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Mobbing as a genre and cause for legal action? Linguistic prolegomena for a legal issue.

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A new type of communication?

- 1 In what we have termed “the pragmatic turn”, Giltrow and Stein (2017) have tried to sketch the way in which disciplines have discovered and turned to tools of analysis from pragmatics to analyze communication and meaning construction in their area, not necessarily abandoning, but adding to, language-internal, more form-based approaches in the area of law. The necessity for widening the analytical tools to less form-based approaches is suggested by the nature of genres on the Internet and their elusiveness to form-based approaches, such as for instance demonstrated by the analysis of blogs (Puschmann 2010). Internet genres have such a wide range of variation in terms of their types and their linguistic realization that attempts to characterize them by formal criteria, such as is more possible for traditional written-based genres, are doomed. This widening of the scope of pragmatics into the genre and legal domain where traditions of literalness and compositionality had traditionally dominated the playground, especially in legal interpretation, is gradually, if hesitatingly, taking place. In addition to being more conducive to description in terms of pragmatics, the Internet offers many challenges to all traditional notions of text type and genre. The purpose of this contribution is to demonstrate the particular challenge the social phenomenon of mobbing: “a systematic succession of acts of hostile and unethical communication that one or more perpetrators direct against a target (or targets) over a significant period” (Guillen Nieto in his volume) as an act of communication involving language poses for the theory of genre.
- 2 In law, apart from the paramount theoretical issue of whether the law is “in the text” (Stein 2017), one of the salient issues that persists, is whether you can be found guilty

of a crime based on what you have “not said”, - the issue turning on the very notion of “saying” as represented in morphemes that have a physical textual correlate, - or what you intentionally mean as a result of inferential meaning construction. The present paper takes up several strands of a wide-scope view of pragmatics as depicted in a recent overview of the field of pragmatics and applies them to the analysis, from a linguistic perspective, of a particularly critical candidate for genre-hood, speech acts involved in mobbing. So this contribution purports to be both a study of issues inherent in the notion “genre” and in the more pragmatic conception of this term as well as a study, from the linguistic point of view, of the phenomenon of mobbing itself.

- 3 Forensic linguistics is mostly concerned with “negative” speech acts in the sense of analyzing language as evidence in crimes or committing crimes by language. The latter type of concern with language is at the center of interest in the present context. Acts of mobbing are destructive and societally negative acts of language. They can and often do include non-language-related acts, but they significantly involve language.
- 4 It is also a societal and medial fact that the occurrence of mobbing has been brought to the centre of attention through the Internet and the many more technical facilities as the carries of new genres. Mobbing did exist before the Internet. But the Internet has made it much easier and much more “inviting” to engage in acts of mobbing. This is not the place to expatiate on the way the Internet encourages mobbing on an unprecedented scale, but it should be mentioned that, beyond the mere quantitative increase of technical facilities and modes, it is easier to “hide” behind the technical distance to the victim: there is less social “cost” than in case of face-to-face social accountability.
- 5 In contrast to other “negative” uses of language, like defamation, harassment or insult, or hate speech, mobbing includes, as a rule, much larger segments of language use. They go much beyond one individual utterance and may stretch over considerable extensions of time and space. It is these larger units with language embedded in them or consisting entirely of language acts that are endowed with sensefulness and are also in their totality referred to as ONE act of mobbing, and not as several, unrelated acts. They receive their coherence and identity as one single, if complex, communicative act only if seen as one unitary whole, with the individual acts – utterances, moves etc. – receiving their interpreted significance only from this sense as one unitary whole.

Genre

- 6 The linguistic concept to be invoked here as an analytic descriptive tool is the “genre”. The notion of the “genre” (cf. Giltrow 2010 and Bhatia 2012 for the history of this concept) implies a view of an abstracted unity of several or many individual speech acts that receive their function and their “sense” only from this overarching entity. The genre implies a “top down” view on the individual speech acts and informs, as a type of “context”, the interpretation of the individual utterance. The notion of “genre”, as an “activity type” (Levinson 1992) is primarily a socio-pragmatic category that has superseded a more narrowly linguistic, text-based view of communication, the notion of the “text type”, that would first analyze actually occurring linguistic forms, and then try to follow up on how they are linked into higher-ranking units, or are “interpretable” as a reflection of notional genre categories, as carried out paradigmatically in Biber (1995), i.e. basically a bottom-up process. So the distinction is

between the top-down notional, socio-pragmatic concepts of genre and the bottom-up traditional category of “text type”, with text types underdetermining genre, meaning that genres are not necessarily and sufficiently distinguished from each other by linguistic form. They **may** be distinguished, but they do not **have** to be.

- 7 The notion of a genre implies the concept of a function of the speech act in a particular social or institutional context. Traditionally, the notion of “function” in the context of speech acts has been ascribed to individual utterances, or sentences only, typically couched in speech act terms. An utterance is ascribed to a certain illocutionary type (i.e. directive) in an act of interpretation. There may be higher-ranking conversational functions that are realized by the lower act. For instance, a reproach can be performed by a directive speech act.
- 8 Applying the notion of genre to mobbing as a type implies widening the notion of function to large scale units. These units that are interpretatively abstracted into higher-ranking units may be multi-modal, with language embedded in other types of actions, including physical ones, and other medial uses of language. In addition, these individual acts will, in the case of mobbing, be non-adjacent, and very discontinuous in time, presenting a major problem for any concept that would postulate adjacency or local integrity of “text” in the sense of linguistic utterances.
- 9 It is this very non-adjacent and temporally stretched out character that is the real theoretical challenge and which forces an interpretation as being held together by the presumption of a common intention, of an intended functional unity. Forms of coherence traditionally analyzed in text linguistics (Halliday and Hasan 1976, Dressler and Beaugrande 1981) cutting across sentence boundaries and stretches of continuous text, such as coreference chains or sentence connexion do not normally hold in longer communicative actions like mobbing. Even larger standardly analyzed large-scope forms of semantic cohesion like semantic isotopies, seme recurrences and word fields may not be observed and cannot therefore be criterial in establishing a sense of unity of a particular communicative action and establishing “genre-hood”. There are cases where none of these forms of coherence is observed, but there is still a clear sense of unity of purpose over non-adjacent space, time, topic and communicative event.
- 10 The fact that there are few or no “surface” form that can be considered the typified linguistic “signifiant” side is more common than one might think, including in the discipline in which the linguistic surface forms are often at the center of attention and discussion. For instance Kurzon (1997) points out that the legal genre “contract” has unifying characteristics above all speech act characteristics: it is above all the obligations imposed and incurred, that , if ratified, define a genre, as well as certain superstructural characteristics. So the abstract unity of the type is less constituted by linguistic surface characteristics than by the external, institutional circumstances as a type of legal activity.
- 11 Therefore it is a criterion for establishing the unity of a communicative event that there is the overarching intention as unity-defining concept here. It would appear that if we do not accept that a series of actions is held together as a unitary event it would not be possible to identify such an action as an instantiation of a genre mobbing. There is a perception of a coherent communicative act with a purpose, and there is a word and a concept for it in the speech community lexicon. Essentially following the definition of genre as an “activity type” (Levinson 1992), it is obvious that

- 12 - There is intentional human agency
- 13 - There is an intended effect
- 14 - There is the perception of coherent activity
- 15 - That it involves language, i.e. some amount of linguistic “text”.
- 16 - There must be a recurrent pattern or structure in the nature of a frame to be formed or to exist that allows the individual occurrence to attributed to this general pattern and its identity as class membership to be established.
- 17 - This is standardly reflected in the existence of a name or a label, like “a blog”, or “a chat” , triggering expectations of structural properties that will then act as top-down interpretive schemas.
- 18 It is not necessary for an institutional embedding to be postulated, although it is clear that the majority of mobbing acts have an institutional context (health institutions, educational institutions, political institutions) as embedding and backdrop that acts as a constraining and redundancy supplying knowledge background.

Discontinuous speech act

- 19 The specifics of mobbing as a negative genre involve further theoretical issues. A feature that is not in itself a problem for postulating mobbing as a genre is the discontinuity of mobbing actions: there have always been, in spoken, written and Internet media, cases of discontinuity of the “instalments” in which genres are instantiated, such as a novel in sequels, or successive sessions of a court proceeding. Internet genres are, apart from a relative paucity in terms of surface text, in addition notorious for being discontinuous in their production and reception modes.
- 20 It is a further frequent characteristic of a genre as a “social construct and social action providing the writer with a socially recognizable way to make his or her intentions known.” (Miller 1984, 157f) that they are announced and ratified by the addressee. Only when the addressee is being “notified” in some way and has agreed to engage in a particular social action will she or he cooperate: telling a conversational story in midst ongoing cooperative conversation with normal turn-taking will only work if the proponent of a story pre-announces it and asks the fellow-conversationalists for permission to monopolise the conversational floor for some time. It is these “pre-signals” that announce and contextualise a genre that are also singularly absent in a mobbing situation: otherwise the evil purpose would be defeated,- a feature that relates to the particular speech act character of the genre, to be addressed below.
- 21 The challenge for this type of genre is on a different level and surfaces in a real-time production and comprehension view as spelled out by van Dijk (1980) and van Dijk and Kintsch (1983) as a dialectic between between bottom-up and top-down processes shared between speaker and hearer. The normal case for genre is that communicants have an a priori knowledge of which genre they are about to embark on. Often there is a choice of genres and speakers make a deliberate choice, or they may have a genre forced upon them in asymmetrical social situations, like when you are stopped by the police. As a whole you are aware of what genre you are about to embark on and, also as a rule, although with exceptions, you are gearing up to cooperate, call up the required

types of knowledge and make full use of the redundancies afforded by your acquired knowledge of handling genres, and put it to full strategic use to your advantage.

- 22 This is not so in the case of mobbing actions seen as a sequence of non-adjacent individual episodes or actions. It is often the case that the victim interprets the individual episodes as negative actions directed towards her or him, but is entirely unaware of the systematic and coherent character of these actions. The individual actions only “make sense” if the overarching intentionality of these actions is recognized. This may not take place at all from the side of the victim. Linguistically speaking, for an illocution to be in effect as a certain illocution, or for a genre to be operative as a given genre, i.e. to work and be cooperated in, it needs to be “ratified”. This ratification has two components: it needs to be recognized that what we are in is indeed a certain genre, and then it needs to be accepted and cooperated in. This is an issue for all negative speech acts: the moment you realize what the game is, the game will no longer work. So the condition for its success is that it NOT be ratified, - in contradistinction to “normal”, positive genres.
- 23 In the pragmatically oriented theory of discourse the understanding a text or a discourse essentially meant a reconstruction of the intention of the speaker. This reconstructive process is, in the case of an act of mobbing, delayed or even non-existent. In modern pragmatics discourse is seen as an interactional process of meaning generation (Foolen 2019, Jaszczolt 2019) between hearer and speaker (these terms including writer and reader) . This type of approach, although psychologically most realistic for the analysis of ongoing spoken discourse, would not be suited to the description of the type of negative speech acts discussed here. At best, there might be a process of reconstructive, asymmetrical meaning assignment in the way of a backward contextualization of individual speech (and other acts).

Type of speech act

- 24 So mobbing, if it is to be conceptualized as a genre, is a non-adjacent, discontinuous speech act that is on the one side held together analytically and by the speaker/originator’s intention, but it is in a way also solipsistic as this intention lives, in order to be “successful”, on the fact that it is not recognized as such by the recipient. As such, it would appear that it is a subclass of deceptive acts, i.e. deception with malicious intent. In terms of a linguistic characterization, it seems a defining feature of “negative” speech acts or genres that are not definitionally located on the level of illocutions, but in terms of their negative intended perlocutionary effect. They misfire – are not successful – if the intended perlocutionary effect is indeed uncovered. This seems to be typical for a class of morally negative speech acts: a lie is not “successful” if it is discovered as a lie, as demonstrated by Horn (2017:31)
- 25 “While lying is by definition intentional, misleading or deceiving can be accomplished either intentionally (agentively) or unintentionally (non-agentively) and is typically a *perlocutionary act*, defined by its effect on the addressee or victim. And while lying may or may not be successful in its intended goal, *mislead* and *deceive* are “success” verbs..... Thus we have contrasts like those in (3):
- 26 (3) Sorry if I {misled you/deceived you/#lied to you}, I didn’t mean to.
- 27 Don’t let the blue sky {mislead you/deceive you/#lie to you}—it’s bitterly cold out.

- 28 She {lied to me/#misled me/#deceived me}, but I didn't believe her for a minute.
- 29 I tried to {mislead/deceive/#lie to} her, but she was too clever to believe me."
- 30 The obverse seems to be the case for "positive" speech acts in which the ratification and the felicity of the realizing of the illocution opens up the possibility of perlocutionary acts or effects.
- 31 From the side of the text producer, it is obvious that – for this very reason – there is no interest in the victim recognizing the overarching intention, and therefore the nature of the genre, in contradistinction to a normal situation when everybody agrees to be engaged in the same type of communicative activity. In van Dijk's terms, there is no interest in encouraging or enabling top-down processing of the individual acts and words as a realization of a higher-ranking intention, – a feature facilitated very much by the very discontinuity of the acts. If the victim is not helped by counselors in "making sense" in bottom-up inferring the macro-intention, the victim may never succeed in connecting the dots to lines.
- 32 It is not a particular theoretical difficulty for looking at mobbing as a genre that the intention is not only on the side of one speaker, but as a rule mobbing actions are performed by several actors, who act in intentional concord. If it is difficult – because of the general indirectness – for the action to be recognized by the victim, the difficulty in identifying the intentional nature of the action surfaces as a major impediment in bringing legal action and for identifying mobbing so as to make it available for therapeutic intervention.

Challenge for prosecution

- 33 On top of the difficulty in identifying mobbing as an overarching strategy, the legal side is faced with another major impediment. In order to persecute, police and the legal system are asking for evidence, "hard and fast". In addition, an essential element especially in committing language crimes is the recognition, by the judge, that the act was intentional. For instance, acts of lying are invested with their moral reprehensibility only if the lie is intentional. Cases of accidental truth do not exonerate the liar judicially and morally. And legal cultures are divided between recognizing perjury only in dependence on factual untruth: perjury is likely tied to the intention of lying when giving testimony.
- 34 But the major problem in cases of mobbing is the very indirect character of the individual speech acts involved. It is unlikely that a search for individual expressions that might be direct indicators of the nature of the individual act or of the whole intended activity will turn up massive evidence in the form of individual expressions, such as derogatory or pejorative words that can be used as direct evidence. Such an approach has been convincingly demonstrated Muschalik (2018) for the act of threatening, showing the value of a confluence of qualitative and statistical methods in providing actionable linguistic evidence. It is more likely that the whole super-structural discourse pattern making up the act as a whole as demonstrated by Guillen (forthcoming) and the application of this type of analysis to larger corpora will be of value for the evaluation a complex negative speech act as an actionable offence. In addition to linguistic markers in the traditional sense, genres are often characterized by possessing a canonical discourse structure that is part of its definition, such as a

story that typically displays “functional” parts like orientation, complication action, a peak, coda and possibly morals. A mobbing episode would typically contains separate discontinuous moves stretched out over a period of time. In their intended goal they are held together by an integrating overarching goal (Liao 2017), which integrates the individual moves into a superstructure (van Dijk 1980) that is subservient to this global goal. From this more global discourse structural perspective a notion of a genre is easier to characterize than under a more traditional text type perspective focused on the surface connexion of linguistic surface elements.

- 35 The very notion of a superstructure, however, requires systematicity and recurrence an abstracted property. It is under this aspect that linguistics faces another challenge particularly relevant for the legal aspects. Larger corpus studies of documented occurrences of mobbing episodes must investigated in the search for such recurrent moves, that are elements in a hierarchical superstructure with a specific “negative” goal. It is the identification of this abstract pattern and the recurrent linguistic forms and micro speech acts that will build the type of evidence that can form the foundation for legal persecution.

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RÉSUMÉS

Cet article envisage la notion de harcèlement comme un « genre », à part entière, selon une acception plus large et ouverte qu'habituellement ; c'est-à-dire, ici, avec ses caractéristiques et stratégies pragmatiques, sociales, etc. propres. Cette définition ouverte du harcèlement prend sa source dans la notion d'activité sociale qu'il implique, envisagée dans une configuration spécifique ou selon une certaine visée actionnelle, où le langage utilisé est déterminé, programmé par des vecteurs pragmatiques, extérieurs au langage en tant que tel, constitutifs de cette situation et du contexte spécifique dans lequel elle se déroule. Une telle définition se prête plus facilement à une conceptualisation d'une action sociale complexe telle que le *mobbing* (le harcèlement, au sens où une foule « mob » est susceptible de se masser autour de quelqu'un, de l'assaillir, physiquement ou moralement) envisagé comme activité unitaire et coordonnée, dont toutes les composantes actionnelles sont guidées par un objectif global commun (le harcèlement). Tester la notion de « genre » sur un cas limite aussi complexe permet de faire ressortir à la fois les propriétés structurelles définissant les actions de harcèlement et les problèmes théoriques liés à la notion de « genre ». Cela permet en particulier de se demander dans quelle mesure ce concept de harcèlement peut être compris et utilisé pour couvrir un certain nombre d'actions sociales complexes et multimodales.

The paper takes as its point of departure a more modern, pragmatics-based concept of “genre” at the base of which is the a notion of a social activity in a specific configuration or actional purpose, with use of language embedded in and determined by these pragmatic, language-external vectors. Such a concept lends itself more easily to a conceptualization of a complex social action like mobbing as a unitary, coordinated activity, with all component actions steered by a joined overarching goal. Testing the notion of “genre” on such a complex borderline case will at the same time bring out both defining structural properties of mobbing actions and the theoretical issues incumbent on the notion of “genre”, especially how far the concept can be stretched to cover complex, multimedial social actions.

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