

AN ANALYSIS OF TRANSITIVITY CHOICES IN FIVE APPELLATE DECISIONS IN RAPE CASES

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1. Introduction

Legal discourse has long been an object of linguistic analysis, from the beginning of the 1960s (Mellinkoff 1963; Crystal and Davy 1965; etc) to today (Conley and O'Barr in press; Stygall 1996; etc). The first works in the area were mainly descriptive (e.g. Crystal and Davy 1969). Nowadays some researchers have adopted a critical perspective, investigating issues such as power, gender, discrimination, etc, present in the discourse of the law (e.g. Conley and O'Barr in press). Most of the works dealing with legal discourse produced from the 60s on come from the area oral discourse/spoken interaction, and have used courtroom oral interaction as their source of data.

The critical perspective adopted by some conversation analysts is by no means restricted to this particular field. Based on the systemic-functional perspective proposed by Halliday (1973; 1985), who claims that the functions of linguistic structures are based on social structures, from the end of the

70s many discourse analysts started to investigate the links between language, power and ideology. This new trend in discourse analysis created the field of study of critical discourse analysis (CDA). Works in this new area of research include social meanings and their textual realisations in the scope of grammatical description (Fowler et al. 1979). Critical discourse analysts such as Norman Fairclough, Roger Fowler, Gunther Kress and Teun van Dijk, have been looking at a variety of modes of public discourse, such as the discourses of the media, of the academy, of official documents, and so forth, in order to investigate issues of power, control, discrimination and misrepresentation mediated through language.

However, to date there are few works which have crossed two of the areas of research mentioned above: that of legal discourse and of CDA. The work by Wodak (1985) and van Dijk (1996) are two rare exceptions. Similar to the studies of conversation analysts, Wodak and van Dijk also look at courtroom interactions. Up to the moment there are no investigations of written legal discourse using the framework of critical discourse analysis.

In short, the present study differs from most other works in the area of legal discourse analysis in two major ways: first, it is based on the theoretical and methodological apparatus proposed by CDA (Fairclough 1989; 1992; 1995); second, it investigates a specific kind of written legal discourse: the discourse of legal decisions on cases of violence against women. More specifically, in this paper I investigate the transitivity choices present in five reported appellate decisions produced by British High Courts in cases of rape. Through this analysis I wish to assess how the texts foreground or background relations of power and of gender, and how women are seen and described by this particular type of legal discourse. In order to contextualise the object of study, I will start by giving a brief overview of appellate decisions. I will then move to the analytical sections on transitivity, passivisation and nominalisation. Finally, I will present some concluding remarks.

2. Reported appellate decisions

One of the aims of critical discourse analysis is to investigate issues of power present in discourse. Linguistic processes mirror and reproduce the structures of social interaction, structures where power is frequently distributed asymmetrically. These power inequalities have an effect on the production of texts, and consequently on the construction of social subjects. One of the premises of CDA is that there is a dialectical relationship between discourse and social practices, and that power inequalities present in social interactions are both created and recreated by discursive practices. The legal system, with its hierarchical structurings and asymmetrical power positions, produces a discourse where the above premise can be investigated and checked. Before moving further, it is important to point out that there is no single legal discourse but numerous different instances of legal discourse produced by different legal areas (basically, there are two main branches of law: civil and criminal; but civil law is subdivided into several other sub-

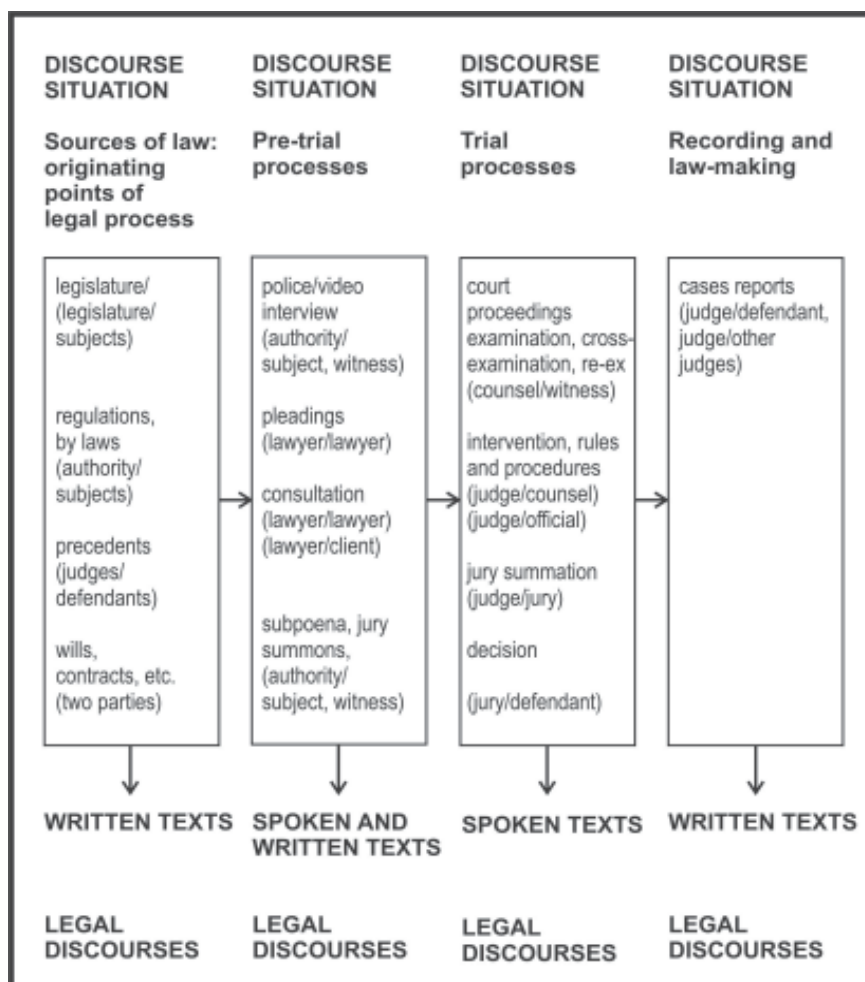
branches, e.g. family law, tax law, property law, etc). As I am particularly interested in gender relations, I am concentrating here on the discourse of the criminal justice system in cases of rape.

More specifically, I am interested in the discourse of *reported appellate decisions on rape trials*, a type of text where gender relations and power relations overlap. These are the decisions reported from the higher courts and published in official law reports, which form the basic units of what lawyers call 'case law' (Radford 1987). In order to situate these texts, I will point out exactly where they fit in a sequence of judicial procedures: a crime or felony is initially judged by a first instance court, presided by a single judge, and sometimes a jury (in the British legal system, these courts are the *Magistrates' Court* or the *Crown Court*). In this first level the defendant (e.g. in a rape case) may be considered guilty or not guilty; if found guilty, he/she will be sentenced. In case the first instance verdict and sentence is unsatisfactory for the defendant, he/she may appeal to a higher court (in England, the *Divisional Court of Queen's Bench*, *Crown Court* or *Court of Appeal*). The Court of Appeal, which judges appeals on more serious cases (e.g. rapes), and where usually three judges sit, will produce a new decision entitled 'appellate decision', maintaining or altering, partially or entirely, the previous decision.

Appellate decisions exert influence over three distinct areas: the first, and more immediate, is over *the lives of the individual persons* directly involved with them (e.g. the appellant and the complainant); second, they also have a *didactic role* since these decisions are used at law schools for teaching the law; and thirdly, they function as *sources of law* when they are used as precedents in future cases.

Appeal courts are usually constituted of three judges; each of them gives an opinion in an appeal case, and the majority verdict prevails (Maley 1992), being later on published in the form of a law report. According to Radford (ibid:137), "reported decisions are basically legal texts compiled as ritualised forms for both teaching the law and carrying it out". Appellate reported decisions are written by judges and later on edited for publication; thereby they do not describe in detail what happened in the courtroom, but rather express the ways of seeing of both judges and editors.

Only the judgments considered legally significant are later on published in law reports. The decisions of higher appellate courts are particularly important as they are considered the essence of common-law (unwritten law used as precedent and principles that will guide future cases). In that sense, reported decisions can be seen as sources of law, exerting a great influence on the legal system and its practitioners, and having great social significance. In the diagram below, reported decisions are located in two discourse situations: as precedents, they can be seen as *sources of law*, and belong to the first discourse situation on the left. When they are reported in law reports, they become part of the fourth discourse situation, on the right, as examples of *recording and law-making*.



(from Maley 1994)

Reported decisions “are the ‘good policy’ cases which serve as teaching texts for trainees, solicitors, barristers or judges” (Radford 1987:137). If these texts express strong and unequal power relations between the participants of legal events (e.g. lawyers, judges, appellants, complainants, etc), this is the message that legal practitioners will receive and be socialised into, and this is the structure they will probably reproduce in their social practices and in their discourse. As Kress points out, “through the experience of texts which are marked by inequalities of power, linguistic/social subjects are trained into assuming certain positions of power in given texts” (1989:449).

3. Transitivity

Transitivity refers to the way meaning is represented in a clause. The choices made in the system of transitivity indicate the way the writer¹ sees

the world around her/him. As transitivity is concerned with the representation of the mental picture that a writer has of the world, it involves the transmission of ideas and therefore belongs to the ideational function (Halliday 1985). Transitivity realizes the ideational function by expressing processes. According to Halliday (1973:134), “transitivity is the set of options whereby the speaker encodes his experience of the process of the external world, and of the internal world of his own consciousness, together with the participants in these processes and their attendant circumstances (...)”. Transitivity thus focuses on how a writer represents who acts (who is agent) and who is acted upon (who is affected by the actions of others). Since transitivity, as part of the ideational function, portrays the writer’s world-view, many critical analysts have investigated it as a means of uncovering the links between language and ideology, and which meanings are foregrounded, backgrounded or not included in a text.

Transitivity refers to three basic elements present in a clause. The first is a *process* (the semantic nucleus of the clause), consisting of an obligatory verb or adjective; it involves the event or state of affairs described in the clause. This process is combined with one or more nouns or noun phrases which indicate the *participants* in the event or the state of affairs. The process may also be accompanied by one or more *circumstances*. In terms of participants, the doer of the action is called *agent*, and the persons or objects acted upon are called *affected participants*, or *patients*. *Circumstances*, the third element in the system of transitivity, are expressions which indicate the time, place or manner of the event described in the clause (Fowler 1991:73-6).

Halliday divides the processes expressed by transitivity into different categories, according to what they represent. So, actions are classified as *material processes*, or processes of doing; speech is classified as *verbal process*, or process of saying; states of mind are called *mental processes* or processes of sensing; and states of being are called *relational processes* or processes of being (Simpson 1993).

When expressing in texts the events that go on around and within them, writers can choose between different processes and participants, and between which of these participants will act or be acted upon; the choices made will be reflected in the syntax of the text. So, the basic principle of transitivity can be expressed by a question: *who or what does what to whom or what?* The analysis of transitivity choices, as Mills argues, “is primarily concerned with the roles of human participants” (1995:143). The main insight that the notion of transitivity offers is that every text could have been produced differently, and these different versions would have represented alternative points of view.

A process may be expressed linguistically in a number of ways, each of them signifying a different way of seeing. In the scope of critical discourse analysis, an investigation of transitivity aims at assessing which cultural, ideological, political or theoretical factors have influenced the way a process

is expressed in a particular text (Fairclough 1992). A very important concern in analysing transitivity is whether agency, causality and responsibility are made clear or not in the text.

To analyse relations of agency and causality in the reported decisions I will investigate not only what kinds of processes appear in it, but also the passive and the nominalizations used when referring to the three main participants of an appeal: the *judges* (or the *Court*), the *appellant* (the man convicted of rape, who is now appealing the previous judgment) and the *complainant* (the woman who was raped). Through this analysis I intend to assess the world-view expressed in the appellate decisions, and also to see how the text producer (i.e. the judges) establishes, foregrounds or backgrounds relations of power between them and the two other key participants in this type of social interaction: the appellant and the complainant. My aim in carrying out this analysis is to check how linguistic devices, used at a micro textual level, express the relationship between three broader levels of social phenomena: the social action (in this case, a rape trial), the social institution (the legal establishment) and the social formation (the ideologies that inform and underlie the legal institution and the social events that take place in it).

Before moving on to the analysis of the data, I'd like to make a last comment concerning the roles of the participants in a trial, and how this is connected with power relations. In transitivity terms, the judges, the appellant and the complainant are participants in the clauses where they appear (they are either agents or patients of the process described by the clause). In broader social terms, however, they are also members of a social interaction called 'trial', in which they occupy specific roles. Following Fairclough's (1995:39) classification, judges can be seen as *subjects* in the trial, i.e. their institutional roles and identities have been acquired in a specific acquisition period, and maintained as permanent attributes. The appellant and the complainant, on the other hand, are *clients* in this trial, i.e. they are outsiders who are taking part in this particular interaction, according to rules determined by the legal institution, but without a defined acquisition period or long term maintenance of attributes. The distinction between *subject* and *client* indicates an asymmetry of power: subjects, as permanent members of an institution, are more familiar with it, and more able to control not only its social and linguistic practices but also the clients who are occasionally involved in it. As Fairclough points out, "the primary concept is 'subject': 'client' (...) might be defined as [a] special and relatively peripheral type of subject" (ibid:39).

3.1 Transitivity choices: processes in the appellate decisions

In order to analyse the transitivity choices found in the data, I will present and label in this section several examples of processes in which the judges, the appellants and the complainants appear as participants. Only

clauses where the judge(s), the appellants and the complainants appeared as subjects were selected. The analysis for each participant will be presented separately, as below, and the different texts from which the examples were taken will be indicated. The numbers beside the clauses refer to the lines where they are found in the texts:

3.1.1 JUDGES/COURT as agents

Text 1

- the Court **did not think** that the evidence of sexual promiscuity of the complainant **was** sufficiently strong ... (23) mental process; relational process
- we **do not think** that this by itself was sufficient reason for rejecting the application (109) mental process
- *Clearly*, it is easier **to justify** such cross-examination (110) verbal process + modality

Text 2

- the judge then **indicated** that he **had changed his mind** and **concluded** that his earlier ruling was incorrect (134) verbal process; mental processes
- This court **made it clear** that the words of the Act were to be applied in their plain and natural meaning (145)
- In our judgment the learned judge **was** correct in his first ruling ... and **fell** material process; mental process; verbal process;
- For the reasons which we **have endeavoured to give**, we **would answer** the question posed in the reference No. (192) verbal processes + modality

Text 3

- the judge **directed** the jury (27) material process
- The Court **dismissed** [the appeals against sentence] of Khan (59) material process
- In the event we **have come to the conclusion** (219) mental process
- we **believe** this to be a desirable result (281) mental process

Text 4

- nowhere did the judge **refer to** the need of corroboration (13) verbal process
- We **must** therefore **look** a little more closely (171) mental process + modulation
- We therefore **reject** Mr. Jeffreys' submissions as to corroboration (346) material process

Text 5

- We **have referred** to the case of Caswell (159) verbal process

- in our judgment the answer in the instant case is that which we **have given**, namely that the married state does not imply consent to fellatio (185) verbal process
- The Court then **went on to consider** the appeal against sentence and **allowed** it (194) mental process; material process

The judges, or the Court, appear as agents of different kinds of processes: material, mental, verbal and relational. However, most of these processes are mental, verbal or relational. This constructs a picture of the trial mainly as a non-active, abstract and static situation. Notice, also, that when the judges/Court appear as actors in a material process, the affected participant (or goal) is never directly the appellant or the complainant, but rather a nominalised process (“we therefore reject Mr. Jeffrey’s submissions as to corroboration” - Text 4: 346) or a nominal (“When the judge is deciding whether or not to allow questioning... he is not exercising a discretion”- Text 1: 14 ; “We dismiss the appeal”- Text 1: 209).

The picture created by the transitivity pattern in the texts analysed is that the judges, or the Court, do not act directly upon the two parties most affected by appellate decisions (the appellant and the complainant) but rather upon the appeal, either admitting or dismissing it. This mitigates the power that they exert over appellants and complainants: their actions are presented as affecting not human agents, but mainly nominalised processes (e.g. ‘questioning’, ‘the evidence’, ‘the application’, ‘cross-examination’). When the appellant is at the receiving end of legal procedures (e.g. arresting, convicting, sentencing, etc), these procedures are syntactically constructed in the passive or through nominals, thus eliminating the need to present legal practitioners as their agents.

3.1.2 APPELLANT as agent

Text 1

- he **continued to press his attentions** on *her* (48) material process
- he **came up to** *her* again and **pulled** *her* into a passage way (51) material processes
- he **pulled** *her* along and **hit** *her* on the head (55) material process
- he **told** *her* to take off her clothes (56) verbal process
- the appellant **had** intercourse with *her* (60) material process

Text 2

- ... he **grabbed** *her*, **pulled** *her* behind the hedge, **forced** *her* to the ground and **lay** full length on top of *her* (44) material processes
- he **put** his hand over *her* mouth and **threatened to kill** *her* (45) material process; verbal + material process
- the respondent **admitted touching** *the complainant’s breasts* and **putting** his hand up *her* skirt (78) verbal process; material processes

Text 3

- four of the appellants **attempted to have sexual intercourse** with her, and three others **succeeded** (26) material processes + modality
- Three youths **succeeded in having sexual** intercourse (87) material process
- three others ... **attempted to have sexual intercourse** but **failed** (88) material processes + modality

Text 4

- he **stopped her** doing so, **pushed her** into the bedroom and **ordered her** to take off her clothes (52) material processes; verbal process
- He **pushed her** on to the bed and, according to her, **raped her** (53) material processes
- He **pushed her** down on her back, **punched** and **slapped her face**, **probed her private parts** and **raped her** (88) material processes

Text 5

- the appellant **burst in** carrying a knife (51) material process
- he **placed** the point against *her* throat (52) material process
- he **ordered her** to take off all her clothing (53) verbal process
- he **made her** undress him, again at knifepoint (55) material process
- he then **began** an act of oral intercourse *with her* (64) material process

The appellants are agents of all four kinds of processes: material, mental, verbal and relational. However, it is interesting to notice that they are actors of material processes mostly in one specific part of the decisions, which can be called *trial-as-story-telling*, or *story-in-trial* (Maley 1992), i.e. the part where the evidence presented constructs a story of the events concerned in the trial. Also notice that in most material processes where the appellant appear, as *actor* the complainant is *goal*, i.e. she is the recipient of his actions, the affected participant. In the rest of the appellate decision the appellants are usually described as performing verbal, mental and relational processes, which means that the trial is also a verbal event for the appellants, except when the story of the rape is being told.

Considering the appellate decisions as a whole, appellants and complainants appear in the texts (either as agents or affected participants) almost exclusively in the *trial-as-story-telling* section. The remainder of the decisions are comprised basically of the views and argumentation of the appellate judges concerning the case under analysis; the complainant and appellant are hardly ever mentioned. Even the final decision, usually given through the formulaic sentences “the appeal is dismissed/allowed”, “the conviction is quashed”, does not mention either the appellant or the complainant, although both of them are affected by it. The impression conveyed by the syntactic structure of the appellate decisions (except in the *story-telling* section) is that they merely represent a static discussion of

abstract legal notions (emphasised by the presence of countless nominals, and not dynamic procedures that affect the lives of two real persons.

3.1.3 COMPLAINANT as agent

Text 1

- not only **had she had** sexual experience with men to whom she **was** not married but that she **had done so** casually and with little discrimination (5) material processes
- she **did not want anything to do with** him (47) mental process
- she **refused** and *attempted to get away* (50) verbal process; material process + modality
- she **refused** and *tried to fight* him (52) material process + modality
- she **described** her relationship with her then boyfriend as a “casual sexual relationship” (97) verbal process

Text 2

- The complainant, a young woman aged 17, **was drinking** at various clubs (34) - material process
- [she] **began talking** with the respondent, a young man of 20 (37) - verbal process
- She **indicated** she **wanted to walk** home and bold so (38) - verbal/mental/material processes
- She **was** clearly distressed, **crying** and *trying to scream* (52) - relational process; material process; material process

Text 3

- a 16-year-old girl **met** one of the appellants at a daytime discotheque (23) material process
- she **accompanied** him and four other youths by car to a house where others joined them (24) material process
- the girl, who was a virgin, **did not consent** to any sexual activity (25) verbal process
- After her ordeal, she **left** and **travelled** to a friend’s house, where she **made a complainant** (89) material processes; verbal process

Text 4

Complainant 1

- the complainant, Miss P., aged 31, **visited** *in the early hours* of ... a club in Hockley, Birmingham (43) material process
- She **had** since 2.30 p.m. on the previous day **spent** most of the time drinking in the company of her girl friend and two men. (44) material process
- She **danced** with him (48) material process
- ... and he, so she **said**, offered to drive her home (49) verbal process

- She **was** terrified that she **was going to be whipped** (56) mental process; material process
- It was not however until February 25 that she **made a complaint** to the police (70) material or verbal

Complainant 2

- She **was** an employee at the same club as the appellant (82) relational process
- She **accepted** a lift home in the appellant's car (83) material process
- As a result she **was clad** only in a blanket for the drive home (85) material process
- As she **was dressing** in the bedroom, she said, he came in naked and took hold of her (87) material process
- She **struggled**. (88) material process; notice how 'struggle' is presented here as an intransitive verb; she did not 'struggle *with him*', she simply "struggled".

Text 5

- the complainant **served** a divorce petition upon the appellant (47) material action
- she had occasion **to go** to the lavatory (50) material process
- she **objected** and **took** her hands away (64) verbal process; material process
- she *tried to put* her hand between his body and hers (66) material process + modality
- She **lay** on the bed (76) material process
- She **obeyed** (77) material process
- She **did not cooperate** (80) material process

In terms of transitivity choices, the complainants also appear as agents of different kinds of processes. Like the appellants, they are actors of material processes mainly in the *trial-as-story-telling* part of the appellate decisions, or when their sexual history is being commented upon. However, the women are agents of fewer material processes than the men; on top of that, the complainants in all five cases are goals of most of the material processes where the appellants are actors. On the other hand, the complainants are rarely the actors of material processes in which the appellants are goals, or affected participants (one single exception is Text 5, where we find examples of material processes where the complainant is actor and the appellant goal). However, notice that in Text 3 the complainant does things *with* the appellants, rather than *to* them (she *met* them, she *accompanied* them).

In most cases, when the complainants act, they act not upon the appellants but upon other things (e.g. the house, the lavatory, the bed, etc). In other words, the text does not describe women as acting upon men, but

rather as being acted upon by them, or by the police, the Court, etc³. In the description of the rape (*trial-as-story-telling*), women are mostly agents of processes of saying or of being, which seems to emphasise the sense of helplessness that involves them. The very nature of the event leads to this construction: since we are dealing with decisions on rape cases, the female protagonists are usually constructed as helpless and almost as passive, while the attackers are generally described as powerful and active.

The description of the women involved in the five appellate decisions does change, though, from case to case, depending on how the Court sees each particular complainant. In Text one, the opinion of the judges is quite clear: the complainant was a woman of promiscuous behaviour, which contributed to a great extent to her rape, as can be seen in line 197: “clearly, the complainant was prepared to have intercourse with a number of different men”. In Text 2, the opinion of the Court towards the complainant seems to be intermediate, and we find no comment on her sexual life. In Text 3, the Court describes the complainant as a ‘real victim’: she is called “a virgin” (line 25), and the rape is referred to as “her ordeal” (line 89). Text 4, on the other hand, describes both its complainants in negative ways: many of the statements of the first complainant are introduced by reporting verbs and expressions which add a tone of doubt and questioning to her version of the rape (e.g. “so she said”, “it was said”, “she said”, “according to her”). The second complainant is described as having been involved in “some horseplay in a jacuzzi” where she got soaked, and therefore of taking a ride in the appellant’s car “clad only in a blanket”, which seems to depict her as rather ‘naughty’ and provocative. In Text 5 the view of the Court is intermediate, and again there are no comments about the complainant’s past or present sexual life. The way the judges see the complainants has a direct bearing on the degree of responsibility for the events the Court allocates to each of them, and thus on how active the complainant is described to have been prior to and even during her rape.

A last feature worthy of notice here, even though it is not the topic of this paper, is the use of modality² (indicated in italics). The use of modal markers of probability, such as the modal shifts ‘try’ and ‘attempt’ (“she **attempted** to get away”, “she **tried** to fight him”, “she was **trying** to scream”, “she **tried** to put her hands between his body and hers”) seems to indicate that the complainants’ reactions to their attackers were mostly ineffective. This further emphasizes their state of helplessness, and their general lack of control over the situation.

4. Concluding remarks

Simpson (1993) points out that the particular meaning of a linguistic feature is determined by its context. In a different text, and maybe under the scrutiny of a different analyst, the same linguistic feature can be interpreted in quite different ways. In this paper, informed by Critical Discourse Analysis and by a feminist critique, I have endeavored to investigate the links between

the transitivity choices, made in a specific type of legal text, reported decisions in rape cases, and issues of power and gender present not only in these particular texts but also in the legal culture as a whole.

One of the main characteristic of the appellate decisions analysed is that they are characterized by verbal processes, which help to construct the rape trials as abstract verbal activities. This characteristic extends to other forms of bureaucratic discourse. In Fowler's words, "politics and *the law* (...) rely heavily on verbal actions and verbal processes for their operation. Debates, negotiations, official statements, submissions, *court-room procedures and judgments* are verbal practices" (1991:74-5 - my emphasis). The trials are constructed as speech events for the appellants and the complainants, except where the story of the rapes and the sexual history of the complainants are told (notice that the sexual history of the appellants, whether they were promiscuous or not, is never mentioned in the appellate decisions). For the judges, the trials are also verbal and mental events, except when they perform certain actions peculiar to their position: accepting or refusing evidence, allowing or forbidding questioning, allowing or denying the appeal.

When material processes dominate in a text (such as in the *trial-as-story-telling* part of the appellate decisions), the picture created is one of action. On the other hand, the frequent use of verbal and mental processes creates the image of a static situation. The result of the construction of the trial as a verbal practice is almost to eliminate the notion of *action*. Even for someone who is not familiar with legal procedures it is not difficult to see that legal interactions between judges and appellants/defendants or complainants, due to the different places they occupy in a hierarchical system, are inherently asymmetrical in terms of power. This is rather obvious, and thus it is not the point I tried to make through this analysis. What I wanted to discover was to what extent appellate decisions make use of linguistic mechanisms to strengthen and/or maintain this power asymmetry alive. One of these linguistic mechanisms is the transitivity choices. The abundance of verbal and mental processes, for instance, disguises the fact that appellate decisions represent in fact relations of power, where the decision of the judges or Court (agent and subject) has a dramatic material impact on the lives of the appellants and the complainants (affected participants and clients).

The emphasis on verbal and mental processes and the systematic undercutting of agency that characterise the legal texts analysed here might express a wish, on the part of the legal writer, to be more politically correct by mitigating or softening the otherwise raw exercise of power that usually characterises an interaction between an outsider/client (e.g. an appellant or complainant) and a member/subject of the law and order establishment (e.g. a judge).

As appellate decisions are written by judges, they tend to portray a very specific point of view: white, male, middle or upper-class (Griffith 1977; Patullo 1983). It is not surprising, therefore, that legal discourse will tend to

express the ideologies and serve the interests of this particular social group, at the same time excluding the voices of other minorities. Women represent a social group that is frequently discriminated against in legal texts from rape cases. First because, as clients or public, they can only take part in the legal interaction according to strict rules previously established by the legal institution, which they cannot negotiate (this also applies, of course, to men who occupy the 'client' position). Second because women are exposed to an extra layer of discrimination, which concerns their sexual history: the law and order establishment will consider them as worthy or not of respect and protection depending on their previous classification as women of 'good' or 'bad' reputation (see, for instance, texts 1 and 4).

I argued above that most transitivity choices present in the data functioned as a way of hiding the powerful position of judges. However, transitivity choices might represent distinct world-views, not merely a single one (Mills 1995). Depending on how critical the text consumer is of the different views present in a text, he/she can see them as complementing each other, or contradicting each other, and therefore difficult to reconcile. The data analysed also present distinct world views about women. Many of the appellate decisions describe women as free to act as they choose: they go to night-clubs (Texts 1,2 and 4), they drink (Texts 1,2 and 4), they have sex with different men (Text 1), they have children outside of marriage (Text 1); these forms of behaviour do not desqualify women from the shelter of legal protection against male aggression. On the other hand these same women are described as 'promiscuous' (Text 1), 'provocative' (Text 4), or even as liars (Text 3), and lose legal protection (or at least respect) as a result of their 'inadequate' social and sexual behaviour.

How does the legal culture, traditionally conservative, deal with the tensions of a post-modern society, marked by constant changes in social and cultural values, and consequently in gender relations? In broad terms, judicial discourse represents the establishment and strives to keep things as they are. Having said that, I want to point out that to argue that the judicial discourse works to protect the existing social order does not mean that all judges are impervious to cultural, moral and social changes. Judges can present in their discourse traces of social/cultural innovations. The examples I showed above indicate that traditional and more progressive views of gender roles and gender relations can exist side by side in the discourse of the criminal justice system. However, judicial attitudes will always change belatedly, if at all. The main function of judicial discourse is to maintain the status quo, not to challenge it. Referring to the ideologies that shape English judicial discourse, Griffith (1977:214) says that:

Law and order, the established distribution of power both public and private, the conventional and agreed view amongst those who exercise political and economic power, the fears and prejudices of the middle and upper classes, these are the forces which the judges are expected to uphold and do uphold.

In spite of the traces of conflicting notions about gender found in the data, in general terms one of the dominant ideologies in the appellate decisions analysed is that women are the helpless recipients of male behaviour, and are at the same time in need of male protection (either from a boyfriend/husband/etc, or from law and order officials). However, it seems that their previous sexual history, the time, place and circumstances of their attack, and the way they behave during it can all determine, to a great extent, if they will fit the standard concept of a 'real victim', and ultimately if they will be entitled or not to legal respect and protection.

NOTES

- 1 I wish to thank Dr. José Luiz Meurer, Dr^a. Viviane Heberle and Dr. Pedro Garcez for reading this paper, and for their help, criticism and suggestions.
- 2 I am using the term 'writer', instead of 'speaker' because I am analysing a written text. However, the transitivity system is found both in spoken and written texts.
- 3 For more on modality, see Halliday 1985; Figueiredo 1995.
- 4 Some scholars, specially in the area of anthropology, see cases of violence between men and women not merely as an exercise of male power, but also as a form of communication, eroticism, identity formation and gender interaction (see, for instance, Gregori, Maria Filomena (1992). *Cenas e Queixas - Mulheres e Relações Violentas*. São Paulo: Anpocs/Paz e Terra). In that view, women would not only passively receive violent male actions, but would also be acting upon men during violent encounters between the genders.
- 5 According to Polly Pattullo (1983), the law does not require the judge to direct the jury to look for corroboration. However, most judges do give this kind of warning during rape trials, which is further evidence that in a way the woman is also on trial, along with her attacker (her sexual reputation and the way she reacted to the attack are closely scrutinised). One English judge warned the jury in a 1976 trial that "it is well known that *women in particular* and small boys are liable to be untruthful and invent stories" (in Patullo *ibid*:18 - my emphasis).

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