Area 1. Language as the mirror of human rights issues in law and legal discourse

Evaluation and argument in judicial protest. A study of dissenting opinions in human rights cases

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Abstract

Despite its significance for the transparency and quality of the judicial decision-making process, it is only recently that the institution of judicial dissent (esp. in the civil law tradition) has begun to attract more systematic and in-depth attention from a legal perspective (Keleman 2018). Even more acute is the gap in legal linguistics literature (see Bowles, 2002; Gozdz-Roszkowski, 2020). For example, suppose the expression of dissent is regarded as the primary reason for drafting a dissenting opinion. In that case, we still know very little about its linguistic construal, the linguistic resources associated with argument evaluation, the expression of stance, the degree of conventionality, among other aspects. This paper aims to address this gap by analysing a selection of separate opinions attached to judgments given by the Constitutional Court in Poland in cases involving human rights (such as abortion and protection of sexual minorities). The analysis will focus on using language in argumentative patterns adopted in the justifications of judicial dissents. Specifically, this study aims to answer the following research questions: 1)What are the prevalent types of argument used in dissenting opinions? 2) Are there any salient patterns in expressing argument evaluation? And 3) What is the role of evaluative language in accomplishing the dialectical and rhetorical goals of dissenting opinions? This study will use a corpus-driven method to data-mine a corpus of dissenting opinions (circa 100,000 words sampled from the Internet database of Poland's Constitutional Tribunal) to identify opinions worth analysing in more detail owing to the presence of language items associated with the area of human rights. This analysis will be followed by constructing phraseological profiles of such axiologically loaded lexemes. Finally, a manual analysis of selected dissents will be carried out to reconstruct argumentative patterns. The results of the study should bring two types of significant implications. First, given the widespread criticism of the Constitutional Tribunal's decisions regarding their rulings on the right to abortion and the protection of sexual minorities, the analysis is expected to uncover the alternative legal interpretations of individual judges and how they frame their protest against the dominant interpretation of the heavily politicised court. Second, the findings will demonstrate how a study of evaluative language could be combined with an analysis of legal argumentation contextualised within the institutional constraints of the Polish constitutional review.

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Biodata

Stanislaw Gozdz-Roszkowski is an Associate Professor and Head of the Department of Specialised Languages and Intercultural Communication, University of Lodz (Poland), where he has taught various seminars in legal communication and legal discourse analysis. His research focuses on functional and corpus-based approaches to the study of judicial discourse across different languages and cultures. He has published widely in the area of variation in legal language, legal phraseology and communicating evaluative meanings in judicial opinions. His most recent book publication is Phraseology in Legal and Institutional Settings. A corpus-based interdisciplinary perspective. Routledge (co-edited with Gianluca Pontrandolfo) 2018. Recent journal papers include:

- Gozdz-Roszkowski, S. (2020). Move analysis of legal justifications in Constitutional Tribunal judgments in Poland: What they share and what they do not. *International Journal for the Semiotics of Law*, *33*, 581-600. doi: https://doi.org/10.1007/s11196-020-09700-1

- Gozdz-Roszkowski, S. (2020). Communicating dissent in judicial opinions: A Comparative, genre-based analysis. *International Journal for the Semiotics of Law*, *33*, 381-401. doi: https://doi.org/10.1007/s11196-020-09711-y

Improper entry by an alien on trial: The uncomfortable linguistic past of 8 USC § 1325

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Abstract

Between July 2017 and June 2018, thousands of minors were separated from their parents by American authorities while crossing the border into the United States. These family separations were caused by the prosecution of parents for Improper entry by an alien 8 USC § 1325 (2011), which criminalises unlawful entry into the United States.

This paper uses linguistics to analyse the language in original congressional debates surrounding the bill's passage that enacted Improper entry by an alien (2011). Our results show evidence of racist motivations during the congressional hearings. However, under current American jurisprudence, our findings jeopardise the validity of this law. Current literature shows a link between early immigration legislature in the United States and racist animus. For example, in 1929, hostile attitudes towards Latin American immigrants led Congress to seek criminalisation of unauthorised entry and pass a bill that enacted Improper entry by an alien (Gonzalez O'Brien, 2018). However, two Supreme Court decisions call into question whether this statute remains good law: 1) Village of Arlington Heights v. Metropolitan Housing Development Corporation (1976), which holds that a law enacted with discriminatory motivation is unconstitutional; and, 2) Ramos v. Louisiana (2020), which struck down a state statute partially because of the discriminatory motivation for its original enactment. This paper uses qualitative and quantitative linguistic methods to ascertain whether racist discourse was used during the original enactment. We investigate a corpus of congressional hearings concerning the original bill. In addition to qualitative analysis, these documents were analysed using the textometric software program IraMuTeQ. IraMuTeQ uses similarity analysis and descending hierarchical classification to calculate the statistical strength of links between words and identify classes of words found in the same linguistic context. Our qualitative findings evince political rhetoric that links 'immigrants' to racially discriminatory language. This language refers to genetics, including 'degenerate,' 'bad blood,' and 'contaminate.' In our corpus, immigrants are consistently represented as a risk for "national character" and disproportionately subject to 'inadequacy' and 'feeble-mindedness,' except for those coming from England, Holland, France and other Northern European countries. Quantitatively, similarity analysis shows that interactions between individual committee members and expert witnesses centre on the 'quality' or 'degeneration' of race. Our results add linguistic evidence to the argument that Improper entry by an alien (2011) was originally enacted for racially discriminatory reasons. They provide another reason to reconsider this statute's constitutionality and the validity of charges brought against individuals under it.

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Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 US 252 (1976).

Biodata

Mary C. Lavissière is an Associate Professor of Applied Linguistics at the University of Nantes. She completed her PhD dissertation in linguistics and two master's degrees at Sorbonne University. She co-coordinates the Master of Language and Law at the University of Nantes and co-directs the theme 2 research team, which studies language

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Chloe Dillon is an attorney and works as a federal public defender practising before the federal court in San Diego, California. She joined Federal Defenders of San Diego as a trial attorney in the fall of 2012. Before that, Dillon clerked for the Los Angeles Immigration Court for two years and, before law school, also worked at a deportation defence firm in San Francisco, California. She is a graduate of Dartmouth College and the University of California at Berkeley, where she completed a masters degree in Comparative Literature. She obtained her law degree from the University of Arizona School of Law in Tucson, Arizona. Her practice focuses primarily on the intersection between criminal and immigration law in the United States. For example, she represented hundreds of individuals charged under Operation Streamline, the government's plan to deter migration across the United States' southern border by prosecuting for misdemeanour crimes.

Rachel Hill is a recent graduate of the Thomas Jefferson School of Law Juris Doctorate program. Before completing her doctorate, Hill graduated from the University of Idaho with a master's degree in civil engineering. As a result of her technical background, Hill has had several opportunities to engage with data management and analytics. Hill's main research interests are religious studies and cultural conflict. Hill was the Managing Editor and Editor in Chief of the Thomas Jefferson Law Review and supported research on topics including sex-offender registration, access to legal representation under immigration law, and sufficiency of environmental legal regimes. Hill aspires to continue her career in the nexus of environmental, social, and legal constraints that impact people's access to resources and their ability to engage in fair and equitable work.

How should a refugee sound? Credibility and the politics of listenership

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Abstract

Linguistic anthropologists have long studied the discursive origins of states' and publics' mistrust of asylum seekers (Daniel & Knudsen, 1996) and the linguistic analyses by which gatekeeping institutions scrutinise asylum seekers' linguistic practices and question the credibility of their narratives (Eades, 2005; Smith-Khan, 2017). Moreover, recent sociophonetic work has addressed the role of perceptual awareness in deeper social and legal structures of power and control (McGowan & Babel, 2020; Rickford & King, 2016). Little research, however, has specifically sought to identify the role of the

sociophonetic minutiae of asylum seekers' narrative performances in these broader discourses of mistrust. By addressing the following general research questions in this study, I bridge these bodies of work in order to unearth micro linguistic details that can have life-or-death consequences for asylum seekers: How do intelligibility and perceived origin of accented Englishes, as well as perceived emotional affect, influence perceptions of credibility in asylum seeker narratives? How do these details of an asylum seeker's narrative performance contribute to broader perceptions of their authenticity, credibility, and trustworthiness? To answer these questions, I used sociophonetic perceptual tasks to elicit 25 listeners' credibility evaluations of five audio-recorded asylum seeker narratives from YouTube: three performed by actors in Standard American, Standard Australian, and Arabic-accented English, and two performed by `authentic' asylum seekers in Arabic-accented English and English accented by an indeterminable African language. I then used qualitative discourse analysis to examine the relationships between intelligibility, affect, and raciolinguistic perceptions of national origin in the listeners' responses, ultimately analysing the constellation of social and perceptual cues that constitute 'credibility' in asylum narratives. The analysis extends the understanding of what asylum seekers are expected to say by determining how they are expected to sound and reveals the extent to which 'credibility' in asylum seeker accounts is as much an issue of our ability to 'listen' as it is about their ability to narrate, and as much an issue of us confronting our negative biases, as it about their tellings. As a result, this work not only establishes asylum proceedings as inherent arenas of the practice of language policy but also extends the borders of linguistic anthropology to concerns of aurality and listening and encourages scholars to disrupt and transform epistemic barriers that separate disciplines in order to achieve more just practices and policies in asylum law.

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Biodata:

Jeremy Rud is a PhD student in the Department of Linguistics at the University of California Davis and holds an MA in Linguistics from the University of Colorado Boulder. His research broadly focuses on language in migration and asylum contexts and addresses asylum seeker credibility at intersections of public policy, narrative performance and entextualisation, and speech perception. This work interests Rud due

to the principal role of language in the asylum process and the injustices that result when public policy fails to incorporate the tenets of sociolinguistics. As such, Rud seeks to contribute to the field by uncovering and challenging taken-for-granted notions of language held by institutions that act as gatekeepers to asylum seekers. For example, some of Rud's studies have included a critique of a nonprofit's narrative portrayals of former refugees, a caution against states' use of algorithms to evaluate asylum applications, and a micro-analysis of listeners' politicised judgements of credible fear in asylum seekers' narrative performances.

Apostasy-based refugee claims and interpreting International Human Rights law

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Abstract

We observe that the geopolitical actors defining and interpreting apostasy vastly differ in international human rights law and refugee law. In human rights law, specifically regarding the freedom of religion or belief, the discussion on the definition and scope of apostasy is often instigated by countries with an established state religion. In contrast, in refugee law, Western countries—often 'destination' or 'receiving' countries—lead the way. The freedom of religion or belief is internationally recognised. However, studies demonstrate that apostasy—i.e., the implementation of the freedom to change religion or belief, meets difficulties in various state practices as an aspect of this overall freedom. In this article, doctrinal legal and historical research is conducted regarding (Dutch) apostasy-based refugee claims within international human rights law interpretation. Within both research areas—human rights law (more specifically law and religion) and migration law—apostasy and related topic are discussed. However, merging these two and discussing these in terms of interpretation is new and has societal relevance. The working hypothesis constitutes the lack of conceptualisation of apostasy in international human rights law, leading to conceptual ambiguity, which is often filled in by refugee law—which seems to struggle with identifying apostasy. We employ methods of doctrinal legal research and historical legal research. The research consists of two parts. First, we will examine how the freedom to change religion or belief or the right to apostasy is internationally recognised. Second, doctrinal and historical research is conducted regarding the UN legal documents to demonstrate that the phrasing of the provisions has been gradually altered and interpreted by various actors since the legal establishment of the freedom to change religion or belief in 1948. We argue that this has led to conceptual ambiguity within international human rights law and has also diminished the normative force of the legal provisions. This aspect has resulted in consequences for the legal protections for apostates around the globe. The second part of the article provides an overview of the ways international, EU and national Dutch law approach apostasy in the context of religion-based refugee claims. In this section, it will also be demonstrated that a lack of conceptualisation of apostasy exists. However, we argue that, whereas for some refugee claims, this causes no issues in practice—as religion-based refugee claims may rely on the same facts for both the apostasy and the conversion element of the same claim—issues may occur in the context of 'pure' apostasy-based refugee claims.

Biodata

Mirjam van Schaik is an Assistant Professor of Constitutional Law and Legal Theory at the Open University, the Netherlands. She has previously worked as a lecturer and researcher at Leiden University. She holds an LL.M. (Vrije Universiteit Amsterdam 2008) and an M.A. in Philosophy (Vrije Universiteit Amsterdam 2012). She is pursuing a PhD at Leiden University and is currently in the final stage of her thesis 'Defaming Freedom of Religion or Belief. A Historical and Conceptual Analysis'. Van Schaik has published in the fields of law and legal theory. Her research focuses on human rights, particularly freedom of religion and speech, law and religion, and the democratic legitimacy of judicial law-making. Van Schaik has published in national and international peer-reviewed journals. She is a member of the Netherlands Network for Human Rights Research and editor at nederlandrechtsstaat.nl (the Netherlands online forum for constitutional matters).

Lynn Hillary started working as a doctoral researcher at the Department of Constitutional and Administrative Law and Legal Theory of the Open University of the Netherlands in September 2018. She researches the principle of mutual trust and external European asylum law under Rolf Ortlep and Carla Zoethout's supervision. Her research interests are human rights, European (public) law and migration law. After she graduated from the LL.M. Public Law in 2015 at the Vrije Universiteit Brussel, she went on to study International Migration and Refugee Law (VU Amsterdam). While studying, she worked at the migration chamber of a regional court. From 2016 to 2018, Lynn Hillary worked as a legal advisor with the Dutch Council for Refugees. She gave legal advice to asylum lawyers and employees of the NGO while also working on their strategic litigation project. Lynn is an editorial assistant for the Nederlands Tijdschrift voor de Mensenrechten (NTM/NJCM-Bulletin) and coordinator of the Migration & Borders working group of the Netherlands Network for Human Rights Research.