 2005: 159). Like many other manifestations of linguistic vagueness, adjectival vagueness may be encountered in the space between the poles of possible and impossible precisification, a space which is "restricted by the lexical meaning of the word on the one hand, and the precisification interdiction on the other hand" (Fjeld 2005: 159). The gradability of indefinite adjectives may in this context create a number of challenges in legal interpretation since their meaning is to be determined in relation to the nouns modified and "according to a class of comparison" (Fjeld 2005: 159). Bierwisch

(1987) argues for a notational distinction between dimensional and evaluative adjectives since their gradability cannot be traced back to a common basis. Following Bierwisch's approach, Fjeld (2005: 159-160) describes the conceptual and practical differences in the interpretation of dimensional and evaluative adjectives. Whereas dimensional adjectives "are interpreted according to the external properties of the referent of the noun and a metric scale of comparison", evaluative adjectives "refer to internal and often prototypical properties, and must be interpreted according to an unpredictable and subjective scale of measurement related to their class of comparison" (Fjeld 2005: 159-160). However, unlike in the case of dimensional adjectives, the properties denoted by evaluative adjectives are prototypical "with no inherent scale or norm, as in *a good car, a nice child*" (Fjeld 2005: 160). For this reason, the interpretation of evaluative adjectives must rely on a conventional ideal according to which the class of comparison is ascertained (Fjeld 2005: 160).

The qualitative analysis of the adjectives in the ABGB will extend our knowledge on the question as to which role they play as contributors to vagueness in the text. Evaluative adjectives such as *right*, *proper* and *good* are also encountered in the ABGB and may be assumed to evoke an array of different possible professional and non-professional readings. The interpretation of evaluative adjectives may be considered particularly relevant to the investigation of misunderstandings between laypersons and legal practitioners. The historical development of certain legal concepts such as *good faith* (*bona fides*) and the contemporary discursive understanding thereof is largely unknown to the average layperson. This seems surprising since the collocation *good faith* amounts to 63.64% of all uses of the adjective *good* in the ABGB. Fjeld (2005: 164-166) provides a septempartite classification of evaluative adjectives as a subcategory of relative adjectives, shown in Table 1:

General quality adjectives	primarily express a quality-relevant dimension in general	<i>good, bad, useful, useless, (un)interesting, (in)advisable, (un)acceptable</i>
Modal adjectives	specify context demands of purpose and grade of modal force ranging from necessity to desirability	<i>(un)necessary, expedient, (un)practical, (un)desirable</i>
Relational adjectives	denote the relative requirements between the noun and some (objectively fixed or indisputable) standards or requirements	<i>(un)suitable, (in)sufficient, (in)adequate, (in)appropriate</i>
Ethic adjectives	are semantically related to an ethical standard or moral code. Such adjectives therefore normally require a normative or deontic ordering source	<i>right, equitable, responsible, justifiable, reasonable, objective</i>
Consequence adjectives	denote different degrees of consequence attributed to the modified noun	<i>crucial, critical, serious, considerable, (in)significant</i>
Evidence adjectives	denote degrees of accordance between conditions and conclusions, which implies the availability of the modified noun	<i>evident, marked, natural, unlikely</i>
Frequency adjectives	denote the evaluation of the appearance of the noun related to some kind of a quantitative norm	<i>widespread, common, normal, usual, special, deviant</i>

Table 1 Subclassification of evaluative adjectives (Fjeld 2005: 164-166)

This chapter has described a number of typical properties of adjectives in general and introduced Fjeld's (2005) classification of evaluative adjectives. It was discussed that the interpretation of evaluative adjectives in particular may lead to a considerable divergence between professional and non-professional interpretations. In the following chapter the code under investigation will be introduced and subsequently described based on its legal history and context, its contemporary relevance and its overall structure.

5. The Austrian Civil Code 1811

5.1. Legal history and context

The code under investigation is referred to amongst legal historians as *Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Oesterreichischen Monarchie* [General Civil Code: For All the German Hereditary Provinces of the Austrian Monarchy (Winiwarter 1866)] and may be considered the final result of the unification process of Austrian civil law that started in the middle of the 18th century. Announced on 1 January 1812, the ABGB has been in force for more than two hundred years. The code had a considerable influence on a number of other civil codes in Europe and was translated into Latin, Czech, Polish, Hungarian, Serbian, Croatian, Slovenian, Romanian and English.

The most significant predecessors of the ABGB are normative texts such as the Code Theresianus (1766), the Horten Draft (1776), the Civil Code of Joseph II (1786), the Draft Martini (1796) and the Civil Code of Galicia (1797). Kohl *et al.* (2012: 174-175) provide a critical discussion of the German title of the ABGB, addressing four main aspects which are particularly relevant for the text's contextualization, namely its claimed generality, its function as a source of civil law, its status as a code and the spatial dimension of its purview. They highlight that the modifier *allgemein* (general) in the German title cannot be regarded as a synonym for *equal*. This view is also presented by Brauner (2014: 182), who in this context also draws attention to the fact that the ABGB has often been ascribed the principle of social equality. Furthermore, the modifier *bürgerlich* (civil) is a direct translation of the Latin expression “*ius civile*” and relates, according to § 1 of the ABGB, to the rights between the inhabitants. The compound *Gesetzbuch* characterizes the normative text as a code, which also inevitably excludes other sources of civil law. Finally, the spatial dimension of the Code's purview is defined as in force for all German Hereditary Provinces of the Austrian Monarchy (“*Erbländer*”). Brauner (2014: 177) states that the expression *allgemein* is typical of 1800 codices to emphasise that a normative text does not only apply with respect to a certain territory, but in all provinces which constitute the state.

This historical discussion is necessary to address the relationship between the ABGB and its intended addressees. The ABGB was not written to establish or

ensure social equality amongst the subjects of the Austrian Crown. However, one of the central aims that most-likely underlie the ABGB was to provide a comprehensive source of reference that is also typical of other legal systems in the tradition of Roman Law. Unlike common law systems, “[c]ountries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court” (The Robbins Religious and Civil Law Collection 2010). Explaining the motives as to why the ABGB is being introduced, the historical preamble of 1811 states four main characteristics civil law is expected to fulfil, namely the adherence to the general principles of justice, the consideration of the specific relations between the inhabitants, the comprehensibility of its language and its appropriate collection. The preamble goes on to announce that, building on the work and decision of earlier monarchs, the accomplishment of a complete indigenous civil code shall be attained. The notion of normative completeness is revealed in the editors’ assignment to formulate and establish the central source of Austrian Civil law. Legislative history shows, however, that the text of the code has been altered a number of times.

The ABGB saw major amendments in 1914, 1915, 1916 and the 1970s, and has continuously been updated to the present. It may thus be argued that the ABGB is not only a vital part of Austrian Civil Law culture, it is doubtlessly one of the most significant normative texts in the country today. The following chapter will acquaint the reader with a general description of the structure of the ABGB, taking into account the present version as of 17 August 2016 and providing a short introduction to its current content.

5.2. The Austrian Civil Code today: text and translation

On the occasion of the 200-year jubilee of the ABGB, Ogris (2011: 1-2) states that all Austrian citizens are accompanied by the code from the cradle to the grave. He notes that it may not comprise or regulate all legal problems or relationships, drawing attention to the fact that the right to marriage and to divorce, the right to registered partnership, the right to work or to housing are to a large extent not included in the code. However, one may agree with Ogris (2011: 2) that the ABGB is indisputably the very heart of Austrian Civil Law and the academic disciplines

concerned with the study thereof. The code has been praised by some lawyers for its clear and comprehensible language, the lack of case law regulations in its legislative method, and its transparent structure (Ogris 2011: 3). Nevertheless, the normative text which constitutes the ABGB today has undergone a large number of changes and adaptations. In the year of the jubilee, only 861 of the original 1502 articles had remained unaltered since the announcement of the historical text in 1812 (Ogris 2011: 4). Today the ABGB comprises 1503 articles and is structured in parts, divisions and chapters. Eschig and Pircher-Eschig (2013) have created a concise translation of the code intended for “lawyers and associates as well as for everyone who refers to Austrian civil law in an international context”. As this paper is primarily concerned with the linguistic structures of the ABGB and the phenomenon of vagueness, the work done by Eschig and Pircher-Eschig (2013: vi) may be considered suitable since it is the most recent attempt to translate the complex style of “a text which is to some extent more than 200 years old” and which comprises “specific Austrian legal terms”. Written by two Austrian legal practitioners, the translation of the ABGB corroborates Seidlhofer’s (2005: 339) argument that “English functions as a global lingua franca”. The translation of the ABGB may thus be considered a valuable piece of evidence for the effects of English as a lingua franca (ELF) on law in an international context. The questions as to how the phenomenon of vagueness is related to aspects of translation and the concept of ELF cannot be discussed here any further. However, it is necessary to conduct research on how speakers of different L1 backgrounds deal with English translations of legal texts as far as the space between vagueness and precisification is concerned.

5.3. Legal structure of the ABGB

The table of contents provided in the ABGB translation of Eschig and Pircher-Eschig (2013) corresponds to the German original and displays 1503 articles of varying length. It is structured in a short introduction, three main parts and 41 chapters. The introduction provides the reader with the foundations of Austrian Civil Law, stating that “[t]he essence of the laws providing for the private rights and obligations of the state’s residents among themselves constitutes the civil law” (Eschig & Pircher-Eschig 2013: 1). Comprising §§ 15 to 284, the first part elaborates

on the definition of personal rights, determining that “[p]ersonal rights relate on the one hand to individual qualities and relationships and are on the other hand based on family-relationships” (Eschig & Pircher-Eschig 2013: 3). The second part, which is constituted by §§ 285 to 1341, primarily deals with assets, assuming the term to denote “[e]verything that is different from a person and that can be used by humans” (Eschig & Pircher-Eschig 2013: 76). It is not only the part with the most chapters and subsections; it includes nearly 70.3% of all regulations and deals with property law, inheritance law and the law of obligations. The third and smallest part is concerned with common provisions for personal rights and rights *in rem*. In contrast to the second part, the third part comprises §§ 1342 to 1503, which only amounts to 11.1% of all regulations. Table 2 shows the structure of the ABGB as provided in the translation by Eschig and Pircher-Eschig (2013: vii-viii):

Introduction. About civil law in general	§§ 1–14
First part. About personal rights	§§ 15–284
Second part. About the property law	§§ 285–1341
Third part. About the common provisions for personal [rights] and rights in rem	§§ 1342 -1503

Table 2 Structure of the ABGB (2013/179)

This chapter has described the ABGB from three different perspectives. At first, focus was placed on its immediate legal history. Subsequently, the contemporary importance of the code and of the recent translation by Eschig and Pircher-Eschig (2013) was described. Finally, the legal structure of the normative text was presented. In the following chapter the empirical analysis of the ABGB will be introduced and an overview of the research by Fjeld (2005), which this study replicates in the quantitative analysis, will be provided.

6. Empirical project: adjectival vagueness and the Austrian Civil Code

The study presented in this paper consists of two parts. The first part is a replication of earlier research conducted by Fjeld (2005) in which the lexical semantics of vague adjectives was investigated. The normative texts chosen were three Norwegian Acts, namely the Act of Social Security (ASS), the Act of Public Administration (APA) and the Act of Civil Service (ACS). These three texts amount to a total number of 34,800 words. According to Fjeld (2005: 160), 1,613 of these 34,800 words were adjectives. These adjectives were subsequently generally “classified according to Pinkal’s taxonomy”, as visible in Table 3 (Fjeld 2005: 161):

<i>Type of adjective</i>	<i>ASS (18,078 words)</i>	<i>APA (6,996 words)</i>	<i>ACS (1,309 words)</i>	<i>% of the adjectives</i>
Non-restrictive	351	72	16	27
Precise	608	116	753	47
Boundary fuzzy	111	18	6	8
Relative	170	101	15	18
Total	1,240	307	1,613	100

Table 3 Distribution of types of adjectives in the three acts (Fjeld 2005: 161)

In addition to the three acts, a short story was examined in a control study according to the distribution of adjectives. In the legal texts, the most frequent adjectives were found to be precise (47%) and non-restrictive adjectives (27%). In contrast, the short story, which amounted to 6,084 words, displayed very different results. The most frequently occurring adjectives were relative adjectives (47%) and adjectives with fuzzy boundaries (24%), the latter of which are also referred to as “borderline indefinite adjectives” (Pinkal 1995). The great divergence in results led Fjeld (2005: 161) to the suggestion that “legal language differs from general language as far as adjectives are concerned”. 14% of all relative adjectives (18%) in the three acts were evaluative ones and only 4% were of the dimensional type. Based on the distribution of adjectives encountered in the three acts, Fjeld (2005: 161) argues that “evaluative adjectives, which have no standard interpretation,

denote a considerable part of the precisification needed when using the law". It may indeed be assumed that the lexical semantics of evaluative adjectives in particular may lead to problems in the interpretative approaches discussed earlier.

The idea of completeness or systematicity of the legal corpus is challenged if the meaning of such adjectives cannot be measured objectively. According to Fjeld (2005: 161), "a semantic shift from objective measurement to subjective assessment" is implied "[w]hen nouns denoting typical external and measurable dimensions are characterised by evaluative adjectives". Earlier I argued for the conception of the study of meaning as a study of boundaries. It is the boundaries of subjective interpretation which may lead to questions on democratic participation. Fjeld (2005: 161) states that the use of adjectives in normative texts is not a sign "for any reader to decide the interpretation of the words out of his own understanding of the situational context, but as signs of interpretation according to juridical assessment when applying the law in a particular case".

Fjeld's (2005: 162) study aimed to extend our knowledge on the role of adjectives in normative texts and how they contribute to vagueness. However, the corpus of 34,800 words compiled for the research is too small to be a representative sample. Fjeld (2005: 162) arrives at the self-critical conclusion that "a corpus of three acts is not really sufficient" but that it may be "large enough to identify the most frequent adjectives contributing to vagueness in normative texts". Following Fjeld's research (1998, 2001, 2005), the study presented in this paper serves to further elucidate the lexico-semantic relationship between adjectives and vagueness in normative texts. The ABGB has not only been chosen for the fact that it is 2.5 times larger in size than the three Norwegian acts examined in Fjeld's (2005) study, it has to the best of my knowledge not been investigated according to the phenomenon of adjectival vagueness and the role of adjectives as precisification tools. The results of this study may therefore prove useful for both the field of Austrian Civil Law and legal linguistics. In chapter 6.2 the legal structure of the ABGB was introduced; the following chapters will present the method employed in this study and the data obtained.

6.1. Method

The study presented was conducted in two main steps. Firstly, a corpus was compiled of Eschig and Pircher-Eschig's (2013) translation of the ABGB. This was accomplished with the help of CLAWS7 part-of-speech tagger for English, an online corpus annotation tool, which was also used for the POS tagging of approximately 100,000,000 words of the British National Corpus (BNC) and which shows an accuracy of ca. 96 to 97%. Subsequently, a quantitative analysis was conducted on the tagged corpus with which the total number of nouns, adjectives, prepositions and adverbs were determined. The number of adjectives obtained was then classified according to Pinkal's taxonomy and ranked according to the adjectives' respective lexical frequency. Parts I, II and III were then compared to test for possible divergences between the observed absolute and relative frequency of adjectives. The word list functions of the corpus analysis toolkit Antconc (v3.4.4) and the Vocabulary Profiler Lextutor were used to validate the adjectives' frequency ranking.

Subsequently, the most frequent group of adjectives were examined according to their role as contributors to vagueness in the ABGB. The qualitative analysis was conducted with the intention to extend our knowledge on how individual adjectives are used as deprecisification tools in the ABGB and which problems may arise in the process of interpretation from an applied linguistics perspective. Taking into consideration Fjeld's (2005) findings, this study is not only intended to be a replication of earlier research, but also to describe in detail the ABGB-specific manifestations of adjectival vagueness with regard to their immediate linguistic co-text. The qualitative analysis was conducted using the various functions provided in Antconc (v3.4.4). The following chapter will acquaint the reader with the data obtained in corpus analysis.

6.2. Data

This section introduces the data upon which both the quantitative and the qualitative analysis were conducted. The German-English translation of the ABGB provided by Eschig and Pircher-Eschig (2013) displays a total number of 184,135

words. However, this also includes the title page, the preface, the table of contents, the original German text and the glossary as well as repetitive footnotes throughout the text. Since for the scope of this study only the English translation of §§ 1 to 1503 is relevant, the other elements of the work were not taken into consideration. The provisions under investigation consist of 87,390 words. Lextutor acquires 87,381 tokens and 3,945 types, which equals a type-token ratio of 0.0451. As previously mentioned, there is a major discrepancy between the individual parts of the ABGB with 449 tokens in the introduction, 18,179 tokens in part I, 59,166 tokens in part II and 9,596 tokens in part III. Part II is evidently the largest of the three parts with 67% of tokens constituting 70% of all legal provisions encoded in the ABGB. Figure 2 shows the distribution of tokens across the three parts of the code and Figure 3 the distribution of articles:

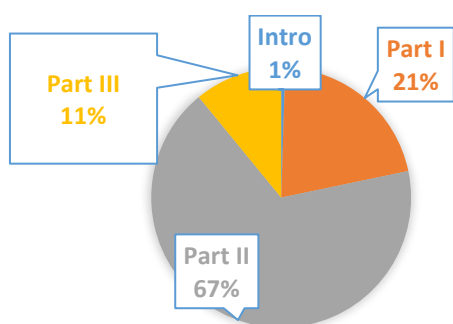


Figure 2 Distribution of tokens

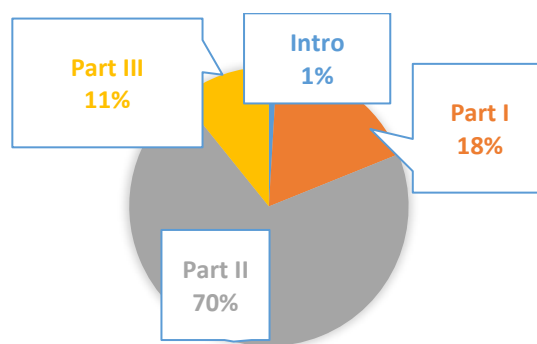


Figure 3 Distribution of articles

In order to gain deeper knowledge of the internal linguistic structure of the ABGB, it is necessary to compare the three main parts with regard to the lexical frequency of the parts of speech they comprise. Whereas part I includes 4,652 nouns, 2,953 prepositions, 1,270 adjectives, and 616 adverbs (unmarked), part II contains 13,995 nouns, 9,444 prepositions, 3422 adjectives and 1,993 adverbs. Part III consists of 2,296 nouns, 1,549 prepositions, 460 adjectives and 327 adverbs. Figure 4 displays the distribution of nouns, prepositions, adjectives and adverbs across the three parts:

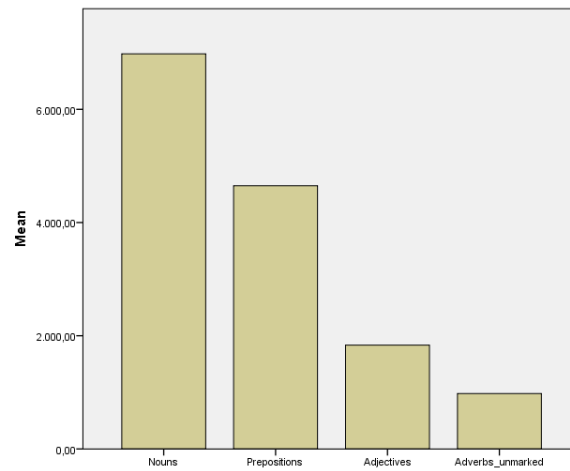


Figure 4 Distribution of POS (mean)

The application of the Text Lex Compare tool (Lextutor) showed that the ABGB comprises a total number of 2,184 semantic families. The first part shares 846 families with the second part and 553 families with the third part. The second part shares 898 families with the third part. Not only was the corpus annotated with POS-tags, the text was also semantically tagged using the USAS Category System. The application of this tool facilitates the grouping of the semantic fields which are repeatedly encountered throughout the ABGB. The tagset of the USAS Category System is structured in “21 major discourse fields expanding into 232 category labels” (Archer, Wilson & Rayson 2002: 2). Table 4 shows the 21 major discourse fields as provided by Archer, Wilson and Rayson (2002: 2):

A general and abstract terms	B the body and the individual	C arts and crafts	E emotion
F food and farming	G government and public	H architecture, housing and the home	I money and commerce in industry
K entertainment, sports and games	L life and living things	M movement, location, travel and transport	N numbers and measurement
O substances, materials, objects and equipment	P education	Q language and communication	S social actions, states and processes
T Time	W world and environment	X psychological actions, states and processes	Y science and technology
Z names and grammar			

Table 4 Major discourse fields (Archer, Wilson & Rayson 2002)

It is observable that the discourse field A, which includes abstract and general terms, displays 18,482 tokens and is the most frequently tagged field. With 7,740 tokens, the second most frequent category is field I, which comprises tokens that are relatable to money and commerce in industry. Whereas field S contains 7,522 tokens and denotes social actions, states and processes, 6,109 tokens were placed in field N, describing numbers and measurement. Figure 5 shows the distribution of tokens across the 21 discourse fields.

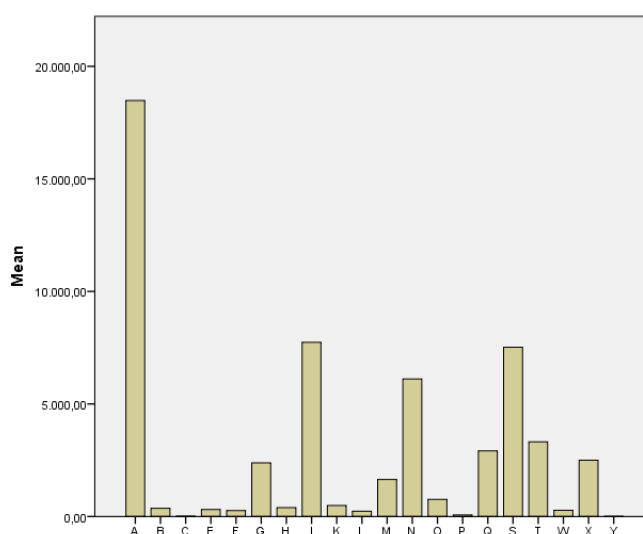


Figure 5 Distribution of tokens across the discourse fields

The ABGB comprises a total number of 5,152 tokens which Antconc tags as adjectives. There seems to be a strong tendency towards attributive rather than predicative use. The most frequent collocation attested with regard to the occurrence of adjectives is ADJ + N which is illustrated in the following examples.

- (1) *other* kinds of regulations
- (2) the *legal* consequences
- (3) relating to *specific* lawsuits

Finally, a number of adjectives also show a tendency to occur as predicative complements. A suitable example may be the co-occurrence of COP + ADJ in the following sample:

- (4) whoever exceeds the limits of self-defence irrespective of a competent authority *is liable* (§ 19 ABGB, Eschig & Pircher-Eschig 2013: 4)

7. Quantitative analysis

Whereas the last chapter has provided a general overview of Fjeld's (2005) research and has introduced the method of the study and the data obtained, this chapter serves to present the quantitative analysis of the adjectives in the ABGB. It will not only be investigated which adjectives occur most frequently throughout the code, the observed relative frequency of the respective adjectives will also be determined. Subsequently, the attested adjectives will be classified according to Pinkal's taxonomy (1985) according to their precisification qualities. Once the distribution of adjectives has been completed, the seven types of evaluative adjectives will be investigated further with regard to their distribution in the ABGB.

7.1. Observed absolute frequency

The ABGB comprises a total number of 87,390 tokens, of which approximately 5.9% were determined to be adjectives. Of all adjectives attested in the ABGB, 1.6% occur in comparative function and only 0.05% as superlatives. This may suggest that comparative and superlative forms occur less frequently in the ABGB than in non-legal texts. The three parts of the ABGB were compared according to the most frequent adjectives they share, using the Text Lex Compare tool. The eighteen most frequent adjectives in the ABGB are *other*, *legal*, *liable*, *specific*, *reasonable*, *due*, *minor*, *personal*, *adoptive*, *public*, *honest*, *disabled*, *certain*, *immoveable*, *moveable*, *capable*, *federal* and *ordinary*. Figure 6 shows the observed absolute frequency of the most frequent adjectives in the three parts of the ABGB. The adjectives attested in the introduction are included in part I.

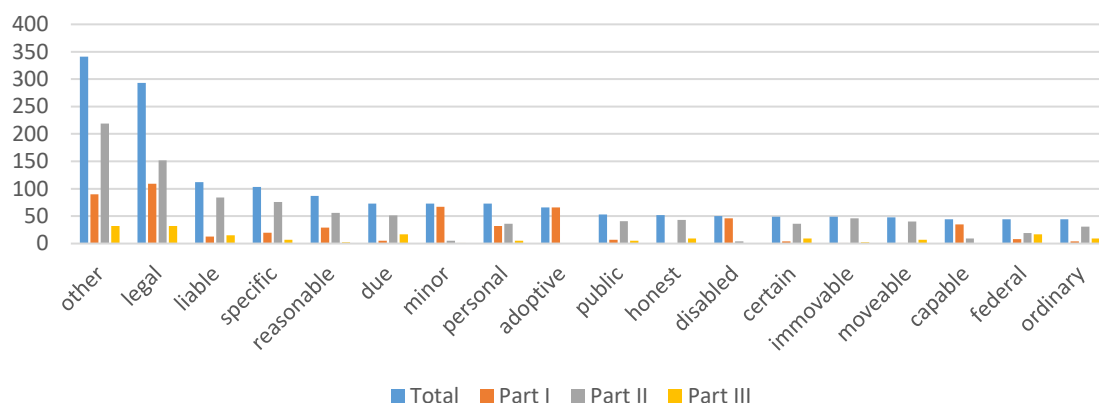


Figure 6 Observed absolute frequency of most frequent adjectives

As visible in Figure 6, the most frequently occurring adjective in the ABGB is *other*, which is counted 341 times in the code. This equals a percentage of approximately 6.2% of all adjectives attested. The second most-frequent adjective is *legal*. It was found to occur 293 times (5.3%). Whereas *liable* is attested 112 times (2.0%), *specific* occurs 103 times (1.9%). *Reasonable* received 87 adjective tags (1.6%) and *due*, *minor* and *personal* each occurred 73 times (1.3%). *Adoptive* appeared 66 times (1.2%). *Public* showed 53 times (1.0%), *honest* 52 times (0.9%), *disabled* 50 times (0.90%), *certain* and *immovable* each 49 times (0.90%), *moveable* 48 times (0.87%), and *capable* and *federal* each occurred 44 times (0.80%).

7.2. Observed relative frequency

In order to make the findings more comparable, Figure 7 shows the relative frequency ratios of the eighteen adjectives with the highest observed absolute frequency across the three parts per 10,000 tokens:

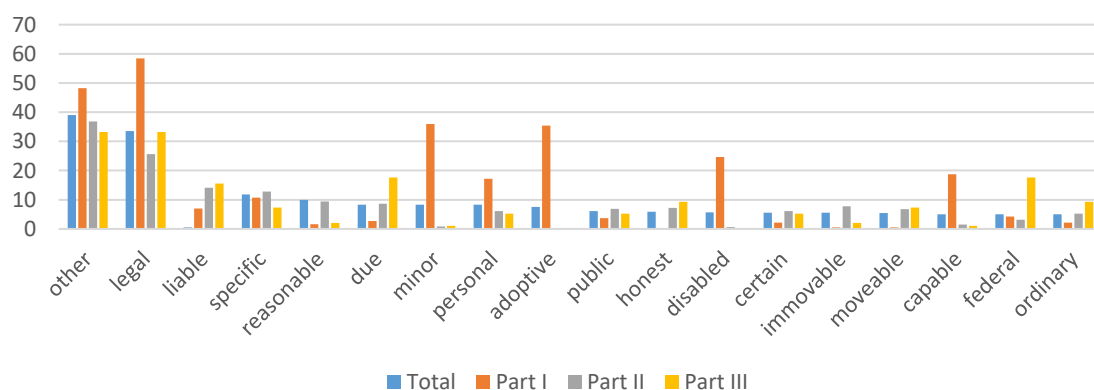


Figure 7 Observed relative frequency of most frequent adjectives

The comparison of the observed relative frequency of the adjectives under investigation show that *other*, *legal*, *minor*, *adoptive*, *disabled* and *capable* seem to occur relatively more often in the first part of the ABGB. Whereas *specific*, *public*, *immovable* and *certain* display a higher observed relative frequency in the second part, *liable*, *due*, *honest*, *federal* and *ordinary* are relatively more frequent in the third part. After the observed absolute frequency and the observed relative frequency of the adjectives has been presented, it is necessary to provide the two frequencies in juxtaposition. Table 5 shows the frequency of occurrence of the adjectives with the highest observed absolute frequency and their respective relative frequency ratios in the entire code:

Adjective	Frequencies	RelFreq	RelFreq Ratio
other	90 : 219 : 32	39.02	0.00390205
legal	109 : 52 : 32	33.53	0.00220849
liable	13 : 84 : 15	12.82	0.00128161
specific	20 : 76 : 7	11.79	0.00117862
reasonable	29 : 56 : 2	9.96	0.00099554
due	5 : 51 : 17	8.35	0.00083534
minor	67 : 5 : 1	8.35	0.00083534
personal	32 : 36 : 5	8.35	0.00083534
adoptive	66 : 0 : 0	7.55	0.00075524
public	7 : 41 : 5	6.06	0.00060648
honest	0 : 43 : 9	5.95	0.00059503
disabled	46 : 4 : 0	5.72	0.00057215
certain	4 : 36 : 9	5.61	0.0005607
immovable	1 : 46 : 2	5.61	0.0005607
movable	1 : 40 : 7	5.49	0.00054926
capable	35 : 9 : 0	5.03	0.00050349
federal	8 : 19 : 17	5.03	0.00050349
ordinary	4 : 31 : 9	5.03	0.00050349
Total:	537 : 848 : 169		

Table 5 Observed absolute and relative frequency of adjectives in comparison

Interestingly, whereas *adoptive* only occurs in the first part, *honest* is not attested in the first part at all. *Disabled* and *capable* do not show in the third part. 537 of the most frequent adjectives are found in part I, 848 in part II and 169 in part III. The observed relative frequency of the sum of these adjectives is 287.77 in part I, 142.85 in part II and 175.84 in part III. This leads to the conclusion that part I shows the highest lexical density with regard to occurrence of adjectives than the two other parts. This is corroborated by the fact that the observed relative frequency of all adjectives to occur in part I is 734.69, only 581.82 in part II and 587.5 in part III. Thus, part I is the part with the highest lexical density of adjectives in terms of

the observed relative frequency. Part II may display the highest observed absolute frequency of adjectives, but is seemingly the part with the lowest relative frequency when compared to part I and III. It appears that there is a correspondence between the area of law and the adjectives used to realise the respective nomemes. This may be significant for the further steps of the quantitative analysis since the adjectives attested will also be examined according to their precisification qualities.

7.3. Precisification qualities (Pinkal 1985)

In the last chapter, focus was placed on the question as to how many adjectives are attested in the ABGB and how these findings may be compared to one another. This chapter serves to present the data collected with regard to the precisification qualities of the adjectives attested in the ABGB. In order to be able to make statements on the relationship between the adjectives in the ABGB and their precisification qualities, the 5,152 attested adjectives were classified according to Pinkal's (1985) taxonomy. Figure 8 shows the distribution of non-restrictive, precise, fuzzy boundary and relative adjectives across the three parts of the ABGB:

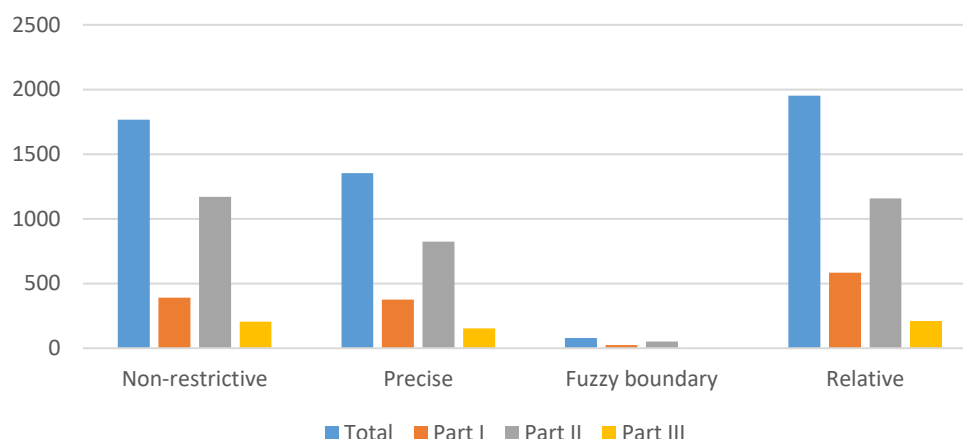


Figure 8 Distribution of adjectives according to Pinkal's taxonomy (1985)

The distribution of adjectives shows that the most frequent adjectives are relative adjectives. 38% of all adjectives attested have been classified as relative adjectives. 34% were found to be non-restrictive in that they "do not specify the determined entities at all, but only their epistemological status" (Fjeld 2005: 158).

26% of the adjectives investigated proved to be precise. Table 6 displays the numbers of the four main categories:

<i>Type of adjective</i>	<i>Part I</i>	<i>Part II</i>	<i>Part III</i>	<i>% of the adjectives</i>
Non-restrictive	392	1170	205	34
Precise	375	825	153	26
Boundary fuzzy	25	51	3	2
Relative	585	1159	209	38
Total	1377	3205	570	100

**Table 6 Distribution of adjectives according to Pinkal's taxonomy (1985)
(absolute frequency)**

The large number of relative adjectives is relatable to the large number of evaluative adjectives in the ABGB. Not only do evaluative adjectives such as *specific*, *reasonable* and *honest* occur more frequently in the ABGB than all dimensional adjectives altogether, they also show a higher observed absolute frequency across the three individual parts. This may corroborate the assumption that evaluative adjectives do not only “make up a considerable amount of the qualifiers in juridical texts” (Fjeld 2005: 164), but may also be a central source of adjectival vagueness. Fjeld (2005: 164) starts her own description of evaluative adjectives with a reference to Thornton (1987), who advises his readers to refrain from lexical items such as “*acceptable, adequate, equitable, necessary, normal, ordinary* and *proper*”. However, there are different conceptual categories between evaluative adjectives introduced earlier in chapter 5. Table 7 shows the distribution of the seven subtypes of evaluative adjectives across the ABGB:

<i>Type of adjective</i>	<i>Part I</i>	<i>Part II</i>	<i>Part III</i>	<i>% of the adjectives</i>
General quality	201	423	69	39
Modal	24	47	6	4
Relational	51	141	25	12
Ethic	32	172	20	13
Consequence	41	79	3	7
Evidence	19	115	20	9
Frequency	61	195	31	16
Total	429	1172	174	100

Table 7 Distribution of evaluative adjectives in the ABGB

The most frequently occurring evaluative adjectives are general quality adjectives as approximately 39% belong to this subtype. The ABGB comprises a number of prototypical general quality adjectives such as *good*, *negative*, *acceptable*, *useful*, *capable* and *incapable*. These adjectives show a considerable degree of linguistic indeterminacy as their interpretation is based upon a set of conventionalised ideals or prototypes (Fjeld 2005: 146). It was stated earlier that vague adjectives generally enable legal practitioners to engage with the text. Two indispensable concepts for the interpretation of evaluative adjectives in normative texts are context and discourse. Widdowson (2004: 53) argues that “it is only when the linguistic features of the text are related to contextual factors that discourse is realised”. A qualitative investigation of the lexico-pragmatic properties of evaluative adjectives must thus be carried out in order to find out how these adjectives influence or co-determine the interpretation of normative texts. It may be assumed that the divergence in interpretations between laypersons and legal practitioners may be particularly high due to the different ways of relating linguistic features to contextual factors of individual cases. However, general quality adjectives are not the only adjectives which may serve as examples for this divergence.

Frequency adjectives account for approximately 16% of evaluative adjectives in the ABGB, e.g. items such as *normal*, *ordinary*, *extraordinary*, *average*, *customary* and *unusual*. Fjeld (2005: 165-166) notes that frequency adjectives are often used “as complicated many-dimensional expressions with several semantic

components". She goes on to argue that frequency adjectives show a degree of polysemy since "they are to be interpreted in the span between frequency and prototype" (Fjeld 2005: 165-166). This distinction is essential since frequency adjectives often do not denote "countable frequency" but "genericity" (Fjeld 2005: 166). In order for a reader to decide what may be understood by normality, ordinariness or customariness, they must relate such concepts to prototypical concepts in their minds. However, the space between frequency and the respective prototype may be described as a continuum which is not fixed, but shows "tolerance to exceptions" (Fjeld 2005: 166).

Approximately 13% of evaluative adjectives have been classified as ethic adjectives, which all relate to a socially-constructed "ethical standard" or "moral code" (Fjeld 2005: 165). Lexical items such as *unjust*, *(un)reasonable*, *objective*, *malicious*, and *(un)true* need to be positively fixed in order to ensure that individuals do not simply read their subjective moral values into the law. The interpretation of such ethic adjectives seems to heavily rely on a "normative or deontic ordering source" (Fjeld 2005: 165). Proponents of natural law theories often use ethic concepts to argue for a universal set of legal norms that apply irrespective of human-made positivist law. Ethic adjectives are therefore a considerable challenge for legal practitioners as they need to carefully consider whether the adjectives' prototypicality should be resolved in favour of stipulative definitions or natural legal principles. The problems arising in the interpretation and application of such ethic adjectives certainly reflect the conflict between positivism and natural law theories.

Relational adjectives "denote the relative requirements between the noun and some (objectively fixed or indisputable) standards or requirements" (Fjeld 2005: 165). Approximately 12% of evaluative adjectives have been assigned to this category. Examples of relational adjectives in the ABGB are for instance *adequate*, *legitimate*, *irregular*, *favourable* and *(in)sufficient*.

Evidence adjectives amount to approximately 9% of evaluative adjectives and "denote degrees of accordance between conditions and conclusions" (Fjeld 2005: 165). The ABGB also comprises a number of evidence adjectives such as *evident*, *accountable*, *culpable*, *natural*, *obvious* and *negligent*. The interpretation of evidence adjectives seems somewhat binary since the conditions found in a

particular case are counterbalanced with concepts such as culpability, accountability or negligence. The application of evidence adjectives poses a challenge for the assumed completeness of the legal order. The relationship between different cases in which a concept such as negligence is negotiated is parameterised by evidence adjectives and must therefore be necessarily paradigmatic.

7% of the adjectives in the ABGB may be classified as consequence adjectives which “denote different degrees of consequence attributed to the modified noun” (Fjeld 2005: 165). Explicit examples of consequence adjectives in the ABGB include items such as *serious*, *urgent*, *ultimate*, *essential*, *inevitable* and *unavoidable*.

Modal adjectives, which account for only 4% of all evaluative adjectives, in the ABGB, “specify context demands of purpose and grade of modal force ranging from necessity to desirability” (Fjeld 2005: 165). The group of items which has been categorised as modal adjectives comprises examples such as *necessary*, *detrimental*, *onerous* and *practical*.

7.4. Summary of findings: quantitative analysis

The quantitative analysis has revealed that relative adjectives are the largest group of adjectives attested in the ABGB and that evaluative adjectives account for the vast majority of these items. The four most frequent subtypes of evaluative adjectives are general quality adjectives (39%), frequency adjectives (16%), ethic adjectives (13%) and relational adjectives (12%). Figure 9 shows the observed absolute frequency of the types of evaluative adjectives across the three parts of the ABGB:

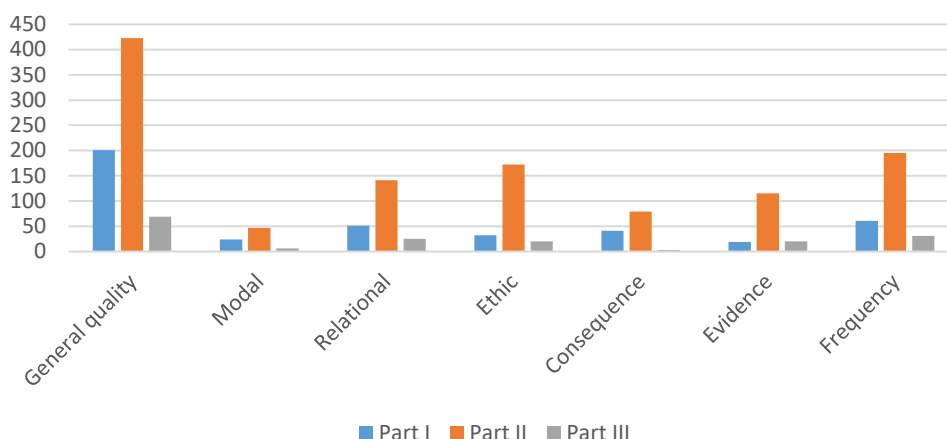


Figure 9 Distribution of evaluative adjectives across the three parts

In this chapter the quantitative findings of the analysis have been presented. Not only were the adjectives attested in the ABGB classified according to Pinkal's (1985) taxonomy, but the subtypes of evaluative adjectives were also presented in comparison. The most frequent group of adjectives was found to be relative adjectives, more than two thirds of which were categorised as evaluative adjectives. The following chapter will investigate this type of adjectives in more detail, taking into consideration the immediate co-text in which they occur in the ABGB.

8. Qualitative analysis

Since approximately 68% of all relative adjectives may be ascribed as belonging to either general quality adjectives, frequency adjectives or ethic adjectives, the qualitative analysis presented in this chapter will investigate the actual use of such adjectives and their respective linguistic co-text in order to draw conclusions on their potential to contribute to vagueness in normative texts. At first, three general quality adjectives will be examined with regard to their potential for deprecisification, namely *good*, *acceptable* and *useful*. It will be shown that these items are sources of vagueness as they "are close to an explication of the pure positive or negative quality parameter" (Fjeld 2005: 164). Subsequently, frequency adjectives, ethic adjectives and relational adjectives will also be examined according to their assumed potential to create vague expressions, taking into account Fjeld's (2005: 170) four types of interpretation situations. According to Fjeld (2005: 170),

laypersons and legal practitioners may interpret normative texts differently due to the “reconstruction of a different ordering of source”. In other words, legal practitioners and laypersons tend to differ in the weight they place on certain linguistic signals. Table 8 shows the four types of interpretation situations according to Fjeld (2005: 170):

The layman and lawyer make the same interpretation, which means that general language interpretation strategies are adequate.
The layman and lawyer make nearly the same interpretation, but the layman feels insecure about his interpretation because of unusual linguistic signals.
The layman and lawyer make different interpretations because the text gives too few clues for the necessary recoverability of meaning.
The layman can make no sense of the legislative text because of unfamiliar linguistic signals.

Table 8 Types of interpretation situations according to Fjeld (2005)

8.1. General quality adjectives: Good condition, deemed acceptable, useful expenses

The following three examples serve to illustrate how general quality adjectives can lead to a considerable degree of linguistic indeterminacy which cannot always be resolved by their immediate linguistic co-text. Whereas the first example describes a sole possessor’s duty to maintain their property in good condition in order to prevent damage to their neighbour, the second example revolves around the definition of when a path’s condition may be considered defective. The third and final example deals with a finder’s right to claim reimbursement after returning a lost asset to the possessor.

In 2008, the Austrian Supreme Court emphasised that according to § 858 the sole possessor only has to maintain their wall and planks if the opening may cause damage to the neighbour or has already caused damage before (20b79/08v). The provision in the ABGB shows the following wording:

§ 858

In der Regel ist der ausschließende Besitzer nicht schuldig, seine verfallene Mauer oder Planke neu aufzuführen; nur dann muss er sie in *gutem Stand* erhalten, wenn durch die Öffnung für den Grenznachbar Schaden zu befürchten stünde.

§ 858

In general, the sole possessor is not obliged to reconstruct his decayed wall or plank, he only has to maintain it in *good condition* if the opening is likely to cause damage to the neighbour.

(Eschig & Pircher-Eschig 2013: 204, my emphasis)

Accordingly, the individual qualified as the sole possessor does not have to maintain the wall or plank unless it may be considered dangerous for their neighbour. However, the provision does not supply any explicit information as to what may be understood by the wall's or plank's *good condition*. Since care and maintenance for the objects are also inextricably linked to the sole possessor's financial interest, they most-likely also show an interest in the most economical of interpretations. The linguistic co-text ('if the opening is likely to cause damage to the neighbour') restricts the meaning of *good condition* in that implies the object's condition must be *good enough* in order to prevent any damage for the 'innocent' party. Nevertheless, the meaning of the adjectival phrase must be described as linguistically indefinite since the degree to which the object under discussion is a potential danger for another individual may be the basis of a plethora of subjective interpretations.

The object's condition is placed between two absolute poles which seemingly do not allow for any deviations. In other words, the object's condition is or is not *good enough* according to objective standards in order to meet the requirements of § 858. This may be an example where legal practitioners and laypersons could potentially diverge in opinions on the classification of the object. In an attempt to find a more accurate meaning of the phrase *good condition*, legal practitioners may turn to a variety of legal sources largely unknown or unavailable to the layperson. In doing so, legal practitioners receive an in-depth understanding of the norm's meaning according to its historical context, its position in the legal system and the assumed purpose, whilst taking into account recent tendencies in Austrian jurisdiction. The use of evaluative adjectives such as *good* may lead to considerable

challenges in legal interpretation, especially if there is no way of restricting their meaning in the relationship with the nouns they modify.

Another example to illustrate the high degree of prototypicality and context-dependence of general quality adjectives may be found in the set of provisions concerning torts in the context of path maintenance, that is, § 1319a (1) to (3). The ABGB determines that the person responsible for the maintenance of a path is liable for compensation if “a person is killed, injured or an asset is damaged due to the defective condition of a path” (Eschig & Pircher-Eschig 2013: 314). Again, the question is whether or not the condition of the path under discussion is defective according to objective criteria. The final sentence of § 1319a (2) addresses this problem and determines the following:

§ 1319a (2)

...Ob der Zustand eines Weges mangelhaft ist, richtet sich danach, was nach der Art des Weges, besonders nach seiner Widmung, für seine Anlage und Betreuung angemessen und zumutbar ist.

§ 1319a (2)

...Whether the condition of a path is defective is determined in accordance with what is reasonable and deemed acceptable in accordance with the nature of the path, in particular its purpose, for its facilities and maintenance.

(Eschig & Pircher-Eschig 2013: 314, my emphasis)

A recent case (40b211/11z) decided by the Austrian Supreme Court has involved the question as to whether a mountain biker using an agricultural road (‘Güterweg’) may be granted compensation following his collision with a cattle line (‘Weideband’) that was taut across the road. The claimant stated that he was going down the gravelled road, which was qualified as a mountain bike route, at an appropriate speed when suddenly he saw a cattle line taut across the road. Despite the fact that the mountain biker attempted to carry out an emergency stop, he fell from his bike and suffered physical injuries. The defendant party responded that the accident was caused by the fault of the claimant, who could have seen the cattle line in time and prevented the accident if he had been attentive and had gone at an appropriate speed. Moreover, the defendant party claimed that on an alp that is home to a cattle population such cattle lines are to be expected.

An important question in the case turned out to be the degree of reasonableness and acceptability of the paths condition. This may be reformulated with the question as to which objective criteria should apply in the interpretation of expressions containing general quality adjectives such as *acceptable*. an applied linguistics perspective, the case is complicated by the fact that a general quality adjective occurs in the immediate co-text of an ethic adjective (*reasonable*).

It is not clear which exact requirements ought to be met in order for a path to be classified defective as the provision only refers to the nature of the path and its purpose. The court must thus determine the type and purpose of the path in order to be able to define what is reasonable and acceptable in terms of its facilities and maintenance. The degree to which the road's condition may be regarded as acceptable in accordance with the nature of the prototypical path might possibly be another instance of divergence between interpretations of laypersons and legal practitioners. However, it may be assumed that laypersons would most-likely seek legal advice as the provisions include too few clues to enable them to draw a sufficient conclusion on the meaning of *reasonable* and *acceptable*.

A final example for the use of general quality adjectives in the ABGB can be found in § 392 of the ABGB, which determines the finder's entitlement to a finder's reward. The provision is formulated as follows:

§ 392

Der Finder hat gegen den, dem der Fundgegenstand ausgefolgt wird, Anspruch auf Finderlohn und auf Ersatz des notwendig und zweckmäßig gemachten Aufwandes ist.

§ 392

The finder is entitled to claim a finder's reward from the person to whom the found asset has been handed over and to be reimbursed for necessary and useful expenses.¹

(Eschig & Pircher-Eschig 2013: 102, my emphasis)

From a linguistic perspective, the phrase *necessary and useful expenses* is highly indefinite for two main reasons, namely the indeterminacy of the noun *expense* ('Aufwand') and the co-occurrence of a modal adjective with a general quality adjective, which complicates the matter even further. Seemingly, the

¹ The phrase *useful expenses* as a translation for the German phrase *zweckmäßig gemachter Aufwand* may here be understood to refer to *purposive expenditure*.

reimbursement to which the finder is entitled must refer to only those expenses which are both *necessary* and *useful*. The expenses on the side of the finder are in turn very likely to be co-determined by the kind of asset they have found, which may be a reason why the paragraph remains vague even though all contextual information is provided. It could therefore be argued that § 392 is an instance of pure vagueness since neither the type of expense nor the necessity or usefulness thereof can be determined without relating the text to a specific legal case. This corroborates Bhatia's (1998: 117) claim that normative texts are indeed intended "to be all-inclusive".

Paradoxically, it seems that the appearance of the two kinds of evaluative adjectives makes the norm seem more precise in that it provides the court with objective criteria to find out what kind of measures it is dealing with. However, on the other hand the co-occurrence of different evaluative adjectives may possibly be related to the degree of perceived adjectival vagueness as different deontic ordering sources are applied. Whereas the expense may be considered *useful* in that it was in the interest of the owner, the court does not necessarily have to agree that the measures taken were also *necessary*. Once again there seems to be a divergence between possible interpretations based on general language usage and institutionalized meaning-making mechanisms as applied by legal practitioners. Information on the type of expenses is not available to the public and therefore, it may be assumed, individuals cannot rely on their everyday understanding of *necessary and useful expenses*. Especially in the context of general quality adjectives, such as *good*, *acceptable* and *useful*, it may not only be necessary to investigate their potential to create vague expressions, but also their immediate co-textual environment, that is, how the co-occurrence of (evaluative) adjectives may affect the interpretation of the text on both the layperson's as well as the legal practitioner's side.

8.2. Frequency adjectives: Ordinary meaning, unusual diligence and normal degree

The meaning of frequency adjectives “can be interpreted as estimated deviation from a class of comparison counting as a norm or prototype” (Fjeld 2005: 166). The following three examples were chosen to show how frequency adjectives may contribute to a considerable degree of vagueness in the ABGB. Whereas the first example is found in a provision to determine how legacies must be interpreted under Austrian inheritance law, the second example describes the liability of experts. The third example refers to a landowner’s right to prevent impairment on his property.

The first example that will be discussed in this chapter is of particular importance to this paper since the provision is seemingly intended to guide legal practitioners in the interpretation of legacies. The death of a human being inevitably leads to questions concerning their subjective intentions when formulating their will and the conceptualization of the words used to express them. § 655 seemingly refers to general language usage when determining the following:

§ 655
Worte werden auch bei Vermächtnissen in ihrer gewöhnlichen Bedeutung genommen; es müsste denn bewiesen werden, dass der Erblasser mit gewissen Ausdrücken einen ihm eigenen besonderen Sinn zu verbinden gewohnt gewesen ist; oder, dass das Vermächtnis sonst ohne Wirkung wäre.

§ 655
Words are deemed to have their ordinary meaning also with respect to legacies; it would have otherwise to be proven that the testator was used to associate a specific meaning with certain expressions or that the legacy would otherwise be without any effect.

(Eschig & Pircher-Eschig 2013: 158, my emphasis)

The determination of the testator’s communicative intention heavily depends on the question as to which meaning should be ascribed to the lexical items that were used. In 2007 it was held by the Austrian Supreme Court that the interpretation of legacies should be based on the ordinary meaning of the words therein. Crucial focus should however be placed on the investigation of the testator’s truthful communicative intention since it is the testator’s will that should be put into effect (10Ob16/07m). The provision also states that it has to be proven that the

testator linked certain expressions to a specific meaning. It seems that neither the provision itself or Austrian case law has so far specified the terms *ordinary* and *specific*. While it seems that the phrase *ordinary meaning* is related to the conventional language code, e.g. the literal or semantic meaning, an utterance's *specific meaning* may refer to its specific use in social relationships, e.g. pragmatic meaning.

From a descriptive perspective, the determination of what may be considered the *ordinary* meaning of a lexical item may be subject to a variety of factors. First and foremost, it must be decided whether or not the deceased language user can be considered a member of a certain speech community based on their linguistic socialization. This of course leads to problems as to which linguistic conceptualization of set theory should be chosen, namely on which grounds the language user can be classified as a member of a certain set or language variety. According to Hymes' (1972: 54) this set is defined as a "community sharing knowledge of the rules of conduct and interpretation of speech, and rules for the interpretation of at least one linguistic variety". This may be particularly difficult if it is not clear to which language community the language user should be assigned, that is, if they spent a considerable time abroad, speak a number of different languages and so on. Lastly, in case of doubt, individuals' idiolects must be taken into consideration which seems to complicate matters even further.

ordinary ----- *specific*

The meaning of frequency adjectives is not only context-dependent; it also relies on subjective parameters linked to the genericity they are intended to denote. Whereas so-called simple concepts may still be explicable with prototype theory, the compositionality of meaning seemingly poses greater challenges, which holds especially true in legal contexts. The principle of compositionality assumes that "the meaning of a whole is a function of the meanings of its parts" (Kamp & Partee 1995: 135). Accordingly, the linguistic meaning of every legal text may be parsed in its semantic components regardless of their institutionalized use in the respective legal system. The article under investigation is not only highly indefinite in that it does not allow for an explicit line between the *ordinary* and the *specific* meaning of a

lexical item, it may also serve as evidence for the significance of adjectival vagueness in normative texts.

The next example chosen from the ABGB revolves around the use of the frequency adjective *unusual* in the phrase *unusual diligence*, which is found in § 1299. The provision determines the conditions under which an individual can be held liable for professional negligence, that is, if they do not meet the requirements expected in their field of expertise.

§ 1299

Wer sich zu einem Amte, zu einer Kunst, zu einem Gewerbe oder Handwerke öffentlich bekennt; oder wer ohne Not freiwillig ein Geschäft übernimmt, dessen Ausführung eigene Kunstkenntnisse, oder einen nicht gewöhnlichen Fleiß erfordert, gibt dadurch zu erkennen, dass er sich den notwendigen Fleiß und die erforderlichen, nicht gewöhnlichen Kenntnisse zutraue; er muss daher den Mangel derselben vertreten. Hat aber derjenige, welcher ihm das Geschäft überließ, die Unerfahrenheit desselben gewusst; oder, bei gewöhnlicher Aufmerksamkeit wissen können; so fällt zugleich dem letzteren ein Versehen zur Last.

§ 1299

Whoever publicly claims an office, an art, a profession or a trade or whoever, without an emergency, voluntarily assumes a task which performance requires specific expertise or *unusual diligence*, shows that he is confident to have the required diligence and the required, not common, knowledge; he is hence responsible for lack of such. However, if the person who entrusted him with the task knows of his inexperience or would have had to know it using reasonable attention, the latter is at the same time responsible for his negligence.

(Eschig & Pircher-Eschig 2013: 309, my emphasis)

The provision shows an intersection of two different adjective phrases, that is *specific expertise* and *unusual diligence*, which lead to a complication in interpretation. What is considered *usual* or *unusual* may only be determined by virtue of the specific expertise required for the task and the stereotypical notion attached to it. It may thus be assumed that frequency adjectives, such as *unusual*, appear to have a particularly strong attachment to the nouns they modify since they are hardly interpretable without this referential relationship. The degree of unusualness of diligence can only be determined according to the specific task in the professional environments provided at the beginning of the article. *Unusual*

diligence may serve as an example to show that frequency adjectives show a tendency to be evaluated as prototypes (Fjeld 2005: 166). The prototypicality of the phrase may lead to a considerable divergence in interpretation between laypersons and legal practitioners due to the presence of intrinsic vagueness. This may also hold true for the frequency adjective *normal*, which will be discussed in the next section of this paper.

§ 364 (2) of the ABGB refers to a land owner's right to protect themselves against a number of disturbances caused by their neighbour. These seven possible disturbances which the land owner may prohibit his neighbour from causing are presented in the form of a categorical list, the deciding factor being whether or not the disturbance under discussion exceeds the normal degree ('gewöhnliche Maß') in the context of local standards. The exact wording of the provision reads as follows:

§ 364 (2)

Der Eigentümer eines Grundstückes kann dem Nachbarn die von dessen Grund ausgehenden Einwirkungen durch Abwässer, Rauch, Gase, Wärme, Geruch, Geräusch, Erschütterung und ähnliche insoweit untersagen, als sie das nach den örtlichen Verhältnissen gewöhnliche Maß überschreiten und die ortsübliche Benutzung des Grundstückes wesentlich beeinträchtigen. Unmittelbare Zuleitung ist ohne besonderen Rechtstitel unter allen Umständen unzulässig.

§ 364 (2)

A land owner can prohibit the neighbour from causing exposure to wastewater, smoke, gas, heat, odour, noise, vibration and similar which originate from his land to the extent they exceed the normal degree [of acceptability] in accordance with local standards and have a material negative impact on the customary use of the land in such an area. Direct exposure without a specific legal title is not permitted under any circumstances.

(Eschig & Pircher-Eschig 2013: 95, my emphasis)

According to the provision, a hypothetical conflict between a land owner and their neighbour may be decided based on three main factors, namely whether the disturbance can be subsumed under one of the categories stated in the article, whether the disturbance can be considered in excess of the normal degree as far as local standards are concerned, and whether the disturbance "has a negative impact on the customary use of the land" (Eschig & Pircher-Eschig 2013: 95). The significance of frequency adjectives in legal meaning-making mechanisms is evident in the practical application of the provision. Whereas a certain disturbance may be

included in the list and may affect how the land owner can make use of his land, the disturbance must exceed the *normal degree* in order to be prohibitable. Therefore, in order for both laypersons and legal practitioners to arrive at a meaningful interpretation of the provision, they must decide what can be considered a *normal degree* with regard to local standards, and identify the nature and extent of the respective disturbance as a transgression of social norms.

However, the phrase *normal degree* is highly indefinite in that it does not provide any quantitative information on the amount of emissions which can be released without entitling the neighbour to demand that the land owner cease and desist. The “type-related interpretation” of frequency adjectives (Fjeld 2005: 166) could prove problematic in the context of legal certainty since it is evident that the degree to which a certain emission still remains within the boundaries of normality is far from clear-cut. The expression *normal degree* presupposes the existence of a norm according to which phenomena in the outside world can be classified as normal or abnormal. It appears that the interpretation of all adjectival categories is related to the concept of norm in legal discourse. Individuals without any legal training who are unlikely to be familiar with recent tendencies in recent Austrian case law (‘ständige Rechtsprechung’) may possibly not know how to interpret the provision and thus prevent legal consequences. Frequency adjectives appear to pose a number of participatory challenges in the context of legal interpretation as eventually the decision as to what may be considered a *normal degree* of something lies at the courts’ discretion.

In 2011 the Austrian Supreme Court had to decide whether or not cat excrements should be considered a disturbance according to § 364 (2). The Court of Appeal had held that there is no Supreme Court decision on the question as to whether the intrusion of cats on neighbours’ private property may be an offence under the provision (50b138/11x). The Supreme Court confirmed that the intrusion of cats on private property may be evaluated according to the provision, but does not constitute an offence since the excrements left behind by the animals cannot be interpreted as a transgression beyond the *normal degree*. In this case, the degree of normality was linked to the question as to whether cat excrements “have a material negative impact on the customary use” of the neighbour’s property (50b138/11x). The discussion is complicated even further by the taxonomy given in the provision

and the following expression *and similar*. While establishing a link with the emissions stated earlier, the expression remains intrinsically vague due to the fact that no clue is provided as to what is similar to “wastewater, smoke, gas, heat, odour, noise, [and] vibration” (Eschig & Pircher-Eschig 2013: 95).

These three examples of frequency adjectives in the ABGB show that the interpretation of such adjectives is extremely context-dependent and shows a strong tendency to rely on the immediate linguistic co-text in the provision. Unlike with dimensional adjectives, there is no way to measure the degree of ordinariness, unusualness or normality.

8.3. Ethic adjectives: Reasonable manner, unjust, malicious intent

In the previous chapter the precisification qualities of frequency adjectives were illustrated and described. It is the aim of this section to show how the source of vagueness of frequency adjectives differs from that of ethic adjectives. Here three examples will be used, namely the spouses’ legal obligation to provide custody in a *reasonable* manner, the degree to which a claim for maintenance may be considered *unjust*, and the description of an individual’s state of mind as *malicious* intent.

The first example that may be used to illustrate how ethic adjectives function as tools of deprecisification is § 90 (3), which was taken from the set of marital law provisions in the ABGB. The provision is relatively short and deals with the relations between spouses and their children with regard to the obligation of custody. It is worded as follows:

§ 90 (3)

Jeder Ehegatte hat dem anderen in der Ausübung der Obsorge für dessen Kinder in angemessener Weise beizustehen. Soweit es die Umstände erfordern, vertritt er ihn auch in den Obsorgeangelegenheiten des täglichen Lebens.

§ 90 (3)

Each spouse is obliged to assist the other in providing custody of his children in a reasonable manner. To the extent required by the circumstances, each spouse represents the other in the custody affairs of daily life.

(Eschig & Pircher-Eschig 2013: 8, my emphasis)

In order to arrive at a meaningful interpretation as to what may be considered a *reasonable* manner, a “normative or deontic ordering source” (Fjeld 2005: 165) is required. In other words, there must be a criterion or a set of criteria to determine what assistance in the provision of custody should be like to be described by the phrase *reasonable manner*. Ethic adjectives do not only account for 13% of all evaluative adjectives in the ABGB, they seemingly also create a number of problems in the interpretation of provisions since it is hardly possible to fix ethical standards in normative texts.

The use of the ethic adjective *reasonable* has been criticized by Eidenmüller *et al.* (2008: 702) in their reaction to the Draft Common Frame of Reference (Study Group on a European Civil Code 2008), arguing that the “excessive use of terms such as ‘reasonable’ leaves the normative substance of the law to the judges’ individual sense of justice”. The problems that lie in the use and interpretation of ethic adjectives such as *reasonable* is evident in the example under discussion. The provision does not specify how the custody in which parents are supposed to assist each other should be apportioned. Instead the degree of reasonableness is put forward as a normative parameter, which is crucial in the determination of a lack of custody. Therefore, Eidenmüller *et al.* (2008) are seemingly correct when criticizing the use of ethic adjectives as they often lead to extreme cases of indefiniteness. This may hold particularly true for linguistic realizations of natural law ideals, such as the notion of justice described in the next example.

In the context of Locke’s theory of distributive justice, Fagiani (1983: 163) claims that “[a]ccording to the tradition of ‘natural law’ justice is inherent to, and should always be observed in, all interpersonal relations”. Interestingly, however, the abstract ideal of justice leads to complex forms of indefiniteness when linguistically realized in normative texts. § 94 (3) may be a suitable example to illustrate this claim. The provision states the following:

§ 94 (3)

Auf Verlangen des unterhaltsberechtigten Ehegatten ist der Unterhalt auch bei aufrechter Haushalts-gemeinschaft ganz oder zum Teil in Geld zu leisten, soweit nicht ein solches Verlangen, insbesondere im Hinblick auf die zur Deckung der Bedürfnisse zur Verfügung stehenden Mittel, unbillig wäre. Auf den Unterhaltsanspruch an sich kann im Vorhinein nicht verzichtet werden.

§ 94 (3)

Upon request of the spouse entitled to maintenance, maintenance is wholly or partially to be paid in money even during an existing joint household, unless such demand would be unjust in particular considering the available means to cover the needs. The entitlement to maintenance cannot be waived in advance.

(Eschig & Pircher-Eschig 2013: 12, my emphasis)

The entitlement of a spouse to maintenance is to a large degree determined by what is considered *just* or *unjust* in the context of the means available. Very similar to perceived reasonableness, perceived (in)justice cannot be measured dimensionally, but is inevitably decided at the court's discretion. This may lead to problems in interpretation on the layperson's part since the degree of (in)justice the provision refers to can hardly be calculable when reading the provision. In both German Law and Austrian Law, what may be regarded as *(un)billig* or *(un)just* is theorized as an indefinite legal notion, namely a concept that is discussed on a regular basis, but not explicitly defined in the legal corpus. Zankl (2010: 39) points out that a jurisprudence of evaluation must carefully take into account a number of considerations. He argues that in the application of legal concepts such as "Billigkeit" or equity, a certain solution in a specific legal case cannot be assumed to be correct simply on the grounds that it appears to be just. In his view, some cases demand that there be an unjust judgement delivered to ensure legal certainty (Zankl 2010: 39).

This may raise concerns with regard to the relationship between the application of so-called natural legal principles and the citizens as addressees. Not only does the ethic adjective *unjust* make the application of the norm unpredictable for a layperson, it may also be the source of philosophical disputes on the question as to whether there is an objective variable such as justice that is present in the law. From an applied linguistic perspective, this question could be reformulated. It could be enquired whether the space between the poles of deprecisification and

precisification evident in normative ideals such as justice or equity could at all be omitted from future codifications. However, this paper is not intended to prescribe rules on which adjectives should or should not feature in codifications.

The third example which will be used to illustrate a practical application of the precisification interdiction (Wright 1975) can be found in § 1294. The provision deals with the various ways damage can be caused under Austrian Civil Law and provides a stipulative definition of *malicious intent*, namely “if the damage has been caused with knowledge and intent” (Eschig & Pircher-Eschig 2013: 308). The provision reads as follows:

§ 1294

Der Schade entspringt entweder aus einer widerrechtlichen Handlung, oder Unterlassung einer anderen; oder aus einem Zufall. Die widerrechtliche Beschädigung wird entweder willkürlich, oder unwillkürlich zugefügt. Die willkürliche Beschädigung aber gründet sich teils in einer *bösen Absicht*, wenn der Schade mit Wissen und Willen; teils in einem Versehen, wenn er aus schuldbarer Unwissenheit, oder aus Mangel der gehörigen Aufmerksamkeit, oder des gehörigen Fleißes verursacht worden ist. Beides wird ein Verschulden genannt.

§ 1294

Damage is either caused by an illegal act or omission by someone else or by coincidence. The illegal damage is either caused deliberately or accidentally. Deliberate damage, however, is based on the one hand on *malicious intent*, if the damage has been caused with knowledge and intent and on the other hand on a mistake, if it has been caused by culpable ignorance or due to a lack of due attention or due diligence. Both are called fault.

(Eschig & Pircher-Eschig 2013: 308, my emphasis)

In spite of the fact that a stipulative definition for *malicious intent* is given in the provision, the binomial pair consisting of knowledge and intent (‘Wissen und Willen’) does not sufficiently specify the characteristics of an individual’s state of mind when acting with *malicious* intent. The ethic adjective *malicious* originates from the Latin forms *malitiosus* or *malitia*, referring to “badness, ill will [and] spite” and has been in legal use since the early 14th century with the meaning of “characterized by malice prepense” (*malicious*, Dictionary.com). The meaning of *malicious* is negative throughout and refers in this context exclusively to a state of

the guilty mind (*mens rea*), which in some jurisdictions is a necessary prerequisite for a number of crimes.

There are no criteria given in the provision as to when an individual's state of mind can be classified as *malicious*. In other words, the question remains unanswered as to how much knowledge and intent should be present in the individual's mind at the time when the damage is caused. Endicott (2005: 40) points out that "[p]recise standards are impossible when the law needs to regulate widely varying conduct with a general standard". This observation supports Wright's (1975) concept of the precisification interdiction and seems to hold true for the degree of maliciousness as well since the interpretation of malicious intent can only be derived from the immediate social relationships involved in each case. Thus, the line what may generally be meant by *malicious* must not be drawn. One can therefore only accept that the relationship between the human mind and the damage caused is a legal construct that will inevitably lead to instances of linguistic vagueness. The provision also raises another problem, namely the role of vagueness in stipulative definitions, which is also relevant in the context of criminal law. After all, it is an accepted view that individuals should not be punished in the event that a criminal law provision remains unclear. However, in some contexts the use of stipulative definitions deviates so drastically from general language usage that laypersons might possibly misinterpret them or not be able to make sense of them at all.

8.4. Relational adjectives: Sufficient compensation and legitimate disapproval

The final two examples taken from the ABGB include relational adjectives and revolve around the questions as to what may be understood by *sufficient* compensation or a *legitimate* disapproval. The interpretation of relational adjectives heavily depends on the nouns they modify (Fjeld 2005: 165), which will be exemplified in the following two provisions.

§ 1321 determines how a land owner should deal with another party's livestock when they encounter it on their property. The provision specifies that the land owner cannot simply kill the animal(s), but states that they are allowed to chase

it away as long as the measures taken are reasonable. As discussed earlier the degree of reasonableness with which the land owner's entitlement is constrained may lead to a number of problems in interpretation. However, the provision includes another indeterminate adjectival phrase. In the event that the land owner suffered damages caused by the animals, they may also "exercise the right of a pledge with respect to as much livestock as is sufficient for his compensation" (Eschig & Pircher-Eschig 2013: 315, my emphasis). However, the land owner is then obliged to come to an agreement with the owner of the livestock or make a court claim within eight days. The text of § 1321 states the following:

§ 1321

Wer auf seinem Grund und Boden fremdes Vieh antrifft, ist deswegen noch nicht berechtigt, es zu töten. Er kann es durch anpassende Gewalt verjagen, oder wenn er dadurch Schaden gelitten hat, das Recht der Privatpfändung über so viele Stücke Viehes ausüben, als zu seiner Entschädigung hinreicht. Doch muss er binnen acht Tagen sich mit dem Eigentümer abfinden, oder seine Klage vor den Richter bringen; widrigen Falls aber das gepfändete Vieh zurückstellen.

§ 1321

Whoever discovers someone else's livestock on his land is, for this reason, not yet entitled to kill it. He can chase it away with reasonable force or, if he has incurred damages as a result, exercise the right of a pledge with respect to as much livestock as is sufficient for his compensation. However, he has to reach an agreement with the owner or to file a claim with the judge within eight days, otherwise he has to return the pledged livestock.

(Eschig & Pircher-Eschig 2013: 315, my emphasis)

The practical problem which the average land owner faces in the situation described by the provision is that, if they decide to make use of their right to a pledge, they need to determine how much livestock is considered *sufficient* in the context of the damages they suffered. After all, they will later have to negotiate with the other party on the number of animals or even have to file a claim at court. Omission to act inevitably entails that the pledged animals have to be returned after the end of the deadline. A typical scenario which contains the application of the provision is a case from 1973 in which the claimant claimed compensation of 2000 Schilling from the defendant, asserting that the defendant's cattle had intruded on his property and had caused damage to his oat seeds and his clover lawn. It was also

stated that the defendant's party had accepted the claimant's claim on the merits. The Court of First Instance decided that on 19th of June 1973 around 9:00 the defendant's family was contacted and informed that her livestock was on the claimant's property. The defendant's son went there immediately and found the cattle as described. The livestock had left the upper pasture ('obere Weide') through an open fence. The defendant's son then led the animals back to the pasture and apologised to the claimant's wife. However, he did not accept any liability for damages (60b33/75). In this case, the claimant did not make use of his right to retain as much livestock as he considered *sufficient*. Instead he filed the lawsuit for compensation with the judge as prescribed in the provision. Nevertheless, the question remains as to how many animals a party can retain to ensure that they are sufficiently compensated for.

From a linguistic perspective, the meaning of relational adjectives is very much dependent on the relationship with the nouns they modify, which is evident in the example *a proper suit* (Fjeld 2005: 165). The meaning of adjectival categories generally and of relational adjectives particularly is therefore to a large extent co-determined by the noun's "norm-relatedness" (Fjeld 2005: 165). The degree to which the cattle retained by the affected party may be considered *sufficient* or *insufficient* as compensation for the incurred damages can hardly be determined a priori. However, it is on the spur of the moment that the financial value of the animals must be compared to the damage they caused.

It appears as though relational adjectives are tendentiously used in contexts where the law simply cannot provide precise requirements due to the multitude of possible scenarios in the real world. Relational adjectives show a high degree of relativity and indefiniteness as they cannot be interpreted on their own, but need to be considered in relation to another lexico-semantic entity. Collocations thus restrict adjectival meaning by convention. In a legal context, this raises the question as to whether it is at all possible or desirable to standardise the plethora of types of 'sufficiencies' that originate from the diversity of meanings generated. Fjeld (2005: 165) argues that "it is easier to decide what a *proper suit* is than to decide what a *proper limit* is". In the provision on the intruding cattle, the expression *sufficient for his compensation* has most-likely been included to prevent an unjustified transfer of assets. The use of relational adjectives may therefore also be explicable with the

allocation of power to officials who eventually have to decide whether the number of animals retained by one party is justified (Endicott 2005: 45). Generally, the legal and linguistic indeterminacy resulting from such expressions seems to corroborate Endicott's (2005: 44-45) claim that there is value in vagueness as it does not only regulate "activities that simply cannot be regulated with precision", it can also function as "a useful technique for allocating decision-making power and encouraging forms of private ordering that promote the purposes of the law". However, this approach to vagueness should also be viewed critically. Especially in the context of social power relations, the inevitable degree of arbitrariness that may result from vague expressions could also be a threat to legal certainty. The next example will illustrate this, showing how shifts in interpretation of a relational adjective can account for diachronic change in language and in jurisdiction.

§ 1222 determines that if a child enters into marriage without having informed their parents or without having obtained their parents' approval, the parents do not have to provide a dowry. However, in the event that parents do not approve, the court is obliged to determine whether the cause of their disapproval ('Missbilligung') can be considered *legitimate*. The provision shows the following wording:

§ 1222

Wenn ein Kind ohne Wissen oder gegen den Willen seiner Eltern geheiratet hat und das Gericht die Ursache der Missbilligung *begründet* findet, sind die Eltern selbst in dem Falle, dass sie in der Folge die Ehe genehmigen, nicht schuldig, ihm eine Ausstattung zu geben.

§ 1222

If a child married without the knowledge or without the consent of the parents and the court decides that the cause of the disapproval is *legitimate*, the parents are not obliged to provide the child with a dowry, even if they subsequently approve the marriage.

(Eschig & Pircher-Eschig 2013: 298, my emphasis)

In order to refuse a child their dowry, parents must relate their disapproval to a certain cause to justify its *legitimacy*, that is to say, they need to argue why their decision is in agreement with the benefit of their child. Czedik-Eysenberg (2004: 187) has drawn attention to the fact that Austrian case law very much reflects the change in values with regard to what may be regarded as a *legitimate* cause of

parents' disapproval. He goes on to note that the legitimacy of disapproval has seen a remarkable number of different interpretations from 1959 to 1992. Such interpretations have included an age difference of forty years between the partners (1959), the fact that one partner stems from a 'very different culture' (1968), the lack of a student's stable income (1969), previous convictions and so-called workshyness (1975), the illegitimate use of an academic title (1986) and being in high debts or at the brink of bankruptcy (1992). These very different examples of the provision's application seem to show how time-dependent and context-dependent the interpretation of relational adjectives may be. In fact, it may even be argued that the application of the provision is to a large extent dominated by the meaning assigned to *legitimate* by the courts.

This must necessarily lead to the question as to whether the potential for arbitrariness evident in the provision can at all be reconciled with the concept of legal certainty. Endicott (2005: 41) points out that "[t]he challenge for lawmakers is to determine whether, in a given scheme of regulation, the arbitrariness resulting from precision is worse than the arbitrariness resulting from the application of a vague standard". The use of relational adjectives serves as an appropriate example to show how this space between vagueness and precision is to a large extent co-determined by the deprecisification qualities of such adjectives. The potential for arbitrariness in interpretation that seemingly results from relational adjectives is a direct consequence of the lexico-semantic properties of the items.

However, as Widdowson (2004: 85) notes, language users generally approach language with "contextual and pretextual assumptions [...] and set the conditions for relevance". In this particular context, the legal practitioners involved in the interpretation of the provision need to identify legitimate causes for the parents' disapproval. The conditions for what is relevant are not set by what the individual parties regard as legitimate, but are determined by the court in accordance with what is socially acceptable at the time of the decision. The use of *legitimate* in § 1222 seems to support the claim made by Bhatia *et al.* (2005: 337) that "the use of text-internal resources is largely determined by text-external factors and constraints, which play a decisive role in the construction and interpretation of legislative provisions". This appears to hold true in particular for the use and interpretation of relational adjectives. As is the case with evaluative adjectives

generally, relational adjectives need to be interpreted according to a “subjective scale of measurement” (Fjeld 2005: 160). This subjective scale is constructed when individuals attempt to relate text-external factors to text-internal resources.

At this point it is important to note that there may be a high degree of divergence between the outcomes of institutionalised meaning-making techniques and the textual interpretation employed by laypeople. The way the provision is interpreted may heavily depend on the purpose it is intended to fulfil. However, it seems very unlikely that laypersons can evaluate beforehand what is considered a *legitimate* cause, which leads to the assumption that the use of some (relational) adjectives may be a central source of misunderstandings and misconceptions on the laypersons’ part. One could therefore argue that in some contexts the futile application of interpretation techniques from general language knowledge may lead to laypersons being subjected to the imposition of the law.

8.5. Summary of findings: qualitative analysis

In the qualitative analysis, eleven examples of adjectives were investigated with regard to their potential to influence the degree of vagueness in normative texts. The first adjectives analysed were the three general quality adjectives *good*, *acceptable* and *useful*.

The interpretation of general quality adjectives can be described as a process in which the modified noun is placed between two absolute poles. Provisions that include such adjectives require individuals to decide whether something is good or bad *enough* to meet the prototypical prerequisites laid down. Austrian case law shows instances where it is discussed whether or not a particular phenomenon in the outside world can be qualified as something. The co-occurrence of a general quality adjective (*useful*) with a modal adjective (*necessary*) seemingly makes provisions more precise. However, it may also be assumed that there is a considerable divergence in interpretation between legal practitioners and laypersons as to what may be regarded as both necessary *and* useful.

In the analysis of frequency adjectives it could be confirmed that the meaning of such lexical items is generally interpreted with regard to some kind of deviation from a class of comparison (Fjeld 2005: 166). It was found that the degree

of ordinariness or normality referred to in legal texts may be dependent on a variety of factors, such as language user's linguistic socialisation and the blurry link between semantic meaning and pragmatic meaning. Another aspect raised was that, whereas prototype theory should be sufficient to explain the gradience between simple concepts, instances where meaning seems rather compositional may pose greater challenges. This may particularly hold true for the interpretation of legacies and contracts.

Ethic adjectives have also been the subject of discussion from a legal perspective. Eidenmüller *et al.* (2008: 702) have warned of the "excessive use" of ethic adjectives such as *reasonable*. Not only is *reasonable* the fifth most frequent adjective in the ABGB, it was shown that it may indeed lead to severe cases of linguistic indeterminacy. It was found that ethic adjectives generally seem to reflect indefinite natural law ideals such as reasonableness or justice which are commonplace in the ABGB. The analysis of ethic adjectives showed that the use of such normative parameters makes the norm seemingly unpredictable for laypersons. The philosophical question as to whether justice can ever be an objective variable in law would have exceeded the possibilities of this paper. However, it may be enquired whether it is at all possible to completely omit normative ideals such as justice and equity from further normative language use.

The analysis of relational adjectives showed that they tend to be used in contexts where the law cannot prescribe precise requirements to accommodate for every possible scenario in the outside world. The indeterminacy residing in such lexical items may support Endicott's (2005: 45) argument that some instances of vagueness are valuable in that they regulate the otherwise unregulatable. It was also found that the application of the meaning of relational adjectives by the courts has seen remarkable shifts in interpretation. The interpretation of relational adjectives has shown to be particularly time-dependent and context-dependent, which corroborates Czedik-Eysenberg's (2004: 187) claim that the changes in Austrian case law also reflect the changes of societal values. Individuals without any legal training cannot be assumed to be able to evaluate beforehand how text-internal resources in the provision are linked to their specific situation in the outside world.

9. Discussion

The empirical analyses which were presented in chapter 8 and chapter 9 raise a number of questions with regard to the characteristics of adjectival vagueness in the ABGB and the implications of this study for future legislative drafting and legal aptitude research. The first section of this chapter will provide a discussion of the quantitative findings of the study and compare the relevant findings to those of the study conducted by Fjeld (2005) on three Norwegian Acts (ASS, APA and ACS). It is observable that the findings diverge considerably as far as the distribution of the types of adjectives is concerned. After the discussion of the quantitative results, the conceptual similarities between interpretation and translation will be elaborated on and it will be explained why interpretation is a process rather than a mechanism. Finally, this section will argue for the significance of future research on vagueness and indeterminacy, suggesting possible practical applications in the context of legal aptitude testing. Having briefly addressed Dworkin's (1996) critical inquiry on the relationship of meaning and truth, this chapter outlines the need for further research on a national and international level.

9.1. Adjectives and the quantification of vagueness

One crucial question in the investigation of vagueness in normative texts may be to which extent the number of adjectives in such texts may serve as a potential parameter for their perceived overall vagueness. In other words, would it not be reasonable to assume that there could be a correlation between the number of adjectives in a text and its perceived vagueness? The quantitative analysis has shown that this is not the case since the three lexical items with the highest absolute frequency in the ABGB (*other*, *legal*, *liable*) do not lead to such extreme cases of indeterminacy as other comparatively less frequent ones (*reasonable*, *ordinary*). In fact, some of the adjectives discussed in the qualitative analysis occur infrequently across the ABGB, but nevertheless show a considerable degree of indeterminacy or indefiniteness in their immediate co-text. It may therefore be concluded that the absolute frequency of adjectives in a text cannot serve as a reliable basis for the description of its perceived vagueness.

The distribution of the relative frequencies across the three parts shows that some adjectives occur more frequently in a specific legal context, e.g. family law. Items such as *other*, *legal*, *minor*, *adoptive*, *disabled* and *capable* display a higher observed relative frequency in the first part than in the other two parts of the code. This seems to support the assumption made by Bhatia *et al.* (2005: 337) that the connection between “text-internal resources” and “text-external factors” is of great significance in the creation of normative texts. It appears that different legal scenarios demand different linguistic resources to be successfully mediated. This is also evident in the divergence between Fjeld’s (2005) findings and the data presented in this study. Both of the studies have classified the number of adjectives according to Pinkal’s (1985) taxonomy. Whereas 27% of adjectives in Fjeld’s (2005) study were labelled as non-restrictive, 34% of those in the ABGB are of this type. Fjeld (2005) found that in the three acts 47% of the adjectives were considered to be precise. In contrast, 26% of those in the ABGB are precise adjectives and only 2% with fuzzy boundaries. The Norwegian Acts showed 8% of the latter group. Interestingly, 38% of the adjectives in the ABGB are relative adjectives, whereas only 18% in the texts examined by Fjeld (2005). One possible explanation for the different results could be connected to the fact that Fjeld (2005) investigated provisions aimed at very different addressees.

The ABGB is a comprehensive code that refers to a plethora of legal domains in Austrian private law. Eschig and Pircher-Eschig’s (2013) translation also shows a high degree of internal consistency in terms of lexical choices and structure, which was possibly not the case in the acts chosen by Fjeld (2005). The divergence of findings shows that follow-up research is indeed necessary. Such projects could potentially investigate the occurrence and distribution of adjectives in other codifications such as the German Civil Code, the French Code Civil, the Spanish Civil Code, the Russian Civil Code or the Chinese Civil Code. Comparative legal linguistics cannot yet turn to a comprehensive body of empirical research in order to accommodate the needs of the legal field. This is particularly relevant in times in which some are contemplating about the question as to whether a European Civil Code should be introduced. Surely, this discussion should not only be led by legal arguments, but should also be based on empirical research from applied linguistics. Therefore, the development of fine-grained corpus analysis tools is crucial to

investigate further the semantic resources of normative texts. The semantic tagging techniques employed in this study revealed that the vast majority of tokens found in the ABGB can be classified as 'general and abstract terms'. Such tools may serve as a fruitful starting point for more detailed analyses focusing on the use and deprecisification qualities of parts of speech.

This study has shown that the evaluative adjectives may occur more frequently in normative texts than has been assumed so far. Fjeld (2005: 164) suggests a new system to sub-classify evaluative adjectives, splitting them into general quality adjectives, modal adjectives, relational adjectives, ethic adjectives, consequence adjectives, evidence adjectives and frequency adjectives. However, it seems that a quantitative analysis of the lexical distribution of these items has not yet been performed. Not only does the study conducted on the ABGB show that evaluative adjectives seemingly occur more often in normative texts than dimensional adjectives, the quantitative data obtained was analysed more specifically in order to provide the distribution of evaluative adjectives in the ABGB. Accordingly, the most frequent type of evaluative adjectives are general quality adjectives, accounting for 39% of this type. 16% of evaluative adjectives have been found to be frequency adjectives and 13% were classified as ethic adjectives. Relational adjectives were the fourth largest type, accounting for 12% of all evaluative adjectives. The remaining 20% of evaluative adjectives consist of modal adjectives, consequence adjectives and evidence adjectives. Since 80% of evaluative adjectives may be categorised as either general quality adjectives, frequency adjectives, ethic adjectives or relational adjectives, it appears to be safe to assume that these types may be particularly important in the investigation of adjectival vagueness. The qualitative analysis seems to corroborate this assumption.

9.2. Interpretation as a form of translation

The qualitative analysis presented in chapter 9 focused on four types of evaluative adjectives in particular, namely general quality adjectives, frequency adjectives, ethic adjectives and relational adjectives, which have been found to occur very frequently across the ABGB and which may lead to considerable difficulties in interpretation due to their high degree of indeterminacy or indefiniteness. A

significant question in this context may be whether these phenomena are caused by the adjectives' semantic properties or whether they are more complex co-products of pragmatic inference. In order to answer this question, one may need to revisit Barak's (2006: 122) position arguing that interpretation is a process that is based on the extraction of the legal meaning from a text's semantic meaning. In his view, interpretation is a "rational activity giving meaning to a legal text" (2006: 122).

Whilst it may be true that the creation of meaning in interpretation indeed seems to start at the lexico-semantic level, the process by which individuals give meaning to a certain text is highly agentive, that is, the language user actively engages with the text. Widdowson (2004: 8) has pointed out that meaning is achieved "by indexical realisation, that is to say by using language to engage our extralinguistic reality". He claims that the text itself remains inert if not activated by the language user. This seems to be in line with Barak (2006), who also assumes that the interpretation of a legal text is an activity, a derivation of meaning by the interpreter. The process of legal interpretation itself could therefore be understood as a form of translation.

Widdowson (2014: 224) has identified the ambiguity residing in the concept of translation, pointing out that it may not only refer to "the process of translating", but also refer to "the resulting product". He goes on to note that especially in a professional environment, the former is often merely viewed as a means to accomplish the latter. This also appears to hold true for the community of legal practitioners as the translation of a legal text is always undertaken to arrive at a legally binding outcome. Widdowson (2014: 224) maintains that the teleological approach to the process and the product of translation may be misleading since one can certainly "engage in the covert psycholinguistic process of translation without producing a translation as an overt result". Accordingly, to use Widdowson's (2014) terminology, most individuals engaging in the interpretation of legal texts seem to be **translaters** rather than legal practitioners who function as **translators**. Nevertheless, the question still remains as to how vagueness originating from certain textual elements such as evaluative adjectives can be explained. In other words, when legal authorities such as Eidenmüller *et al.* (2008) criticise the use of certain expressions in legal instruments from a practical perspective, what advice could applied linguists offer?

According to House (2009: 1), “[t]ranslation is the replacement of an original text with another text”. The interpretation of a legal text may therefore be understood as a form of translation, that is, a creation of and replacement with an entirely new text. Widdowson (2014: 227) rejects the idea that there is such a thing as “complete meaning” which is inscribed in a certain text. Instead, he emphasises the interpreter’s role in the derivation of various discourses and argues that “different interpreters find different things [and] focus on different aspects of meaning” (Widdowson 2014: 227). It seems that in the context of the interpretation of evaluative adjectives, Widdowson’s (2014) distinction between the *translator* and the *translato*r is very helpful for a number of reasons. In chapter 6 Fjeld’s (2005) interpretation situations were introduced with the aim to illustrate possible divergences between laypersons and legal practitioners. Both Widdowson (2014) and Fjeld (2005) point out that different individuals may arrive at different interpretations when translating one and the same text. However, whereas Widdowson (2014: 227) emphasises the importance of pragmatic inference in meaning making processes, Fjeld (2005: 168) notes that “[i]n the study of law laymen learn special mechanisms for precisification and deprecification that are mostly unknown to lay readers”. Despite the fact that Fjeld (2005) does not explicitly address pragmatic theory in her discussion on precisification strategies, she argues that the inferences made by legal practitioners and laypersons may diverge considerably. In her view, this divergence in interpretation is only truly serious if the legal text “gives too few clues for the necessary recoverability of meaning” (Fjeld 2005: 170). However, this should not be understood as a general inability of the layperson to recover any meaning from the legal text, but it seems the problem lies in the divergence of foci placed on certain contextual elements.

The investigation of the relationship between adjectives and linguistic vagueness in the ABGB has shown that evaluative adjectives are very likely to lead to complex forms of linguistic indeterminacy and indefiniteness. Most of Fjeld’s (2005) statements on the interpretation of evaluative adjectives could be confirmed. However, Fjeld (2005: 166) has entirely excluded pragmatic perspectives from her discussion of the interpretation of evaluative adjectives, proposing that “the quality parameter of indefinite adjectives might [...] be redefined in terms of modality”. She argues that the arrangement of evaluative adjectives may not only be based on a

positive or negative dimension, but that such adjectives can be arranged “according to their modal force” (Fjeld 2005: 167). In her view, it is the degree of modal force which determines the kind of ordering source required. Whereas “[a]djectives of strong modal force often require a normative ordering source, those of low modal force only a stereotypical ordering source” (Fjeld 2005: 167). Whether one agrees or disagrees with this conceptualisation, the framework which Fjeld (2005) proposes rests to a large extent on lexico-semantic considerations. It is based on certain semantic properties adjectives are claimed to have, e.g. the adjective *necessary*, for instance, is assumed to have “the highest modal strength” as “there are more requirements needed to qualify something as *necessary* than as *advisable*” (Fjeld 2005: 167). It seems that what is perceived as a ‘matter of interpretation’ is in fact a divergence in pragmatic inferences.

9.3. Interpretation and pragmatic inference

In a legal context, the interpretation of text in general is sometimes viewed as a mechanism which does not involve the individual at all. In its most radical sense, this idea was expressed by Montesquieu (1862, cited in Pattaro 2005: 233) when he described the judge as a mere instrument, that is, “the mouth that pronounces the words of law”. However, this view is not in agreement with what really happens in legal interpretation. Widdowson (2004: 11) correctly identifies that the interpretation of written text may lead to problems relating to the divergences in discourses between the writer and the reader. He argues that “written text records only that of the first party, who can only account for second-person reaction by proxy” (Widdowson 2004: 11). Analogically, in the process of legislative drafting individuals “enact [...] a discourse with a projected reader who may be very different from the actual readers who derive their own discourse from the text” (Widdowson 2004: 11).

The lexico-semantic properties of adjectives or any other part of speech may indeed be assumed to constitute a starting point of interpretation. However, the process of interpretation itself is not a passive mechanism, but involves language users actively negotiating the meaning of a text by individual pragmatic inference. This makes legislative drafting a difficult practice since those responsible have to

“guard against any possible misinterpretation or misapplication of legislative provisions” by both the institutional and non-institutional stakeholders involved (Bhatia 2010: 41). This must necessarily lead to the question as to whether it is at all possible to create legal instruments which do not only meet the juridical requirement of applicability, but are also comprehensible to the public. The projected reader to which Widdowson (2004) refers is of ultimate importance in both legislative drafting and in legal interpretation. In Austrian law, the notion of *Rechtsunterworfenene* (individuals subjected to the imposition of the law) is indeed in need of adaptation also with respect to the emerging technologies in legal information retrieval.

Legal provisions have generally been accused of being “inaccessible to ordinary citizens” (Bhatia 2010: 41). Since so-called ordinary citizens often perceive themselves to be the ‘real’ audience of such legal texts (Bhatia 2010: 41), one may inquire how the factor of accessibility can be related to this study on adjectival vagueness. The analysis of the use of *legitimate* in § 1222 has shown that, although the provision specifically addresses parents as the main agent, who under certain circumstances may choose to refuse their child the dowry, those involved in the respective case must first be familiar with the institutional use of the adjective before they can make an informed and confident decision. The change in values reflected by the application of the adjective throughout the years shows that the vagueness residing in the *legitimacy* of the cause produces enormous power-relations between the parents and legal authorities. Bhatia (2010: 41) draws attention to the fact that legal discourse has been described as “an instance of conspiracy theory, according to which legislative provisions are purposely written in a complex and convoluted manner”. He goes on to argue that this assertion is based on the argument that in doing so readers without any legal background are not only shut out of the accessible range, but one allegedly finds a perpetuation of citizens’ dependence on expertise provided by legal practitioners (Bhatia 2010: 41). This argument has also been discussed by Danet (1980: 452), who draws attention to the critical perspective that language may be used as “a symbol and a tool of power, creating dependence and ignorance on the part of the public”. However, it must be noted that a high degree of specification in normative texts does not necessarily lead to a higher degree of accessibility. In fact, it seems that

§ 1222 is far from complex and can hardly be described as convoluted in its structure. Nevertheless, the provision is inherently vague due to the indeterminacy found in the adjective *legitimate*, which is very likely to lead to problems in interpretation on the part of ordinary citizens.

It appears as though the issues arising from such vague expressions are not only found within the limits of the wording of a provision, but primarily how individuals then act upon the normative text. Klatt (2008: 211) states that “the core problem of the limits of the wording in terms of legal theory is the language-philosophical question of what meaning is and whether it can be recognised, and if so how”. It may be argued that the legal profession is to a large extent founded on the assumption that the full recovery of textual meaning is possible. Klatt’s (2008) statement may therefore be in need of reformulation. Whilst the conceptual limits found in a provision’s wording is most certainly a semantic phenomenon, the interpretative processing of textual elements may go much further beyond “disambiguation and reference assignment” (Bezuidenhout & Cutting 2002: 434) than has previously been assumed. When individuals attempt to find an answer to the question as to what may be understood by providing custody in a *reasonable manner* as prescribed by § 90 (3) ABGB, they engage in the pragmatic process of the deconstruction and reassembly of linguistic content by drawing the boundaries between relevant and irrelevant textual elements. Thus, it seems the contextual knowledge individuals possess may even be more significant in the deduction of legal meaning than semantic parameters. The divergence between laypersons and legal practitioners in the interpretation of legal provisions may therefore be a divergence in contextual relevance of certain textual features rather than in their semantic content.

In contextualist theory, it has been claimed that what is expressed may “contain elements that are determined on the basis of contextual information, and that do not correspond to anything semantically encoded” (Bezuidenhout & Cutting 2002: 434). It may indeed hold true that the various processes of interpretation discussed in chapter 4 largely draw on pragmatic rather than semantic aspects. Systematic interpretation, for instance, is carried out assuming that the legal order is complete and that the meaning of one textual element can be recovered by appropriately contextualising it with other legally relevant elements. Similarly, in

historical interpretation we encounter a reconstruction of what is perceived as the historical legislative intent of a provision. The negotiation of the relevant textual features in systematic or historical approaches to statutory interpretation shows that these processes are largely based on individuals' pragmatic inferences drawing on their subjective understanding of reality. The teleological approaches also confirm this assumption since the weight given to certain textual elements is largely co-determined by individuals' "conception of the world, [their] social and individual reality, [their] values, beliefs [and] prejudices" (Widdowson 2004: 13). Some have argued that it is inadmissible to project subjective notions of justice onto the law (Wendehorst & Zöchling-Jud 2015: 11), which too would constitute a form of eisegesis. However, the process of statutory interpretation cannot be an objective mechanism since the literal meaning of a provision can in some contexts be overruled by contextual aspects due to individual inferences.

Ethic adjectives show a considerable degree of indeterminacy due to the fact that the moral code underlying their interpretation is socially-constructed and thus always limited to what is regarded as ethical or moral within a certain community at a certain point in time. The investigation of the semantics of such adjectives is therefore limited through their own absolute deontic boundaries. One example that was discussed at length earlier was the use of *unjust* in § 94 (3). One is safe to assume that most individuals have an idea which acts they deem *just* and which they would consider *unjust*. On an abstract level, however, it appears almost impossible to define the ethics of justice, which, to complicate matters further, are often said to have universal validity. This problem is particularly evident in human rights discourse, where vagueness is perceived as bearing the potential to create "a risk of arbitrariness and, hence, discrimination, in the enforcement of the law" (De Schutter 2014: 347).

The criticism voiced by Eidenmüller *et al.* (2008: 702) is directed at a very different area of the legal landscape and yet refers to the same problem. It reflects an assumption which is commonplace in the legal community, namely that the avoidance of certain textual elements such as evaluative adjectives will lead to a reduction of complexity in interpretation. However, the investigation of the internal structure of lexical items can only be a first step towards a deeper understanding of the psycholinguistic and pragmatic processes of the interpretation of the law. The

legal community is well aware that on the one hand “[l]egal certainty is not simply an arbitrary objective”, but that on the other hand “terms such as ‘reasonable’ or ‘due’ will inevitably vary with the view the individual judge takes of the matter” (Eidenmüller *et al.* 2008: 676). In this context, one contribution applied linguists can make to help understand this problem is to draw attention to the multi-layered stages of the composition of meaning. In the following section, it will be discussed why the notions of comprehension and translation may prove useful in the discussion whether more weight should be given to semantic or pragmatic aspects in interpretation.

The complexity of interpretation does not originate from lexical meaning only, but primarily from the active effort to create a meaningful relationship between the internal linguistic resources of a text and the contextual circumstances provided by the outside world. It seems there are two main concepts which could be considered a fruitful intersection between the study of law and the study of language, namely comprehension and translation. These two terms can denote both processes and products. They seem to be interwoven as they both relate to cognitive and neurolinguistics processes which enable the speaker to make sense of linguistic structures. Fjeld’s (2005: 168) observation that the study of law teaches laypersons precisification or deprecisification mechanisms could be reformulated as follows. In the study of law, laypersons acquire knowledge of the language of the law. Learning interpretation techniques may indeed be regarded as a sub-branch of language acquisition since lexical units are not only semantically enriched, but some of them also take on fundamentally different meanings than are used in everyday discourse. When individuals learn how to interpret statutory texts, contracts, wills or other legal instruments, they may possibly acquire a new linguistic sub-system in their mental lexicon. Accordingly, it must be inquired whether there is a relationship between “how speakers acquire knowledge of a language” (Jackendoff 2011: 586) and how exactly speakers learn to conduct interpretations of legal texts. How do proficient speakers of a certain language turn into translators? Which are the abilities that enable an ordinary person without any background in the legal field to be a successful interpreter? At this point, it may be useful to take into consideration the recent developments in tertiary education in the United Kingdom.

9.4. Vagueness and legal aptitude testing: LNAT and CLAT

In 2004 eight UK universities adopted an admission test for the subject of law involving “multiple choice questions and a short essay” (BBC, 2 February 2004). The Law National Aptitude test (LNAT) is intended to help “universities make fairer choices from the many highly-qualified applicants who want to join their undergraduate law programmes” (LNAT Consortium Ltd 2016). The test consists of two sections, one of which is an entirely computer-based multiple choice test. In the first section, participants are required “to read passages of text and answer questions that test [their] comprehension of them” (LNAT Consortium Ltd 2016). Here, examinees can reach up to 42 points, which is referred to as their LNAT score. The second section requires test-takers to choose one out of three possible subjects proposed by the administrators. However, this section does not count towards the overall aptitude score, but serves to provide examinees with the chance to “show [their] ability to construct a compelling argument and reach a conclusion” (LNAT Consortium Ltd 2016). The LNAT score and the written essay are then forwarded to the participating universities, which review the test results as part of the application procedure. This is done with the assumption that both sections together “show [students’] aptitude for studying undergraduate law” (LNAT Consortium Ltd 2016).

It is important to note that there has not been a consensus in the definition of the notion of legal aptitude. This is evident in the open description of the test to the public. The LNAT is introduced to prospective students of law as a test of their “verbal reasoning skills”, their “ability to understand and interpret information”, their “inductive and deductive reasoning abilities” and their “ability to analyse information and draw conclusions” (LNAT Consortium Ltd 2016). Despite the fact that these four main test areas are doubtlessly relevant to linguistic research, they are predominantly portrayed as legal rather than linguistic abilities. It seems as though the same observation may to a large extent also hold true for the LNAT’s Indian equivalent, commonly referred to as Common Law Admission Test (CLAT). According to AB Tutorials (2016), the CLAT is intended to test applicants on five different skills, that is, “English including comprehension”, “General Knowledge and Current Affairs”, “Mathematics”, “Legal Aptitude” and “Logical Reasoning”. Interestingly, whereas the term legal aptitude remains undefined and is merely circumscribed as a “candidate’s interest towards study of law [sic], research

aptitude and problem solving ability”, the language competence section is described as a language proficiency test for English with a focus on comprehension (AB Tutorials 2016). In the logical reasoning section, candidates are required to “identify patterns, logical links and rectify illogical arguments” (AB Tutorials 2016). It must be concluded that despite the fact that both the LNAT in the UK and the CLAT in India are intended to test legal aptitude, they have failed to provide a detailed definition of the term itself. One reason for the terminological difficulties that seem to go with the term may be the fact that the umbrella term *legal aptitude* may be related more closely to the established concept of linguistic aptitude.

9.5. Towards a linguistic understanding of legal aptitude

Whereas the field of linguistic aptitude research had its beginnings in the United States after the end of the first World War (Dörnyei 2010: 249), there is no clearly defined construct for the assessment of legal aptitude. Carroll (1981: 105, my emphasis) has described language aptitude as consisting of four different components, of which two seem particularly relevant for the development of a construct for legal aptitude:

Phonetic coding ability	an ability to identify distinct sounds, to form associations between these sounds and symbols representing them, and to retain these associations.
Grammatical sensitivity	the ability to recognize the grammatical functions of words (or other linguistic entities) in sentence structures.
Rote learning ability	the ability to learn associations between sounds and meaning rapidly and efficiently, and to retain these associations.
Inductive language learning ability	the ability to infer or induce the rules governing a set of language materials, given samples of language materials that permit such inferences.

The “*value of vagueness*” (Endicott 2005: 45, my emphasis) may not only be considered in the context of legal theory, but also with regard to the potential of vague legal texts to be used in the development of new constructs of legal aptitude testing. Carroll’s (1981: 105) understanding of “grammatical sensitivity” and “inductive language learning ability” could potentially serve as a fruitful basis for

test formats that require candidates to deal with the various forms linguistic and legal indeterminacy can take. Building on earlier research conducted by Sungkhasettee, Friedman and Castel (2011), Diemand-Yauman, Oppenheimer and Vaughan (2011), French *et al.* (2013) and Eitel *et al.* (2014), Lehmann, Goussios and Seufert (2016: 90) draw attention to empirical findings that seemingly account “for a better learning performance with disfluent learning material which makes reading harder”. In the context of the study presented in this paper one may thus inquire whether these insights could also be put to use in legal aptitude tests or legal education generally. In Austria there are currently no legal aptitude tests in place, which shows the need to engage with this relatively new concept in the future. At first, however, it should be discussed how grammatical sensitivity and inductive language learning ability may be useful for the design of legal aptitude tests.

Law texts doubtlessly belong to one of the most cognitively challenging genres of written text for several reasons. Carroll’s (1981) understanding of “grammatical sensitivity” primarily focuses on an individual’s ability to assign certain lexical items their respective grammatical function within syntactic structures. This ability is of crucial use for the interpretation processes as before the ‘legal’ meaning of a provision can be recovered, the interpreter needs to process the grammatical meaning of the text, that is, they are required to find possible literal meanings of the provision. In the event that a text displays one or more instances of lexical or syntactic ambiguity, it is crucial that the interpreter recognises this textual feature even if it is not of immediate relevance for the respective case. In other words, legal practitioners who show high grammatical sensitivity could potentially be expected to be more aware of the lexico-semantic impact of vagueness in normative texts and may also be able to exploit them pragmatically when interpreting a provision. Disfluent learning material may therefore be very useful in legal education since it requires law students to critically engage with text-analytical aspects of legal provisions, thus providing them with a deeper understanding of the linguistic structures of the law.

Carroll’s (1981: 105) concept of individuals’ inductive language learning ability draws on two basic components. Firstly, it refers to the degree to which they are able “to infer or induce the rules governing a set of language materials”. Assuming that legal reasoning and aptitude may not only be linked to cognitive

abilities such as logical thinking, but may also be closely related to language learning processes, one could argue that students of law who show a high inductive language learning ability may also display a higher level of creativity in the interpretation of legal provisions. Most methods of interpretation frequently require individuals to move between legal provisions in order to give their own legal understanding a meaningful direction and to include or exclude aspects found in the outside world. Howarth (2013: 49) argues that “[t]he qualities that lawyers need most are not histrionics and pedantry but controlled imagination and creativity”. He elaborates on this claim, specifying his notion of ‘imagination’ as an ability “to comprehend problems both from their client’s point of view and from the point of view of the law” (2013: 49). Creativity is of great importance in Howarth’s (2013: 49) discussion of legal aptitude as in this view it enables practitioners to solve text-external problems with the help of text-internal resources (Bhatia *et al.* 2005: 337). However, to validate this claim it is necessary to find out more about the role of language processing with regard to legal problem solving and other cognitive skills.

Inductive reasoning is assessed in both legal aptitude tests discussed above and has attracted considerable attention in the social sciences, for instance psychology. Sternberg and Pretz (2005: 125) point out that in the processual approach it is a position widely held that “inductive reasoning tasks, mostly analogies, are diagnostic of one’s general cognitive competence”. They call for an investigation of the cognitive processes which underlie inductive inference (2005: 125), and it seems as though their insights are also relevant for the question as to how linguistic vagueness can be utilized in the development of legal aptitude tests. Inferring or inducing linguistic regularities in language samples (Carroll 1981: 105) generally requires individuals to take risks and to draw on a number of different textual resources. Inductive reasoning is therefore always linked to such risk-taking behaviour since the conclusions individuals draw as a result of such cognitive processes is merely judged by their probability, leaving open the possibility for another equally valid conclusion to exist (Hanson 2003: 217). Vagueness in language samples creates such situations in which individuals are challenged to step out of their comfort zone and to critically explore the text as an unknown territory.

There may indeed be value in vagueness as the phenomenon requires those in the legal profession to engage cognitively with the complex structural

insufficiencies of natural language. Inextricably connected to the notion of language aptitude, legal aptitude may be described as a prediction of an individual's future potential to interpret legal provisions successfully in comparison to other individuals. Earlier a distinction was made between individuals with and without legal training, but it seems as though this is a distinction based on individuals' ability rather than their aptitude. Rysiewicz (2008: 570, original emphasis) points out that "abilities are available **now** to an individual for task performance with no further training needed, while aptitudes characterise **potential** for achievement given appropriate instruction". With this definition in mind, it may be interesting to inspect one of the multiple choice tasks found in the 2010 practice test paper of the LNAT. The task requires candidates to "answer all 42 multiple choice questions in Section A, selecting one of the possible answers listed for each question" (LNAT Consortium Ltd 2010). The following question is one out of three questions that candidates are required to answer based on their reading of the text in the first task:

Which of the following pairs is not used as an opposition in the passage?

- (a) ideal physician and Victorian patriarch
- (b) adult and children
- (c) quasi-familial and quasi-legal
- (d) patriarch and batterer
- (e) paternalism and autonomy

(LNAT Consortium Ltd 2010)

It may be argued that the task only partially tests candidates' legal aptitude as it predominantly focuses on their reading performance. High literacy and reading comprehension scores may be considered an important indication of an individual's legal aptitude, but it is more likely that the task provides insights into the individual's current abilities rather than their future potential to deal with legal provisions. This is of course also connected to the test format, which is intended to provide the highest possible degree of objectivity in scoring the answers. One possible extension of this reading task may appear less objective, but could potentially increase the validity of the aptitude test. Candidates could be provided with a number of legal provisions from a variety of contexts and be instructed to analyse and interpret the provisions from a number of different perspectives, e.g. an analysis of § 1222 of the ABGB could focus on three possible aspects, that is, the legal interests of the child, the legal interest of the parents, and the linguistic and legal

indeterminacy of the *legitimate* cause of disapproval. Candidates with high linguistic awareness may be assumed to perform considerably better than those who merely apply legal definitions. Individuals with high aptitude in interpretation will successfully exploit the linguistic resources of a legal provision and also integrate strong arguments as to why their analysis is in accordance with the balance of interests as a guiding principle of legal discourse. Instances of adjectival vagueness appear very suitable to test individuals' aptitude in interpreting legal statutes since their legal argument cannot be based on knowledge, but on how successfully they are able to engage cognitively with these linguistic obstacles in the text. Individuals who are able to provide both creative and balanced solutions to the linguistic problems that arise from the "tension [...] between precision and all-inclusiveness" (Bhatia *et al.* 2005: 337) may be considered to have a high aptitude in interpretation. Interpretation tasks including evaluative adjectives in particular seem suitable to make predictions on individuals' potential to be strong interpreters or the likelihood to be successful in the legal profession.

In order to understand vagueness as a multi-componential phenomenon we need to firstly empirically investigate the lexico-semantic structures of statutes, and then proceed to the question as to how pragmatic inference and interpretation are connected. It is crucial to examine how lexical items such as evaluative adjectives contribute to vagueness in legal texts, but research in legal linguistics cannot stop at the finding that certain lexico-semantic items create problems in interpretation. The examination of the connection between interpretation and the lexical properties of adjectives is only the point of departure for future research in legal pragmatics. Phenomena of precisification and deprecisification have both a semantic and a pragmatic component to them, but it is important to stress the significance of pragmatic inference in the interpreting processes.

As discussed earlier, Fjeld (2005: 168) argues that in legal education individuals "learn special mechanisms for precisification and deprecisification", but a mechanism of interpretation as such cannot be learned. Instead, they are familiarised with an inventory of meaning-making techniques which they then use to "derive their own discourse" (Widdowson 2004: 11) from the statute, contract, testament or other legal documents. Most legal linguists would certainly disagree with Montesquieu's understanding of the judge as the mouth of the law since

language is not merely a medium of legal interpretation, but lies at the heart of any legal meaning-making processes. Therefore, individual cognitive processes in interpretation should be examined in detail in order to move beyond legal semantics and to extend our knowledge on how individuals act on legal text. In other words, it is imperative to find out how exactly individuals engage with linguistic structures when interpreting legal documents and which pragmatic and psycholinguistic processes underlie the recovery of meaning. The linguistic meaning of a text upon which any form of interpretation rests should, however, not be used synonymously with the evaluative notion of truth. The following section briefly addresses this problem and argues why absolute concepts such as the notion of truth are not particularly helpful in the discussion of linguistic meaning and indeterminacy.

9.6. Meaning and truth in interpretation

Dworkin (2009; 1996) has repeatedly raised the question as to whether there can at all be truth in interpretation and it should be noted that his inquiry is embedded in the larger context of intellectual criticism directed at post-modernist thought. In one of his earlier papers, Dworkin (1996: 87) eloquently expresses what may be called a binary approach to the relationship between language and truth that juxtaposes the argument of objective truth with that of universal relativity. Inquiring whether there is such a notion as objective truth in interpretation, he describes what he sees as the bleak alternative as follows:

Or must we finally accept that at bottom, in the end, philosophically speaking, there is no 'real' or 'objective' or 'absolute' or 'foundational' or 'fact of the matter' or 'right answer' truth about anything, that even our most confident convictions about what happened in the past or what the universe is made of or who we are or what is beautiful or who is wicked are just our convictions, just conventions, just ideology, just badges of power, just the rules of the language games we choose to play, just the product of our irrepressible disposition to deceive ourselves that we have discovered out there in some external, objective, timeless, mind-dependent world what we have actually invented ourselves, out of instinct, imagination and culture? (Dworkin 1996: 87)

Dworkin was certainly one of the most famous critics of post-modernism in legal discourse and it seems as though his views may also be significant for the coming-of-age of legal linguistics as a discipline. The notion of truth in interpretation is problematic for a number of reasons, the most obvious being that language itself

is prone to producing multiple perspectives on one and the same phenomenon which, to complicate matters, in some cases may seem equally acceptable. It has been established that when individuals use language they immediately find their thoughts constrained. Gleitmann and Papafragou (2005: 637, original emphasis) have argued that “[l]anguage is *sketchy* compared with the richness of our thoughts”, which seems to be yet another reason as to why the evaluative notion of truth is not particularly helpful in the scrutiny of vagueness in interpreting processes. Truth is an absolute concept that does not allow for any shades of grey; the meaning inferred from a statute, a will or a contract would in such an understanding be either correct or incorrect, true or untrue. The binary understanding underlying such an approach is founded on the misconception that a judge could recover the entire objective meaning of a legal document. Instead, however, it is more likely that a judge who looks for dogmatic truths reads their subjective moral values into the linguistic code which constitutes the law. Therefore, a linguistic investigation of the interpretation of statutory texts should not be influenced by any evaluative considerations from the domain of moral philosophy. Legal linguistics should not primarily be concerned with discussions as to why interpretation of the law is conducted, but should instead focus on which cognitive or psycholinguistic processes lead to the formation of meaning and which are common features in individuals that indicate a talent for interpretation. Another issue already touched upon earlier in this paper is related to the current focus on the lexico-semantics of normative texts. In the next section, it will be argued why this may well be an important starting point, but should not constitute an end in itself.

9.7. Stepping into the courtroom: implications for future research

Referring to the work of Pinkal (1981), Bhatia *et al.* (2005: 11) argue that “it must be at least theoretically possible to improve the accuracy of [an] utterance to some extent”. However, as it was mentioned earlier, specific research on what exactly happens in individuals’ minds when they give meaning to statutes, contracts or other legal instruments must be described as scarce. Barak’s (2006: 122) argument that individuals actively extract the legal meaning from a text’s semantic meaning necessarily leads to the question as to how much weight should be given to the interpreting individual or the instrument interpreted in future research. It

may be assumed that both the legal instrument and the interpreting individual play a significant role in such meaning-making processes. Ultimately, individual factors seem to be of enormous importance in interpreting processes, which is also evident in the considerable divergence in outcomes often encountered between legally trained and untrained individuals.

Widdowson's (2004: 8) understanding of the activation of text by "contextual connection" as an "acting of context on code" may be the starting point for various new research perspectives on linguistic interpretation in general and legal interpretation in particular. It seems legal linguistics as a discipline is still very much in the middle of the wood as far as the predominant semantics-based understanding of textual meaning is concerned. That is not to say that the investigation of the semantics of legal instruments per se does not contribute to a deeper understanding of the various lexical choices made in legal instruments. It is indeed important to compile exhaustive corpora of both spoken and written legal texts and to examine the linguistic landscape of legal instruments to support interdisciplinary research in comparative law. However, as this study has shown, the interpretation of the majority of adjectives in legal instruments are largely context-dependent, which seems to corroborate the argument that a semantic perspective on vagueness will on its own always be limited to the linguistic boundaries within legal instruments. Thus, once sufficient empirical data has been collected, it is essential to focus on what individuals actually do with the lexical units they encounter in legal instruments, rather than to leave it at a statistical analysis of these instruments.

The development of empirical research in legal linguistics in Austria can only be described as a coming-of-age process which is still in its early beginnings. Notwithstanding the foregoing, legal linguists in Austria should operationalise the multi-componential concept of vagueness not only to show how insights from applied linguistics can prove useful to the legal community, but also to invigorate interest in the relevance of the study of language for the domain of legal studies. Tiefenbrun's (2010: 47) observation that modern linguistics has had a significant influence on the study of law does certainly not hold true for the situation in Austria. In fact, it seems as though a large number of legal authorities seem to support Schroth's (1998: 28) position that linguistics can provide almost no assistance at all in discussions on legal problems. Being confronted with considerable scepticism in

the legal community, legal linguistics must seek to provide alternative research perspectives to the fossilization of legal studies in Austria. The investigation of vagueness must be carried into the centres of juridical power ranging from the national police departments to the courts of law to provide objective data on individuals' language use in the plethora of forensic contexts available.

Conclusion

This paper has investigated the relationship between vagueness and legal interpretation, placing particular focus on the question as to how adjectives are relatable to the occurrence of linguistic indeterminacy. The inquiry started with the assumption that the Midas touch of the law (Kelsen 1945) is highly relevant to research in applied linguistics, since the rule of law, which is entirely based on linguistic signs, is seemingly nothing but the rule of language. Subsequently, the notions of ambiguity, indefiniteness, indeterminacy and vagueness were discussed in order to raise awareness of the need for clarification in academic discourse so as to avoid terminological confusion. In an attempt to make the theoretical concept of the legal norm more accessible to legal linguistics, the nomeme-norm distinction was introduced. It was discussed that, in this dual theory of the normative space, nomemes are understood as abstract units of social prescription, whereas norms are explicit linguistic realisations of such abstract non-linguistic constructs. Based on the assumption that legal linguistics can only investigate the actual linguistic realisations of certain nomemes, the study of meaning was found to be a study of vagueness. This led to the question as to how one can conceive of institutionalised meaning-making processes that are ubiquitous in law.

Very similar to other normative systems such as religion, the practice of legal interpretation needs mediators which determine the binding meaning of linguistic structures. Starting from Dworkin's (2009) interpretivist position on truth in interpretation, the illusion of the completeness of legal systems was discussed. In this context, the divergence in understandings of civil and common law jurisdictions towards interpretation were outlined, showing that, unlike in the common law, civil law jurisdictions do largely object to a creative element in interpretation. As a next step, the various methods of legal interpretation in Austria were introduced with the aim to show the differences and similarities between them as well as their relevance for the productive nature of the language of the law. It was then concluded that in legal interpretation word meaning may differ considerably from that of ordinary language use. As suggested by earlier research, adjectives do indeed play a crucial role as they frequently lead to instances of indeterminacy in normative texts.

After a general discussion of the properties of adjectives in light of possible and impossible precisification, the ABGB of 1811 was introduced, taking into consideration its legal context and history, the contemporary significance of the work and its overall structure. Replicating earlier research by Fjeld (2005), the subsequent quantitative analysis provided a considerable amount of data including the frequency and distribution of adjectives in the ABGB. It was found that relative adjectives may occur more frequently in normative texts than has previously been assumed. Being the most frequent type of relative adjectives, evaluative adjectives were investigated in detail in the qualitative analysis of this paper. It was shown that the majority of evaluative adjectives may induce extreme cases of linguistic indeterminacy, which led to the question as to whether it is possible to conceive varying degrees of indeterminacy that arise from certain lexical elements.

A lexico-semantic perspective on vagueness as a multi-componential phenomenon, however, should function as a solid basis for future research in legal pragmatics. It seems that an important result of this study is that the space between precisification and deprecisification in textual elements is only one side of the coin. Future inquiries may relate the empirical data generated by lexico-semantic analyses to the inherently pragmatic negotiation of meaning in various legal settings, thus enabling the legal community to draw on objective data on vagueness in methodological discussions or the construction of legal aptitude tests.

It was one of the central aims of this paper to show how insights from applied linguistics may prove useful in the domain of law and legislation. A parallel insight gained during the research conducted was that the isolation of legal linguistics in Austria is most likely explicable by the fossilization of legal studies. Unlike in other countries, a search for an umbrella organisation which functions as a platform of informed exchange and that drives forward the development of legal linguistics is still in vain. Therefore, the foundation of a national association seems crucial for the future of this branch of applied linguistics in Austria. Such an interdisciplinary platform could invigorate interest from students of linguistics and law in the investigation of the language of the law, and facilitate further research in multiple contexts of the subject area. It is to be hoped that soon the first introductory courses in legal linguistics will be designed for Austrian university departments of law and linguistics, which would provide a more critical perspective on the rule of law.

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Appendix A – English abstract

Based on the assumption that the rule of law is the rule of language, this study seeks to investigate the relationship between linguistic vagueness and legal interpretation. Drawing on established concepts in pragmatics, it is argued in the introductory section that the Midas touch of the law is highly relevant for research in applied linguistics for several reasons, the most crucial being that there is no legal meaning-making without language. The conceptual differences between ambiguity, indefiniteness, indeterminacy and vagueness are discussed and related to contemporary legal theory. A theoretical distinction is made between *nomemes* (abstract units of social prescription) and *norms* (explicit linguistic realisations of abstract non-linguistic constructs). After a general discussion of language interpretation in general and the various meaning-seeking methods under Austrian civil law specifically, the role of adjectives as contributors to vagueness and their precisification qualities are discussed. A short introduction to the Austrian Civil Code is provided, presenting its legal context and history, the contemporary significance of the work and its overall structure. The empirical part of this thesis consists of a quantitative and qualitative analysis of the adjectives found in the English translation of the codification as published in 2013. In the replicative part of the project, the quantitative distribution of all attested adjectives in the ABGB is presented and classified according to Pinkal's taxonomy. A selection of the most relevant linguistic samples is analysed with regard to the space between precisification and deprecisification. It is suggested that relative adjectives may occur more frequently in normative texts than has previously been assumed, with evaluative adjectives leading to extreme cases of linguistic indeterminacy. The conclusion is drawn that an applied linguistics perspective on the value of vagueness may focus on the applicability of linguistic indeterminacy in legal education and legal aptitude testing.

Appendix B – German abstract

Die vorliegende Studie zielt darauf ab, die Beziehung zwischen sprachlicher Vagheit und Rechtsauslegung zu erforschen, wobei davon ausgegangen wird, dass die Herrschaft des Rechts eine Herrschaft der Sprache ist. Auf Basis etablierter Konzepte der Pragmatik wird im einführenden Teil dieser Arbeit die hohe Relevanz des Midasprinzips nach Kelsen dargelegt und auf die Tatsache hingewiesen, dass Normeninterpretation ohne die Sprache schlichtweg unmöglich ist. Die konzeptuellen Unterschiede zwischen Ambiguität, Unbestimmtheit und Vagheit werden weiters unter Bezugnahme auf zeitgenössische rechtstheoretische Positionen kritisch diskutiert. Die Arbeit führt auch die theoretische Unterscheidung in Nomeme (abstrakte normative Einheiten sozialer Präskription) und Normen (explizite sprachliche Realisierungen abstrakter nicht-sprachlicher Konstrukte) ein. Nach einer allgemeinen Diskussion zur Sprachinterpretation werden die verschiedenen Methoden der Rechtsauslegung im österreichischen Privatrecht erläutert und die Bedeutung von Adjektiven hinsichtlich ihres Vagheitspotentials und ihrer Präzisierungsbedürftigkeit dargestellt. Anschließend wird eine kurze Einführung zum Allgemeinen Bürgerlichen Gesetzbuch gegeben, in welcher der grundlegende juristische und rechtsgeschichte Kontext und die zeitgenössische Bedeutung und Struktur der Kodifikation dargestellt wird. Der empirische Teil der vorliegenden Arbeit besteht aus einer quantitativen und qualitativen Analyse der Adjektive in der Übersetzung des Allgemeinen Bürgerlichen Gesetzbuches in der Fassung von 2013. Im replikativen Teil wird der Versuch unternommen, die quantitative Verteilung aller nachgewiesenen Adjektive im ABGB darzustellen und nach Pinkals Klassifikation einzuteilen. Im qualitativen Teil der Arbeit wird eine Auswahl der relevantesten Beispiele im Hinblick auf das Kontinuum zwischen Präzisierung und Depräzisierung näher untersucht. Es ist anzunehmen, dass relative Adjektive häufiger in normativen Texten vorkommen als bisher von der Forschung angenommen und dass evaluative Adjektive in der Tat zu extremen Fällen sprachlicher Unbestimmtheit führen können. Abschließend wird festgestellt, dass aus der Perspektive der Angewandten Linguistik der Wert der Vagheit möglicherweise in der Anwendbarkeit von sprachlicher Unbestimmtheit im rechtswissenschaftlichen Studium wie auch im Bereich der Rechtsaptitätsforschung liegen könnte.