

LEGAL DISCOURSE, POWER AND PRAGMATICS

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Abstract

Since ancient times legal discourse has been of interest to both philosophers of language and lawyers. The paper seeks to reveal the interdisciplinary methods where language and law are intertwined. As a method of analysis, the author uses Critical Discourse Analysis (CDA) as a linguistic tool to show the different power relationships, the pragmatic peculiarities, and syntactic complexities of the language of the law. The author aims to investigate how the question-answer sequences of a cross-examination reveal inequality, domination and control in the court proceedings. A methodological approach to CDA, sociocognitive approach (SCA) provides linguistic means to examine the examples in question. The paper reveals how power is expressed in language use by analyzing the presuppositions, implicatures, speech acts and turn-taking sequences. Moreover, the author adds information with regard to cross-examination as a discourse genre.

Key words

legal discourse, Critical Discourse Analysis, power, pragmatics, sociocognitive approach, presuppositions, implicatures, speech acts, turn-taking sequences

1 Introduction

The underlying assumption of this paper is that language and law require an interdisciplinary approach to be investigated as a distinct discourse genre, i.e. legal discourse.

Law is most often considered as an oral activity: thus a good command of spoken language proves to be a necessary criterion to put a client's case strongly before a judge.

Austin's philosophical work (1962) on speech acts gave rise to many legal analyses which presumed a relation of an individual utterance to a formal system. Sociologists and discourse analysts approach legal discourse from different perspectives. They consider the differences in ideology, gender and social class and those between lawyer and client, which may result in power differences "in their relationships" (Wodak & Meyer 2008).

According to Kryk-Kastovsky (2006), the language of law has several pragmatic characteristics: firstly, the turn-taking system in court is similar to institutional settings. Lawyers initiate questioning, in contrast to everyday conversations, where both parties may ask questions and give answers. Secondly,

legal discourse deals with the nature, functions and consequences of language use in negotiation of social order. Thirdly, counsels use various questioning forms and strategies, which are revealed in the control of discourse. The latter socio-pragmatic principle can be considered as the sign of power differences between the parties.

2 Critical Discourse Analysis (CDA)

CDA seems to be a fruitful method for showing the inherent properties of legal discourse. According to Wodak and Meyer (2008), CDA considers language as a social practice and the context of language use as an essential means for revealing the underlying reasons behind peoples' activities. CDA understands discourses as forms of language taking part in organizing social life. CDA supports the need for interdisciplinary work to show how language works in organizing institutions and in exercising power. The focus in the perspective of CDA lies in the term 'critical', which means that social theory should be aimed to critique society. CDA emphasizes the need for critical knowledge to emancipate humans from domination and control. CDA focuses on the ways discourse produces social inequalities and domination. In other words, "CDA aims to investigate critically social inequality as it is expressed, constituted, legitimized, and so on, by language use (or in discourse)" (*ibid.*: 10). Power seems to be a central concept for CDA researchers. Many analyses attempt to reveal the language use of those in power, who are responsible for dominance and control.

CDA involves a wide spectrum of research strategies and theoretical backgrounds to prove its main assumptions. Among all, the SCA (sociocognitive approach), which is associated with the socio-psychological aspects of CDA, serves a sound basis for further analysis (*ibid.*: 26). SCA introduces the concept of mental representations of communicative situations. These models such as knowledge, attitudes and ideologies direct the pragmatic part of the discourse. Therefore, SCA uses the following linguistic markers in the analysis: implicit meanings such as presuppositions, implicatures, speech acts, turn-takings, and word order.

3 Legal pragmatics

Kryk-Kastovsky (2006: 14) claims that pragmatic notions, such as presuppositions, implicatures, and speech acts can be found in legal discourse as well as in everyday conversations. Thus, the study of legal pragmatics is concerned with the linguists' issues of pragmatic aspects of language use.

Pragmatic presupposition is an implicit assumption about a belief relating to an utterance whose truth is taken for granted. In the legal context, presuppositions are important means in interrogating clients about hidden facts or the truth of the case. Shuy (1998: 15) claims that presuppositions intimidate the suspect who may think that the interrogator may have known about his guilt.

Implicatures can be considered as the core concept of pragmatics. Grice (1989) makes a distinction between what is said by a speaker and what he/she implicates. According to Grice's classification, conversational implicature is based on the linguistic or non-linguistic context of the utterance, background knowledge and the assumptions that are evident to both speakers in the interaction. In this way, implicature is a pragmatic notion, which refers to what is suggested in an utterance. Legal discourse is peculiar from the perspective of pragmatics, as meanings have to be inferred from depositions, or witnesses' answers. Implicatures can be considered as useful tools for both interrogators to find out the truth and for witnesses to evade answers. According to Shuy (2004: 11) the counsel can use inferencing strategies with the help of implicatures to reveal the ambiguities present in the deposition of the witness.

Speech acts are the most frequently occurring pragmatic notions in legal discourse. As to the type of speech acts, speakers in legal discourse perform various performative speech acts, such as declaratives, representatives, commissives, and expressives (Searle 1975). Legal language is interwoven by these performative acts because legal utterances mean acting, not only descriptions. Danet (1980) demonstrates that representatives commit the speaker to the truth of the proposition, while directives are "the most prominent in legislation that imposes obligations" (*ibid.*: 458).

Exercising power is apparent in courtroom settings, where asymmetrical relations feature witnesses and defendants. Analyzing court trial discourse, Atkinson and Drew (1979) show that court examinations involve only question and answer sequences in contrast to everyday conversations. The turns of the examination are prelocated in one direction only: thus the interrogated party must not interrogate the interrogator. The power distribution seems to be apparent in this context, representing the one-sided control of power exercised by the men of law.

Interrogation in the legal context plays an essential role in pragmatics. Kryk-Kastovsky (2006) claims following Danet's (1980: 521) description that open-ended questions have the least control, while *wh*-questions, and leading questions (*yes-no* questions) have maximal control over the answers of the witness in the interrogating process. If the latter question forms are used as declaratives, they presuppose the truth of the utterance.

4 The trials of Rodney King: A chronology

The trials of Rodney King and the following riots captivated the whole world in the spring of 1991 and continued to provide evidence on power abuse, power, and racism not only for the world of courts, but also for the wider public for more than twenty years.

On March 3rd, 1991, King was pursued by Highway Patrol officers at speeds of over 110 mph. They attempted to arrest King when LAPD officers (Laurence Powell, Stacey Koon, Theodore Briseno, and Timothy Wind) intervened. King was beaten over fifty times with metal batons and finally was taken to hospital. As videotapes on the events were revealed, the FBI opened an investigation of the case. On March 7th, Los Angeles Police Chief announced that the officers would be prosecuted.

Following the district attorney's announcement that he would seek indictments against the officers from the grand jury, on March 2nd 1992, the jury of ten whites, one Hispanic and one Filipino acquitted the officers of all charges. Two hours later, rioting began in Los Angeles.

A new trial in 1993 began on the charge of violating the civil rights of Rodney King. The judge sentenced the officers to thirty months in a correctional camp.

In 1994, a civil trial ended with a jury awarding no money in damages to King.

5 Pragmatic analysis of the cross-examination: The cross-examination process

The cross-examination phase in a trial is peculiar from the point of view of pragmatics. The prosecutor is allowed to suggest answers or put words in the witness mouth in order to reveal the truth. According to Wellman (1997: 66), the purpose of the "cross" is to persuade the jury of the witness' bias and demonstrate the implausibility of the defendant's testimony. Therefore, the prosecutor should apply various pragmatic techniques to force a confession from the witness.

5.1 Presuppositions

The prosecutor built the cross on accusations with the help of presuppositions. He wanted to prove contradiction between the verbal, superficial commitment and the factual acts of the officer (Koon). The cross-examination started with questioning the credibility of Koon.

- (1) *Prosecutor Alan Yochelson: And when you gave directions to the Los Angeles police officers there, you take responsibility for all their actions, correct?*

Witness Koon: Yes, sir I take responsibility for all the actions.

...

Prosecutor Yochelson: When can you shoot somebody under LAPD policy?

Witness Koon: When they are eminent threat to you.

The prosecutor's presupposition is that Koon was not a responsible officer because he did not act according to the rules. King (the accused) was not a threat for him because he did not attack anybody. Koon's use of conditional mood makes his statement hypothetical, unreal: thus the prosecutor's presupposition has been proven.

- (2) *Prosecutor Yochelson: And what was Mr. King doing here that lead you believe that he was going to kill you?*

Witness Koon: It was my belief that he was under the influence of PCP. If he had grabbed my officer, it would have been a death grip.

Prosecutor Yochelson: He didn't grab anybody during these events did he?

Witness Koon: No, sir he did not.

This presupposition brings a discredit on the whole case: Whatever Koon claims people may think that truth is unimportant for him.

5.2 Implicatures

Implicature as a core concept of pragmatics cannot be explained by a syntactic rule, but by conversational principles. As already mentioned, implicatures are means for prosecutors to find out truth and for witnesses to evade answers.

The prosecutor's statement starts a dispute, therefore, it implicates an oppositional view of reality that exists in the testimony of the respondent. The prosecutor applies inferencing techniques (working out implicatures) to solve contradictions in the respondent's answers. The inferencing technique is based on the prelocated turns of legal discourse. As the interrogator owns the means to direct talk, he can draw conclusions that can be the basis for moral inferences.

In their talk on MBT, officer Powell refers to a movie titled 'Gorillas in the Mist' as a similar situation and participants to the night of the crime. This implicature is worked out by inferencing techniques to demonstrate the witness' bias. The prosecutor infers that the gorillas were African Americans in the movie.

- (3) *Prosecutor White: Now this incident that you are referring to, this last call, „right out of Gorillas in the Mist” – it involved a family of African Americans didn't it?*
Powell: Yes, it did.

Now, the prosecutor wants to know if the witness made a comparison between the movie and the night events. The prosecutor makes it clear that the witness understands the word “gorilla” in its metaphorical sense referring to people.

- (4) *Prosecutor White: Were there any gorillas round?*
Powell: I didn't see any.

The prosecutor's inference is almost perfect. He has proven that officer Powell called the African Americans “gorillas” based on a movie.

At this point, the prosecutor moves forward to justify that Powell used excessive force because he did not consider King as a human being.

- (5) *Prosecutor White: Alright, at any time during this evening did it through your mind this was not a human being that you were beating?*
Powell: No.

Finally, Powell makes a confession revealing that the prosecutor follows the right track.

- (6) *Prosecutor White: All right, he wasn't an animal, was he?*
Powell: No sir. Just acting like one.

Despite the negation of the officer, the prosecutor was successful in detecting the truth. The witness considered King to be an animal and consequently treated like an animal.

The inferencing techniques used by the prosecutor made the witness reveal the truth.

5.3 Speech acts

On cross-examination, the primary aim of attorney is to find out the truth of the case the witness may not intend to reveal. Prosecutor-witness communication involves a slightly different set-up of speech acts compared to Searle's (1975)

classification (declarations, representatives, directives, expressives and commissives). The example includes one speech act only restricting the dialogue to representatives.

Questioning by the attorney is often accusatory owing to the presuppositions based on the facts of the case. Accusations in the form of questions may take three types: declaratives, *yes-no* questions, and alternative questions. (Luchjenbroers 1997: 482). Declaratives as questions are powerful means to suggest the interrogator's exact knowledge of the topic: thus these forms are close to representatives. There is no way for the respondent to evade or give a different answer.

- (7) *Prosecutor Barnett: Alright, and so you lost control of Mr. King at that point?*
Witness Briseno: Yes, sir. I thought Mr. King was under the influence of a ... probably PCP.

The answers of the witness take the speech acts of the representatives which commit the speaker to the truth of the proposition.

- (8) *Prosecutor Barnett: And March 3, 1991, what was your occupation?*
Witness Briseno: Los Angeles police officer.
Barnett: As of that date, how long had you been a Los Angeles police officer?
Witness Briseno: Nine years...

5.4 The sequential organization of the cross-examination

Kryk-Kastovsky (2006) claims that one of the principal characteristics of courtroom discourse lies in achieving certain goals. The counsel should be brief, intelligible, and essential in questioning the witness and should make the strongest point at the beginning and end of the cross. The counsel needs to ensure that he asks leading questions to keep control of the witness. Atkinson and Drew (1979: 61) emphasize that the verbal exchange in court examination consists almost exclusively of question-answer exchanges in contrast to everyday interaction. The turn order is fixed; turn allocation is initiated by the interrogator and repairs come from the interrogated.

The asymmetrical power distribution is manifested in the turn-taking system of the dialogue. Only the counsels have the right to ask questions, the interrogated necessarily contribute answers. According to the analysis, some cases may contradict this principle, as demonstrated in the following excerpt:

- (9) *Prosecutor Terry White: While Mr. King was on the ground did you see any movements that you would describe as threatening .. to Officer Powell?*
Witness Briseno: Which time?
Prosecutor White: During these second series of baton blows.
Witness Briseno: No sir.
Prosecutor White: Did you see any movements by Mr. King that could be defined as aggressive?
Witness Briseno: No sir.

6 Conclusion

I hope to have come up with some illustrative evidence that the analysis of the pragmatic means used by the interlocutors and the sequential organization of the cross-examination contribute to detecting power exercised in legal settings.

On the one hand, the fixed turn order and the one-sided use of leading questions show the asymmetrical power distribution, on the other hand, the pragmatic tools, such as presuppositions, implicatures and speech acts are used to have the witness reveal the truth. Presuppositions may show the contradictory aspects of the deposition. Implicatures are powerful means for counsels to reveal the truth, and speech acts compel the witness to answer directly.

This fact, of course, does not mean that counsel-witness interaction is inevitably asymmetrical. As shown in the trial above, the witness may give witty replies or evade answers; therefore, the interaction is experiencing significant shifts towards the empowerment of the counsel. Nevertheless the pragmatic means owned by the interrogator entitle him to use the coercive linguistic tools to show power proving the crime committed by the defendant.

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