A Study of the Frame of Legal Language

Pi-chan Hu

Abstract: Why is there always a wide gap between ordinary language and legal language? Do legal professionals and laymen think differently? In this study, we employed categorization theories such as frame semantics, checklist theory and prototype theory to establish the frame of legal language (legal frame) and the frame of ordinary language (layman frame). We found that the construction of the legal frame is made up of elements in a rigid connection and all the elements are necessary and sufficient. By contrast, the construction of the layman frame is composed of elements in a loose connection and not every element is necessary or sufficient. The difference between the rigidity of the legal frame and the looseness of the layman frame is what leads to the gap between ordinary language and legal language. The very difference in frames of language gives rise to the difference of categorization in the mind of ordinary people and legal professionals.

Keywords: legal language; categorization; frame semantics; checklist theory; prototype theory

1 Introduction

As is known to most people, there is always a gap between ordinary language and legal language. What's the difference in the semantic framework of laymen as well as that of legal professionals in interpreting legal language? How do people come up with the meaning of words? How do they conceptualize the category of a word or a term? To answer these questions, we would like to employ

linguistic approaches such as frame semantics, checklist theory, and prototype theory to investigate the meaning of words. All of these theories are mainly used in the study of categorization, the utmost essential concern of cognitive linguistics (Lakoff 2008; Langacker 1990; Taylor 2004).

Interpretation has always been one of the major issues in the study of legal language (Cheng & Cheng 2012; Hutton 2009; Solan 2010). As most of the disputes over the interpretation of legal expressions or terms are problems of categorizing, it is necessary here to introduce the concept and the theory of categorization. Generally speaking, the process in which ideas and objects are recognized, differentiated and understood is termed categorization. Ideally, a category illuminates a relationship between the subjects and objects of knowledge (Hey 2001). Categorization is fundamental in language, prediction, inference, decision making and in all kinds of interaction with the environment (Lakoff 2008; Langacker 1990; Taylor 2004). Whenever we reason about kinds of things—chairs, nations, illnesses, emotions, any kind of thing at all—we are employing categories (Lakoff 2008: 139).

People need to categorize objects and events in their worlds (Kövecses 2006). Most categorizing is done automatically and unconsciously, and if we become aware of it at all, it is mostly in problematic cases (Lakoff 2008). A large proportion of our categories are not categories of tangible things but categories of abstract entities such as events, actions, emotions, spatial and temporal relationships, and social relationships. Broadly speaking, in the field of law, every judicial judgment is a process of embodying categorization—whether the evidence is valid, whether the constituent elements are satisfied, and most important of all, whether the actor is guilty or not guilty.

1.1 Frame Semantics

Fillmore is the discoverer of “frame semantics,” a theory that

associates linguistic semantics with encyclopaedic knowledge (Fillmore 1982, 1994, 2003). The basic idea is that one cannot understand the meaning of a single word without access to all the essential knowledge that relates to that word. One of Fillmore's favorite examples is the set of verbs *buy, sell, charge, pay, cost,* and *spend*. For example, one would not be able to understand the word "*sell*" without knowing anything about the situation of commercial transfer, which also involves, among other things, a seller, a buyer, goods, money, the relation between the money and the goods, the relations between the seller and the goods and the money, the relation between the buyer and the goods and the money and so on (Croft and Cruse 2004).

Frames are constructs which were originally developed by researchers in the field of artificial intelligence. The constructs made it possible to represent in computer memory those aspects of world knowledge which appear to be involved in the natural processing of texts. According to de Beaugrande and Dressler (1981: 90), frames constitute "global patterns" of "common sense knowledge about some central concept," such that the lexical item denoting the concept typically evokes the whole frame. In essence, frames are static configurations of knowledge.

Frames are based on recurring experiences. Therefore, the commercial transaction frame is based on recurring experiences of commercial transaction. Words not only highlight individual concepts, but also specify a certain perspective in which the frame is viewed. For example, "*sell*" views the situation from the perspective of the seller and "*buy*" from the perspective of the buyer. This, according to Fillmore, explains the observed asymmetries in many lexical relations (Fillmore 1982, 1994, 2003).

According to Fillmore (1982, 1994, 2003), frame semantics has the following three characteristics:

1.1.1 Frames do not have a clear boundary

The domain of a frame can be based on the individual's life experience, intellectual degree, cultural background, and understanding of the world, thus making it impossible to tell its size, its internal factors and its clear distinction from other frames.

1.1.2 Frames have universality and individuality

Universality is the common sense of what features a word is supposed to have for most people and the individuality is the unique understanding among individuals. For example, the knowledge of the cycle of a week and the system of five-day work base is what it takes for one to understand the word *weekend*. And for most people, *weekend* is a time for rest, while for those who work at the restaurants, hotels, or scenic attractions, *weekend* may be a time when they work hardest, which is due to their occupational background (Taylor 2004; Lakoff 2008). The difference in meaning between rest and work for different people is called individuality, which is also termed perspectivization by Dirven et al. (1982) or the windowing of attention by Talmy (2000). Perspecivization refers to the phenomenon that different uses of a word whose semantic structure is rather complex tend to highlight components of frame-based knowledge (Verhagen 2010).

In the Criminal Code, a term in different articles may have slightly different meanings. Let's take the term *xie-puo* (脅迫, 'intimidate or threat') for example. Some articles with the term are given as shown in Table 1.

Table 1　Articles with the term *threat*

Article	Content
Article 142	（妨害投票自由罪） 以強暴**脅迫**或其他非法之方法，妨害他人自由行使法定之政治上選舉或其他投票權者，處五年以下有期徒刑。 A person who by violence, **threats**, or other illegal means interferes with another in the free exercises of his right to vote at a political election duly authorized by law or in the free exercise of his other voting right shall be punished with imprisonment for not more than five years.
Article 152	（妨害合法集會罪） 以強暴**脅迫**或詐術，阻止或擾亂合法之集會者，處二年以下有期徒刑。 A person who by violence, **threats**, or fraud interferes with or disturbs a lawful assembly shall be punished with imprisonment for not less than two years.
Article 328	（普通強盜罪） 意圖為自己或第三人不法之所有，以強暴、**脅迫**、藥劑、催眠術或他法，**至使不能抗拒**，而取他人之物或使其交付者，為強盜罪，處五年以上有期徒刑。 A person who uses force, **threats**, drugs, hypnosis, or other means to **render resistance impossible** and to take away a personal property of another or cause him to deliver it over with intent illegally to appropriate it for himself or for a third person commits robbery and shall be punished with imprisonment for not less than five years.

The term *xie-puo* in Articles 142 and 152 can be verbal and as long as it makes the victim feel frightened, it is counted as *xie-puo*. On the

other hand, *xie-puo* in Article 328 must be made not only to frighten others but also to be so strong as to *render resistance impossible*. In other words, these *xie-puo's* are different in their manners and extents. Among them, *xie-puo* in Article 328 is the most intense one in severity and degree. The similarity in the meaning of the term *xie-puo* can be seen as universality and the different meaning individuality.

1.1.3 Frames are multidimensional

A word or a concept can be understood by many dimensions. This can be seen from the frame of *mother* (Lakoff 2008: 74), shown as in example (1).

(1) *A mother is a woman who*
- *(a) has sexual relations with the father*
- *(b) falls pregnant*
- *(c) gives birth*
- *(d) devotes much of her time to nurturing and raising the child for the following decade or so*
- *(e) remains all the while married to the father*

Clearly, such a frame is highly idealized, in that the frame abstracts away from its many untypical instantiations. For example, some mothers, for whatever reasons, do not have the marriage relationship with the father. And in the case of children given for adoption, there is a split between the genetic and birth dimensions on the one hand and the nurturance dimension on the other. In addition, for some of the working mothers, the actual job of nurturing may be taken over by a nanny or a grandparent. It is against the background of the idealized scenario that we characterize a prototypical mother. Adoptive mothers,

surrogate mothers, stepmothers, unmarried mothers, widowed mothers, uncaring mothers, perhaps even working mothers, are more marginal members of the category (Lakoff 2008: 74). It's not necessary for a member of a category to satisfy every dimension of the frame.

Overall, frames are configurations of culture-based, conventionalized knowledge. Most importantly, the knowledge encapsulated in a frame is knowledge which is shared, or which is believed to be shared, by at least some segment of a speech community. In principle, any scrap of knowledge, however peculiar it may be, can get absorbed into a frame, so long as the association is shared by a sufficient number of people (Taylor 2004). In the following section, we will see the differences between the frames of legal language and ordinary language.

1.2 Checklist theory

The traditional view of category membership can date back as early as the years of Aristotle who judged categories as something like containers where category membership is defined through a set of necessary and sufficient features (Taylor 2004; Aitchison 2003).

The overall assumption is that there exists, somewhere, a basis meaning for each word, which individuals should strive to attain. We can label this the "fixed meaning" assumption, which may be referred to as a "checklist theory (Fillmore 1975)." In brief, this theory suggests that for each word we have an internal list of essential characteristics, and we label something as *cat*, *square*, or *cow* only if it possesses the "criterial attributes," which we subconsciously check off one by one. This "checklist" theory is intuitively satisfying to some people, perhaps because it is fairly familiar, as many dictionaries implicitly work on a checklist principle (Taylor 2004). However, checklist theory also involves a number of problems. A major problem with checklist theory is deciding which attributes go on to the list, since only a very few words have a straightforward set of necessary

conditions, though occasionally officials can decree that words have fixed meanings within a particular context (Aitchison 2003). In addition, there appears to be no clear way to draw a dividing line between essential and non-essential characteristics.

Does this mean that the fixed meaning assumption has to be abandoned if, in practice, it is impossible to fix the meaning for most words? The answer is probably no since precision is the major goal of legal language and a fixed meaning will be necessary to the pursuit. As a matter of fact, a well-known philosophical viewpoint is that words do indeed have a fixed, correct meaning, but that only a few experts know it (Putnam 1975; Aitchison 2003). Ordinary people must consult these experts if they need to know about the essential nature of something. In the field of law, judges, prosecutors and lawyers are these experts. And it is very unlikely to do away with the "checklist," as from the legal point of view, it is necessary to have a so-called objective and universal standard for prosecutors and judges to operate with in order to be impartial and to secure the supreme principle of the law that everybody be treated equally by the law. The adoption of a checklist is thought to be a means to facilitate the pursuit of precision and to reduce the problem of vagueness since the standard for judging a case will be universal for every individual.

1.3 Prototype theory

Since the 1970s, cognitive psychologists and linguists have been investigating the nature and structure of classificatory systems. These researchers claim that the classical approach is no longer tenable (Rosch 1975, 1983; Jackendoff 1983, 1996; Croft 1990; Langacker 1987, 1999). They reject the view that a category is defined exclusively by its essential properties. Nor do they accept the idea that all members of a category have equal status. Rather there are prototypes. The concept of "prototype" has engendered an alternative theory bearing its name. According to prototype theory, some entities

are judged as better exemplars of category than others. Thus, *wrens* and *robins* are considered to be prototypical "birds," but *chickens*, *penguins* and *ostriches*, being of larger size, flightless and non-arboreal, are regarded as poorer representatives of this category (Aitchison 2003). Hence, a prototypical bird is small, is a nest-builder, sings, flies and is neither a raptor nor a fowl. A well-known picture illustrating this feature is shown as Figure 1 (Aitchison 2003: 58).

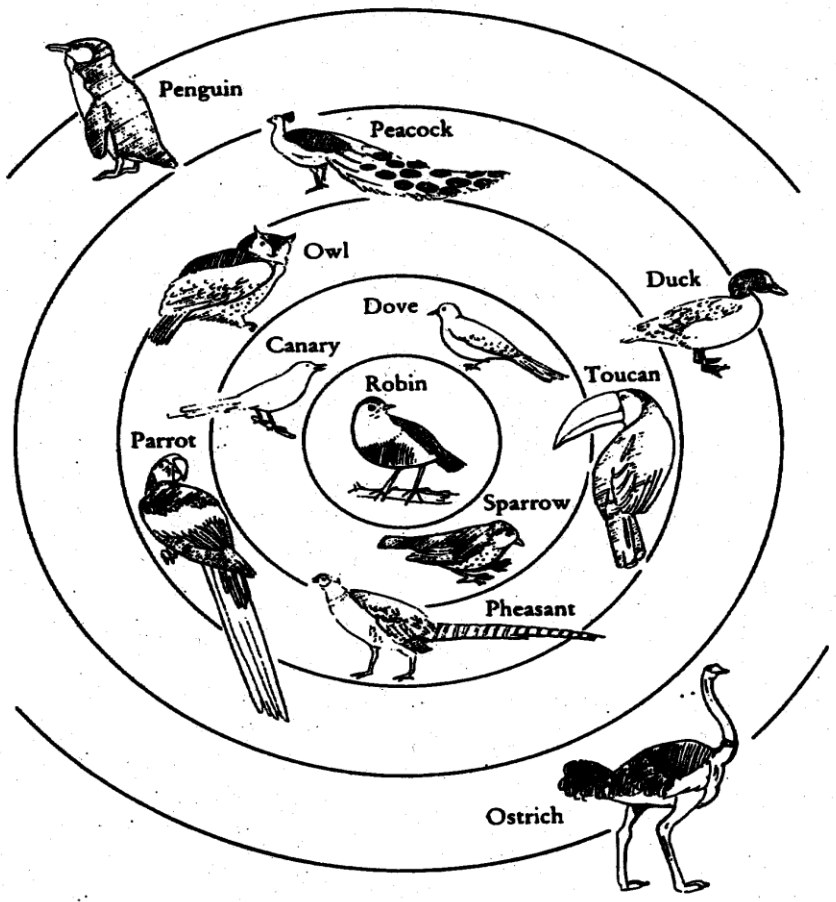

Figure 1 Birdiness rankings

In fact, the prototypical bird has some of the very properties that

would be designated as accidental within the classical perspective. Eleanor Rosch, a cognitive psychologist noted for her pioneering work in prototype theory, has investigated the structure of various categories, including that of *bird* (Rosch 1985). In an endeavor to validate the psychological reality of prototypes, she asked subjects to rate the degree to which an entity was a good exemplar of a category and she found a high degree of consistency between their responses. Furthermore, in experiments testing reaction time, it took subjects less time to verify that a robin is a bird than to confirm that a duck is one (Taylor 2004).

Prototype theory tries to answer the question which principles are responsible for assigning a certain entity to a certain category and is useful, then, for explaining how people deal with untypical examples of a category. Unlike checklist theory, prototype theory argues that category membership is not assigned according to a list of necessary and sufficient features but by a cluster of attributes of the most representative members. Meaning is always dynamic and flexible and never static as it is in a dictionary (Taylor 2004; Cruse 2004).

To summarize, Rosch's work suggests that when people categorize common objects, they do not expect them all to be on an equal footing. They seem to have some idea of the characteristics of an ideal exemplar, in Rosch's words, a "prototype." And they probably decide on the extent to which something else is a member of the same category by matching it against the features of the prototype (Taylor 2004; Cruse 2004). It does not have to match exactly. It just has to be sufficiently similar, though not necessarily visually similar.

Prototype theory proves the existence of the unclear boundary of a category and the fact that there are the prototypical area (good examples) and the peripheral area (bad examples) in every category. This very fact shows that the problem of interpretation over the meaning of a legal term is bound to occur and can hardly be eliminated even with extremely cautious construction of legal texts.

2. Cases

2.1 *Public insult*

In this and the following sections, we are going to investigate several cases to see how frame semantics, checklist theory and prototype theory function in interpreting legal language. To illustrate this, we will employ two offenses—*public insult* and *forcible molestation* for discussion. We will introduce the cases first and do the discussions in later sections.

In the Criminal code, Article 309 is the offense of *public insult*, given as example (2).

(2) 第 309 條 （公然侮辱罪）

I. 公然侮辱人者，處拘役或三百元以下罰金。

Article 309 (public insult)

I. A person who publicly insults another shall be punished with detention or a fine of not more than three hundred *yuan*.[1]

Table 2 presents some cases concerning the offense of *public insult*. We will focus our discussion on cases 1, 6, and 7.

Table 2 Cases concerning the offense of *public insult*
(G: guilty, NG: not guilty)

Case	No.	Content	Verdict
1	91,zih[2],749	我怎麼知道妳是不是**大陸妹**? How would I know whether you are a **China girl**?!	not guilty
2	96,yi[3],985	爛人、不要臉、怎麼有你這麼爛	guilty

[1] *Yuan* is the currency used in Taiwan.
[2] *Zih* refers to a criminal complaint filed by a citizen rather than a prosecutor.
[3] *Yi* refers to a summary court case.

		的人 Bitch! Shameless! What a bastard!	
3	96,jian[4],1919	幹你娘、哭爸、看三小 (台語) Fuck you! Shit!	guilty
4	96,yi,449	幹你娘、幹、幹 (台語) Fuck you! Fuck! Fuck!	guilty
5	96,jian,1589	不要臉的女人 Shameless woman.	guilty
6	96,yi,796	你這麼愛錢，不如去『**賺**』(台語) If you love money so much, why don't you go **earn** it.[5] 依你的年紀，我看也賺沒 (台語) I don't think you can **earn** any money at your age.	not guilty
7	NA[6]	**機車妹** **a nuisance**	guilty

Among the cases listed in Table 2, case 1: *da-lu-mei* (大陸妹, 'China girl') and case 6: *zhuan* (賺, 'earn/prostituting') and case 7: *ji-che-mei* (機車妹, 'a nuisance') were reported by the media, but none of them aroused much discussion or criticism from the common public, nor the legal field. That is to say, people do not seem to have a tense feeling toward whether these expressions are defamatory or not. The discussion of these cases will be presented in later section.

2.2 Forcible molestation

On the other hand, we will cite other cases that aroused an intense reaction from the common public for contrast. They are the cases with

[4] *Jian* refers to a summary court case.
[5] The word *zhuan* (賺, earn) in Taiwanese has the idiosyncratic meaning of *prostituting*.
[6] This case number was withheld from the public as one minor was involved.

regard to *qiang-zhi wei-xie* (強制猥褻, 'forcible molestation'). The first one is case (89,yi,1266; 89,shang[7],3561; 91,taifei[8],168) which occurred in 2000. The fact of the case is that one evening a guy ran into a convenience store, forcibly held the clerk—a 15-year-old girl into his arms and kissed her on the cheek for 2 minutes. This case will be termed as the *forcible kissing case* (強吻案) hereafter. Another case (96,su,25, Zhang-hwa District) which occurred in 2005 is that on a lingerie auction a guy contacted a woman on her breasts for ten seconds. This case will be termed as the *breast case* (襲胸案) hereafter. The actors of the two cases were charged with the offense of *forcible molestation*, coded as Article 224 and given as example (3).

(3) a. 第 224 條 （強制猥褻罪）
對於男女以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。
Article 224 (forcible molestation)
A person who commits an **obscene** act against a male or female person against their will through the use of violence, threats, intimidation, or hypnosis shall be punished with imprisonment of not less than six months but not more than five years.

In both cases, the actors were found not guilty of the offense of *qiang-zhi wei-xie* (強制猥褻, 'forcible molestation') but instead the actor of the *forcbile kissing case* (強吻案) was punished with Article 302—the offense of coercion (強制罪, given below as example (4)).

(4) 第 304 條 （強制罪）
I. 以強暴、脅迫使人行無義務之事或妨害人行使權利

[7] *Shang* refers to a High Court case.
[8] *Taifei* refers to an unusual appeal to the Supreme Court.

者，處三年以下有期徒刑、拘役或三百元以下罰金。

Article 304　(coercion)

I. A person who by violence or threats causes another to do a thing which he has no obligation to do or who prevents another from doing a thing that he has the right to do shall be punished with imprisonment for not more than three years, detention, or a fine or not more than three hundred *yuan*.

Both rulings provoked an overwhelming criticism and antipathy from the public and that was why the two cases became high-profiled. Posterior to these two cases, several similar cases have also drawn the public's attention owing to the result of their rulings.

At this point, we cannot but wonder why those cases concerning *public insult* (the cases of *da-lu-mei* (大陸妹, 'China girl'), *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'a nuisance') aroused a lukewarm reaction from the common public whereas the *forcible kissing case* and the *breast case* provoked an overwhelming reaction. What is it that has caused the two extreme reactions from the common public toward the rulings of these cases? In the following section, we will explore the meaning of *insult* and *obscene* in detail.

2.3 Discussion of Cases and Surveys

Throughout the Criminal Code, there is no definition concerning *insult*. Yet the standard for judging *insult*—using derogatory language in spoken or written form or an act that is defamatory enough to embarrass and demean someone in public—is commonly accepted among legal professionals—judges as well as jurists (Huang 2012, Lin 2008, Chang 2007). The problem of this definition is that words such as *derogatory*, *defamatory*, *embarrass* and *demean* are as vague as *insult*. How is it possible for judges to be objective and universal in making judgments of all the expressions in each individual case?

According to Rosch (1975, 1988), the pioneer of prototype theory, it is common for people to have various rankings for members in the peripheral area of a category. Therefore, a plausible explanation is that the cases of *da-lu-mei* (大陸妹, 'China girl'), *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') belong to the peripheral area of the category of "*public insult*" in the mind of ordinary people, i.e. ordinary language. Nevertheless, it takes more evidence to prove this inference.

With a view to detecting what part of the category, the prototypical area or the peripheral area, those disputed expressions in the cases of *public insult* and the acts in the cases of *forcible molestation*, belong to in the mind of the people, we conducted a survey. The original questionnaires are attached as Appendix A and Appendix B. The survey was carried out with three groups of subjects: group one was made up of 40 college senior students, who were of a variety of majors such as Applied English, Tourism, Risk Management, and Information Science. Their age ranges from 21 to 25. Group two was composed of 40 clerks in an accounting firm, and group three comprised forty university clerks. The education background of group two and three ranges from college degree to master degree and their ages range from 25 to 46. None of the subjects had a background in law. The subjects were asked to rate how good an example of the category—the category of *public insult* and the category of *obscene*—each member was on a seven-point-scale: rating something as "1" meant that they considered it an excellent example; "4" indicated a moderate fit'; whereas "7" suggested that it was a very poor example, and probably should not be in the category at all. The order of the list was varied for different subjects to ensure that the order of presentation did not bias the results. The results were surprisingly consistent. Agreement was particularly high for the items rated as very good examples of the category among groups and individual subjects as well. The result of the survey regarding *public*

insult is shown as in Table 3.

Table 3 The result of the survey regarding *public insult*

Item	Score	Ranking
fuck (幹你娘)	1.00	1
shameless (不要臉)	1.27	2
son of a bitch (王八蛋)	1.33	3
a brute animal (畜生)	1.37	4
bitch (賤貨)	1.54	5
less than pigs or dogs (豬狗不如)	2.11	6
scurrilous (下流)	2.45	7
pervert (變態)	2.59	8
idiot (白癡)	3.12.	9
retarded (智障)	3.26	10
mentally handicapped (腦殘)	3.45	11
non-cultured (沒教養)	3.59	12
a very ugly person (醜八怪)	3.70	13
an irritating pig (豬八戒)	4.14	14
rascal (流氓)	4.59	15
Go to hell. (去死好了)	5.12	16
sissy (娘娘腔)	5.58	17
If you love money so much, why don't you go "earn" it? (那麼愛錢，不會去賺 (台語))	**6.12**	**18**
China girl (大陸妹)	**6.28**	**19**
nuisance (機車妹)	**6.32**	**20**

From the result of the survey, the high scores and high rankings show that terms such as *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') are regarded

as bad examples (members) of the category of *insult*. The result indeed confirms our inference—the three expressions belong to the peripheral area of the category of *insult*. Compared with top ranking expressions such as "fuck," "shameless," and "son of a bitch", *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') and *ji-che-mei* (機車妹, 'nuisance') seem to be a lot less derogatory. Since prototype theory suggests that people tend to have lukewarm feelings toward peripheral members, it explicates why they react indifferently to these three expressions. As to their distribution in the category of legal language, we can only infer from the rulings of the cases since it is technically and practically impossible to conduct a survey with judges. Because *da-lu-mei* (大陸妹, 'China girl') and *zhuan* (賺, 'earn/prostituting') were considered non-derogatory, we infer it to belong to the peripheral area and *ji-che-mei* (機車妹, 'nuisance') was considered derogatory since the actor was found guilty so we infer it to belong to the prototypical area. The summary of these relationships for the category of *public insult* can be illustrated by Figure 2. The boundaries of the prototypical area and the peripheral area are shown in dotting lines because they are fuzzy.

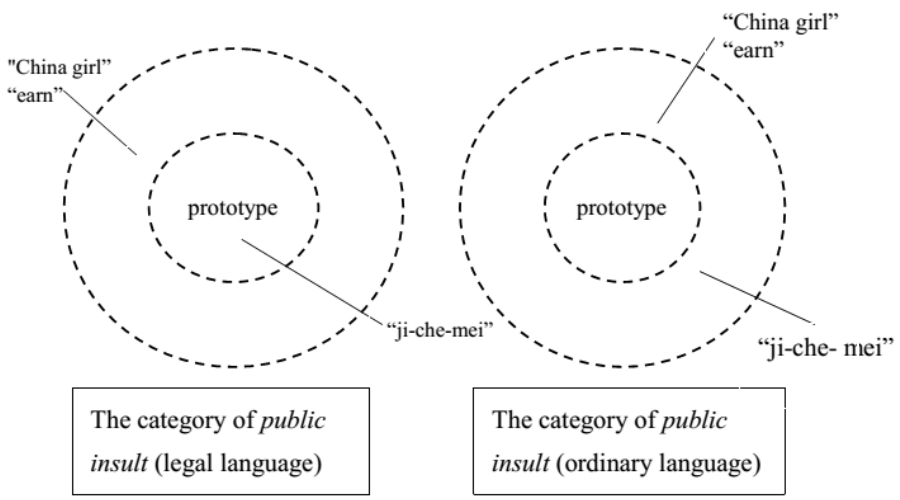

Figure 2 The category of *public insult* in ordinary language and legal

language

Next, we will investigate the meaning of *obscene*. Judging from the intense reaction of the common public toward the rulings, acts such as "*kissing someone on the cheek for 2 minutes*" or "*touching someone's breast for ten seconds*" are likely to fall in the prototypical area of the category of *obscene* in the mind of ordinary people, i.e. ordinary language. Let's take a look at the result of the survey regarding *obscene*, which is shown as in Table 4.

Table 4 The result of the survey regarding *obscene*

Item	Score	Ranking
touch one's private parts (e.g. pudendum) (摸私處)	1.00	1
touch one's buttock (摸屁股)	1.33	2
touch one's breasts (摸胸部)	**1.38**	**3**
tongue-kiss (舌吻)	1.42	4
kiss one's mouth (親嘴)	1.58	5
pinch one's ass (捏屁股)	1.61	6
hold someone and kiss his/her face (抱住親臉)	**1.70**	**7**
touch one's thigh (摸大腿)	2.11	8
kiss one's face (親臉)	2.26	9
pat one's thigh (拍大腿)	2.77	10
kiss one's hand (親手)	4.12	11
kiss one's hair (親頭髮)	4.32	12
touch one's face(摸臉)	4.86	13
touch one's ear (摸耳朵)	5.12	14
touch one's shank (摸小腿)	5.36	15
touch one's back (摸背)	5.48	16
touch one's hair (摸頭髮)	5.95	17

touch one's hand (摸手)	6.11	18
touch one's shoulder (搭肩膀)	6.23	19
pat one's back (拍背)	6.35	20

Following Rosch's pattern in the experiment with the category of bird (1975, 1983), we can define any item with a score below 3 as prototypical members. Then from the result of the survey, the low scores show that acts such as "*kissing someone on the cheek for 2 minutes*" or "*touching someone's breast for ten seconds*," as predicted, are regarded as good examples (members) of the category of *obscene* and fall in the prototypical areas. The high rankings of top three items show that body parts such as private parts, buttocks or breasts are taboo areas which cannot be touched without permission in any way. In addition, the way the act is conducted also matters the scores. Generally, *kissing* is more serious than *touching* as can be seen from the different scores of *kissing one's face* (score 2.26) and *touching one's face* (score 4.86). Therefore, body parts and the manner of contacting are what matters in the judging of the subjects.

On the other hand, as to the category of *obscene* in legal language, judging from the rulings, these acts are likely to either exist in the peripheral area or not belong to the category of *obscene* at all. The summary of these relationships for the category of *obscene* can be illustrated by Figure 3.

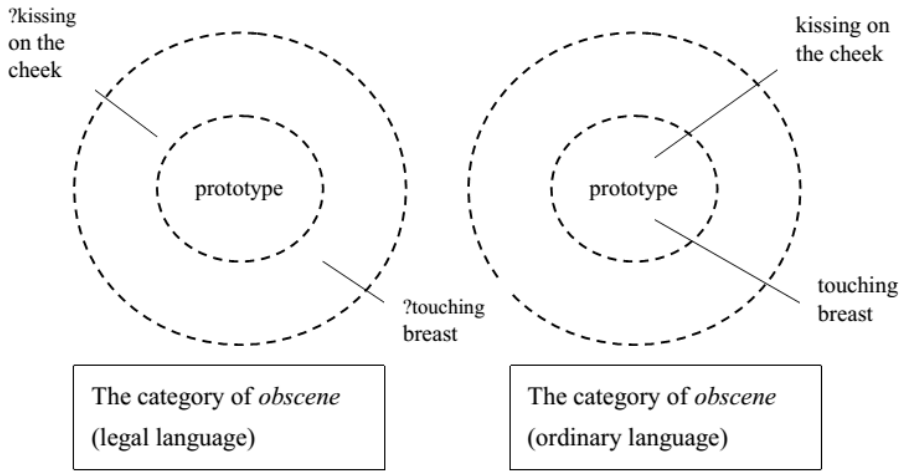

Figure 3 The category of *obscene* in ordinary language and legal language

According to Rosch (1983), people have no problem identifying prototypical members, but why can't judges identify them? Most linguistic theories claim that people are strongly influenced by prototypes (Cruse 1986; Lakoff 2008; Croft 1990; Jakendoff 1996; Taylor 2004). The rulings with regard to the two *obscenity* cases (the *forcible kissing case* and the *breast case*) give people the same effect as announcing that, in prototypical term, a *robin* is not a *bird*! What's the problem with the judges' categorization? In the following discussion, we will try to establish the frame of *obscene* in legal language.

3 The construction of the frame of legal language

Before embarking on constructing the frame of legal language, let's examine the meaning of *obscene* in detail. Throughout the Criminal Code, the term *obscene* appears in twenty articles. Generally speaking, these *obscene's* can be classified into three types (Lou 2003), given as examples (5) to (7).

Type 1: articles 224, 231, 232, 233

(5) a. 第 224 條 （強制猥褻罪）

對於男女以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。

Article 224 (forcible molestation)

A person who commits an **obscene** act against a male or female person against their will through the use of violence, threats, intimidation, or hypnosis shall be punished with imprisonment of not less than six months but not more than five years.

b. 第 231 條 （圖利使人為性交或猥褻罪）

意圖使男女與他人為性交或**猥褻**之行為，而引誘、容留或媒介以營利者，處五年以下有期徒刑，得併科十萬元以下罰金。以詐術犯之者，亦同。

Article 231

A person who for the purpose of gain induces, retains a male or female to have sexual intercourse or make an **obscene** act with a third person shall be punished with imprisonment of not more than five years and, in addition thereto, a fine of not more than one hundred thousand *yuan*.

Type 2 article 234

(6) a. 第 234 條 （公然猥褻罪）

I. 意圖供人觀覽，公然為**猥褻**之行為者，處一年以下有期徒刑、拘役或三千元以下罰金。

Article 234

I. A person who publicly commits an **obscene** act for exhibition shall be punished with imprisonment for less than one year, detention; and, in addition thereto, a fine of not more than three thousand *yuan* may be imposed.

Type 3 article 235

(7) a. 第 235 條 （散布、販賣猥褻物品及製造持有罪）

I. 散布、播送或販賣**猥褻**之文字、圖畫、聲音、影像或其他物品，或公然陳列，或以他法供人觀覽、聽聞者，處二年以下有期徒刑、拘役 或科或併科三萬元以下罰金。

Article 235

I. A person who distributes, sells, publicly displays, or by other means shows to another person an **obscene** writing, picture, or any other object shall be punished with imprisonment for not more than two years, detention, in lieu thereof, or in addition thereto, a fine of thirty thousand *yuan*.

There are three reasons why these *obscene's* vary from each other. First, from the perspective of the taxonomy of the Criminal Code, these *obscene's* are codified in different chapters, meaning that the legal interest each article is trying to protect is different. Article 224 (*forcible molestation*) is listed in Chapter 16—the chapter of offenses of *obstruction of individual sexual autonomy* (妨害性自主罪) while Article 234 (*public obscenity*) is listed in Chapter 16-1—the chapter of offenses of *social morals and decency* (妨害風化罪). The legal interest of type one is individual sexual autonomy, type two is social ethics, and type three is ethics in publications respectively. Second, from the viewpoint of frame semantics, as is illustrated by the example of the term *xie-puo* (脅迫, 'intimidate or threat') in section 1.1.2, there is individuality in the frame of every word or every concept. These *obscene's* are different on account of so-called contextual dependence. According to Lin (2003) and Wagner & Cacciaguidi-Fahy (2006, 2008), the same legal term does not necessarily convey exactly the same legal concept in different contexts. The *obscene's* of type two and type three do not have to involve

stimulating others' sexual desire or satisfying the actor's sexual desire as the *obscene* of type one does. Third, as far as seriousness of infringement is concerned, the *obscene* of type one is the most serious, the *obscene* of type two is intermediate and the *obscene* of type three is the least serious one. In fact, with the change of the times and social development, in recent years nearly nothing in publications has been found to be *obscene*, as can be seen from the rulings of such cases as 96,jian-shang[9],329 (Taipei District Court), 96,jian-shang,423 (Tainan District Court), and 96,yi,1624 (Tainan District Court). All of these cases are concerned with Article 235—*obscenity in publications*. Even though the publications in these cases involved anal sex, sex between humans and animals, or sex between same or different genders, none of the defendants is found guilty (Kao 2008). The rulings of these cases have worsen the interpretation problem of the legal term *obscene*. The common public is worried that nothing is *obscene* by the standard of law.

In the following discussion, the main concern will be focused on the first type of *obscene*. The most commonly accepted definition, given as example (8), of the term *obscene* in the field of the Criminal Law, legal practitioners in particular, is made by the resolution of the Criminal Court meeting of the Supreme Court in 1928:

(8) 猥褻的定義係指「在客觀上足以誘起他人性慾，在主觀上足以滿足自己性慾之行為」：
An act is considered *obscene* if it:
(i) arouses others' sexual desire objectively;
(ii) satisfies the actor's sexual desire subjectively.

In the definition, there are two elements for the term obscene: an objective element and a subjective element. And it takes judges'

[9] *Jian-shang* refers to an appealed case of the Summary Court.

interpretation to tell whether or not each element is met when the definition is applied in real cases.

With regard to the *kissing case*, the judges held that, "*Kissing is a common social practice of international etiquettes; therefore, it is impossible for kissing to be obscene*." This opinion came under fire and stimulated a lot of seminars and journal papers (Lou 2002; Hsu 2002; Lin 2003; Chang 2003) to discuss what "*kissing*" means and what an ideal definition of *obscene* should be. Besides, the court also interpreted that "Since the victim was under extreme fear, it was impossible that her sexual desire was stimulated." Here the judges interpreted the word *ta-ren* (他人, 'others') in the definition, shown as example (8), as the victim. Following this interpretation, nearly no case can be established because in most, if not all, of the cases, the victims are always under extreme fear. Since these two opinions only appeared in the ruling judgment of the District Court, we'll leave them out of our discussion.

Two other opinions—the actors did not rub his own sexual organs against the victim's body and the duration of the two acts "*kissing on the cheek*" or "*touching on the breast*" is not long enough to arouse one's sexual desire or to satisfy the actor's sexual desire—appeared in the ruling judgments of every level of the court—the District Court, the High Court, and the Supreme Court. In other words, the judges think that only when the actor rubs his own sexual organs against the victim's body and when the duration of a sex-related act exceeds a certain length of time can the actor get satisfaction from the act, and in turn can the act be counted as *obscene* by the law. The two opinions appear in most of the ruling judgments concerning the offenses of *forcible molestation*, which are arrived at through the interpretation of the judges.

But again another problem arises—exactly how long does it take to arouse one's sexual desire and to satisfy the actor's sexual desire? Three minutes, ten minutes, or much longer? There has never

been an answer in any ruling judgment of any court at any level.

In the Criminal Law, the establishment of an offense lies in whether or not all the criminal constituent elements are met (Fletcher 1998). When judges are making rulings, they are checking off each and every element of an offense, which is like the items in a checklist. As is mentioned in section 1.2, the researchers of checklist theory claim that there is a fixed meaning for every word or every concept. From the perspective of the Criminal Law, judges have to make sure all the criminal constituent elements are met before they find an actor guilty. Now let's try to explore the elements of the offense of *forcible molestation*.

Following the principle of the Criminal Law, legal interest, the context (the underlined bold part) of Article 224 (repeated here as example (9)), and the definition made by the Criminal Court in 1928 (given as example (8)), we can get all the constituent elements for the offense of *forcible molestation*. These elements form a checklist, presented as example (10).

(9) a. 第　224　條　（強制猥褻罪）

對於男女**以強暴、脅迫、恐嚇、催眠術或其他違反其意願之方法**，而為**猥褻**之行為者，處六月以上五年以下有期徒刑。

Article 224　(forcible molestation)

A person who commits an **obscene** act against a male or female person **against their will through the use of violence, threats, intimidation, or hypnosis** shall be punished with imprisonment of not less than six months but not more than five years.

(10) the elements of the offense of *forcible obscenity*

(a) there is an act

(b) the act is committed through the use of violence, threats,

intimidation, hypnosis, or any other means against the victim's will

(c) the act arouses others' sexual desire

(d) the act satisfies the actor's sexual desire

From example (10), we can see the judges think that elements c and d were missing in those disputed cases and that is why the defendants were found not guilty of the offense charged.

When judges are checking off each element in the list, they are undergoing the process of categorizing. As is mentioned in section 1.1.3 a frame is multidimensional. Example (1) shows that the frame of *mother* has the genetic dimension, the marital dimension, the nurturance dimension and so on. In the real world it is not necessary for a female adult to meet every dimension in order to be a *mother*. Nevertheless, in the field of law, every dimension is necessary and sufficient for a legal frame to be constructed. Every element in the checklist presents a dimension of the frame. To a judge, there are a number of dimensions he or she needs to take into consideration, the factual dimension (what are the facts?), the evidential dimension (is there enough evidence?), the legal dimension (which rule should he apply to a case?), the social dimension (does the interpretation he makes reflect the social condition?), and so on. Judges are not allowed to have too much discretion; they are trained to be objective, neutral and therefore just and are required to put aside their own preference or prejudice. The employment of a checklist will be conducive for the judges to apply the same standard to every individual case.

From the perspective of frame semantics, the frame of a word or a concept can be influenced by external factors and internal factors (Fillmore 1982, 1994, 2003). For legal language, external factors can be legal system, legal principles, culture and environment (Huang 2007). For example, law is treated very differently in Civil Law countries and Common Law countries. In the former, codes are the

most important base for application of law while in the latter precedential cases are what count most in the judicial system. In addition, from the standpoint of culture, *obscene* can have an extremely distinct standard in some countries. In some Muslim countries, a girl can get killed by her own family members, mostly her father or brother(s), if she dishonors her family, e.g. unveiling herself in public, which is considered extremely *obscene* and shameful in their culture (Zhong 2002). On the other hand, the internal factors can be composed of the criminal constituent elements (Huang 2007), shown as example (10). Following the pattern Huang designed for legal language, we can illustrate the combination of the internal factors and the external factors that constructs the frame of legal language, given as Figure 4.

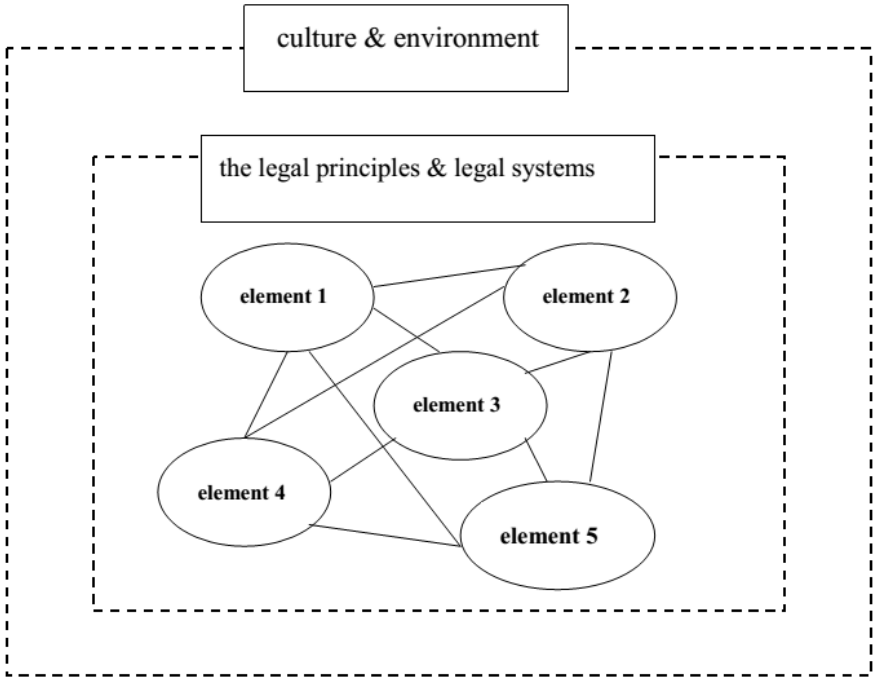

Figure 4 The frame of *obscene* in legal language

The dotting lines of the external factors show that the boundaries are

fuzzy, and the interwoven lines among the internal elements show the rigidity in their relationship among each other. Moreover, every element is necessary and sufficient just as the item in a checklist and the number of the elements is fixed.

Though the frame of ordinary language is not the main objective of this research, we can still get a rough picture of it with the discussion mentioned above. In the survey for *obscene*, we asked the subjects to define *obscene* briefly, which is an optional question. Among all the subjects, we got twenty-two responses, shown as example (11). As we can see, some of the responses are the same and the number in the parenthesis refers to the number of the response. In all of the responses, *something that undermines social morality and decency* is the most common.

(11) a. something that undermines social morality and decency (8)
b. something that is scurrilous (5)
c. something that is disgusting (4)
d. something that is repulsive (3)
e. something that is filthy (2)

As is mentioned in section 1.1, the frame of a word can be influenced by one's life experience, intellectual background, culture and understanding of the world (environment), which function as external factors in constructing the frame. Example (11) is filled with abstract words such as *social morality, decency, scurrilous, disgusting,* and *repulsive.* In fact, these words are also very vague. When ordinary people are judging whether an act is *obscene* or not, they are categorizing it instinctively and unconsciously, and there is no such thing as a precise checklist for them to match. Therefore, as long as one or several elements in their mind are met, they find it enough to call it *obscene*. Cognitively, there are far too many factors influencing

their thinking (Aitchison 1994; Ungerer and Schmid 1996; Croft and Cruse 2004), so it is highly impossible to find the exact internal elements in the mind of ordinary people. In fact, the elements vary from person to person. Similarly, the combination of the internal factors and the external factors constructs the frame of ordinary language, given as Figure 5.

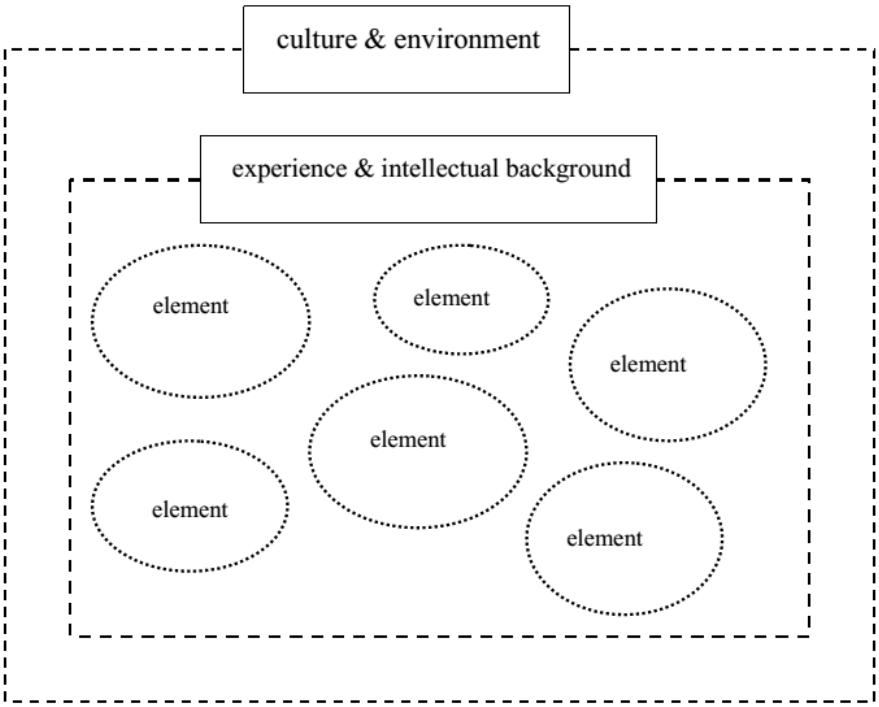

Figure 5 The frame of ordinary language

Compared with the frame of legal language, which is highly rigid, the construction of the frame of ordinary language appears fairly loose. The dotting boundary of each element shows that none of them is necessary or sufficient in the frame and there is no connection between each element either. Besides, the number of the elements is indeterminate.

In summary, the construction of the legal frame (the frame of legal language) is made up of elements in a rigid connection and all the elements are necessary and sufficient. On the other hand, the

construction of the layman frame (the frame of ordinary language) is composed of elements in a loose connection and not every element is necessary or sufficient. The difference between the rigidity of the legal frame and the looseness of the layman frame is what leads to the gap between ordinary language and legal language. The very difference in frames of language gives rise to the difference of categorization in the mind of ordinary people and legal professionals.

In judging a criminal case, ordinary people tend to look at the case from the perspective of the victim since psychologically people tend to identify themselves with the victims (Roesch et al, 1999). On the other hand, prosecutors or judges, bound to their roles as justice defenders, tend to view a case from the perspective of the facts and the law (Hsu 2002, Lou 2002, Huang 2012). The phenomenon of perspectivization, mentioned previously in section 1.1.2, makes the meaning of *obscene* doomed to be different in the mind of ordinary people and the judges. Fillmore illustrated this with the notion *innocent* (Fillmore 1982, 2003). To ordinary people, *innocent* refers to the fact that the defendant did not commit the crime in question. By contrast, in legal language, *innocent* refers to the fact that the defendant has not been declared guilty by the court as a result of legal action within the criminal justice system. This disparity is responsible for frequent misunderstandings in the use of legal terms.

4 A Better Definition?

After the occurrence of the *forcible kissing case* (強吻案) and the *breast case* (襲胸案), several other similar cases took place subsequently. For example, one of the cases is that some unemployed worker contacted a woman's private parts at a lavatory. Another case is that a man tongue-kissed his 13-year-old stepdaughter for 6 seconds. And none of the defendants was found guilty. Obviously, a good or even better definition with clarity is pressing and necessary (Harris & Hutton 2007).

As is mentioned earlier, a great number of seminars and journal papers have been held and written to try to come up with exactly what *obscene* means. Many of the jurists hold the opinion that the legal interest behind Article 224 is *individual sexual autonomy*, so as long as the infringing sex-related act is conducted without the consent of the victim, i.e. against the victim's sexual autonomy, then the act should be counted as *obscene* (Gan & Xie 2006).

Since among the elements listed in example (10), the two elements—the act has *to arouse one's sexual desire* and *to satisfy the actor's sexual desire* cause most of the disputes, it is necessary to examine the definition of *obscene* again. First, let's take a look at the definition of *obscenity* in *Black's Law Dictionary* (2005: 493).

(12) *Obscenity*:

a. The quality or state of being morally abhorrent or socially taboo, esp. as a result of referring to or depicting sexual or excretory functions.

b. Something (such as an expression or act) that has this quality.

The dictionary definition does not seem to correspond much with the definition made by our Supreme Court (given above as example (8)). In fact, terms in the definition such as *morally abhorrent* or *socially taboo* are even vaguer than the term *obscene*. There can be many problems when the definition is applied in real cases. On account of different legal systems, it is possible that the concept *obscene* is constructed on different frames in American Criminal Law and Taiwan's Criminal Law, as is mentioned previously that a lot of factors including culture and legal system can influence the frame.

The interpretation of most legal terms changes over time. If the definition of *obscene* is so controversial, why hasn't it been adjusted

or why hasn't it evolved with the times? Next, let's examine some definitions proposed by legal scholars and the Grand Justices.

(13) 猥褻的標準應視「被害人是否因為行為人的舉動而受到性自主權與身體控制權的侵害」而定。

The judgment of *obscenity* depends on "whether the victim's sexual autonomy or body control is infringed by the actor's act." (Lou 2002)

(14) a. 猥褻係指「基於性滿足的傾向，不受許可的碰觸他人的身體」。

Obscenity refers to the act "that a person contacts someone else's body out of the tendency of sexual satisfaction without the consent of the person being contacted."

b. 行為人「基於性慾的飢渴而發動攻擊，即是猥褻，無須性慾獲得滿足，更無須被攻擊者的性慾受到激惹。」

The act the actor commits out of his or her own sexual desire is *obscene*. It's not necessary for the actor's sexual desire to be satisfied or the victim's sexual desire to be stimulated. (Lin 2003)

(15) 猥褻行為碰觸的範圍應限定於「身體的私密部位」避免以高道德化的標準作為處罰依據。

The range of the body contact in an *obscene* act should be restricted to "**private body parts"** in order to avoid using a high moral standard as a basis for punishment. (Chang 2003)

In the Judicial Yuan (JY) interpretation No. 613,[10] the Grand Justices wrote:

> *刑法第二百三十五條規定所稱猥褻之資訊、物品，其中「**猥褻**」雖屬評價性之不確定法律概念，然所謂猥褻，指客觀上足以刺激或滿足性慾，其內容可與性器官、性行為及性文化之描繪與論述聯結，且須以引起普通一般人羞恥或厭惡感而侵害性的道德感情，有礙於社會風化者為限（本院釋字第四〇七號解釋參照），其意義並非一般人難以理解，且為受規範者所得預見，並可經由司法審查加以確認，與法律明確性原則尚無違背。*
>
> ***Although the term "obscene" as used in the context of obscene material or objects** in Article 235 of the Criminal Code **is an indeterminate concept of law,** it should be limited to **something that, by objective standards, can stimulate or satisfy a prurient interest**, **whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures, and that may generate among average people a feeling of shame or distaste**, thereby **offending their sense of sexual morality and undermining social decency** (See J.Y. Interpretation No. 407). Since the meaning of the term is not incomprehensible to the general public or to those who are subject to regulation, and may be made clear through judicial review, there should be no violation of the principle of clarity and definiteness of law.*

Based on the JY interpretation No. 613, the constituent elements of *obscene* can be roughly illustrated as the following four points:

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[10] Source: http://www.judicial.gov.tw/CONSTITUTIONALCOURT/EN/p03_01.asp?expno=613 (access date: July 7, 2013)

(16) a.「客觀上足以刺激或滿足性慾」、
something that, by objective standards, can stimulate or satisfy a prurient interest;
b.「其內容可與性器官、性行為及性文化之描繪與論述連結」、
whose contents are associated with the portrayal and discussion of the sexual organs, sexual behaviors and sexual cultures;
c.「須引起普通一般人羞恥感或厭惡感而侵害性的性道德感情」、
something that may generate among average people a feeling of shame or distaste;
d.「有礙於社會風化」。
something that offending their sense of sexual morality and undermining social decency

In the JY interpretation No. 407,[11] the Grand Justices wrote:

> ……又有關***風化之觀念，常隨社會發展、風俗變異而有所不同，主管機關所為釋示，自不能一成不變***，應基於尊重憲法保障人民言論出版自由之本旨，兼顧善良風俗及青少年身心健康之維護，隨時檢討改進。至於個別案件是否已達猥褻程度，法官於審判時應就具體案情，依其獨立確信之判斷，認定事實，適用法律，不受行政機關函釋之拘束，乃屬當然。
> …… *In addition,* ***cultural ethics often vary subject to social development and changing customs. Any rulings of the agency in charge must be flexible rather than rigid, and should be improved and adjusted from time to time****, in light of both the true intent of the Constitution to safeguard freedom of speech and*

[11] Source: http://www.judicial.gov.tw/CONSTITUTIONALCOURT/EN/p03_01.asp?expno=407 (access date: Aug 10, 2013)

> *press, and the government's interest in maintaining a moral social fabric and the welfare of children and youth. As to determining whether in any individual cases the definition of obscenity has been met, it goes without saying that the judge shall make his decision in light of concrete factual situations, pursuant to his independent judgment, in both fact-finding and law application, without being bound by the interpretive ruling of the executive branch.*

Even though the JY interpretation No. 613 is made to respond to the question of the definition concerning *obscene material or object* (Article 235), but most of it is still closely related to the term *obscene*. The key point here is that the interpretation of the judges with regard to *obscene* in every individual case has to be flexible rather than fixed.

We can see that all the definitions given by jurists and the Grand Justices are filled with such words as *social morality, social decency* or *cultural ethics* which are highly diversified and full of vagueness. Although jurists and the Grand Justices cannot give us a succinct or precise definition of *obscene,* one thing for sure is that the concept of *obscene* must vary with social development and changing customs. And the judges must be flexible in their application of the offense concerning *obscene* in order to adjust with the shift of the times without being bound by the interpretive ruling of the executive branch.

With regard to the definition of *obscene*, Tiersma wrote the following comment:

> *Other notoriously flexible or vague terms are words like* ***obscene*** *or* ***indecent****. Many governments around the world claim the power to ban* ***obscene*** *or* ***indecent*** *materials or acts. But what exactly is* ***obscene****? Justice Stewart of the Supreme Court*

> *admitted that he could not define it intelligibly, but claimed that "I know it when I see it."*[12] *At best, people might agree on a vague (and somewhat circular) definition of these terms, something along the lines of "offensive to one's standards of decency." Yet people differ dramatically on what those standards of decency are and how to apply them to any particular situation.* (Tiersma 1999: 80)

The comment indicated that the definition of obscene has beset legal professionals in America as well and we cannot but lament that language is in principle an inadequate tool for the task which law sets for it.

As is pointed by Zheng (2002) and Huang (2012), those acts in the *kissing case*, the *breast case*, the *tongue-kissing case* are indeed *obscene* but they are *morally obscene*, not *legally obscene*. For a criminal rule to be smoothly enforced, there must be some sort of threshold to set the range of punishment, or else it will criminalize people beyond what the legislature intends. The distinction between *morally obscene* and *legally obscene* is a matter of degree, a problem of gradual vagueness, whose result leads to categorical vagueness. To compensate the problem of vagueness, judges makes interpretation with conditions such as *long duration of the act*, *the rubbing of the actor's sexual organs against the victim's body* or *the fondling of the actor all over the victim's body* to enhance the definition made by the Supreme Court. In the Criminal Law, *morality* has never been a good threshold because it is so vague and hard to find a universally-acceptable standard for everybody. In fact, some jurists would love to remove most of the morality-related offenses from the Criminal Code and put them in other disciplines of law such as the Civil Law (Huang 1999a; 1999b; 2005).

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[12] *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964 (Stewart, J., concurring).

From the sections discussed previously, we can see that people simply cannot come up with a better definition of *obscene*. The diversified definitions mentioned above are simply not sustainable for the legal system to operate. As a result, jurists and legal practitioners (including the judges, the prosecutors and the lawyers) cannot but compromise on an outdated definition. Somewhat ironic, isn't it? As Aristotle wrote in his work, "It is the easiest of things to demolish a definition, while to establish one is the hardest (*Topica*, 7.6. $155^{a}15$)," this explains why the definition of *obscene* is not expressly stated in the Criminal Law and why a resolution made by the Supreme Court more than eighty years ago is still in effect and binding today.

6 Conclusion

The previous discussions designate that discrepancy in the result of categorization between ordinary people and legal professionals is due to the phenomenon that the language in their minds is constructed on different frames, illustrated by the discussion of *obscene* in section 3 and shown as Figures 4 and 5. Whether the reasoning made by the judges in each case sounds convincing to the common public or not, the fuzziness in language and the complexity in language frames render it harder or impossible to achieve total agreement in legal language.

Even though legal professionals have endeavored to pursue precision in legal language, the argument over the interpretation of those disputed words or terms has shown us the imperfection or insufficiency of language. Unfortunately, language is the major instrument we can employ to embody abstract legal concepts. As Frankfurter pointed out, "Words are clumsy tools. And it is very easy to cut one's fingers with them, and they need the closest attention in handling; but they are the only tools we have, and imagination itself cannot work without them (Frankfurter 1947: 546)."

If legal frame and layman frame are meant to vary, then judges

have to be utmost vigilant when they are applying definitions or making interpretations to real cases. Moreover, the power granted to them by the state requires them to be extremely cautious. One thing for them to start with is to do away with outdated definitions and inappropriate or unreasonable interpretations. Undeniably, even though judges are expected to evaluate a case like Lady Justice,[13] they are, just like ordinary people, more or less influenced by their own subjectivity. Perhaps researchers should endeavor to find ways to help reduce discrepancy among judges to the minimum.

Just as Fillmore (2003: 284) claimed, "The law has its own sort of semantic principles even though the checklist approach has gone mad in some legal field." Overall, not every ruling provokes criticism among the public so we may well say that legal language has achieved an effective compromise between prototype theory and checklist theory in the form of various principles of statutory interpretation (Fillmore 2003; Solan 2010). Whether the definition or interpretation used for any legal term is appropriate or not, one thing cannot be denied is that the approach of checklist theory in the legal field—a fixed meaning for a legal term—is a necessary evil and reduces the problem of arguments over legal concepts to a certain extent and facilitates the pursuit of fairness and neutrality.

All we have established here is that everyone more or less agrees that there are clear cases and unclear cases of the application of linguistic expressions in the legal field. Although the very great theoretical differences over the nature of clarity have not been resolved, and it is unclear how much is clear, we can still learn some important lessons and one of them is that judges and jurists should be modest in making claims of justice.

[13] Lady Justice is often depicted wearing a blindfold. This is done in order to indicate that justice is (or should be) meted out objectively, without fear or favor, regardless of the identity, power, or weakness: blind justice and blind impartiality. http://www.commonlaw.com/Justice.html (access date: Sep. 10, 2012)

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Bionote

Dr. *Pi-chan Hu* is an assistant professor of the Department of Applied Foreign Languages at Chien-Hsin University of Science and Technology. Her research interests include forensic linguistics, semiotics, legal translation and applied linguistics. Her publications include "On inform-consent doctrine: a text analysis of inform-consent form" (2008), "A linguistic investigation of the distinctiveness of a trademark" (2014) and "The Semiotic Analysis of Trademark Distinctiveness: A Case Study of 'MISS WU'"(2014).

Appendix A The questionnaire of the survey regarding *public insult*

下列用語均為辱罵他人之用語，請用 1 分至 7 分為其評分，1 分表示該用語為非常侮辱之字眼，4 分則為侮辱程度中等，7 分表示侮辱程度很弱或不侮辱。

The following expressions are derogatory terms. Please rate each expression on a seven-point-scale: "1" means that the expression is extremely derogatory; "4" indicates the expression is moderately derogatory; whereas "7" suggests the expression is slightly or not derogatory at all.

Item	Score
an irritating pig (豬八戒)	
idiot (白癡)	

bitch (賤貨)	
less than pigs or dogs (豬狗不如)	
scurrilous (下流)	
pervert (變態)	
fuck (幹你娘)	
shameless (不要臉)	
son of a bitch (王八蛋)	
a brute animal (畜生)	
a very ugly person (醜八怪)	
If you love money so much, why don't you go "earn" it? (那麼愛錢，不會去賺 (台語))	
rascal (流氓)	
nuisance (機車妹)	
retarded (智障)	
mentally handicapped (腦殘)	
non-cultured (沒教養)	
China girl (大陸妹)	
Go to hell. (去死好了)	
sissy (娘娘腔)	

Appendix B The questionnaire of the survey regarding *obscene*

如果某人違反他人意願，對他人為下列行為，請用 1 分至 7 分評斷其行為猥褻之程度，1 分表示該行為非常猥褻，4 分則為猥褻程度中等，7 分表示猥褻程度很弱或不猥褻。

If a person does the following act to another person against his or her will, please rate each act on a seven-point-scale: "1" means that the act is extremely obscene; "4" indicates the act is moderately obscene;

whereas “7” suggests the act is slightly or not obscene at all.

Item	Score
touch one’s ear (摸耳朵)	
hold and kiss one’s face(抱住親臉)	
touch one’s thigh (摸大腿)	
kiss one’s face (親臉)	
pat one’s thigh (拍大腿)	
touch one’s buttock (摸屁股)	
touch one’s breasts (摸胸部)	
tongue-kiss (舌吻)	
kiss one’s mouth (親嘴)	
pinch one’s ass (捏屁股)	
touch one’s shank (摸小腿)	
touch one’s back (摸背)	
touch one’s hair (摸頭髮)	
touch one’s private parts (pudendum) (摸私處)	
kiss one’s hand (親手)	
kiss one’s hair (親頭髮)	
touch one’s face(摸臉)	
touch one’s hand (摸手)	
touch one’s shoulder (搭肩膀)	
pat one’s back (拍背)	

* 請定義何謂猥褻（答或不答皆可）。
Please define *obscene*(猥褻). (optional)

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