



Sentencing remarks as a legal subgenre: *R v Darren Osborne*

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Abstract. In the common law system, sentencing remarks are a legal subgenre where, once the verdict has been rendered by a jury, judges present the reasons for the sentence imposed. From the linguistic point of view, both the medium (oral) and the addressees (offenders, but also society) make these texts extremely attractive, as an instance of expert-lay communication, which combines clarity with rhetoric and persuasion. In our study, we shall analyse the sentencing remarks subgenre with a special focus on *R v Darren Osborne*, a terrorist case where religious hatred was an important component and the judge was perfectly aware that the audience was not only the accused or the victims, but society at large. The result of our analysis will be a characterization of the sentencing remarks as a defined subgenre, both concerning textual moves and, most importantly, the stylistic devices deployed.

Key Words: courtroom language, legal language, legal stylistics, sentencing remarks, *R v Darren Osborne*.

[es] Las observaciones al dictar la condena (*sentencing remarks*) como subgénero jurídico: la Reina contra Darren Osborne

Resumen. En los países del *common law*, las observaciones al dictar la condena son un subgénero jurídico en el que, una vez que el jurado ha emitido su veredicto, los jueces enumeran los motivos de la pena impuesta. Desde el punto de vista lingüístico, tanto el medio (oral) y los destinatarios (el delincuente, pero también la sociedad) confieren un atractivo especial a estos textos, como ejemplo de comunicación entre experto y lego en la que se combina la claridad con la retórica y la persuasión. En nuestro estudio analizaremos el subgénero de las observaciones al dictar la condena con una atención especial a *R v Darren Osborne*, un procedimiento por terrorismo en el que el odio racial fue un componente importante, y la jueza era perfectamente consciente de que sus destinatarios no eran solamente el acusado o las víctimas, sino la sociedad en general. El resultado de nuestro análisis será una caracterización de las *sentencing remarks* como subgénero definido, no solo en lo tocante a movimientos textuales, sino, lo que es más importante, por los recursos estilísticos desplegados.

Palabras clave: comunicación experto-lego, estilística jurídica lenguaje de los juicios, lenguaje jurídico, observaciones al dictar la condena, *R v Darren Osborne*.

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1. Legal Genres

For a few decades now, linguists have been working in order to categorize the intersection between a basic human ability, language, and probably the main consequence of (and instrument for) human organization into society: law. Such intersection between “language” and “law”, however, is not easily defined: do we study legal language, the language of the law, language “about” law, “law and language”? The relationships between the two elements are numerous, since they may span any area in which language and law come into contact, which may be at times confusing (Kurzon 1997). An example of the heterogeneity of research fields resulting from this intersection may be seen in language and law conferences, where authorship identification, forensic phonetics or language rights coexist with translation problems, the philosophy of law or cybercrime terminology².

Within “legal language”, the classification and delimitation of the great variety of linguistic manifestations is made much more approachable through the concept of “genre”, a notion which Swales (1990) and Bhatia (1993, 2004, and more lately 2017) have applied to English for Academic and Scientific Purposes, in order to describe the result of a given communicative purpose within a given specialized domain. In legal language, an awareness of the existence of genres is greatly useful for a number of reasons: from the very beginning, the training stage of the legal profession (the aspiring lawyer knows what to expect when learning the tools of the trade), to the professional endeavour, where practicing lawyers may resort to pre-existing text types, which not only makes their work easier, but also affords predictability and certainty in case of disputes (Lemens & Adams 2015).

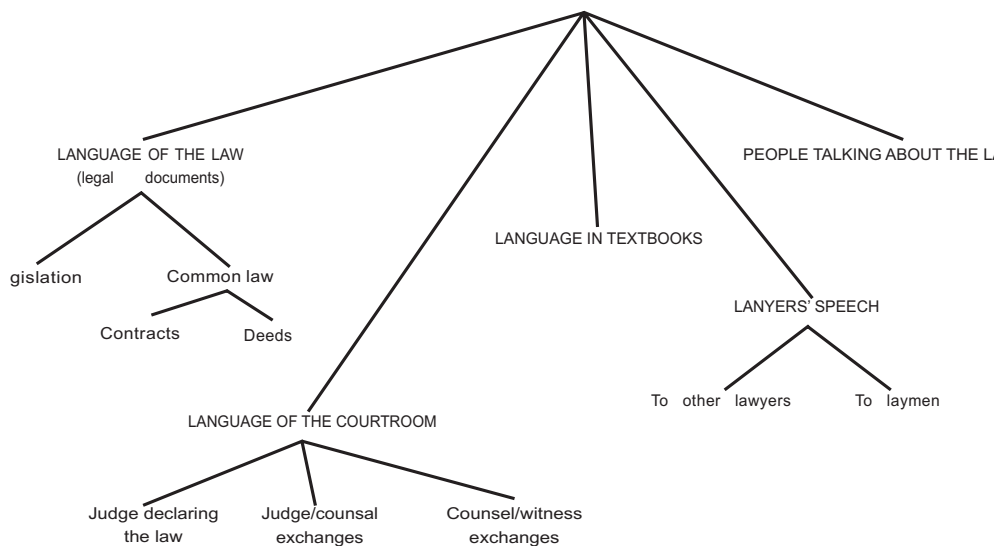
The classification of genres in “legal discourse” is also varied, and largely depends on the criterion, e.g. place (e.g. courtroom language), medium (written, oral) and participants. In this latter case, classifications differ depending on whether “external participants”, i.e. those who are technically not members of legal professions, are included. This would expand the focus to genres aimed at lay addressees, and even to genres to some extent removed from the “core” of the legal profession, such as courtroom novels (see Campos Pardillos 2007), for the concept of “hard” and “soft” genres). Some typologies even combine different criteria within the same classification, which leads to potential dysfunctions: for instance, Trosborg (1995) divides legal language into “language of the law” (legal documents), language of the courtroom, language in textbooks, lawyers’ speech and people talking about the law (Figure 1).

Useful as this classification may be, one will immediately observe that criteria are combined, since the first category “language of the law” is based on medium + type (written, standardized), the second one on venue and medium (the courtroom, oral), the third one on medium (written, not standardized), the fourth on participants, and the last one seems to be a wider category including all other discourses not fitting into the others. However, there are contradictions at first sight: for instance, “language of the courtroom” overlaps with “lawyers’ speech”, since at least one of the categories is lawyers speaking to lawyers (unless one considers that the judge is not a lawyer). In spite of these contradictions, these “combined” or “hybrid” classifications seem to be the norm, as the intersection of criteria leads to extremely practical

² Such was the variety at the International Language and Law Conference in Freiburg in 2017 (<https://www.frias.uni-freiburg.de/downloads/veranstaltungen/friedmann-vogel>).

models for analysis, based on very defined types of subgenres with shared characteristics (see also Borja Albi 2007). This has been reinforced by the application of corpus linguistics to legal genre analysis, which has provided substantive evidence for insights on the characteristics of specific genres, and dispelled monolithic notions of “legal language” as a single entity (see Goźdz-Roszkowski 2013 and, more recently, Fanego & Rodríguez-Puente 2019).

Figure 1: Subdomains of modern legal language (Trosborg 1995: 2)



2. Sentencing remarks in criminal proceedings

The “sentencing remarks” are the closing stage of a criminal trial in the common law system: after the jury has delivered a verdict, the sentencing phase starts, during which the judge considers a number of factors which include aggravations and mitigations, previous convictions or psychological or social reports. Once the judge has made a decision, the offender is brought to the courtroom and the judge delivers the sentence orally, explaining which factors have been taken into account in order to calculate the time to be served (aggravating and/or attenuating factors, time spent on remand), and the conditions for release. Once the remarks have finished, the perpetrator is taken into custody or released under a conditional discharge, where applicable.

In order to fully understand and appreciate the distinguishing traits of the “sentencing remarks” subgenre, as will be described here, it is necessary to consider the overall picture of the literature on courtroom discourse. In such area, the main focus of research seems to be expert-lay communication, the expert being usually counsel and the lay persons being witnesses, victims (when giving testimony as witnesses) and jurors (for a “canonized”, generally accepted overview of topics for analysis in courtroom communication, see, for example, the chapters in Coulthard & Johnson, eds. 2010).

However, the criterion confusion between “place” and “participants” may leave out some interesting discourses. What happens, for instance, when things are said within the courtroom, but are not aimed at those *within* the courtroom? This can occur, e.g. when transcripts are recorded (in writing, and now taped or filmed), and are used for appeals, training or for the preparation of similar cases, although it may be argued that the primary function of those discourses was communication with those taking part in the proceedings. Nevertheless, sentencing remarks are specific in that they are addressed both at those inside the courtroom *and* at audiences outside the courtroom. As we shall see in the examples quoted here, sentencing remarks are mainly, or seemingly, made at the defendant, but also indirectly speak to victims, victims’ families, and what is more important, society at large. In fact, sentencing remarks are among the most publicized courtroom discourses, something which is intentional in nature, although at times incomplete or decontextualized newspaper reporting makes the average reader believe that some of the sentencing factors have not been properly considered (Roberts & Hough 2011: 169). This is why the UK judiciary strives to provide full written versions of sentencing remarks, in order to compete with such inaccurate versions and provide a reliable account of what has been said in court³.

In comparison with other examples of courtroom discourse, a review of the literature shows relatively scarce studies on sentencing remarks. This can be due to many reasons, which may include the fact that they are a specific feature of the common law system (in the continental system, judgments and sentences are written). However, in our opinion, the most likely explanation is that sentencing remarks are an “after-the-fact” subgenre, which has no impact on the offender being found guilty or not guilty (whereas closing arguments or jury directions, for instance, may influence a verdict). Those few studies dealing with sentencing remarks tend to focus on the treatment given to specific offender profiles, such as youth offenders (Bouhours & Daly 2007), persons with disabilities (Sullivan 2017), gender (Hall et al. 2015) or women convicted of murder (Potts & Weare 2017). In some studies, the issue of value judgments (which will be part of our analysis) is barely mentioned in passing, for instance, when women are given a harsher treatment than men (Hall et al. 2015). Most of the analyses focus on the legal implications, with rare exceptions, including Sullivan (2017) (who explores discourses on disability), Hall et al (2015) (who pinpoint the differences in the way the offender is addressed) or Robertshaw (2004), who discusses rhetorical strategies in a famous case.

It is our belief that the sentencing remarks subgenre, as part of the general genre of “legal decisions”, merits attention for a number of reasons, starting from the fact that it provides “closure” to the case (once the remarks are finished, the proceedings end in the first instance, the courtroom is vacated and, if there is a custodial sentence, the convicted person is “taken down”). Nevertheless, the real distinguishing trait of sentencing remarks as opposed to other courtroom exchanges and other written rulings lies in the opportunity they create for the judge (representing the judiciary as one of the powers of the modern state) to address the sentenced person, the victims, the families, and society in general, providing an “official version” of the facts of the case, but also a moral appreciation of such facts and the circumstances surrounding

³ <https://www.judiciary.uk/judgment-jurisdiction/crime/>.

them. It is in such remarks that one may find the justification for the proportionality between the crime and the response by the state, and it is a stylistic analysis of how this is done that can help to systematize the communication strategies which may eventually help to construe a version of the facts and the role of justice as perceived by the ordinary citizen. Also, sentencing remarks are worthy of study because they seem to challenge the traditional classifications of legal genres: as legal decisions, they would fit within the “written” genres (Bhatia 1987, Tiersma 1999), but their oral nature and the fact that they take place between an expert user and lay addressees (perpetrator, victims, general public) would place them next to other oral courtroom discourses, such as the closing arguments.

3. The “sentencing remarks” subgenre, and the specifics of *R v Darren Osborne*

For our study, we have chosen a sample of 16 instances of sentencing remarks issued by various judges in English Crown Courts between 2016 and 2017, published in the Judiciary website (<https://www.judiciary.uk/judgment-jurisdiction/crime/>). In order to check the stability of the components of the subgenre, a variety of crimes were included, all of them being serious enough to be triable in the Crown Court (including, amongst others, murder, terrorism, child pornography or wounding with intent). Once the general features of “ordinary” sentencing remarks were established, and considering that their most appealing trait is the message sent by justice to society, they were compared to those displayed in a high-profile case. Thus, a trial was chosen where the events and the implications were ideal for the judge to send a message to society as a whole: the case was *R v Darren Osborne*, heard at Woolwich Crown Court, and reported in the media as the “Finsbury Park Attack”. On June 19, 2017, after a terrorist attack in London by ISIS-inspired terrorists where eight people were killed and 48 were injured, and in the wake of media accounts about paedophile rings run by members of immigrant communities in Northern England, a man called Darren Osborne, who had been radicalised by far-right anti-Muslim material, drove a stolen vehicle against a group of Muslims outside a mosque. A man died at the scene, and the perpetrator was held by the crowd, who were prevented from lynching him by the imam. After a jury trial, the person was found guilty of terrorism-related murder and attempted murder, and sentenced to life imprisonment for a minimum of 43 years. The judge making the remarks was Justice Cheema Grubb, a fact that granted additional media coverage as she had been the first Asian woman judge to be appointed to the High Court.

Concerning mode, sentencing remarks are a subgenre belonging to the category “written to be read” in the Hallidayan perspective. This is not a necessary requirement, but judges mostly resort to this strategy, allegedly in order to control details (Tugendhat 2016), but also, as will be seen here, so as to carefully combine stylistic persuasive devices which might not be readily available during oral improvisation.

From the stylistic point of view, sentencing remarks are the result of the confluence of two purposes. On the one hand, there is the primary goal that the person found guilty, and the victims where applicable, are told specifically the reasons for the duration of the sentence (note that the verdict, i.e. the fact that the accused is guilty, is something that has already been decided at an earlier stage), and the condi-

tions for release, especially where the sentence is life imprisonment. Nevertheless, this is not the only function of sentencing remarks: in a day and age where justice is perceived as one of the pillars of democratic states, and where citizens have almost unrestricted access to most court decisions, either through reports by online media or direct access to institutional pages, there is a need for society to perceive that justice is fair and reasoned, and for members of the judiciary to “justify themselves” before the general public. More specifically, online publication would seem to follow the recommendations of the Halliday Report (Home Office 2001), which points out the need to improve public understanding of sentencing. This is why sentencing remarks, as will be seen below, are an argumentative text with various levels of addressees, and there are cases, as illustrated here, where the perpetrators may not be the most important recipients of judges’ remarks.

The usual structure⁴ of the “sentencing remarks” subgenre usually consists of six sections based on specific moves (understood as “discoursal or rhetorical unit that performs a coherent communicative function in a written or spoken discourse., considering their communicative purpose”, Swales 2004: 228). Such moves are present in all the samples studied with the exception of (6): (1) Narration of crime; (2) References to victims; (3) Character description; (4) Sentencing considerations; (5) Sentence and conditions for release, and (6) Additional remarks. We shall now explore them in detail, with special attention to their most usual stylistic features, and shall also emphasize how these features are at times departed from in *R v Darren Osborne*.

3.1. *Narration of the events*

The first move in the sentencing remarks is addressed at the defendant, and acts as a reminder of the events as proved and the decision of the jury. It is made in the second person, and contains the name of the defendant, the usual formula “you have been convicted of”, the reference to the offence and the statute (in the case of statutory offences), and a brief description of how the offence was committed. Such is the formula used in most cases:

Berlinah Wallace, you have been convicted of the offence of applying a corrosive fluid with intent contrary to section 29 of the Offences Against the Persons Act 1861 (*R v Berlinah Wallace*, our emphasis).

Even in those cases where the defendant is not present (it is possible for the offender to refuse to come to court), the second person is used, for the message will be relayed subsequently:

The Defendant has refused to come into Court to hear this sentence being imposed. With the consent of his advocate I will proceed to impose sentence upon him in his absence and **will refer to him in these sentencing remarks in the second person. I am content for him to be given a copy of these remarks to read.** Last Friday **you Ming Jiang** were convicted at this Court of the single count you face on this indictment of murder (*R v Ming Jiang*).

⁴ Tugendhat (2016), a judge himself, remarks that “most sentencing remarks are predictable and boring”.

In principle, it is unusual for value judgments to be used at this stage; they usually appear in the form of occasional adjectives (e.g. “vicious attack”). However, in *R v. Darren Osborne*, the opening sequence is different, given the circumstances of the case, and the judge chooses to emphasize a procedural detail, which anticipates the characterization of the defendant by referring his attempts at misleading the jury:

Darren Osborne you have been convicted on overwhelming evidence by an **intelligent** British jury who saw through your **pathetic** last-ditch attempt to deceive them by blaming someone else for your crimes. On 17th June 2017 you hired a big heavy van and the next day you took it from Cardiff to London intending to deploy it as a lethal weapon to drive into and murder innocent people, lawfully assembling and protesting in London. You told the jury you intended to “plough through as many of them as possible”. But you failed in that endeavour because you could not get your van near the march. There is no doubt at all that the detailed public safety arrangements made by the Metropolitan Police for the Al Qud’s Day march saved many lives.

As can be seen, the description of the offence(s) (which goes on for another two paragraphs) already shows the judge’s stance as reflected in a number of value judgments; another unusual occurrence is the presence of praise for other participants which act as secondary addressees (the jury, the Metropolitan Police). The use of “British” is not coincidental: in addition to reinforcing the notion of “a jury of your peers”, the foundation of the jury system, there is an appeal to the ability of British society to overcome hatred and desire for revenge. This is also anticipated in seemingly neutral details: when providing the context, the judge mentions that “The streets were busy with people of many races, going about their normal lives in a vibrant part of the capital city.” The mention of the multiracial nature of London appears intentional, in the same way as the adjective and the use of “capital city”: there is a suggestion of a cause-effect relationship, i.e. “London is vibrant because of its multicultural nature.” As will be shown in the final remarks, this reference is fully intentional, and connects with one of the central points in the final, additional remarks.

3.2. *References to victims*

Once the events of the offence have been described, there are references to the victims and the impact of the offence upon them. This is not only a usual component of criminal procedure (Roberts & Manikis 2012), but also a way a rhetorical strategy increasing pathos and paving the way to the sentence as a conclusion, especially by emphasizing the positive traits and vulnerability of the direct victims:

Elsie was aged **just** 18 months when you killed her, a young, **vulnerable and defenceless** child. (*R v Matthew Scully-Hicks*)

Yang Liu, **just** thirty-six years old when he died was a young man whom his parents describe as **warm and full of life**. He was **kind** and well loved. He was **respectful towards his family**, in particular his grandparents before they died (*R v Ming Jiang*).

In the case of the secondary victims, relatives and friends, judges use a combination of language of emotions (subjective, often idiomatic) with the technical language of psychological and physical harm:

He has been left with a **void in his life** that is permanent.

His life has, in short, been **shattered** in a way that he cannot understand.

She is a **shell of her former self**, lacking concentration having formerly been achieving at university, confident and enjoying life.

Mr Wilkinson carries not only the physical but also the emotional effects of your actions. He has **weekly counselling and suffers from post traumatic stress disorder**.

[H]e has **anxiety attacks** and cannot be left alone. She too is **receiving psychological treatment** (*R v Aaron Barley*).

As can be seen, the discourse is both subjective and objective: the emotional and metaphorical (“void”, “shattered”, “shell of her formal self”) coexists with specialized language (“counselling”, “post-traumatic stress disorder”, “anxiety attacks”). The pathos component is reinforced by direct quotations from family statements, which provide textual polyphony:

She also said: “We have lost our beautiful, kind and thoughtful daughter; we miss her giggles and laughter, the jokes we shared and having her to hold and share our future lives together as a family” (*R v Lane*).

It is to be noted that, as Fairclough (1995: 54) has pointed out, this is not a “transparent report” of the words uttered, but rather a “representation”: there is a conscious decision to “interpret and represent”, and the narrator chooses here (and when portraying the offender) those words which best fit the point of view intended. The same happens when the judge resorts to various types of free indirect or submerged speech to introduce the voice of the victims, although this time the value judgments by the narrator are more visible:

Everyone in this Court heard Shana speak when the recording of her conversation with you about the theft of the key was played. We heard the clear tones of a **confident** and **vibrant** young woman (*R v Lane*).

In *R v Darren Osborne*, the victim is also portrayed in praising terms (“Makram Ali [...] has been described as a **sincere and warm** person who was always **full of laughter** and **immense love** for his family) and explicit mention is made of his family (“He left behind a **wife**, six **children** and two **grandchildren**. Their hearts have been shattered by his loss and the circumstances in which he died”). The distinguishing feature in this case is the judge’s emphasis on the racial component, whereby the number of potential victims increases, and fits in with the overall message to society, as will be seen further on:

Many of those who have written statements speak of the fear they feel for themselves and their children of being attacked in the streets simply because they are visibly Muslims.

3.3. *Character description*

Sentencing remarks usually contain a description of the perpetrator's characteristics, partly as an explanation of the crime and its circumstances, but also —though not explicitly— as part of the aggravating and attenuating component. Where harsher sentences are imposed, the potential positive characteristics of offenders are often “deactivated” through reference to their negative side, and even turned against them:

I have no doubt, as those who support you have attested, that you can be both a **charming and charismatic individual**; although, it is to be **regretted that these are the same characteristics which you deliberately misused in this case, both to manipulate your patients into believing what you were advising them, and in your evidence at trial, when you sought to persuade the jury about the righteousness of your position** (*R v Ian Stuart Paterson*).

Speech polyphony, which provided pathos in the descriptions of victims, is also used in the character description: the direct voice of the perpetrator is heard through quotations from witnesses. In some instances, the choice of quotations by judges-cum-narrators is a very visible one, especially when they resort to pure, unmediated direct speech contributing to character portrayal (even using swearwords, which would have been neutralized or even eliminated by the use of reported speech):

On an occasion between February and April 2016 he heard the baby crying and the person, who I find was you, saying “shut up you little **fucking** brat”. The next time the neighbour heard the baby crying he heard you say “shut up you silly little **cunt**” (*R v Matthew Scully-Hicks*).

In *R v Darren Osborne*, direct speech is also used on two occasions in order to portray the offender: quoting the perpetrator's partner and Darren Osborne himself. Of course, the choice of quotations by the judge is important, in order to emphasize the offender's nature and the reasons for the crime:

Your partner Sarah Andrews who described you as a ‘**ticking time-bomb**’ challenged your views, your own daughter who has Muslim school friends argued with you and, in the end stopped bringing her friends home, Sapper Callum Spence, a serving soldier challenged you when you were shouting out things like, “**All Muslims are terrorists**”, “**I’m going to kill all the Muslims**” in the pub the night before you set off for London.

Again, quotations, often including the narrator's evaluation in the *verba dicendi* (“ranting”) include swearwords (interestingly, in fragments where the media, and even the Crown Prosecution Service, omitted the expletive)⁵:

⁵ What Darren Osborne said was reported in the media without the expletive, as “At least I had a proper go” (e.g. *The Sun*, <https://www.thesun.co.uk/news/5398261/darren-osborne-finsbury-park-three-girls-muslims/>; *Daily Record*, <https://www.dailyrecord.co.uk/news/uk-world-news/driver-accused-killing-man-after-11895866>). Even the Crown Prosecution Service provided this “softened” version in its website (<https://www.cps.gov.uk/counter-terrorism-division-crown-prosecution-service-cps-successful-prosecutions-2016>). The only source we have found to report the quotation in full, in addition to the sentencing remarks and quotations thereof, is <https://www.counterradicalisation.eu/case-studies/judiciary-of-england-and-wales-woolwich-crown-court-r-v-xx-02-february-2018>, an EU-funded Austrian Project against online radicalisation. The original UK judiciary website is intended as the authoritative

After your arrest you celebrated and smiled. You said while you were being restrained: “**I’ve done my job, you can kill me now.**” You shouted at some of those holding you, “**I want to kill you, I want to kill more Muslims.**” You were sober as the police breath test after your arrest demonstrated but even in the police van you continued your ranting saying, “**At least I had a fucking proper go**”.

In addition to the perpetrator’s words, the judge also resorts to other modes of indirect speech presentation which, while not containing the perpetrator’s exact utterances, do preserve those traits which help to portray his or her character (in the quotation below, the use of “foul” and the explicit refusal to provide the actual quotation may even have a greater effect than mentioning the words themselves, since the audience may even imagine worse expletives and slurs than those actually used):

You wrote a suicide note the night before driving to London. In it you set out **in foul language** your twisted view of Muslims said that [*sic*] you wanted peaceful vigils. I am not going to repeat those things in court.

3.4. *Sentencing considerations*

In this move, in order to explain how the duration of the sentence is calculated, there is mention of statutory instruments (where applicable) and Sentencing Guidelines:

There are certainly no statutory aggravating features. However, there is one non-statutory **aggravating feature**, namely that at the time of the offence you were heavily under the influence of alcohol. Whilst that in part was as a result of a previous and highly damaging relationship, you were old enough and intelligent enough to realise that over-indulgence would severely affect your behaviour (*R v Lavinia Woodward*).

In *R v Darren Osborne*, the sentence agrees with common practice in England since the abolition of the death penalty:

The sentence for **murder is mandatory: it is life imprisonment**. I must set the minimum term you must serve.

This move purports to be the most “objective”, in the sense that these are the specific factors determining the sentence: therefore, the register is apparently purely legal and technical. Nevertheless, given the dual nature of sentencing remarks as argumentative –logical–, but also persuasive –emotional– discourse, the tone becomes loaded when justifying a lesser, or usually greater, sentence. This includes explicit references to lack of remorse, again summarizing words by the offender “filtered” through the judge’s narrating voice, accompanied by evaluations of behaviour:

You, Ming Jiang **have shown a complete lack of remorse** throughout and have been prepared to maintain a fabricated account both to the police in inter-

source for the complete, unexpurgated version of the remarks, which underlines the role of the official online media as the tool for establishing what actually goes on in the courtroom.

view and in the presentation of your case at trial which in part **I view as having been demeaning to your victim.** (*R v Ming Jiang*)

You **have shown no remorse** – indeed **only regret that Mr Wilkinson survived his injuries and at times satisfaction** in what you did achieve (*R v Aaron Barley*).

The same occurs in *R v Darren Osborne*, where mentions of lack of remorse also coexist with value judgments (“perverted”), supplemented by explicit references to speech by the offender selected and evaluated by the judge as a character trait:

The court has seen no evidence that the danger you present has lessened; indeed, **your conduct and language in court exposes your unreformed attitude and lack of insight.** There is no mitigation in your case because although you were radicalised within a short period of time you have had much longer than that to see the error of your ways but you steadfastly refuse to do so and even in the grave atmosphere of a criminal trial, before a jury of your fellow countrymen, you repeated your **perverted** hatred of Muslims.

3.5. *Sentence and conditions for release*

The sentencing itself takes place by means of a performative formula, in the first person:

I am obliged by law to sentence you to imprisonment for life on the counts of murder of which you now stand convicted. (*R v Aaron Barley*)

Accordingly, I sentence you to life imprisonment with a minimum term of 15 years (*R v Zahid Hussain*).

The sentence for murder is fixed by law and is one of life imprisonment. That is the sentence which I pass upon you for the charge of murder in count 1 (*R v Ian Stewart*).

In cases of life imprisonment, the minimum term is also calculated. In order to overcome the legal-lay imbalance (between the judge and the offender - and also the general public -), the discourse is very objective and gives specific detail in numerical terms:

The 12 years’ imprisonment, less the days spent on remand, is not the actual term you will serve in custody (*R v Berlinah Wallace*).

Time spent on remand in custody, which is now 187 days, will be deducted from this minimum term, producing the final minimum term of 29 years and 178 days. This is the minimum period before which the Parole Board can consider you for release [...] (*R v Aaron Barley*).

In *R v Darren Osborne*, the calculation is in principle similar:

Accordingly, I pass a discretionary life sentence for the offence of attempted murder pursuant to s.225 Criminal Justice Act 2003. I will pass the same minimum term on each offence to reflect the totality of your offending.

I therefore pass concurrent life sentences for these two offences. The appropriate minimum term for this terrorist murder in the context of an attempt at multiple murder is 43 years. The days you have spent on remand must be deducted resulting in a minimum term of 43 years minus 224 days.

The conditions for release are explained in detail, apparently to the offender, but most likely (especially in some cases) to the whole of society:

It is important that you –**and everyone concerned with this case**– should understand what these sentences in fact mean. The minimum terms are not a fixed term after which you will automatically be released but the minimum time that you will spend in custody before your case can be considered by the Parole Board. It will be for the Parole Board to say at that time whether or not you will be released. If it remains necessary for public protection, you will continue to be detained after that date. You may therefore never be released. If you are released you will be subject to licence and this will remain the case for the rest of your life. If for any reason your licence were to be revoked, you would be recalled to prison to continue to serve your life sentence in custody (*R v Aaron Barley*).

Clarity is a requirement of the Criminal Justice Act, which provides that the reasons for the sentence must be stated “in open court, in ordinary language” (Section 174(a) and (b)). What is worth noting from the rhetorical point of view is that the addressee is no longer merely the culprit, but a wider audience, which again reveals the secondary addressees; as Epstein (2013: 133) notes, judges are always aware of “public expectation that wrong-doing will be punished”:

It is important to emphasise, so that **you and the public** can understand the position, that the minimum term is just that - a minimum period which cannot be reduced in any way (*R v Glen Gibbons*).

The criminal justice system is heavily reliant on this communication and the transparency of this process; as Roberts and Haugh (2015: 29) point out, “transparent sentencing reinforces the perception of fairness of the justice system”. There is a double need for clarity: for the defendant (and the victims), but for society as a secondary addressee. As can be seen in one of the previous examples, there are metapragmatic markers of clarification (“It is important that you – and everyone concerned with this case – should understand what these sentences in fact mean”, “It is important to emphasise, so that you and the public can understand the position, that”), which speak to both the convicted person and society (“the public”, “everyone concerned”).

3.6. *Additional remarks*

Unlike the previous sections of sentencing remarks, which are always present in all the cases studied here, additional remarks are made only when the judge deems it necessary to make comments which are not strictly part of the reasoning behind the sentence. This may happen, for instance, when the judge informs the defendant about the consequences of further reoffending after imposing a non-custodial sentence:

To the extent that it is appropriate to give you an incentive and a warning as to your future behaviour, that can be proportionately achieved by making it clear to you that any repetition of this (or any) offending will result in the offences before me today being brought back before the court and the sentence

reconsidered. If, as I anticipate, you do not reoffend, then that will not happen. But if it does, a prison sentence would be inevitable. This is the real effect of a conditional discharge – you are permitted to leave the court at liberty but on condition that for the next two years you do not reoffend (*R v Patrick Rock*).

In *R v Darren Osborne* this does not apply, since this is a life sentence; nevertheless, as will be described below, additional remarks have functions which exceed mere admonitions to perpetrators. In the case at hand, the apparent function of this section would seem to commend the behaviour by other participants in the events and the proceedings: counsel, police officers and the imam of the Finsbury mosque. The first two praises do not contain anything extraordinary at first sight, and appear to focus on the participants' behaviour during the proceedings with no further implications:

I would like to commend the excellent way the evidence has been presented & [sic] the hard work of the advocates on both sides.

The court also commends the officer in the case Detective Sergeant Kevin Martin whose commitment and professionalism has been evident in the way the case has been investigated, particularly when near the end of the Crown's case the defendant challenged his identification as the driver of the van at the crucial time. The agile and rapid response he led mean that the time-table of the trial was not derailed but the issue raised was properly investigated and met. He also oversaw the preparation of high quality materials for the jury.

The judge's stance, however, becomes more visible when commending the behaviour of the Imam of Finsbury Park. It is soon made clear that, beyond this primary addressee (in the third person), the message is intended to be more far-reaching:

Finally, the court commends Mohammed Mahmoud, Imam of the Muslim Welfare House in Finsbury Park. Having been captured while trying to run away after the attack Darren Osborne was in some danger from an angry crowd of about one hundred people but the Imam told them to leave him alone. To not seek vengeance; to allow the law to take its course. As it has done. This was a demonstration of true leadership. His behaviour throws into sharp relief the bile spewed out on-line from those who aspire to lead the haters.

The persuasive intent is clear through the use of stylistic devices: parallelism in sentences without a personal verb ("To not seek vengeance; to allow the law to take its course"), extremely short sentences in contrast to the preceding ones ("As it has done"), but most noticeably, the lexical choices ("bile spewed out") used to describe "those who aspire to lead the haters", who are portrayed as the real danger. The character description in the sentencing remarks had depicted the perpetrator as somebody whose mind was "poisoned by those who claim to be leaders"; this is in contrast with the "true leadership", shown by the imam. Note here that speech presentation is also a conscious choice, with the words of the imam combining the colloquial ("leave him alone" with more formal language ("seek vengeance", "allow the law to take its course"), moving from indirect to free indirect speech. Therefore, given that the real danger is "still out there", the message is sent to the whole of society (the "our"

in “our cities” reveals planned media dissemination, and the same can be said of the judge’s specific reference to the offender’s reasons for the “revenge attack”⁶:

He chose to respond to evil with good. His response should be everyone’s response whether it is to the evil of child grooming and abuse in Rochdale or the evil of terrorist atrocities in our cities.

4. Conclusions

One of the most important components of “the rule of law” in civilized countries is that judicial decisions must be “reasoned”, i.e. they must include the reasons why the judge has issued a given ruling. In the case of sentences, in common-law countries this role is fulfilled by sentencing remarks, an oral subgenre (within legal decisions) which provides the reasons for a given sentence and the conditions for its enforcement. In order to do so, there is a whole argumentative process, the starting point of which is to establish a “narrative” of the facts and the trial. It must be borne in mind that language in criminal courts is used to “tell a story” (Hickey 1993), or in Woodbury’s (1984) words, a trial is “a story-telling contest” in which contrasting interpretations of the events are presented as facts. Thus, what the judge does in the sentencing remarks is, on the basis of the jury’s verdict, provide the “final” version of events, the “official narrative”, albeit with his or her own value judgments that will colour the facts and justify the punishment imposed, whereby the judge becomes the “official” narrator. As in all argumentative texts, point of view is a major component, and stylistic devices such as textual polyphony, which in narrative discourse helps towards the description of the character, are used here in order to portray the perpetrator and the events in such a way that the sentence is justified, and more importantly, perceived as fair and acceptable by society. The use of different modes of speech presentation, which apparently helps towards a faithful narration of events, becomes an instrument for the judge to set the tone on the build-up to his or her final decision on the sentence and its enforcement.

During the analysis of sentencing remarks as a subgenre and *R v Darren Osborne* as an example, additional, interesting issues have emerged, both from the point of view of the classification of legal genres and regarding the subgenre itself. Concerning the study of legal genres, sentencing remarks confirm the variation underlined by recent studies in the field (Goźdz-Roszkowski 2013 and, more recently, Fanego & Rodríguez-Puente 2019), and at the same time, pose a challenge to traditional classifications of genres, since legal decisions are included within the “written” genres (Bhatia 1987, Tiersma 1999), whereas sentencing remarks, even if published later, are an oral subgenre. This would suggest the need for review of such classifications, which would make it possible to include also legal proceedings where decisions are oral, and thus avoid the confusion on whether sentencing remarks are a subgenre or a full-fledged genre (some authors, like Robertshaw (2004), use both “genre”

⁶ These messages appear to be necessary if one looks at the readers’ comments in online newspapers about the sentence; in addition to some people arguing that the person was right to be angry against Muslims, and it was only the way he chose to act that was wrong, or that he would get “an excessive sentence to appease certain groups or people”, there were comments specifically saying things like this was “the result of London attacks and girls at a concert being murdered”, a comment hailed as “spot on” by other readers (<https://www.dailymail.co.uk/news/article-5338965/Darren-Osborne-GUILTY-mosque-van-attack.html#comments>).

and “subgenre”, probably because they are aware of the difficult fit of sentencing remarks within the traditional view of legal decisions).

Concerning the subgenre itself, it is our belief that, in addition to the judge as narrator, our analysis has emphasized the comparative importance of primary addressees (offenders) and addressees outside the courtroom: it may very well be that in *R v Darren Osborne* the remarks are directed probably more at society, in order to prevent further occurrences of “revenge terrorism”, than in other cases which judges deem less influential. In this respect, these remarks differ from others, insofar as they are aimed at “making things happen”, or “preventing things from happening”, and therefore are closer to other, “pre-verdict” courtroom genres where words are used to *persuade* that something is to be done (find someone guilty or not guilty), and not to *convince* that someone has been right or wrong to do something (impose a specific sentence).

Regarding directions for further research, once it has been observed that sentencing remarks are a suitable meeting point for languages for specific purposes and stylistics (especially, critical discourse analysis), it may be interesting to focus on cases where society at large is a primary addressee (for instance, *R v Thomas Muir*, after the murder of MP Jo Cox by a white supremacist), since they may show specific stylistic patterns differing from other less “exemplary” cases. Also, a wider dataset would provide further information, such as the average length of the remarks, or the potential link between the seriousness of the crime and the emotional load of vocabulary. In addition to this, specific subcorpora could be compiled in order to detect linguistic patterns depending on the type of crime, the defendant’s age, and of course, the length of the sentence.

An analysis of the communicative functions of sentencing remarks also casts light on the relationship between law and society. In times where all powers of the modern state may (often rightly) come under criticism, one should not disregard those instruments which the legal system, especially in common law countries, uses to gain acceptance by society. Our review of the literature has shown that sentencing remarks are in general an under-researched subgenre, probably because they have no outcome on the verdict. This lack of attention should be redressed, both from the point of view of the perpetrator (if justice is to have a therapeutic effect, and not be only about punishment and retribution), and also from the standpoint of society, especially in common-law countries, which attach great importance to the relationship between justice and the citizen (e.g. through the jury system). By helping towards a better understanding of the linguistic characteristics of sentencing remarks, further contributions may be made towards a better perception of justice and improved communication between the judiciary and society.

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Sentencing Remarks (with dates and judges)

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- R v Berlinah Wallace* (Justice Nicola Davies DBE)
- R v Darren Osborne* (February 2, 2018; Justice Cheema-Grubb)
- R v Delroy Wright and others, and R v Reano Walters and others* (September 14, 2017, Justice Openshaw)
- R v Endris Mohammed* (November 20, 2017; Justice Gilbert)
- R v Glen Gibbons* (February 7, 2018, Justice Bryan)
- R v Hough* (July 17, 2017; Justice Lewis)
- R v Ian Stewart* (February 23, 2017; Judge Bright QC)
- R v Ian Stuart Paterson* (May 31, 2017; Justice Jeremy Baker)
- R v Jon Venables* (February 7, 2018; Justice Edis)
- R v Lavinia Woodward* (September 25, 2017; Judge Ian Pringle QC)
- R v Matthew Scully-Hicks* (November 7, 2017; Justice Nicola Davies DBE)
- R v Michael Lane* (March 23, 2017; Justice Green)
- R v Ming Jiang* (May 2, 2017; Justice John Potter)
- R v Peter Morgan* (December 21, 2016; Justice Garnham)
- R v Zahid Hussain* (October 9, 2017; Justice Sweeney)