

Editorial Introduction

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Forensic Linguistics / Language and Law in Brazil and Portugal

While **forensic linguistics/language and law** has been an established academic discipline in the English-speaking world since the 1990s it came much later to the Portuguese-speaking world. The discipline is irremediably hybrid, bringing together as it does academics from two separate disciplines, linguistics and law. These disciplines are linked by their concentration on the same object, language use in legal contexts, but divided by their different analytic purposes and methodologies. For this reason, the hybrid discipline is institutionally fragile worldwide, with only the British universities of Aston, Cardiff and York having a critical mass of at least three permanent members of staff. Many lawyers and forensic linguists are alone in their institution, although the absolute number of academics and host institutions is growing encouragingly fast. For this very reason – institutional isolation – regular biennial international conferences, supported by the founding of the *International Association of Forensic Linguists* (IAFL) and the *International Journal of Speech Language and the Law* (IISLL) were crucial to the development of the discipline in the English-speaking world 1990s.

The flowering of the discipline in Brazil and Portugal in the last decade can be in no small part attributed to the development of a similar supportive infrastructure. In 2012 the University of Porto brought international forensic linguistics to Portugal by hosting the 3rd European IAFL Conference and the positive ripple effects of this stimulus were consolidated five years later when the university hosted the 2017 Biennial IAFL International conference – the largest so far. Also the Porto Faculty of Arts began offering an option in Forensic Linguistics within an existing Masters degree and in 2017 expanded the provision by offering a complete, at-a-distance, postgraduate degree.

The discipline began to develop in much the same way and at almost the same time in Brazil, where it is more often called language and law. In 2012 Virginia Colares organised

a language and law conference in the Catholic University in Recife at the end of which the (Portuguese speakers') Association for Language and Law (ALIDI) was founded with Virginia as the dynamic foundation President. The next year saw the first international ALIDI conference at the Federal University of Santa Catarina, in Florianopolis jointly sponsored by IAFL. In 2014 the present bilingual journal, *Language and Law – Linguagem e Direito*, co-edited in Brazil and Portugal, was founded to both facilitate access to international research and to generate an ever-growing archive of abstracts and research articles written in Portuguese. The discipline was reinforced when the AILA organising committee, scheduled as part of its triennial conference in Rio de Janeiro in 2017, a two-session Invited Symposium entitled *Innovations and Challenges in Forensic Linguistics*, for which over half the speakers came from Brazil and Portugal. Now, following the second ALIDI international conference, which took place in Florianopolis in 2018, we are delighted to publish this Special Issue containing a selection of the best papers.

While there is still a woeful lack of language and law publications in Portuguese, apart from several written and/or edited by Colares (2010, 2016); Coulthard *et al.* (2015) and one by Pinto *et al.* (2016) the situation is improving slowly with Almeida *et al.* (2019) due to be published shortly. However, as it was in the English-speaking world in the 1990s, the Brazilian and Portuguese police and courts hardly ever call on the expertise of Forensic Linguists and Phoneticians – most experts can count their number of cases on the fingers of one hand. To some extent this is because potential users do not even know that the expertise exists.

In Brazil, much of the current research is in the areas of language and the law – with an important concentration of researchers in the Catholic University of Pernambuco. Much of the work is on legal texts, particularly judgments, though there are a few researchers looking at interaction in legal settings and problems of translation and interpreting, where training and provision leave much to be desired, when compared with, for instance, neighbouring Argentina. Forensic phonetics is developing slowly but well with a concentration of researchers in the Federal Technical University of Parana and the Federal Police have a few dedicated specialists. The Brazilian police and the courts are slowly beginning to commission expert reports on identifying voices and authenticating tapes. The Brazilian public became aware of the possibilities when some two years ago a tape emerged purporting to be a recording of the President in conversation in the subterranean garage of the presidential palace with a businessman who was under investigation by the State Prosecution service. They were apparently planning a crime. Experts from both sides confirmed that it was indeed the President's voice, but the President's expert was able to demonstrate that the recording had been massively edited – with 294 discontinuities in a recording of less than 40 minutes duration – and so was useless as evidence. Reports by forensic linguistics consultants on for example disputed authorship, plagiarism, trademarks and textual interpretation are still very rare, but a small group of forensic linguists in the South of Brazil has recently formed a consultancy *i-LEXis* (<http://www.i-trad.com/>) to try to develop the market mainly through publicising to the police, lawyers and other professionals working in the judicial system the range of services forensic linguists can offer.

In Portugal, the major centre for research is the University of Porto where there is ongoing research into cybercrime, including work with the Prosecutor General's Office, and the detection of plagiarism, particularly plagiarism by translation, and there

is now a growing number of cases of forensic consultancy with reports submitted in cases of plagiarism and defamation, partly as a result of the publicity of the *Laboratório de Linguística Forense* (<http://www.linguisticaforense.pt>). Encouragingly, recently individuals have also sought the assistance of forensic linguistics in their court cases.

The articles

This issue consists mainly of articles based on papers given at the ALIDI international conference, *Linguagem e Direito: Construindo Pontes II*, which was held at the Federal University of Santa Catarina, in Florianópolis in April 2018. The issue opens with two papers in English and then continues with five in Portuguese.

João Pedro Pádua's article, *Discursive devices for inserting morality into law: an initial exploration from the analysis of a Brazilian Supreme Court decision*, uses tools and concepts from discourse analysis – in particular from ethnomethodology – to discuss this important topic. He uses fascinating data to illustrate his argument which is drawn from a decision made by the Brazilian Supreme Court to remove from office the President of the Lower House of Congress after he had been charged with criminal offences. Pádua's analysis shows that the reporting judge, who as is customary presented his analysis and recommendations for general discussion, mixed expected references to the legal/technical framework with moral considerations in order to characterize the politician as institutionally deviant. Pádua demonstrates how this characterisation is then fed back into legal categories in order to legally justify the decision to remove the President from office. The implications of this technique of conjoining morality and law are discussed.

The article by Ana Maria Olivo and Débora de Carvalho Figueiredo, entitled *Dead weight: an analysis of how obesity is dealt with in Brazilian legislation*, analyzes Brazilian laws relating to overweight and obesity. The aim is to demonstrate how the relationship between weight and health is discursively construed. To do so they draw on the 'Legitimation in Discourse' framework proposed by van Leeuwen (2007). The results indicate that Brazilian legislation while accepting the medical definition of obesity as a simple BMI score chooses to reduce the causes of obesity to the level of the individual and therefore the result of inadequate choices. The authors argue that this is an unhelpful reductive interpretation of a much more complex social problem.

Elizete de Azevedo Kreutz and Carmina Silvestre, in their article *Chiclets versus XClé: uma análise multimodal das marcas no processo de disputa legal*, write about a fascinating trademark dispute. In 2006 Cadbury Adams Brasil Ltda, the owner of the trademark Chiclets, filed a lawsuit, claiming infringement by the product name XClé owned by Docile Alimentos. Drawing on this case for examples the authors offer a theoretical framework in order to show how a multimodal analysis focussing on naming and packaging can be used to defend against a charge of trademark infringement. This clarifies the legal/linguistic argument which the defendant used successfully.

The issue continues with Jordana Lenhardt's article, which uses another high profile legal dispute to discuss image rights and the danger of unintentionally committing discursive crimes on Brazilian social networks: *Crimes de linguagem: reflexões sobre*

criminalização discursiva em redes sociais brasileiras. The data consist of a set of extracts from a judicial ruling in dispute where Gilmar Mendes, one of the members of the Brazilian Supreme Court accused a famous Brazilian journalist and actress, Monica Iozzi of (mis-)using an image of him and in so doing offending his honour. The analysis shows that the judicial decision encompasses social issues well beyond the simple use of certain lexico-grammatical items, such as the social status of the parties involved, the relations that such linguistic items can establish and the reach of social media. Readers might like to focus on the meaning of the question mark before the word *cúmplice* which the judgement, as reported, apparently did not consider. An important linguistic and speech act consideration for this and indeed all online communication, is when someone ‘reads’ the image, be it Gilmar himself or anyone else who is insulting the honour of Gilmar Mendes: is it Monica Iozzi who poses the question ‘cúmplice?’ or is it just those readers who answer positively?

Análise acústica do ditongo [e] em inglês e em português por falantes bilíngues, by Maria Lúcia de Castro Gomes and Otávio Augusto Bernardo-Silva, takes us into the world of Forensic Phonetics, where pure phonetics research is applied to help with the identification and elimination of speakers suspected of being involved in criminal activity. The paper focuses on the acoustic analysis and subsequent characterisation of pairs of diphthongs produced in two languages by bilinguals. The article presents the results of acoustic analyses of the vowels they produced in pairs of Portuguese and English words such as lei/lay and leis/lays. The results demonstrate that an analysis of such acoustic measures as duration and formant frequency can identify both special characteristics of groups of speakers and also the idiosyncratic features of individual speakers, in both L1 and L2.

There follow two papers devoted to the analysis of the legal process. The first, *A imprescindibilidade dos critérios linguístico-textuais na produção de documentos com força probatória e a garantia do devido processo legal* by Olívia do Carmo Petreca and focuses on cases concerned with tax matters. She observes that, in both administrative and judicial courts, evidence is predominantly in the form of documents such as tax infraction notices, overdue liability certificates, licenses etc. However, for these documents to be valid, there are rules to be followed. The author focuses on cases judged by the Brazilian Supreme Court and employs ‘logical-semantic Constructivism’ to analyse some of the court documents that had been produced by public officials. These analyses demonstrate the importance of linguistic criteria for interpreting legal texts in the area of taxation and for helping to reduce subjectivity in litigation.

Finally, Tadeu Luciano Siqueira Andrade questions the existence of ‘equality before the law’ in his article *A vulnerabilidade nas relações jurídico-consumeristas: uma análise da desvantagem linguística perante a lei*. He observes that in cases where there is a dispute between a customer and a supplier legal-consumer relations, the customer will almost always be at a disadvantage, because the supplier has the specialised knowledge of both the product and the conditions of sale, guarantees etc. While pointing out that there are several types of vulnerability, technical, legal, socioeconomic and informational as well as linguistic, the article concentrates on the linguistic. The article uses examples from one specific case dealt with in the *Vara das Relações de Consumo da Comarca de Conceição do Coité* (BA), to exemplify linguistic disadvantage before the law, a disadvantage significantly increased in this case because, unlike the defendant, the plaintiff had no

legal representation.

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