DEPARTMENT OF ENGLISH AMERICAN AND CELTIC STUDIES

UNIVERSITÄT BONN

Language as a social practice – Constructing (a)symmetries in legal discourse

abstracts

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Rabinstr. 8,
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Language as a social practice – Constructing (a)symmetries in legal discourse

Thursday, 07. September 2023		
09:00-09:15	Elisabeth Reber	*Opening and welcome*
09:15-10:15	Fabio Ferraz de Almeida	*Layers of asymmetry in producing and assessing cultural evidence at the International Criminal Court*
10:15-11:15	Elisabeth Reber	*Managing epistemic (a)symmetries in oral arguments over time*
11:15-11:30	Coffee break	
11:30-12:30	Alison May	*Law's symmetries: From 18th to 19th century courtrooms and the present*
12:30-14:00	Lunch break	
14:00-15:00	Claudia Claridge	*Negotiating legal concepts and procedure in the Old Bailey courtroom*
15:00-16:00	Theresa Neumaier	He did not threaten me, but I was frightened – *negotiating threats in historical trial discourse*
16:00-16:30	Coffee break	
16:30-17:30	Panel discussion "Does (a)symmetry in legal discourse mean inequality and injustice?"	

18:30	Dinner

Friday, 08. September 2023		
09:00-10:00	Susan Ehrlich (remote)	*Language ideologies and asymmetries in courtroom discourse*
10:00-11:00	Johanna Mattissen	*Legal discourse in the EU. What parliamentary questions to EU institutions tell us about language asymmetries and identity*
11:00-11:30	Coffee break	
11:30-12:30	Karin Luttermann	*Knowledge asymmetries in blog communication*
12:30-13:30	Janine Luth	*Law, linguistics and (changing) media culture*
13:30-13:50	Final discussion "How can we collaborate at Bonn and beyond?"; planning of edited volume and workshop closing	

Layers of asymmetry in producing and assessing cultural evidence at the International Criminal Court

Fabio Ferraz de Almeida, University of Jyväskylä

In this talk, I will discuss the construction of asymmetries in the context of the International Criminal Court. I will do so by examining the interactional and discursive resources mobilized in the production and assessment of cultural evidence in the trial of Ugandan rebel commander Dominic Ongwen. I am specifically concerned with the evidence submitted by the defence team on the role of local spirituality as part of a strategy to develop a notion of 'collective duress' that would exculpate the defendant. The analysis traces how this evidence is entextualized during testimony-taking, reviewing how distinct forms of asking and answering questions lead to the transformation of human experience and lay narratives into legal adequate material, which constitute the first layer of asymmetry. Next, I examine how the Trial Chamber's assessment and eventual dismissal of this entextualized evidence about spirit beliefs are grounded in specific patterns of re- and decontextualization, which form the second layer of asymmetry. Finally, I argue that counsels and judges at the ICC orient to a binary understanding of "believing" that fails to do justice to the complexity of navigating an internal armed conflict in which multiple normative orders compete for legitimacy.

Managing epistemic (a)symmetries in oral arguments over time

Elisabeth Reber, University of Bonn

During the oral arguments at the U.S. American Supreme Court (SCOTUS), the justices ask questions for the attorneys to have an evidential basis for their final vote and to form potential coalitions with other justices (Johnson 2004, Wrightsman 2008). Similarly, "formulations" are used to solicit legally relevant information from the suspect in police interviews (Ferraz de Almeida & Drew 2020). Informed by Diachronic Interactional Sociolinguistics (Reber 2021), this paper examines how the justices and attorneys manage epistemic (a)symmetries in the oral arguments at the U.S. American Supreme Court, specifically when referring to other parties' prior talk. Drawing on two datasets of audio recordings taken from the 1980s and 2000s, the study addresses the following research questions: Which participants use YOU SAY constructions and how? How have these constructions evolved over time? The analysis demonstrates that while being used by both justices and attorneys, YOU SAY constructions tend to be used more frequently by justices and serve different functions in the turns by attorneys and justices. A closer look at the justices' speech reveals an increase of forms as well as a functional change in I THOUGHT YOU SAID constructions from a repair initiator to a marker of affiliation and disaffiliation.

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Law's symmetries: From 18th to 19th century courtrooms and the present

Alison May, University of Leeds

Legal linguistic research to date has justifiably focused on the inherent asymmetries and inequalities that are present in courtroom interaction and trial discourse (e.g. Adelswärd et al 1987; Eades, 2012, 2016; Linell 1991; MacCoun 1988; Matoesian & Gilbert 2020; Ng 2013) and in cross-examination in particular (Baffy and Marsters 2015; Ehrlich 2015; Heffer 2018). While this focus on legal/lay asymmetry is vital to understanding the challenges faced by witnesses and defendants, it has obscured our view of legal symmetries in courtroom interaction as a social practice (but see Wright et al 2022). Responding to the provocative title of this symposium, I argue that the evolution from a prosecution-dominated process to one that is carefully managed to produce equality for adversaries is historically important. Using a combined corpus linguistic and discourse analytical approach and a corpus of 18th and 19th century trials from the oldbailey.org plus two 20th century ones, it examines law's symmetries across the centuries, arguing that the metaphor of the balanced scales of justice is justified. From symmetrical rhetorical patterning to balanced practices in time and space, the courtroom is an interactional space that seeks to maintain equilibrium in the pursuit of a fair trial. This paper, therefore, counterbalances the focus on asymmetry in courtroom interaction, by examining its antithesis.

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Negotiating legal concepts and procedure in the Old Bailey courtroom

Claudia Claridge, University of Augsburg

Both the right to certain specialised speech acts and the knowledge about which legal concepts may (not) apply in certain cases is distributed asymmetrically in court. Only lawyers may *object* and only judges may *overrule* in the modern courtroom, thus affirming the privileged 'expert' status of the legal professionals. In the historical courtroom, however, where lawyers were not always present (especially before 1832), victims could act as prosecutors and defendants be active in their own defence. Using such speech acts properly and similar procedural strategies requires legal experience that lay people did not usually have.

This contribution will use the *Old Bailey Corpus* (1720-1913) to see how such standardized speech acts (e.g. *I object, objection*) and metapragmatic references to or uses of legal concepts and norms (e.g. *evidence, law*) are distributed among speaker groups and across time. It will focus in on the surrounding context of such uses to investigate in what ways they are understood (or misunderstood) and how (un)successfully they are used by different speakers.

He did not threaten me, but I was frightened – negotiating threats in historical trial discourse

Theresa Neumaier, Technical University of Dortmund

In this paper, I investigate how threatening behaviour is portrayed and negotiated by different parties in Late Modern English trials. If a threat is brought to court, it must be re-enacted for the jury, which typically requires a quotation of the perceived threat (Johnson 2015, p.374; Clift & Holt 2007, p.7) As quoting is always evaluative (Bublitz & Hoffmann 2011, p.434), it can be described as a "highly selective and thus powerful resource of institutional meaning-making" (Johnson 2013, p.148). Focusing on a selection of cases tried at the Old Bailey I show that trial participants – prosecutors, defendants, legal experts, witnesses – employ different types of quotation to frame a speech event as (non-)threatening. While non-professional witnesses often rely on direct quotations with *say* as the preferred verbum dicendi, questioning by professionals during (cross-)examination frequently aims at making them choose more evaluative language, e.g. by adding intensifiers, adjectives, or markers of epistemic certainty or by choosing more specific verbs of speech (e.g. *threaten*). This finding is indicative of the different aims trial participants are pursuing in the courtroom. Furthermore, as for many prisoners professional counsel was only available after the Prisoners' Counsel Act (1836), it also reveals distinct power asymmetries between laypersons and professionals in the (historical) courtroom.

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Language Ideologies and Asymmetries in Courtroom Discourse

Susan Ehrlich, York University

Previous investigations of inequalities in courtroom proceedings have examined, among other things, the asymmetrical discourse structure of the courtroom and the way that it constrains the interactional practices of witnesses. Following Eades (2012), in this paper I make a case for investigating discursive practices in the courtroom in relation to language ideologies.

Adopting a case study approach, I examine a recent Australian sexual assault case (The Queen v. James Ronald Lennox, 2018) in which the complainant's expressions of non-consent were at issue.

Based on an analysis of the trial transcripts and audio-tapes of interactions between the judge and lawyers, I show some of the language ideologies that were generated in the trial and how they may have contributed to the jury's question to the judge and more generally to how the jury understood a crucial aspect of this sexual assault/rape case—whether or not the complainant freely and voluntarily consented to the sexual acts under investigation. More specifically, I argue that the interaction of various language ideologies—monolingual ideologies (Angermeyer 2008), raciolinguistic ideologies (Rosa and Flores 2017) and a referential transparency theory of language (Haviland 2003)—functioned to disparage the complainant's language and worked to construct it as an impediment to her communication with the accused.

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Legal discourse in the EU - What parliamentary questions to EU institutions tell us about language asymmetries and identity

Johanna Mattissen, University of Cologne

The language policy of the European Union, as laid down in Regulation No 1/1958, provides for currently 24 official and working languages, through which all Member States are represented with at least one of their national languages. In addition, the Charter of Fundamental Rights of the European Union, made legally binding by the Treaty of Lisbon, prohibits discrimination on grounds of language. The EU institutions, however, are entitled to determine how they implement language arrangements internally, and recent observation shows that the de iure and the de facto status even in the case of a restricted set of working languages differs. The European Parliament has adopted a full multilingual language policy with equal importance of all official languages of the EU. Its members (MEPs) have the right to put questions to the Council, the Commission and further EU institutions and bodies. An analysis of the questions raised during the last six decades concerning language issues shows a range of areas in which linguistic asymmetries in legal discourse in the broadest sense have been noted, both on national and on the EU levels, and both large-scale and in detail. The presentation will focus on the impact of the restriction of languages, discrimination against languages (including by technical devices), preference of languages, national language policies and handling of minority languages on the sense of identity and justice mirrored by the MEPs as representatives of their peoples.

Knowledge asymmetries in blog communication

Karin Luttermann, University of Eichstaett-Ingolstadt

Text linguistics is an established discipline in linguistics for describing written communication. The presentation focuses on blogs with particular reference to constitutional law and criminal law. In law, processes of production, transformation and transfer of knowledge take place in multiple forms and between varying persons. The internet-based form *blog* is a hybrid text type, between the poles of written and oral communication, which requires special consideration of knowledge asymmetries between the expert-lay actors. The subject of this presentation is the scienceblog on the topic of climate protest. Under the title "What is protest allowed to do?", a broad discussion on legal issues has developed. The aim is to work out the lay-specific forms of understanding and the jurisprudential constitutions of meaning that have a bearing on the discursive negotiation of e.g. *violence*, *disobedience*, *legitimacy*, *legality*, *the rule of law* in explicative and argumentative textual patterns. The extent to which experts make implicit knowledge explicit in the discursive construction and present knowledge asymmetries as something that can be overcome dialogically, i.e. to what extent and with what linguistic means non-experts are invited to approach the construction of expert-like knowledge structures, is to be made transparent through text-pragmatic analyses.

Law, Linguistics and (Changing) Media Culture

Janine Luth, University of Heidelberg

The lecture will show the (asymmetrical) relationship between legal experts and the media, which is also referred to as the fourth estate. First, it has to be asked whether and in which respect asymmetries exist and by which transformation processes they are mitigated. The communication of legal content to a broad public has been the subject of legal linguistic research for some time, but new questions arise because of the transformation of the public sphere and media structures. The lecture would therefore like to devote special attention to legal conflicts and social media. Two directions are to be considered: Legal initiatives as well as court decisions are discussed and criticized in social networks. However, social networks also create new legal conflicts since the boundaries of what can be said and shown must be negotiated. Case studies will be used to demonstrate both approaches to law and media culture.

To conclude the lecture, the workshop topic of asymmetrical structures will be brought to the fore once again: Exchanges on the internet were often expected to open up participation in democracy and law. However, this is now often viewed pessimistically: Does social media reinforce emotional barriers and aversion to authority? This hypothesis will also be tested on the basis of the case studies.

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