

Area 10. Historical perspectives on legal pragmatics

'Let him be Anathema'—A Catholic Perspective on Language Crimes

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Abstract

'Talk is Silver, Silence is Golden' is a typical proverb that translates in many languages. Whilst this saying might not always be true, it most certainly is in cases of speech considered a crime. Most legal orders know language crimes, such as defamation or perjury, where the offenders commit crimes by uttering defaming or untruthful speech. Many of the language crimes typically sanctioned by secular law are also sanctioned by religious law, such as Roman Catholic canon law. Canon law, for instance, penalises crimes such as bribery, solicitation, threat, perjury, and defamation. Many criminal laws, both secular and religious, also deal with religion as the content of defaming speech in regulations on blasphemy. The German Criminal Code, for instance, penalises the public defamation of religions and religious communities if this act 'is capable of disturbing the public peace' (section 166, Criminal Code). The Criminal Code speaks of *beschimpfen*—'insulting' or 'badmouthing'—religious content or religious organisations in a way that seems likely to pose a threat to public peace. However, this regulation is subject to intense debate as it conflicts with the principle of secularity and with the basic right of freedom of speech. Nevertheless, it still exists and is responsible for at least a small number of convictions every year. In secular modernity, this and similar norms protecting religion from insult appear slightly anachronistic. However, it is less surprising that religious laws provide for respective regulations. Canon law, for instance, threatens any Catholic with a penalty who publicly, in speech, writing, or another media, utters blasphemy or incites hatred against the church (see canon 1369 CIC/1983: 'A person who in a public show or speech, in published writing, or other uses of the instruments of social communication utters blasphemy, gravely injures good morals, expresses insults, or excites hatred or contempt against religion or the Church is to be punished with a just penalty'). Two classical examples of ecclesiastical crimes without any parallel in modern secular law are heresy, the denial of parts of the Catholic faith, and apostasy as the total denial of the faith. However, heresy and apostasy, even though they relate to faith as an individual's inner stance, are crimes only when uttered audibly, as canon law has learnt to define crimes as acts of external violation of laws. Therefore, heresy and apostasy are language crimes committed by speech acts. Whoever commits these crimes is not only punished but punished with a *latae sententiae* excommunication, a type of excommunication which results automatically upon committing the crime (see canon 1364 §1 CIC/1983). Consequently, there is no way to avoid punishment from a Catholic perspective once the crime has been successfully committed. As anachronistic as it might seem in the light of modern penal theory, this idea of automatic punishments might serve as an interesting stimulus to encourage

debate on the performative quality of language, language crimes, and their punishment in general.

Keywords: canon law; language crimes; defaming speech acts; heresy; excommunication

Biodata

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Proper names revisited: Some evidence from Early Modern English courtroom records

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The property of unique reference traditionally ascribed to proper names has often been subject to criticism. Although it might be true that in everyday discourse proper names lose their uniqueness due to context-dependency, since in the utterance 'John Brown came to the meeting yesterday', various bearers of the proper name could be meant, the uniqueness condition still holds true in institutionalised contexts, like courtroom discourse. In this paper evidence from selected Early Modern English courtroom records demonstrates that in trial proceedings the unambiguous identification of persons, locations, and points in time (i.e. the so-called deictic anchoring of the event) is mandatory for the uninterrupted flow of the courtroom discourse.

In the course of the analysis some data from *The Trial of Titus Oates* demonstrate how mistaken identity of a witness (Mr. Ireland) had to be clarified for the purpose of successful proceedings. Moreover, the spatio-temporal location of Mr. Ireland was crucial to the counsel so that his sister's depositions played an important role in identifying these variables. Along the same lines, in *The Trial of Lady Alice Lisle* the contradictory evidence provided by the main witness Dunne as to the identity of the person who opened the stable door (Dunne himself, Carpenter, or maybe the girl who was around) gave rise to a controversy with the judge. Finally, the identity of the court was at stake during *The Trial of King Charles I*, where the king rejected the court he was tried by and called it unlawful since it consisted of House of Commons only. On the other hand, the counsel refused to accept Charles I as the ruler since, in their

opinion, he was just 'an elected king'—an expression Charles I rejected since in his opinion it ignored the tradition of England being a monarchy based on hereditary dynasties.

The data from the above-mentioned trials provide sufficient evidence supporting my initial hypothesis that in courtroom discourse the property of uniqueness of proper names plays a vital role for the unambiguous and successful outcome of the proceedings.

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Keywords: proper names, Early Modern English, courtroom records

Biodata

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miscommunication past and present (Peter Lang, 2012) and coedited with Dennis Kurzon the volume *Legal Pragmatics* (John Benjamins, 2018).

The linguistic realisation of legal norms in mediaeval law

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Abstract

Legal norms are the basic elements of every legal system. Linguistically, they can be realised in various types of sentences. In these sentences, expressions of modality—e.g., grammatical mood, modal verbs and specific constructions—serve as important markers. They identify the respective sentences as legal norms—e.g., prohibitions, permissions or penal provisions—at the semantic level. These expressions often serve as indicators of the speech act realised in a provision at the pragmatic level. A penal provision, for instance, could be phrased as a directive speech act ordering the authorities to administer a certain punishment or as a commissive speech act guaranteeing to the public that perpetrators will be punished in a certain way. Whether a penal provision is realised as a directive or a commissive may well define how lawmakers communicate with their subjects and betray the attitudes they may take toward them (cf. Durant & Leung, 2016; Höfler, 2019; Mahlmann, 2017). While the relationship between expressions of modality, norm types and speech acts has been analysed in modern laws (cf. Höfler, 2019), there is still very little research into their use in mediaeval legal texts. The present study aims at filling this gap concerning German-language law-making because it investigates how legal norms are realised in the Zurich town privilege of 1304 (Zürcher Richtebrief). The Zurich town privilege is one of the most important collections of German-language mediaeval law and a seminal precursor of modern Swiss legislation (cf. Bitterli, 2011, p. XI). The study focuses on three questions: 1) What expressions of modality are used in the text. 2) What types of norms do they realise. And 3) what does the use of the respective expressions tell us about how mediaeval lawmakers communicated with their subjects? The analysis to be presented will consist of two parts. In the first part, the expressions of modality found in the town privilege will be analysed from a semasiological perspective and classified according to the norm typologies proposed by Höfler (2019) and Strömberg (1988). In the second part, the use of modal expressions will be scrutinised from a pragmatic perspective, considering the communicative situation manifested in the text. The study thus allows for novel insights into 1) how legal norms were expressed in Middle High German law texts, 2) how mediaeval lawmakers communicated with their subjects and 3) how their way of communicating differed from what can be observed in modern legal texts.

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Keywords: historical pragmatics; middle high German; modality; legal linguistics; medieval town privileges

Biodata

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