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A Critical Discourse Analysis of Courtroom Proceedings in Nigeria

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Abstract

Critical Discourse Analysis is a theory that examines and analyzes power asymmetry in discourse. It primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context. This paper applied this theory to legal discourse with the aim of exposing how the question-answer sequences of a direct and cross examination, turn-taking, objections, and other legal proceedings create unequal relationship among participants. It draws its motivation from the enormous works on legal discourse in western world that have brought radical changes in their justice system. The data of the study are audio recordings and personal observations of courtroom interactions; Supreme Court Quarterly Report 1990, from the High Court Library. From the data analysis, it was discovered that, evidentiary rules empower those who assume the examiner's role by placing them in control of topic choice and direction, and giving them the means to constrain the contributions of others. It was also learned that the Judge wields the ultimate power and dominates in the court. Witnesses are powerless participants in

legal discourse and are subjected to various forms of control by examiners. The study concluded that there is an unequivocally legitimized inequality in the courtroom which manifests through language and that language is the most powerful natural weapon used to effectuate justice in societies.

Key Words: Critical discourse analysis, courtroom, power, inequality, lawyers and Judges

Introduction

The justice system is arguably the most directly powerful institution in societies subject to the rule of law (Gibbons, 2003), and researchers have been concerned with the roles language play in relation to the aim of such interaction. Language is an invaluable factor in court transactions, as almost every activity is carried out with it. However, courtroom discourse is different from the common place verbal exchanges that take place in our day-to-day human interactions, and researches carried out on such discourses are usually with the aim of investigating these distinct linguistics features. Hence, legal discourse captures the various relationships between language use and the realm of law. In the words of Shuy, “one of the defining features of Discourse Analysis is that, it is capable of application in various settings and context” (1993, p 47), and the form and structure of utterances making up legal texts, fit most comfortably into the realm of linguistic inquiry.

Legal discourse is a distinct discourse genre. Law is most often considered as an oral activity: thus, a good command of spoken language is a necessary criterion. The language of law has several pragmatic characteristics: first is the turn-taking system in court (Onadeko, 2001). This distinctiveness of legal discourse can be attributed to the explicit rules of evidence that govern verbal interactions in the courtroom to issues bordering Critical Discourse Analysis theory; how language manifests power, control, inequality and discrimination among discourse participants in the courtroom (Bloomaert & Bulcaen, 2000). Another aspect of legal discourse that interests us is the power asymmetry among the discourse participants in the court setting. While the presiding judge has the ultimate authority, the prosecutors and defence lawyers have authority derived from superior legal knowledge base, and from the rules that govern formal discourse in court. The primary concern of this paper therefore, is to examine how the question-answer sequences of a direct and cross examination, turn-taking, objections, and other legal proceedings create unequal relationships among interactants, and how these manifest through language.

Language and Power in the Courtroom

According to Gibbons (2003), the justice system is the most directly powerful institution in societies only subject to the rule of law. And the interest of this study is to find out how this power manifests itself in courtroom interaction. Interaction in the courtroom is mainly linguistic and we need to note that power relations manifestation mostly in language behaviour’ (Gibbons, 2003).

Power, according to Wang (2006), can be characterized as the ability to control and constrain others; as the capacity to achieve one’s aim; as the freedom to achieve one’s goals and as the competence to impose one’s will on others. To Gibbons (2009), it is the ability of an individual or a group of individuals to carry out their will even in the

face of resistance from others, and it includes the ability to control the behaviour of others, at times against their will. Accordingly, Fairclough (1989) asserts that, language is one of the means through which inequality in the distribution of power is created and perpetuated, and through which this inequality can be remedied. This is because it is through the use of language, especially in institutional settings, that conventions are created, and, through their recurrence, developed into ways of behaving that are deemed correct. Conley and O'Barr (2005, p. 170) aptly noted that 'power may exclude, but those excluded remain on the scene, ready to turn local-level episodes of oppression into moments of resistance.'

Luchjenbroers (1991) collected data from a six-day murder trial in the Supreme Court at Melbourne, Australia and came up with a typology to capture the questions and other contributions by participants in the data. She came up with four broad categories of: No Question, Positive Bias, Negative Bias and WH- Questions to capture the examiners' contributions in a way that also factors in the witnesses' ambivalence to the parties in the dispute.

Most of the documented empirical studies in legal discourse were done in Western countries. A few of these include a study by Loftus (1979) which proved that the formation of memory is an ongoing process subject to external influences and not a discrete event that creates an immutable record. Her experiment made legal practitioners to question the law's historical high regards and reliance on eyewitness testimony and led to emphasis on convictions based on eyewitness testimony that is backed-up with forensic evidence.

Onadeko (2001) studied the Patterns of magistrate court discourse in Nigeria. The work examined the strategies used by discourse participant to control and dominate in the discourse. It highlighted the importance of turn-taking and revealed that, the art of turn-taking is highly adhered to structurally. Agangan (2007); which is a speech act study of lawyer-witness courtroom interactions in high courts, using Searle's speech Acts theory, revealed the discourse features, and the types of speech acts used in courtroom interaction. More so, Alo and Agangan (2013), carried out an illocutionary investigation of questions in lawyer-witness courtroom interactions in the high courts in Nigeria. They examined the specific question types that feature in lawyer-witness interactions in courtrooms and their associated illocutionary functions. Farinde (2008) studied pragmatics in forensic linguistics, the focus was on the lawyers' control over witnesses in questions and answer sessions, using speech acts functions. The work revealed that various forms of speech acts are favoured in order to maintain the lawyers' control in courtroom discourse. However, none of these works under review has comprehensively explored courtroom proceedings, what they have done so far are studies centred on lawyer-witness courtroom interaction, etc. Hence, this work seeks to focus comprehensively on courtroom proceedings: lawyer-witness interaction, lawyer-lawyer interaction, lawyer-judge interaction, witness-judge interaction and other courtroom proceedings, to reveal how asymmetrical relationships manifest through language behaviour.

Critical Discourse Analysis

Critical Discourse Analysis (hereafter CDA) is the main theory adopted for the present study as it is in light of its tenets that the findings from analysis of data were interpreted.

CDA was spearheaded in early 1990s by a group of scholars, namely Norman Fairclough, Ruth Wodak, Gunther Kress, Theo van Leeuven and Teun van Dijk. The roots of CDA are, however, diverse and old with some of its central concepts being traceable to sociology, ethnography, philosophy, applied linguistics and pragmatics.

There have been different opinions as to what Critical Discourse Analysis is all about. This is because of its multidisciplinary nature. Van Dijk (2000, p. 353) saw Critical Discourse Analysis as a type of analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context. Wodak (2001, p. 2) is of the opinion that CDA is mainly concerned with analyzing people as well as transparent structural relations of dominance, discrimination, power, and control as manifested in language.

There are certain notions that are key to the study of CDA, this is because, CDA asks how discourse structures are used in the enactment of social dominance, some of which are: dominance, hegemony, class, gender, discrimination, race (Van Dijk, 2000, p. 354). CDA is not so much a direction, school, or specialization next to the many other “approaches” in discourse studies; rather, it aims to offer a different mode of theorizing, analysis, and application throughout the whole field (Van Dijk, 2000, p. 353)

Van Dijk introduced what he calls “*Macro vs. Micro* level of analysis. While language use, discourse, verbal interaction, and communication belong to the *micro-level*, of the social order, power, dominance, and inequality between social groups are of the *macro-level* of analysis. It follows that, the task of CDA is to close or bridge the gap between the macro and micro approaches which is however, a sociological construct (Alexander et al., cited in Van Dijk, 2000, p. 354).

The task of CDA is both deconstructive and constructive. In its deconstructive sense, it aims to disrupt and render problematic the themes and power relations of every talk and writing. In the constructive alternative sense, it is applied to the development of critical literacy curriculum that aims towards an expansion of the capacities to critique and analyse discourse and social relations, and towards a more equitable distribution of discourse resources (Fairclough, 1992). From the foregoing, it is evident that control or access to specific forms of discourse, e.g. those of politics, the media, or science, is itself a power resource. That is, among many other resources that define the power base of a group or institution, *access to* or *control over* public discourse and communication is an important “symbolic” resource, as is the case for knowledge and information (van Dijk, 1996). Most people have active control only over every day talk with family members, friends, or colleagues, and passive control over, e.g. media usage. In many situations, ordinary people are more or less passive targets of text or talk, e.g. of their bosses or teachers, or of the authorities, such as police officers, judges, welfare bureaucrats, or tax inspectors, who may simply tell them what (not) to believe or what to do. Thus, the discourse analyst’s aim under this theory is revealing how linguistic micro discourse structures reproduce, challenge or perpetuate social macro discourse realities. The present study collected courtroom proceedings, and the analysis indicate how the macro concepts of dominance and control were evidenced in the verbal interactions in courtrooms.

Discourse-as-social-practice, views discourse as a product and determinant of ideology (Fairclough, 1992; Jørgensen & Philips, 2002). Thus, the ideology at play in a given

society is articulated and challenged through discourse (Blommaert & Bulcean, 2000). This was the approach taken during the analysis of data collected in this study. The linguistic choices made by the interlocutors were identified and then discussed with reference to whether they occurred in the direct examination or cross examination phases of trials. Finally, an evaluation was made on how power asymmetry in the courtroom was produced and or challenged through the language choices of the discourse participants.

Methodology

This study adopted a qualitative approach to evaluate discourse structures used during courtroom proceedings with the aim of exposing how power, dominance, inequality and control is produced and resisted through linguistic means. The data for the study consist of audio recordings (data 1-4); Supreme Court Quarterly Report 1990, from the High Court Library (data 5), and observations of high court proceedings in two locations at the Bayelsa State High Court Complex (data 6 and 7).

Data Analysis

The analysis that follows is basically concerned with power relations; a critical analysis of courtroom proceedings in order to discover the various issues bordering CDA: dominance, inequality, mind control etc.

Example One:

Control (lawyer-witness interaction)

In the legal setting, an individual's personal information, status is believed to an extent could determine if that individual is capable of committing certain offence. So, during direct or cross examination the name, occupation and addresses are asked. Thus, interrogatory sentences are used, to ask **WH-Questions**, and *polar Questions*.

Defence Counsel:	What is your name?
Witness:	My name is ...
Defence Counsel:	What do you do for a living?
Witness:	I am a surveyor
Defence Counsel:	Where did you obtain your degree?
Witness:	River State University of Science and Technology
Defence Counsel:	How many years have you been in the practice?
Witness:	So many years
Defence Counsel:	Please Mr...
Witness:	...
Defence Counsel:	Yeah, ... be precise with the number of years
Witness:	11 years.

We must note that control over discourse is a major form of power, and from the data above, it is evident that the Defence Counsel who is equipped with legal knowledge and legitimized power, dictates the topic, and directs the flow of the discourse during a cross examination. The witness is relegated to only answering the questions, and not the way he (witness) wants to, but to satisfy the Defence Counsel. Here the witness is presented as a passive participant (lay litigant) in the discourse, open to various influences and control. More importantly, the sole aim of litigation is either to prove the innocence /guilt or uphold/deny a position, right or privilege of someone. Therefore,

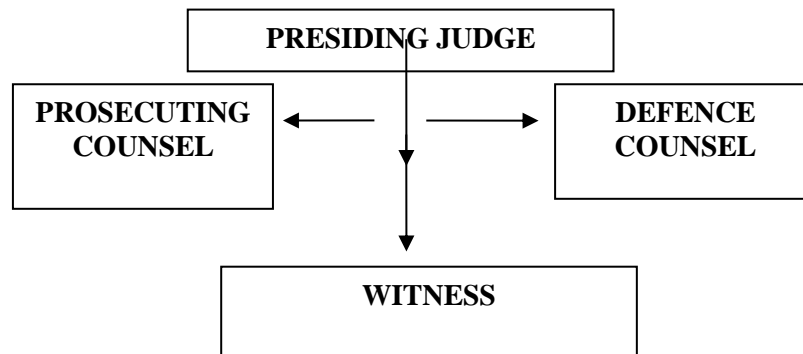
every question/answer is ideologically framed to achieve a goal. From the data, it is obvious that power lies with the defence counsel.

Example Two:

Dominance/inequality (Judge-lawyer interaction)

Prosecuting Counsel: Objection my Lord! The defence counsel is misleading the witness.
 Presiding Judge: Objection overruled, let the witness answer the question.
 Defence Counsel: Objection my Lord! The prosecution counsel is misleading the witness.
 Presiding Judge: Objection sustained, please counsel direct your questions properly.

There is power asymmetry even among the ‘learned’ discourse participants in the court setting. While the presiding judge has the ultimate authority, the prosecuting and defence lawyers have authority derived from superior legal knowledge base, and from the rules that govern formal discourse in the courtroom. Here the Judge with his ultimate authority overrules or sustains the objection raised by the counsels. Below is a structure exemplifying power distribution/relation in the courtroom setting:



In the hypothetical diagram above, the Presiding Judge precedes the Prosecuting Counsel and the Defence Counsel. Therefore, both the Prosecuting Counsel and the Defence Counsel are dominated by the Presiding Judge. The Prosecuting Counsel and Defence Counsel are sister nodes, but they dominate the Witness. Therefore, the Presiding judge as the mother node dominates. The prosecuting and defence counsels are sister nodes having a C-commanding relationship, but dictate and influence the topics and directions during direct and cross examination of witnesses, while the Judge exercises ultimate power on them, sustaining or overruling objections as well as passing verdict. The description above unequivocally presents the power relation and its manifestation through language.

**Example Three:
 Social Power abuse/control**

Counsel: You said your husband said some derogatory things and beats you up right?

Witness: Yes, I did

Counsel: What exactly did he say to you?

Witness: ...they are personal

Counsel: Personal you say, can you repeat them?

Witness: I rather be charged for contempt than repeat those words

Counsel: Do you know you are under oath to tell this court everything you know? Go on say it

Witness: Your Honour, do I have to answer that?

Presiding Judge: Yes, you have to, please answer the question.

The witness is of the opinion that the information the counsel requires is rather personal and she addresses herself to the presiding Judge to ask if she must answer that question. It shows that she tried to resist the prosecuting counsel by calling the attention of the judge, which is part of what CDA captures; resisting power abuse, dominance, etc. However, the answer of the Judge reveals his power over and above the lawyer as well as the witness.

Example Four:

Mind control (Clerk-witness interaction)

Clerk: Are you a Christian, Muslim or pagan?

Witness: Christian

Clerk: (Gives him a bible)

Clerk: Say after me: I swear by this Holy Bible... .

Witness: I swear by the Holy Bible

Clerk: ... that everything I will say

Witness: ...that everything I will say

Clerk: ... is the truth and nothing but the truth

Witness: ... is the truth and nothing but the truth

Clerk: So, help me God!

Witness: So, help me God!

The above is what happens in the courtroom before a witness enters the witness box for examination, which is a clear case of mind control. The convention is to use a symbol or what a particular religion holds with high esteem, or believes in, to cajole, blackmail, regulate or control the person's mind, making such to confess to the truth even if it will turn against him/her. You are always reminded of the oath, and because many persons are fanatics, they are easily controlled, especially in this part of the world.

Example Five

Dominance

Judgment of the Court

Delivered by

Okuribido J.,

Between
Donatus Ndu..... Appellant
And
The State.... Respondent

(a)

“After a meticulous review of the evidence adduced before me and after due consideration of the defences open to the accused along with the applicable laws, ***I have come to the conclusion that***, the prosecution had proved beyond reasonable doubt that the accused on the 16th day of December, 1989 with intent to do grievous harm to the deceased unlawfully killed her... ***I hereby, found you guilty*** of murdering the deceased contrary to section 316(2) of the Criminal Code Law. An offence punishable under section 319 (1) of the same law. You are therefore, sentenced to death by hanging”

(b)

...accordingly, it is:

ORDERED AND ADJUDGED that the defendant, ..., is guilty and hereby sentenced to death for the murder of the victim Ms. ...

From the two excerpts above, the Judges using a verdictive speech act that confirms what Austin and Searle posited that words are not just used to describe the world but to perform various actions. These words actually changed the world of the accused, and show who reserves power and control in the court. This is highlighted in statements such as “I have come to the conclusion that,” “I hereby, found you guilty,” “you are therefore, sentenced to death by hanging.”

These words are manifestations and reflections of the powers the Judges wield, deciding the fate of people.

Example Six

Inequality

Example five:

Clerk: Court! (everyone in the courtroom stands in deference to the Judge)

Presiding Judge: (Walks in and sits down. Everyone else bows to the Judge and then sits down.)

One important aspect of the legal system is the strict adherence to dogmas. One of the clerks (orderly) exclaims “Court!” as the presiding Judge walks in, and everybody stands up, including the so-called “learned colleagues” (lawyers). The Judge then takes his seat and every other person “bows” and sits. This is a legitimized convention in the legal setting, an unequivocally established inequality. So, no matter your status you stand as he/she walks in then you take a bow and sit.

Power

Example seven:

Presiding Judge: I hereby adjourn the case till the 24th of August, 2017

Court: As My Lord pleases.

Power is the ability of an individual or a group of individuals to carry out their will even in the face of resistance from others, and it includes the ability to control the behaviour of others, at times against their will, Gibbons (2009). So, whether the new date is convenient or not as a lay litigant it is never as you please, but as Your Lord (the Judge) pleases! This power gives the Judge the ability to bend your will to his will, and the convention makes you subscribe “as my lord pleases!” This has caused cases to linger for several years, as the Judge adjourns a case however and whenever, thereby also making the Nigerian justice system very slow.

Conclusion

The analysis of the data reveals that legal discourse is absolutely different from the everyday discourse. It is highly structured and strictly follows dogmas, power relations; dominance, inequality, mind control manifest through discourse structures. The courtroom is an entirely different environment with legitimized conventions. And from the data analysis, the study discovered that there is unequal distribution of power in the courtroom, the judge wielding the ultimate power, and the lawyers have authority derived from superior legal knowledge base, and from the rules that govern formal discourse in the courtroom. The lay litigants in the statuses of either the accused or witnesses are pawns in the courtroom, dominated and almost always made to dance to the tune of the dominating group.

This study therefore concludes that, there is unequivocally legitimized inequality in the courtroom, and this inequality manifests through language.

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