Area 9. Discourse analytic approaches to power and justice in language and law

A danger rooted in power: an etymological exploration of the conceptual origins of dangerousness

Author: Dyango Bonsignore Fouquet (d.bonsignore@ua.es)

Abstract

This paper aims at reflecting on the long-standing but often dismissed theoretical insights that lie in the etymological development of words and their related concepts, focusing on the widely problematic notion of dangerousness. From a conceptual standpoint, the recent legal and theoretical approaches to dangerousness have been somewhat utilitarian, merely reflecting or taking for granted the framework provided by the existing regulation. This problem has had the side effect of fueling critical scholarship, providing insights on the effects of such 'naïve' approaches from a power-knowledge perspective (Foucault, 1975). The problem is unsurprising, considering that dangerousness, especially when it is ascribed to individuals, is necessarily a relational concept. This issue begs the question of who is endangered, to what extent, under which conditions is it legitimate to label someone as dangerous, and which kind of power relations does this entail. This problem has been reflected in many discussions, such as the debate between security scholarship on terrorism and critical scholars on State terror, the discussion over crimes and social harms promoted by semiology scholarship, or most classically, the back-and-forth argument about the construction of mental illness as inherently dangerous (Erlenbusch, 2018; Hillyard & Tombs, 2004). Although there is no ready-made answer to these recurring issues, it is hypothesised that, regarding the concept of dangerousness, valuable insights can be gained from examining its etymological formation. Retracing the formation of the contemporary English and French terms 'danger' and the Spanish equivalent 'peligro' should show how many of the long-standing theoretical debates have been encapsulated in their evolution. Some scholars have suggested this possibility on rare occasions without devoting extensive attention to the subject (Rennie, 1978). Method: To continue this acknowledged but scarcely followed path of inquiry, the specialised literature on the etymologies of the words mentioned above must be examined to unearth the underlying characteristics that have been historically tied to the idea of danger and dangerousness. This issue, in turn, should be connected with the contemporary debates through a systematic examination of legal and criminological theory on the subject. Tracing back dangerousness to periculum and dominium portray it as a relational concept inherently tied to certain assumptions on the social distribution of power. Relatedly, it should illustrate that much of the polarisation of the debates mentioned above must be conceived as inherent to the dangerousness label, as inseparable oppositions inscribed in the type of social reality that such label tries to grasp.

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Keywords: dangerousness; crime; etymology; dominium

Biodata

Django Bonsignore-Fouquet is Tutor in Criminal Policy at the Department of Public International Law and Criminal Law of the University of Alicante. He graduated in Criminology in 2014 and holds a Masters in Crime Analysis and Prevention (2015) and a Masters in Legal Argumentation (2019). He has been a PhD candidate since 2017, with a research thesis on the historical formation of dangerousness in modern political and criminological thought, partially funded by the Spanish Ministry of Education. His main research interests concern the history of criminological thought and practice and the genealogy of contemporary visions of dangerousness. He has also been working on social harm theory andz, criminal risk assessment and judicial decision-making, and Artificial Intelligence & Criminal Law. He has published several peer-reviewed articles and book chapters on the topics mentioned above and participated in several conferences over the last few years.

EU data protection (and) legal language: Can legal linguistics shed light on the debated concepts of EU data protection law?

Author: Olga Gkotsopoulou (olga.gkotsopoulou@vub.be)

Abstract

From several US courts adopting corpus linguistics to decipher the ordinary meaning of words that spark controversy during court proceedings to robojudges built with natural language processing tools, the field of legal linguistics appears to gain more ground in applied theory worldwide. This paper aims to explore the EU data protection law through the lenses of legal linguistics to improve legal understanding and certainty. Several scholars have already addressed the peculiarities of EU legal language in a general context (institutional and judicial), such as translation and the usage of EU procedural languages. Other scholars have addressed the issue in a context-specific manner, for instance, concerning EU competition law. Nevertheless, although there are studies about the history and foundations of EU data protection law, there are no holistic and conclusive studies that extend legal, linguistic analysis upon it, except a very limited number of studies concerning exclusively specific concepts.

Therefore, I aim to address this gap by asking in which ways the special regime of the EU legal language, on the one hand, and the advances in society, science and technology, on the other, impact the terminology strategies of decision-makers in data protection law, triggering a variation in the phraseology used. I further examine the relationship between those variations and the different stage of the life-cycle of a legal text, namely the law-making procedure at the EU level, the CJEU case law, the documentation produced by the European Data Protection Board and the drafting of privacy policies by data controllers. The case studies will generate usage patterns and reveal discrepancies and textual inconsistencies with semantic significance both at the EU and Member State level and potentially good practices and mitigation mechanisms. First, I will revise the primary concepts of EU data protection law, such as the terms 'data subject' and 'personal data'. Second, I will provide a selection of other words which appear to be of particular importance, such as 'adequate', 'meaningful' and 'sensitive' and their context of usage. At the next step, I will map the factors that play a role in developing the EU data protection legal language. To achieve this, I will use linguistic tools and methods to study issues relating to definitions, vagueness and ambiguity in law-making, legal interpretation and application—specifically corpus-based analysis using existing and newly created corpora. All in all, my study—as part of a bigger on-going project - aims to improve the empirical understanding of the EU data protection legal language and enrich data protection law with insights from the fields of legal and sociolinguistics, concluding terminology and interpretation of key concepts, that go beyond the current state-of-the-art. This issue would raise awareness around the impact of terminological decisions during legislative and judicial activity and the communication between data controllers and data subjects and the national regulators.

Keywords: data protection law; personal data; corpus linguistics; key concepts; legal language

Biodata

Olga joined the PhD programme at LSTS at the VUB Faculty of Law and Criminology in June 2018. Her PhD research focuses on the EU data protection legal language. She currently works on the projects Cyber-Trust (Advanced Cyber-Threat Intelligence, Detection, and Mitigation Platform for a Trusted Internet of Things), PROTEIN (Personalised nutrition for healthy living) and DPL X Covid 19 (Data-driven approaches to Covid-19 & Data Protection Law). For the latter, she additionally contributes to the Data Protection Law & Covid-19 Observatory. She holds a Bachelor of Laws from the National and Kapodistrian University of Athens, a Master of Laws in International Human Rights and Humanitarian Law from the European University Viadrina and an Advanced Master of Laws on Intellectual Property and ICT Law from KU Leuven. During her undergraduate studies, she was a visiting student for a semester at the University of Helsinki. More information can be found on: https://lsts.research.vub.be/en/olga-gkotsopoulou

Unfair terms in privacy policy documents. Applying AI and corpus linguistics methods in the CLAUDETTE project

Authors: Dorota Kiebzak-Mandera (dorota.kiebzak-mandera@ijp.pan.pl); Krzysztof Loboda (krzysztof.loboda@uj.edu.pl); Giovanni Sartor (Giovanni.sartor@eui.eu)

Abstract

This paper aims to explore possible ways of improving automated detection of unfair terms (cf. Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts) in Privacy Policies texts (PP) by using corpus linguistics tools. Our investigation constitutes part of the CLAUDETTE project - Machine Learning Powered Analysis of Consumer Contracts and Privacy Policies (http://claudette.eui.eu/). As the initial results have indicated, the system developed within the CLAUDETTE project could prove a valuable tool for lawyers and consumers alike. However, most research conducted so far pertains to Terms of Service and the previously proposed promising strategies have turned out less effective in the case of Privacy Policy (PP) texts. We conduct multiple linguistics analyses using corpus linguistics methods, including analysing the frequency of lexical and syntactic items, syntactic complexity, lexical diversity and density. We aim at balancing the corpus under analysis. At the moment, it consists of PP texts of varying origin and representing different legal systems (common law vs continental law) and various end-users of goods/services and target recipients of the texts in question or countries where the companies are headquartered. The insights from our preliminary investigation corroborate the hypothesis that PP texts are heterogeneous, primarily due to the factors mentioned above. Detecting and defining specific linguistic features of PP texts should allow us to detect and define specific ways (semantic, syntactic, pragmatic) of expressing unfair terms in individual groups of PP texts, and thus to improve automated detection of such terms. Our investigation will also contribute to the discussion to define the concepts used in the context of 'unfair terms': transparency, readability, ambiguity, vagueness and other associated concepts found in dictionaries and the legal literature on unfair terms. The terms mentioned earlier—regardless of their semantic scope—are often used interchangeably and inconsistently, even by the same authors. We explore the extent to which such interchangeability is justified and which of the terms used are in the horizontal relation (synonymy) and show a vertical dependence (hyponymy). Both relations limit the interchangeable use of terms. Without an attempt at resolving these semantic issues, the discussion on unfair terms can often prove unsatisfactory.

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Keywords: unfair terms; Privacy Policy, automated detection; AI; corpus linguistic analyses

Biodata

Dorota Kiebzak-Mandera, PhD, is a linguist and a psycholinguist. She is employed at the Polish Academy of Sciences, the Institute of Polish Language, and the Silesian University, the Department of Law and Administration, and the Doctoral School of the Silesian University. Her scientific interest originally concerned the process of language acquisition by mono- and bilingual children. Her psycholinguistic studies were conducted mainly based on corpus linguistics methodology. In 2017, she started to explore issues related to legilinguistics. She collaborated with the Austrian Academy of Sciences and the Leibniz-Zentrum Allgemeine Sprachwissenschaft, Berlin, Germany. She took part in many national and international research projects, including EU COST Actions (COST Action33, COST IS0804). In 2020, she started collaborating with the European University Institute, Florence, Italy, and the Institute of Law of the Polish Academy of Sciences within the project Citizen empowerment through online terms of service review: an automated transparency assessment by explainable AI, financed by the Polish National Science Centre, which is related to the CLAUDETTE project (http://claudette.eui.eu/). In the project, she is responsible for the linguistic part of the research.

Krzysztof Loboda is a Professor of Language Processing Technology and Specialised Translation. Since 2010, he has been a staff member of the Chair for Translation Studies, Jagiellonian University, Cracow, Poland. Krzysztof earned an MA in Translation Studies to further pursue PhD studies in linguistics. He also completed postgraduate studies in Research Project Management and training in Term Extraction and Management at Imperial College London. Before joining the Jagiellonian University staff, he worked as a full-time translator and reviser of legal provisions, official documents, Internet and audiovisual materials for the bodies and institutions of the European Union. Manager and member of translation teams involved in the localisation of software and translation of specialist texts. Former language tools coordinator at the Faculty of Philology, Jagiellonian University. He teaches legal translation, translating for EU institutions and translation technology courses at masters and postgraduate studies in the Institute of Linguistics and Translation, Jagiellonian University. His research interests include natural language processing, neural machine translation, terminology management and specialised translation, cognitive linguistics and corpus linguistics.

Giovanni Sartor is a Professor of Legal Informatics at the University of Bologna and a professor of Legal informatics and Legal Theory at the European University Institute of Florence, Italy. He obtained a PhD at the European University Institute (Florence), was a researcher at the Italian National Council of Research (ITTIG, Florence), held the chair in Jurisprudence at the Queen's University of Belfast and was Marie-Curie professor at the European University of Florence. He has been President of the International Association for Artificial Intelligence and Law. He received an ERC-advanced grant (2018) for the project *Compulaw*, on which he will work from 2019 until 2024. His research interests include legal theory, logic, argumentation theory, modal and deontic logic, logic programming, multiagent systems, computer and Internet law, data protection, e-commerce, law and technology, aviation law, human rights. Among his books are: *Leibniz: Puzzles in the Law* (Springer 2013), *Corso di Informatica giuridica* (Giappichelli, 2010), *Legal reasoning: A cognitive approach to the law* (Springer, 2005), The Law of Electronic Agents (Oslo: Unipubskriftserier,

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Once an alien has passed through our gates: non-citizens and their environments in two US Supreme Court oral arguments.

Author: Laura Michele Hartwell (Laura.Hartwell@ut-capitole.fr)

Abstract

People arriving or having entered the United States have a wide range of life experiences and legal statuses. In Zadvydas v. Davis (2001) and Jennings v. Rodriguez (2017), Supreme Court Justices and Advocates label these populations according to their focus, such as 'dangerous criminal aliens' or '1225(a)(1) individuals'. These persons are also portrayed in vague, at times idealistic contexts, such as 'on the shores', contrasting to more realistic confirmations 'I have never seen [a detention centre] that looked particularly appealing to the average person'. This study analyses how these discursive perspectives play out as they contribute to swaying support toward a preferred conclusion (Johnson, Wahlbeck, & Spriggs, 2006; Sullivan & Canty, 2015). It adopts Felton Rosulek's (2015) attention to 'silencing, de-emphasising and emphasising' by lawyers in closing arguments, extending it to include contributions by the Justices. Non-pronominal terms defining members of these populations include 'alien/s' (124), 'people' (88), 'person/s' (68), individual/s (31), immigrant/s (11), 'somebody' (9), 'client/s' (8). These people are often portrayed in their actual or imagined physical environment:

S. G. Breyer: You've got me thinking [...] of somebody standing at the airport outside the gate or standing at -- outside the gate down at, say, in Mexico, or Canada, possibly. [...]. And he says: But I have a legal right, I think, to be in the United States. Very well, come in. Now he's physically in the United States. (Jennings v. Rodriguez, 2017).

In other instances, poetic expressions evoke an image of physical liberty that belies supervision of non-detained individuals:

A. Scalia: --if meanwhile he's wandering at large in the population. [...]

R. B. Ginsburg: --It's never at large, is it?

E. S. Kneedler: --Pardon me?

R. B. Ginsburg: [...] you use that expression in your brief. In fact, it's not wandering at large. It's under close supervision [...]. (Zadvydas v. Davis, 2001)

This study deconstructs the references by Advocates and Justices to the concerned people and places to reveal the mechanisms of their influential discursive processes.

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Keywords: US Supreme Court; immigration; legal discourse; oral arguments; detention

Biodata

Laura M. Hartwell is currently Director of the Lairdil Laboratory dedicated to teaching and learning languages for specific purposes. Her research interests include English for specific purposes and language teaching. She is a Full Professor at the University of Toulouse 1 Capitole in France, where she has been lecturing English for law and economics since 2017. At the 2019 ILLA conference, she presented her work on *Marks of positioning in Supreme Court oral arguments*. She continues doing research on the oral discourse of US Supreme Court Justices and Advocates—e.g., cartographic metaphors, which may draw limits on a person's rights, as one would draw limits on a map for purposes of gerrymandering. She previously adopted methodologies in corpus linguistics as an Associate professor at the Lidilem Laboratory in Grenoble, France, where she began teaching in 2003 after taking a Masters in Literacy at the University of San Diego in the United States.

'Discursive regulation' in social media: analysis of French parliamentary debates on 'manipulation of information' law

Author: Nadia Makouar (n.makouar@aston.ac.uk)

Abstract

Online content regulation is becoming an increasingly important issue for governments. Due to the power of platforms and numerous legal uncertainties, several countries are trying to reaffirm their position vis-à-vis the regulation of online hate speech and disinformation and struggle to find effective solutions to counter this phenomenon. For

example, Facebook has launched its 'Supreme Court' as a structure responsible for judging disputes over the content published by social network members. This aspect presents real issues for democracies and states and could lead to the challenge of states credentials and sovereignty. Indeed, there is a problem of mass and temporality regulation that does not allow many countries to regulate web content. In 2018, the French government enacted a law on disinformation content. Inspired by the German law (the NetzDG law, which entered into force in 2018), the law against the 'manipulation of information' has been highly controversial, in particular, because of the definition of 'false information' (Hochmann, 2018; Mouron, 2018). The parliamentary debates (part of them have been already explored) show that these debates about 'false information' on social media are crucial for protecting its users and freedom of expression. Our study on French parliamentary discourses focuses on the evolution of the legislative discourse around the notion of 'false information'. Indeed, our research questions revolve around two aspects: 1) how the language of law (or legal language) aims to norm the online discursive practices and 2) how the digital space and the platforms are defined during these debates. In order to highlight these linguistic dynamics and by using corpus linguistics tools and argumentative theory, we consider the different enunciators and the different political sides involved in the development of discursive norms and analyse expressions of controversies, doubts, adjustments regarding the 'discursive regulation' on social media.

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Keywords: parliamentary discourse; discourse analysis; fake news; social media

Biodata

Nadia Makouar is currently a Research Associate in Forensic Linguistics at the Centre for Langage and Law at Aston Institute for Forensic Linguistics (AIFL, Aston University, Birmingham). She previously served as a postdoc at Université de Lorraine

(France) as part of the Citizens' Open Language and Knowledge project. She worked on hate speech against migrants and its relation with online mistrust and conspiracy discourses. She also served as Lecturer in Corpus Linguistics at Université de Cergy-Pontoise. Her research interests at the Centre for Langage and Law concern legal discourses and genres related to internet content regulation. She particularly investigates terminologisation processes of law concepts related to hate speech, fake news and online disinformation in Europe. The objective is to enhance the conceptualisation and normativity of legal terms and dynamics of norms fixation. Her analysis draws on theoretical and conceptual tools from discourse analysis, interpretive semantics and corpus linguistics (contrastive and structuring approaches).