Area 2. Inequality, discrimination and violence in language and law

Hate speech: An expressive or a performative speech act? Some answers from a discourse analysis perspective

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Abstract

This presentation aims to open the debate about the current definitions of hate speech, which, in our opinion, reduces a complex communicative event to a 'one size fits all' threatening speech act against a specific community. More precisely, the official, legal EU definition (Framework decision, EU Council, 2008) describes hate speech as an expressive speech act which can be interpreted in the sense of 'venting the hatred that is boiling inside' (Waldron, 2012, p. 2). This description attributes to hate speech a particular illocutionary force, i.e., the intention of the speaker (to harm or publicly incite to harm) is central to that definition. It also implies a specific perlocutionary force since hate speech is analysed as an act of persuasion, such as endangering the public and incitement to harm. Thus, any content fulfilling these three criteria (expressive speech act, with specific illocutionary and perlocutionary dimensions) would be labelled hate speech. However, our presentation will discuss these three criteria based on online comments examples—i.e., the contestable illocutionary intent of the speaker, the supposed perlocutionary effect on the hearer and the allegedly common abusive language upon which the EU hate speech law is based. Taking up Matsuda's interpretation of hate speech law (1989, p. 2324) as formal laws that should change attitudes, we suggest another definition of hate speech, which could define the law as a tool of social change and social peace. These two aims can only be fulfilled if the 'radically context-dependent' dimension of hate speech (Lea et al., 1992, p. 108; Lea et al., 2011) is considered whether with its definition or whether in its implementation. We will be discussing the 'radically context-dependent' dimension based on real examples and present our proposal based on hundreds of online comments collected during the IMsyPP EU social Justice program. We will use critical discourse analysis (Fairclough, 2008 inter alia) and appraisal theory (Martin &White, 2005) as tools in our discourse analysis.

References

Fairclough, N. (2008). The language of critical discourse analysis. *Discourse & Society*, *9*(16), 811-819.

IMsyPP EU Social Justice program. Retrieved from http://imsypp.ijs.si/ -Innovative Monitoring Systems and Prevention Policies of Online Hate Speech, EU REC AG project, ID 875263

Lea, M., O'Shea, T., Fung, P., & Spears, R. (1992). Flaming in computer-mediated communication: Observations, explanations, implications. In M. Lea (Ed.), *Contexts of computer-mediated communication* (pp. 89-112). Harvester-Wheatsheaf.

Lea, M., Spears, R., & De Groot, D. (2001). Knowing me, knowing you: Anonymity effects on social identity processes within groups. *Personality and Social Psychology Behavior*, *27* (5), 526-537.

Martin, J.R., & White, P. R. R. (2005). *The language of evaluation: Appraisal in English*. Palgrave.

Matsuda, M. (1989). Public response to racist speech: Considering the victim's story. *Michigan Law Review*, *87*(8), 2320-2381

Waldron, J. (2012). *The harm in hate speech*. Harvard University Press.

Keywords: Critical discourse analysis; hate speech laws; online comments; hate speech practices

Biodata

Fabienne Baider graduated from the University of Toronto. She is a Professor of Linguistics and Gender Studies at the University of Cyprus, where she has been working since 2001. She works on semantics and discourse from a socio-cognitivist perspective. Her work has been published in various journals such as the International Journal of Lexicography, Modern and Contemporary France, Corpus Pragmatics, Pragmatics and Society, and Journal of Pragmatics. In addition, she co-directed several special issues and volumes on language and gender (*Intersexion*, 2012), linguistic approaches to emotions (John Benjamins 2014, Presses de la Sorbonne 2013), and hate speech analysis (Online hate speech, 2017). Dr Baider is the author of a volume on semantics, gender and the French Languages (*Hommes galants, femmes faciles*, 2004). She also coordinates several Research programs, such as the EU Social Justice program (CONTACT 2015- 2017), focused on online hate speech, and national research programs such as HOPE (2019- 2021), focused on counter-narratives to hate speech. She is also a partner in many other projects, such as the IMsyPP EU social justice program (2020-2022).

When laws discriminate instead of introducing more equality

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Abstract

This paper looks at how, in France, certain laws, against all expectations, fit into the specific pattern that defines a linguistic system of discrimination (Fracchiolla, 2021). What I call a 'linguistics based system of discrimination' is the way language, as a system, organises in an internalised way of naming everyday reality and its representations in such a way that it promotes discrimination of certain categories of

persons, without people even noticing it in their language use, as is the case of the law of the marriage for all (2013) but also of that of 2004 on wearing religious signs which, in reality, targets gay people for the first, for the second the Islamic veil - and therefore Muslims much more than other religions. However, one can wonder here about how the notion of exception, which enters into account in the writing of these laws, tends in reality to discriminatory treatment of certain categories of people, based on their sex or of their religion, and not an undifferentiated one aimed at fair and equal treatment of all. Thus, while the laws are supposed to exist for everyone, on a principle of equity, we can see how some, on the contrary, introduce a double standard. For purposes of analysis, fifteen interviews with mothers of lesbian families in France will be analysed from a discourse analysis perspective. The corpus was collected from 2015 to 2020, and all the interviews were transcribed. Each of the interviews lasts for about an hour, and they all are about the family story and what the marriage for all changed in their lives and their children's lives. One of the specificities of all the lesbian marriages contracted by the persons I interviewed is that they all decided to get married not as a couple of love proof, but in order to be able to proceed with the adoption of the child or children by the non-biological mother, and thus become a real family. In their case, marriage has become a mandatory and unavoidable step in becoming a real family. This aspect already shows specificity in why marriage exists, compared to common (heterosexual) law marriages. In this specific case, I will put in evidence how the law introduces a certain type of violence under the guise of recognition of rights. I will also explain how it even organises and systematises discrimination through aspects that are not expected daily. My main theoretical framework will be the theory of speech acts (Austin, 1962).

References

Fracchiolla, B (2021). Définition du système discursif de discrimination de genre: à partir des systèmes genrés d´adresse et de la loi du mariage pour tous. *Etudes de Linguistique Appliquée*.

Stein, D., Olsen, F., Lorz, A. (Eds.). (2000). *Law and language: Theory and society*. Düsseldorf University Press.

Stollznow, K. (2017). *The language of discrimination*. Lincom Studies in Semantica.

Keywords: pragmatics; theory of speech acts; forensic linguistics; gender studies; discrimination

Biodata

Béatrice Fracchiolla is a Professor of Linguistics at the University of Lorraine. She does research in the Centre de Recherches sur les médiations EA 3476 but also, for the year 2020-2021, in the CNRS Unit Laboratoire des études de genre et de sexualité. Dr Fracchiolla works mainly in gender studies and verbal violence and on the definition of hate speech, with a specific approach to the notion of discrimination. Some of her other research fields are political discourse analysis, verbal tensions and violence in emails in academic exchanges, and gender education at the middle and high school level. She is currently working on a research project and a book on lesbian mothers and how marriage changed their lives. Dr Fracchiolla's conducts research in pragmatics, discourse analysis and verbal interaction. Most of her publications and work are available on the French CNRS platform: www.halshs.fr

Dehumanising asylum seekers: Discriminatory ontologies of immigration in US regulatory procedures at the Mexico-US Border

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Abstract

US immigration policy regimes have long positioned migrants who cross the Mexico-US border as a threat to the rule of law. 'Policy regime' refers not only to the statutes that constitute immigration law. It also points to the regulatory practices through which those statutes are implemented and the extra-judicial discourse legitimating policy approaches. Since the early twentieth century, US immigration policy regimes have created a conflation between the legal category of the 'illegal alien' and a cultural image of Mexican and Central American migrants as animalistic beings prone to violent crime (Dick, 2011). This conflation is discriminatory as it constructs some, but not all, mobile populations as inherently dangerous Others, as if violations of immigration law indexed a fundamentally corrupt personal character. As this suggests, the conflation of 'illegal alien' with 'Mexican and Central American migrant' is part of an ontology (a theory that delineates categories of being and their relationships to each other), which enables inhumane immigration policy regimes. I use analysis of the Trump administration's discourse about asylum seekers to explore the interdiscursive practices that connect Trumpism to the historical production of this dehumanising immigrant ontology. 'Interdiscursivity' describes activities that allow actors to create relationships between discourse originating in distinct times and places (Dick, 2011, p. e37). I trace two interconnected types of interdiscursivity. One is the emergence of the ideologically interested warrants that Trump administration officials have used to justify the changes they have made to immigration procedures. Although in isolation, these changes relative insignificant, collectively, they have dramatically revised the US immigration regime without Congress engaging in any formal policy reform (Cox & Rodriguez, 2020). The other is the textual similarities in discourse about asylum seekers produced in regulatory language, public appearances (speeches, press briefings, interviews), and news coverage of those appearances. Of particular significance to this type of interdiscursivity are the recurring patterns of deictic reference, particularly of the person (us/them) and place (here/there), those producers of discourse used to construe citizens and migrants distinct and hierarchically arranged types of beings. I argue that these interdiscursivities have enabled the Trump administration to realise the most draconian immigration regulations the US has seen in decades by intentionally introducing the discriminatory ontology into an unusually diverse and widespread set of administrative practices. These practices range from critical interactions, such as credible fear interviews, to mundane activities, such as filing paperwork. Finally, I will conclude this paper by discussing the long-term effects this strategy has produced: effects that I posit will prove challenging for the Biden administration to undo, despite its radically different position on immigration.

References

Cox, A. B., & Rodríguez, C. M. (2020). *The President and immigration law*. New York, NY: Oxford University Press.

Dick, H. P. (2011). Making immigrants illegal in small town USA. *Journal of Linguistic Anthropology, 21*(S1), E35-E55. doi: 10.1111/j.1548-1395.2011.01096.x

Keywords: US asylum procedures; discourse analysis; discrimination

Biodata

Hilary Parsons Dick is the 2019-2021 Frank and Evelyn Steinbrucker '42 Endowed Chair and Associate Professor of International Studies at Arcadia University. She completed her PhD in cultural and linguistic anthropology at the University of Pennsylvania. Dr Dick investigates migration from Mexico and Central America to the US from the perspectives of discourse analysis, the political economies of language; the social life of the law; and gender, class, and ethno-racial power relations. In 2016, she was awarded the Wenner-Gren Hunt Fellowship to support the completion of her first book, *Words of Passage: National Longing and the Imagined Lives of Mexican Migrants* (The University of Texas Press), which the Society recognised for Linguistic Anthropology of the American Anthropological Association as a Distinguished Book in Linguistic Anthropology (2017-2018). Her new research project examines the central role that immigration layers and advocates play in translating, and through that enacting, immigration law and policies focus on their work with migrants from Latin America.

Hate speech: A macro-act of group harassment?

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Abstract

As do the elements of specific civil or criminal offences, the elements of hate speech must be contained in legal definitions that enable triers of fact to examine the offence elements against the specific circumstances of a given legal case. However, the problem lies in the fact that there is no agreed-upon legal definition of hate speech. This fact has two significant implications. First, if hate speech is not cast in a technical legal definition, it may not be possible for the court of justice to recognise which speech acts are likely to fall under the category of hate speech that the law should sanction. Second, certain forms of hate speech may pass unnoticed by the court of justice. As a result, victims of legally unrecognised hate speech could end up lacking either protection of their fundamental rights of dignity and equality in a given jurisdiction. Therefore, one critical issue about hate speech laws is the equivocal nature of its forms of expression. As a way of example, according to US constitutional law, hate speech can only be punishable if it is a 'true threat'-or 'fighting words'-involving imminent risk of violence against the target groups and a breach of social order. By contrast, for the Council of

Europe, hate speech is likely to be punishable if it refers to 'the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons (...)'. Van Dijk defines a macro-speech act as 'the global speech act performed by the utterance of a whole discourse and executed by a sequence of possibly different speech acts.' (1992, p. 215) Drawing on van Dijk's definition, this paper aims at demonstrating that hate speech should be categorised as a single macro-act of group harassment, executed by different types of speech acts of discrimination against a target group over a significant period, to nullify the dignity of the members of such group. Specifically, this paper describes and explains the superstructure, the macrostructure, and speech acts that group harassment may embrace. The analysis is grounded in the critical analysis of hate speech laws in different jurisdictions-International law, Common law, Civil law, European law, and national laws. The paper breaks new ground in categorising hate speech as a single macro-act of group harassment, thus making visible in the eyes of legal practitioners the cohesion between the myriad of speech acts that form the macro-act. She has provided sworn testimony in over twenty cases relating to author identification, trademarks disputes, plagiarism detection, veracity evaluation, gender violence, and sexual harassment.

References

Constitution Annotated. *Analysis and interpretation of the US Constitution. Amdt1.2.3.2.1. Fighting words, hostile audiences and true threats: Overview*. Retrieved on 14 January 2021 from https://constitution.congress.gov/browse/essay/amdt1-2-3-2-1/ALDE_00000742/

Council of Europe. *No hate speech movement*. Retrieved on 14 January 2021 from https://www.coe.int/en/web/venice/hate-speech-movement

Van Dijk, T. A. (1992[1977]). *Text and context: Explorations in the semantics and pragmatics of discourse*. London: Longman.

Keywords: hate speech; group harassment; macro-act; speech act

Biodata

Victoria Guillén-Nieto is a Tenured Associate Professor of Applied Linguistics at the Department of English Studies at the University of Alicante. She lectures forensic linguistics in the *Masters in English and Spanish for Specific Purposes* and the *Masters in Forensic Sciences and Criminal Investigation*. She is currently directing the *Dual Masters in English and Spanish for Specific Purposes and Forensic Linguistics*, co-organised by the University of Alicante and the East China University of Political Science and Law (ECUPL) in Shanghai. In September 2019 she was elected President of the *International Association of Language and Law* (ILLA) for Linguistics. Her research interests are mostly in forensic linguistics (language as evidence). She is the author of Gender-based violence and the mediatization of the law (In F. Vogel (Ed.), *Legal linguistics beyond borders: Language and law in a world of media, globalisation and social conflicts*, pp. 315-338. Duncker & Humblot, 2019). Defamation as a language crime: A sociopragmatic approach to defamation cases in the High Courts of Justice of Spain (*International Journal of Language & Law (JLL)*, *9*, 1-22, 2020); The role of context in plagiarism detection: The case of a professional legal genre (*Ibérica*,

40(1), 101-122, 2020), 'What else can you do to pass…?' A pragmatics-based approach to quid pro quo sexual harassment (In J. Giltrow, F. Olsen & D. Mancici (Eds.), *Legal meanings*, pp. 33-57. Walter de Gruyter, 2021), and has co-edited, with Dieter Stein, the volume: *Language as evidence: Doing forensic linguistics* (Palgrave, forthcoming 2021). At present, she is preparing two volumes: *Hate speech, linguistic approaches* for the series *Foundation in language and law* (J. Giltrow & D. Stein, (Eds.), Walter de Gruyter), and *The language of harassment: pragmatic perspectives*. (Lexington Books). Since 2009, Dr Guillén-Nieto has provided professional linguistic service as an expert linguist in Spain, Switzerland, Sweden, and the USA. She has provided sworn testimony in cases relating to author identification, plagiarism detection, statement veracity evaluation, gender violence, and sexual harassment.

Levels of sender responsibility for expression of harm in threats and hate speech

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Abstract

Social media have enabled fast, anonymous mass communication, including the communication of threatening and discriminatory utterances. This talk examines the ways such utterances linguistically express senders' level of responsibility for harmful acts referenced in online postings. Specifically, I investigate how the agent of the harmful act is realised in a dataset consisting of threats and hate speech in Danish. From a speech act perspective, threats entail that the sender intends to perform a harmful act towards an addressee (Fraser, 1998). Threats, therefore, belong to the class of commissive speech acts (Searle, 1979) by giving addressees an 'evil promise' (Christensen, 2019) to intimidate and dominate them (Gales, 2010). Threats can be expressed directly (1) or indirectly (2).

(1) vi brænder alt hvad I har

'we'll burn everything you own'

(2) Pas på Inger. Vi har dit navn og dit grimme ansigt nu

'Watch out Inger. We have your name and your ugly face now'

Hate speech degrades and dehumanises people by referring to their perceived group membership (ECRI 2016), and hateful threats are often mentioned as a particularly injurious use of language. Nevertheless, where threats require reference to some level of sender responsibility for a future harmful act, other kinds of hate speech never mention such acts or obscure the responsible party. Thus, whether addressed directly to the victim or a third party, hate speech achieves harmful effects by marginalising and silencing members of society. For this study, a set of 400 threatening and hateful messages containing a mention or implicature of future harm were coded for Sender, Addressee, Agent and Patient. As predictable from speech act theory, when the sender is the agent of a harmful act and the addressee the patient, the resulting language crime is

a threat. However, many variations from this pattern are possible and produce other speech act types, notably expressive (3) and directive (4) speech acts.

(3) Håber satme de bliver fanget og pines resten af livet...

'I fucking hope they'll get caught and tortured the rest of their lives...'

(4) Skyd dem!

'Shoot them!'

I will show the grammatical features used to express a lower level of sender responsibility and discuss whether expressives and directives referencing a future harmful act can be understood linguistically as incitements to violence.

References

Christensen, T. K. (2019). Indirect threats as an illegal speech act. The sign of the V: Papers in honour of Sten Vikner. Aarhus: AU Library Scholarly Publishing Services, 113-130.

ECRI, European Commission against Racism and Intolerance. (2016). General Policy Recommendation 15 on Combating Hate Speech. Strasbourg: Council of Europe.

Fraser, B. (1998). Threatening revisited. *Forensic Linguistics*, *5*(2), 159-173.

Gales, T. A. (2010). Ideologies of violence: A corpus and discourse analytic approach to stance in threatening communications. Dissertation. Davis: University of California.

Searle, J. R. (1979). A taxonomy of illocutionary acts. *Expression and Meaning: Studies in the theory of speech acts* (pp. 1-29). Cambridge: CUP.

Keywords: hate speech; threats; speech acts; obfuscation of agency; incitement to violence

Biodata

Tanya Karoli Christensen is an Associate Professor of Danish Language at the University of Copenhagen, specialising in the grammar and variation of spoken and written Danish. Her PhD thesis proposed a theory to account for the meaningful combination of grammatical paradigms within the domain of mood and modality. Her current research is in forensic linguistics with a project detailing the language and genre of threatening messages. An important contribution of this project is establishing an annotated corpus of threatening messages in Danish, part of which is open to the public. Dr Christensen teaches forensic linguistics at all levels in Scandinavia and the US and trains police and intelligence agents at home and abroad. In addition, she consults for police and attorneys— e.g., on authorship cases and cases of possible language crimes. Dr Christensen is a member of the Germanic Society for Forensic Linguistics, the International Association of Forensic Linguists, and the Copenhagen Linguistics Circle.

A critical discourse study of the portrayal of immigrants as non-citizens in a sample from the Spanish press

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Abstract

This study intends to contribute to critical discourse analysis (CDA) by observing how the discourse of the press affects public opinion through the way it represents immigrants (Bañón, 2019; Martínez Lirola, 2017; van Dijk, 2008, 2018). This paper aims to observe the main linguistic characteristics used by the press to portray sub-Saharan immigrants as non-citizens in a sample from the Spanish press. The hypothesis in this study is that the language used by the Spanish press represents immigrants as the other, excluded from the main group and perpetuates the `we-they dichotomy. The main research questions that I will attempt to answer in this paper are the following: 1) What are the main discursive characteristics used to represent migrants as non-citizens in a sample from the Spanish press? And 2) Up to what extent does the lexis contribute to depriving immigrants of citizenship? The corpus consists of the news items published in the digital editions of the newspapers El País and ABC from 1 January 2015 to 31 December 2020. The main discursive characteristics analysed to observe the representation of immigrants as non-citizens are lexis, the use of figures and the passive voice. Following the tradition of CDA, the methodology is mainly qualitative-descriptive. First, the model of social actors proposed by van Leeuwill be used to deconstruct immigrants as social actors. After that, the main characteristics of the language used in the news items, the headings and the captions will be analysed following critical discourse analysis. The analysis will show that the discourse of the press tends to depict migrants negatively, to reproduce the dichotomy 'we-they' and to represent immigrants as 'the other'. The findings indicate that the recurrent use of certain words to refer to immigrants, the use of figures that evoke a sense of invasion, and the representation of them as passive individuals do not promote integration but, on the contrary, the exclusion of immigrants from Spanish society, which thus promotes non-citizenship.

References

Bañon, A. M. (2019). Medios de comunicacion y procesos migratorios: reflexiones para el debate. In Comité Especializado de Inmigración (Eds.), *El fenómeno migratorio en España: reflexiones desde el ámbito de la Seguridad Nacional* (pp. 353-359). Madrid: Ministerio de la Presidencia, Relaciones con las Cortes e Igualdad.

Martínez Lirola, M. (2017). Linguistic and visual strategies for portraying immigrants as people deprived of human rights. *Social Semiotics*, 27(1). 21-38. doi: 10.1080/10350330.2015.1137164

Van Dijk, T. A. (2009). *Discurso y poder*. Translated by Alcira Bixio. Barcelona: Gedisa.

Van Dijk, T. A. (2018). Discourse and migration. In R. Zapata-Barrero, & E. Yalaz (Eds.), Qualitative Research in European Migration Studies (pp. 227-245). IMISCOE Research Series. doi: https://doi.org/10.1007/978-3-319-76861-8_13
Van Leeuwen, T. (2008). *Discourse and practice. New tools for critical discourse analysis*. Oxford: Oxford University Press.

Keywords: Sub-Saharan immigrants; critical discourse analysis; Spanish press; citizenship; journalistic language

Biodata

María Martínez Lirola is a Senior Lecturer of the Department of English at the University of Alicante, Spain and a Research Fellow at the University of South Africa (UNISA). Her main areas of research are Critical Discourse Analysis, Systemic Functional Linguistics and Applied Linguistics. She has published more than 100 papers and seven books, such as Main Processes of Thematization and Postponement in English (Peter Lang, 2009). She has been a visiting scholar in different universities such as: Manchester Metropolitan University (2019), University of Rome (2019), Facultad Latinoamericana de Ciencias Sociales en la República Dominicana (FLACSO-RD) (2018), Queens College, City University of New York (USA, 2017), Universidad del Norte (Barranquilla, Colombia, 2016), Universidad Autónoma de Santo Domingo (UASD, 2015), University of Nottingham, Malaysia campus (2015), University of British Columbia (Vancouver, Canada 2014), Carleton University (Ottawa, Canada, 2012), University of South Africa, UNISA (Pretoria, South Africa, 2012), University of Anahuac Mayad (Mérida, Mexico, 2008), University of Kwazulu-Natal (Pietermaritzburg, South Africa, 2006), and Macquarie University (Sydney, Australia, 2005). In addition, she has presented papers in international congresses all over the world.

'Yes means yes'? Analysis of the language of affirmative consent as a way to fight inequality, discrimination and sexual violence

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Abstract

Criminal law on sexual offences is without a doubt an important tool to protect the sexual freedom of individuals, having a direct effect on both targeting sexual violence and legal equality. In the presentation, I aim to analyse how using the concept of affirmative consent in criminal law affects its ability to serve these ends. I focus in particular on how the language used in affirmative consent standards can help combat legal discrimination and respond to sexual violence. There is no agreement as to how we should express and understand sexual consent and, in consequence, how the criminal law should tackle it. There is also a debate whether using an affirmative consent

standard will positively affect legal regulations. I argue that it will and that it can help fighting inequality, discrimination and sexual violence. Throughout history, criminal law's response to sexual violence did little to combat discrimination and often entrench it by following unequal social conventions. As argues Catharine MacKinnon, this conclusion applies specially to consent to sex, which legal standard did not 'hold consented sexual interactions to a standard of sexual equality (MacKinnon, 2003). Such a situation led to feminist scholars calling for more focus on the language of consent and communication between the involved parties (Pineau, 1989). According to the behavioral view of consent, consent always requires external behaviour/communication (Dougherty, 2019). One of the possible standards of such expression is affirmative consent, which is currently a subject of the most intense academic discussions (Schulhofer, 2017; Turkheimer ,2016). Although there exists no universally recognised definition of affirmative consent, it is generally understood as a positive, unambiguous and voluntary agreement to engage in (a given) sexual activity. I want to analyse the affirmative consent standard and its influence on legal equality. Adopting affirmative consent standard in criminal law will prove to have a positive, tangible impact on fighting inequality, discrimination and sexual violence. The presented argument will be based on a conceptual analysis of 'affirmative consent' and a comparative analysis of its legal interpretations. Provided that the presented hypothesis is correct, it could constitute a base for legislative changes in several legal systems.

References

Dougherty, T. (2019). Consent, communication, and abandonment. *Law and Philos, 38*, 387-405.

MacKinnon, C. A. (2003), A sex equality approach to sexual assault. *Annals of the New York Academy of Sciences* 989 (1 Sexually Coercive Behaviour: Understanding and Management), pp. 265-275.

Pineau, L. (1989). *Date rape: A feminist analysis*. *Law Philos, 8*, 217-243.

Schulhofer, S. J. (2017). Consent: What it means and why it's time to require it, 47. *The University of Pacific Law Review*, 665.

Tuerkheimer D. (2016). Affirmative Consent, 13. *Ohio State Journal of Criminal Law*, 441.

Keywords: sexual consent; sexual violence; rape; women rights; legal inequality

Biodata

Weronika Mincewicz-Podrecka graduated in law from the Jagiellonian University in Kraków, specialising in Criminal Law. She participated in international legal competitions and exchanges (Philip C. Jessup International Law Moot Court Competition, Erasmus+ at Leiden University). Her research interests involved sex crimes, feminist legal theory, sociology of law and cybercrime. In particular, she has been focused on the subject of consent in sexual relations. She is interested, among others, in issues such as affirmative consent standard and its implementation into criminal law regulations; social and criminal law interpretations of sexual consent; the importance of defining sexual consent in the context of sex crimes and sexual violence; relational and communicative aspects of sexual consent; legal limitations of capacity to give valid sexual consent, the effect of the use of alcohol/drugs on the validity of sexual consent; moral aspects of sexual consent; effectiveness of criminal law in protecting the

sexual freedom of individuals. In addition, she is associated with the British parliamentary debates circuit, took part in numerous tournaments and conducted training in debates and public speaking.

Conventional features of cyberhate targeting migrants in Lithuania

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Abstract

This study aims to outline some potential classifiers of hate speech (HS) in Lithuania by investigating pragmatic mechanisms and impoliteness strategies used in hateful online comments against migrants on Lithuanian news portals. Digital public domains have become toxic with verbal attacks on socially vulnerable groups, and migrants are one of the main groups targeted in HS. To counteract against HS (legally and through social activism), there have been numerous attempts to develop stringent criteria for (automated) HS identification. However, there is still no agreement on which features constitute the most optimal classifiers and in which language (s) they are most effective. HS has been addressed from various perspectives, including discourse analysis, corpus/computational linguistics, and pragmatics. In the latter approach, there has been a recent upsurge in researchers' concern with impoliteness strategies, such as mock politeness (Taylor 2015), name-calling (Vasilaki 2014), and the general phenomenon of impoliteness proposed by Culpeper (2011). These categories have proved effective when dealing with impolite behaviour in general and, as the current paper aims to show, can be used when studying abusive content in hateful comments. This study examines discrimination against migrants in internet comments by posing the following research questions: (1) What conventional impoliteness formulae/strategies are used in Lithuanian comments? (2) How much flexibility and creativity do these conventional structures allow? What remains relatively stable and can be used for automated identification of hateful content? The data used for this study includes 734 comments (totalling 51 017 words) written in response to news reports on issues related to migrants. The analysis takes a primarily qualitative approach and applies Culpeper's (2011) paradigm of impoliteness. The main impoliteness strategies identified in this study are insults: personalised negative vocatives, personalised negative assertions, and third-person negative references. Insults realised as third-person negative references dominate; they mainly promote the myth of `migrants as a threat, including highly degrading vulgarisms, criminalising and dehumanising migrants (literally and metaphorically). Negative vocatives and personalised negative assertions are less frequent but are more face-threatening than third-person references and thus more indicative of HS. Some other impoliteness strategies include pointed criticisms/complaints, message enforcers, condescension, silencers, dismissals, threats, and curses/ill-wishes. All these impoliteness categories indicate biased attitudes and acts of bias but do not necessarily point to the extreme forms of hate that could be qualified as hate crimes. However, impoliteness formulae can serve as useful identifiers of offensive content and high-risk texts.

References

Culpeper, J. (2011). Politeness and impoliteness. In K. Aijmer, & G. Andersen (Eds.), Sociopragmatics (vol. 5 of *Handbooks of pragmatics*) (pp. 391-436). Berlin: Mouton de Gruyter.

Taylor, C. (2015). Beyond sarcasm: The metalanguage and structures of mock politeness. *Journal of Pragmatics, 87,* 127-141.

Vasilaki, M. (2014). Name-calling in Greek YouTube comments. In C. Pérez-Arredondo, M. Calderón-López, H. Hidalgo-Avilés, & D. Pask-Hughes (Eds.), *Papers from the 9th Lancaster University Postgraduate Conference in Linguistics & Language Teaching*, pp. 90-110. Lancaster: Lancaster University.

Keywords: cyberhate; impoliteness strategies; internet comments; migrants; Lithuania

Biodata

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Claiming broken promises in US higher education: Evaluating the effect of asserting promissory estoppel on a Title-IX-based disciplinary action

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Abstract

This paper seeks to ascertain the effectiveness, within the US judicial system, of claiming promissory estoppel to challenge a private university's disciplinary action against a student for allegedly having harassed another student sexually. Unlike their public-university counterparts, students at private institutions may not contest the disciplinary action by claiming a violation of their constitutional rights to free speech or due process. Since some jurisdictions have deemed the student-university relationship as contractual, some students have pointed to the language in bulletins, handbooks, and

other institutional literature as the basis of a breach-of-contract claim. Other courts, however, have disagreed about the contractual nature of the relationship. Therefore, the research question is whether these students could prevail via quasi-contractual avenues, in this case, via promissory estoppel. A well-pled claim would have these elements: (1) the private university made a clear promise to the student plaintiff regarding the investigation of allegations of student-on-student sexual harassment; (2) the student relied on that promise; (3) the university expected and foresaw the student's reliance; and (4) the student relied on the promise to his/her detriment. Title IX of the Education Amendments of 1972 forbids sex-based discrimination by US educational institutions receiving federal funds. In 2011, statistics showing the pervasiveness of sexual harassment on campus led the Department of Education ("DOE") to pressure these institutions into investigating complaints more vigorously as a condition of receiving the funds. Some legal scholars then commented about institutions overcorrecting to the point of chilling free speech and depriving the accused of due process. Although the DOE purportedly aimed at addressing these criticisms in 2020 with a set of legally binding rules, free speech and due process apply to actions by the government, represented here by public universities. This paper delves into a less-researched avenue for student plaintiffs to challenge a private university's disciplinary action against them due to an internal Title IX investigation. Courts will dismiss a student plaintiff's promissory-estoppel claim because of the high evidentiary bar to clear: showing a specific promise made by the institution. Judicial opinions issued in the last two years were searched by typing the keywords "promissory estoppel," "university" (or "college"), and "Title IX" into Westlaw's legal database. Thus far, the opinions seem to confirm the hypothesis. Universities usually exercise care in distinguishing between general information and specific undertakings when crafting the written literature aimed at prospective and current students.

References

Freeman, B. (2020). The Title IX contract quagmire. *Michigan Law Review*, *118*, 909-934.

Weigand, T. A. (2017-2018). Promissory estoppel's avoidance of injustice and measure of damages: The final frontier. *Suffolk Journal of Trial and Appellate Advocacy*, *23*, 1-86.

Keywords: Sexual harassment; Universities; United States; Language; Contract law.

Biodata

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legal. *Proceedings of the VIII SELM Conference*, Seville, Spain, 2018; Las coacciones expresivas en la Universidad Pública estadounidense. *Anales de Derecho, 35*(1), 2017. https://revistas.um.es/analesderecho/article/view/282251

When they immigrated in, our Language was wiped out: Examine the inequality and language ideology of legal discourse through public insult cases in Taiwan

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Abstract

1949, the Kuomintang immigrants came to Taiwan and eliminated Taiwan's native languages, making the judicial system still respect Mandarin and reject Taiwanese as the other. The Kuomintang brings Mandarin and portrays Mandarin as the 'national language' and gives it a more elegant and well-educated image. The above practices have made Mandarin the only language used in official documents. Does the use of Mandarin as the main language reflect the unequal power of language? In addition to the frequency of language use, do judicial activities in Taiwan also contain language ideology (Woolard & Schieffelin, 1994)? This article first analyses judicial documents and legal terms with CDA aspect (Fairclough & Wodak, 1997) and examines the phenomenon that they adopt Mandarin and exclude Taiwanese, reflecting the phenomenon of diglossia (Ferguson, 1959). Not only does the official document lack any record of using Taiwanese, but it also does not allow Taiwanese to appear even during court proceedings; however, English translations can be seen in important judicial documents, which further proves that only languages with high authority and political power can be seen in legal discourse. By pointing out that the foreign language education of famous law schools in Taiwan only provides English, German and Japanese, this article argues that this is related to the 'colonial character' that has long been internalised in Taiwan's legal profession society. This aspect has caused the judicial system to use the country's language to transplanted the law as the main language from academic to trial practice, and very little attention was paid to domestic language issues. What is more, by analysing the legal reasoning of the Public Insults, this article finds that judicial practitioners hold the ideology showing 'Taiwanese is relatively vulgar'. The judge only confirmed its 'formal semantics' by looking up the dictionary and ignored the context, treating many Taiwanese lexicons as insults. Many native speakers of Taiwanese do not have higher education, so they can only express their feelings in more direct and non-euphemistic terms. However, the state has treated these lexicons as insults through criminalisation, which has caused disparate impact discrimination (Primus, 2003). Since 2012, some courts of justice have begun to respect the linguistics profession and invited linguists to serve as expert witnesses. However, because of the inquisitorial system adopted in criminal trials in Taiwan, Taiwanese vocabulary is still regarded as 'insult' because it is regarded as 'inelegant' in these judgments mentioned above. Even if the courts have begun to have the concept of sociolinguistics, they still regard Taiwanese as a second-class language. Those who speak Chinese swear words will be forgiven because of their social context, but those who speak Taiwanese swear words will not. Finally, through analysing judgments with diglossia, pragmatics, and sociolinguistics, this article believes that because Taiwanese speakers suffer indirect discrimination, they can claim the constitutional Equal

Protection Clause and initiate constitutional lawsuits. In this way, there will be an opportunity to make Taiwan's native language protected by the law with unprecedented maximum degrees.

Keywords: critical discourse analysis; diglossia; language ideology; Taiwanese, disparate impact discrimination

Biodata

Ting-Wei Zhang is a graduate student in the College of Law at National Taiwan University, and double major in the Graduate Institute of Linguistics at the same time. Her research fields mainly include legal feminism, criminal law, criminal procedure law, legal history, phonology and sociolinguistics (Language and gender, lavender linguistics). Her interest lies in exploring how inequality in the law works, especially the gender inequality caused by patriarchy. Language inequality and ideology are also important concerns for me. Ting-Wei Zhang analyses how Taiwan's patriarchy has features from both East Asian culture and Western male power. She is committed to introducing Western feminism while making it localised and coexisting with East Asian culture. I argue there is also inequality in the language of the law, and this inequality is reflected in how the judicial system only respects certain languages in litigation and systematic benefits to some users of certain languages. I hope that I can use linguistic theories and tools to analyse legal language and expose its inequality. Furthermore, ideology will expand the scope of linguistic research and add discoveries to generalised jurisprudence research.