

# Plenary talks

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## Hate speech in Spain: limits in criminal law and practice

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### Abstract

In Spanish criminal law, the commission of common offences for reasons of hatred or reasons of discrimination results in an aggravation of responsibility. In addition, acting for the said reasons or motives can transform certain behaviours in principle neutral—i.e., not offences—into criminal conduct. In the former case, the regulatory instrument to aggravate liability is a cause of aggravation applicable to any compatible crime. In the latter, certain behaviours can be, according to the law, considered hate crimes or crimes of discrimination. It should be noted that not all these crimes are committed through verbal attacks—hate speech, nor is Spanish criminal law limited only to protecting immigrants. However, the fact is that the crimes of hate speech registered in Spain have affected, above all, foreign victims belonging to particularly vulnerable groups. However, although criminal law is applied in these cases, the reasons, the category and the scope of “hate crimes” are controversial, which gives them a certain instability when it comes to their interpretation. This issue can have consequences in practice before the judge. In particular, concerning proof, difficulties are evident insofar as criminal punishment—or the increase in a sentence, in the case of aggravating circumstance—depends on a determined motive of hatred, that it will be necessary to verify through the analysis of the language, the circumstances of the discourse and those regarding the accused, nevertheless, also due to the vagueness of the expressions that the law uses when describing the behaviours, particularly in the case of hate crimes. Furthermore, finally, because it is debatable whether it is enough to utter expressions with a certain motive of hatred without requiring any harmfulness or at least dangerousness to the message. The importance of reflection on these issues is essential to know the possibilities and limits of criminal law against these behaviours. This will be the main object of my presentation.

Keywords: hate crimes; hate speech crimes; limits; immigrants

### Biodata

Antonio Doval Pais graduated in Law with special distinction from the University of Alicante (1988), where he is currently Professor of Criminal Law. He teaches courses of Criminal Law (Degree in Law) and Criminal Policy (Degree in Criminology). After his graduation, he obtained a research grant from the *Deutscher akademischer*

*Austauschdienst* (DAAD), for a research stay at the Max-Planck-Institut für ausländisches und internationales Strafrecht, Freiburg im Br., Germany (1991-1992) to prepare his doctoral thesis, which he defended at the University of Valencia under the title: *Food Fraud: Historical Evolution and Essential Elements of the Criminal Protection System* (1995), and for which he also obtained a special mention from the University of Valencia. He taught at the University of Valencia from 1992 to 2004, after which he returned to the University of Alicante. He has written three books, numerous articles and other contributions to books. Prof. Doval has published extensively on criminal law issues and is an active member of the following professional associations: *The International Association of Penal Law*, *The European Society of Criminology*, *Crime Policy Studies Group* (Spain) and *Fundación Internacional de Ciencias Penales*. His curriculum vitae is available at: <https://cvnet.cpd.ua.es/curriculum-breve/es/doval-pais-antonio/25814>

## **Circumstances, context and contextualisation: addressing referentialism in law's approach to language**

Prof. Dr Diana Eades

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### **Abstract**

Communication, meaning and understanding are at the heart of both legal processes and sociolinguistic endeavours. For more than half a century, legal scholars and practitioners, as well as linguists and interpreters and translators, have recognised problems for many people in understanding legal language, with obvious consequences for equal justice. The Plain Language movement of the last four decades shows the impact of synergy between professionals in language and linguistics. However, legal language and understanding problems are much bigger than lexical, grammatical and legal complexity, textual cohesion, and layout of written documents. For example, sociolinguistic and linguistic anthropological work has recently been shining a light on the role of particular linguistic ideologies—socially, culturally, and historically conditioned meta-level ideas about language (Blommaert 2005, p, 253, Mertz & Ford, 2016, p. 10)—in compromising the promise of equal justice, particularly in twenty-first-century multilingual and multicultural societies. This talk will focus on the law's referentialist ideology of language and its impact on possibilities for equality in the legal system. I will argue that sociolinguistics can contribute to shifting the law from its frequent reliance on the referentialist approach to language and meaning. Arguably, the law's attention to 'circumstances' in certain legal domains, such as sentencing, needs to be taken up and expanded in other areas of law to embrace a sociolinguistically-

informed notion of context and contextualisation in meaning. This argument will be situated in the wider understanding of how fundamental flaws in the delivery of justice can be exposed, and to varying degrees addressed, when the legal system pays attention to how it fails members of minority groups, including second-language speakers, people from different cultural backgrounds, and children. While these endeavours in the law start with the premise that the social and cultural 'circumstances' of certain individuals cannot be ignored, the next step is recognising the dynamic process of contextualisation in interaction. This aspect will be illustrated with current work with co-author Susan Ehrlich on how attention to context and contextualisation in the interactive, discursive processes in consent-seeking exchanges can reveal compliance mistaken for consent in a range of legal settings. The talk aims to build on important contributions to understanding referentialism in law by several scholars, including Elizabeth Mertz, Larry Solan, the late Peter Tiersma†, Janet Ainsworth, Catherine Gruber, John Haviland and Susan Gal. Examples will be drawn from cases and initiatives in law, primarily, but not exclusively, from Australia.

Keywords: referential language ideology; context, contextualisation; equality; consent

### Biodata

Dr Diana Eades (Adjunct Professor, University of New England) is a critical sociolinguist whose main research in the last 35 years has examined communication with, to and about Australian Aboriginal speakers of English in the legal process. Her books include *Aboriginal English and the Law* (1992, Queensland Law Society), *Courtroom Talk and Neocolonial Control* (2008, Mouton de Gruyter), *Sociolinguistics and the Legal Process* (2010, Multilingual Matters), *Aboriginal Ways of Using English* (2013, Aboriginal Studies Press) and *Discursive Constructions of Consent in the Legal Process* (2016, Cambridge University Press, co-edited with Janet Ainsworth and Susan Ehrlich). Diana has provided expert evidence in criminal and civil cases in courts and tribunals in three states and the Northern Territory. She also applies sociolinguistic research in training lawyers and judicial officers in communicating with Aboriginal people in the legal process. From 1995-1999 she was President of the International Association of Forensic Linguists, and from 1990-1994 she was Vice-President of the Australian Linguistics Society. While working at the University of Hawaii, she was appointed (1999-2002) by the Chief Justice of Hawaii to the state Supreme Court Committee on Equality and Access to the Courts and reappointed in 2002-2005. Prof. Eades was co-editor of *the International Journal of Speech, Language and the Law* from 2006 to 2014.

## **Language-based methods for the study of discrimination and prejudice**

Prof. Dr Janet Giltrow

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## Abstract

Language-based study of discrimination and prejudice can bring to light what is in the shadows cast by legal and political infrastructure. It can measure extensions of that infrastructure: how far does it reach? In this talk, I will first compare, broadly, two methodologies for such study, their benefits and also the limitations of each. One method has a wide socio-political horizon and also the capacity for closer analysis of speech events. This kind of analysis can demonstrate and bring to life the elements visible from a broad perspective. The second methodology attempts to avoid taking instances as demonstrations of higher-level, more general accounts of political formations. This approach tries to wait for findings to show up and not anticipate them. This can be hard to do, but it also can be worth the wait. When reticence is to some degree achieved, findings may show an unexpected and more complex range in the assumptions that activate and perpetuate discrimination. The findings will also be more indeterminate and thus harder to capture in substantive claims. In this talk, that method—the one with complex and possibly inaccessible findings—will be applied to brief passages taken from some responses of white-settler legal culture to indigeneity. Located in Canadian situations, these passages come from (but may not represent) modern readings of historical treaties, legal decisions on land claims and resource extraction. In addition, a passage will be taken from media representation of two recent legal events: police response to report of an indigenous man and granddaughter opening a savings account for the girl; legal response to and legal interpretation of First Nations blockades of city traffic to halt construction of a northern pipeline. Focussing on moments of written interaction rather than speech events, let alone trends in such events and others, this method calls for a big investment in research attention for what may be a small profit. The method relies on the inferential model inherited from Grice and extended, most thoroughly, in Relevance Theory. In RT, inference issues from assumptions mutually estimated. These assumptions are unspoken: in actuality and according to the model, underdetermined and indeterminate. Such findings may be too indefinite to refine and inform public discussion of, for example, ‘systemic racism’, a term which is current in Canada in mid-2020 but which may have expired by the time of this conference. Meanwhile, the methodology with a wider horizon may make more practical contributions to the public discussion.

Keywords: inference; indigeneity; legal culture

## Biodata

Janet Giltrow has published on writing in the research disciplines; genre theory and applications, including revisions of genre theory; measures of emerging genres; writings of 18<sup>th</sup>-century English traders in ‘first contact’ with indigenous peoples in the sub-arctic of (what is now) Canada; applications of Relevance Theory to genres, to reports of sentencing for violent crime and to present-day judicial readings of historic treaties between indigenous peoples and European colonists in (what is now) Canada. She has co-edited, with D. Stein, one volume of collected research on genres in the Internet, and author on the pragmatic turn in study of law and language, and is now co-editing with F. Olsen a collection on meaning in law and on language rights. She is working on a study of the response of white-settler legal culture to indigeneity. She was (2008 -2016) Senior Associate Dean of Arts, Academic, University of British Columbia, Canada.

# Language analysis for the determination of origin: Linguistic and legal problems

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## Abstract

Asylum seekers often do not have the required documentation (birth certificate, passport) to prove the truth of their claimed origin and persecution. In cases where the narrative is in doubt, many countries have been employing the controversial instrument of Language Analysis for the Determination of Origin (LADO). This consists of an interview conducted by a native or proficient speaker of one (or more) of the languages the refugee can be expected to speak, based on their claimed origin, and an analysis of this interview by someone with native and specialised knowledge of that language. The LADO technique has often been criticised from the point of view of various branches of linguistics (forensic linguistics, contact linguistics, sociolinguistics, among others) and legal scholars and practitioners. In particular, a 2014 ruling by the UK Supreme Court criticised how such reports are often presented and how they are used in court proceedings. My talk will present an overview of these debates and the principles that both LADO reports and their use by courts should adhere to, and what organisations providing such reports can and should do to ensure fair and reliable practice.

Keywords: language analysis for the determination of origin; sociolinguistics; forensic linguistics; multilingualism and language attrition

## Biodata

Monika S. Schmid obtained her PhD in English Linguistics in 2000 from the Heinrich-Heine Universität Düsseldorf. Her thesis was *First Language Attrition, Use and Maintenance: the case of German Jews in Anglophone Countries*. She has since held positions at the Vrije Universiteit Amsterdam and the Rijksuniversiteit Groningen. Since September 2013 she has been Professor of Linguistics at the University of Essex and, since 2018, Head of Department of Language and Linguistics. Her work has focused on various aspects of first language attrition. She has published two monographs and edited several collected volumes and special issues of journals on this topic, most recently the Oxford Handbook of Language Attrition (2019). She has received funding from various sources, including the Deutsche Forschungsgemeinschaft, the Dutch National Science Foundation (NWO), ESRC and AHRC for her work. Her website, <https://languageattrition.org>, collects information on language attrition and how to study it for non-specialists and the research community.

# The discourse of social movements

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## Abstract

Social movements have been studied extensively, especially in sociology, with some contributions from Political Science and Social Psychology. Although especially since the Cultural Turn in Social Movement (SM) studies since the 1980s, SM data are often discursive, their analysis has seldom been inspired by the theories and methods of 50 years of Discourse Studies. As part of a long-term, multidisciplinary project on Social Movements, Discourse and Cognition, the present talk will examine some of the properties of the solidarity discourses of the Refugees Welcome movement, emerging in several countries in Western Europe after the arrival of hundreds of thousands of refugees, especially from Syria, in 2015.

Keywords: social movements; discourse; discourse studies; refugees welcome

## Biodata

Teun A. van Dijk was professor of Discourse Studies at the University of Amsterdam until 2004, and since 1999 professor at Pompeu Fabra University, and Founding Director of the independent Centre of Discourse Studies, Barcelona since 2017. After earlier work on generative poetics, text grammar, and the psychology of text processing, his work since 1980 takes a more critical perspective and deals with discursive racism, news in the press, ideology, knowledge, context, antiracist discourse and social movement discourse. He is the author of several books in most of these areas. He founded and edited six international journals, *Poetics*, *Text* (now *Text & Talk*), *Discurso & Sociedad*, *Discourse & Society*, *Discourse Studies*, and *Discourse & Communication*, of which he still edits the latter three. His last monographs in English are *Ideology* (1998), *Racism and discourse in Spain and Latin America* (2005), *Discourse and Power* (2008), *Discourse and Context* (2008), *Society and Discourse* (2009), and *Discourse and Knowledge* (2014). His last edited books are *Racism at the Top* (2000) (with Ruth Wodak), *Discourse Studies* (5 vols., 2007), *Discourse Studies* (2<sup>nd</sup> ed., 2011) and *Discourse and Racism in Latin America* (2009). Teun van Dijk, who holds three honorary doctorates, has lectured widely in many countries, especially Latin America. With Adriana Bolivar he founded the *Asociación Latino-americana de Estudios del Discurso (ALED)*, in 1995. For a list of publications, recent articles, resources for discourse studies and other information, see his website [www.discourses.org](http://www.discourses.org)