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'Projecting Voice: Towards an Agentive Understanding of a Critical Capacity'

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Projecting Voice:
Towards an Agentive Understanding of a Critical Capacity[1]

The concept of voice has increasingly been recognized as fundamental to both descriptive and critical analyses of discourse. However, it has also become fragmented and disembodied from the agents who presumably 'have' or 'lose' voice. In this article, I attempt to re-embody voice by setting out a critical understanding of it that is centred around the idea of **projection**, or the way voice carries to an audience. Projection involves embodied communicational aspects of voice – voicing and hearing – but it also depends greatly on expressions of power as manifested in authority and accommodation. After setting out this Voice Projection Framework, I show how it can itself help 'give voice' to silenced and sanctioned participants: in this case, the jurors in the high-profile English trial of Vicky Pryce, who were dismissed by the judge as showing 'absolutely fundamental deficits in understanding' and who were construed by the media as being emblematic of a failing jury system. I suggest that the problem was not so much a lack of responsive understanding by the jury as a failure of projection by both judge and jury in the specific legal context.

1. Introduction: 'Deficits in Understanding' or Failed Projection?

In February 2013, the well-known UK economist Vasiliki (Vicky) Pryce went on trial in London for subverting the course of justice after it emerged that (ten years earlier) she had taken driving penalty points for her ex-husband and Cabinet Minister Chris Huhne. Huhne had pleaded guilty to the offence and resigned from Government but Pryce decided to claim the very rare defence of marital coercion: namely, that she was coerced to take the points by her husband and so was morally innocent.[2] The high profile case went before a jury and senior judge at Southwark Crown Court. The jury heard the evidence and the judge's summing-up, including directions on the law and a review of the evidence (Sweeney 2013c). Then, during what must have been difficult deliberations, the jurors sent Judge Sweeney ten questions relating to his legal directions and the constraints on their deliberation (see Appendix). The prosecution submitted to the judge that the jury's questions 'aimed at attempting to understand the fundamental purpose of their presence' and Judge Sweeney remarked that they showed 'absolutely fundamental deficits in understanding'. When the jury failed to reach a verdict, the judge's remarks generated front-page headlines about the stupidity

[2] The defence has been abolished in most other common law jurisdictions.

of some jurors, the need for qualifying IQ tests and the inadequacy of the jury system as a whole.[3] Very few commentators questioned whether the judge's harsh evaluation of the jury was justified in the context. One or two noted that the deficits in understanding might have been limited to a minority of the jurors and that the judge had shown his own deficits in understanding by not allowing for the difficulties of deliberation.[4] But the overwhelming perception was that the questions demonstrated alarming deficits.

As I shall argue, this cognitive deficit argument does not stand up well to cross-examination. Several of the jury's questions show legal-linguistic competence, are legally perspicacious and identify actual gaps and ambiguities in the judge's directions. Others raise fundamental questions about the nature of legal evidence. The one clearly surprising question – 'Can a juror come to a verdict based on a reason that was not presented in court and has no facts or evidence to support it?' – has, I shall suggest, been worded in such a way as to invite assistance from the judge in dealing with a 'difficult' juror.

On the other hand, from a legal perspective, the judge's summing-up to the jury is in many ways exemplary. It is well-constructed, logical and coherent, and it follows many of the recommendations made by linguistic and legal researchers intent on improving the comprehension of jury instructions: it provides a clear 'road map' through the directions (Dumas 2000); it integrates the trial evidence with the legal instructions (Auld 2001); it offers narrative illustrations of some of the legal points (Heffer 2006); and it sets out a clear 'Route to Verdict' (JSB 2010: 3) indicating, in order, the set of questions the jury need to answer and the evidence that needs to be considered in relation to each of those questions. The judge not only read out his instructions but provided a written copy of them for the jury to refer to during deliberation. From his own perspective, then, one can understand the judge's exasperated comment that 'it is actually all there and has been there the whole time'.

In this article, I provide an alternative explanation for such contexts of institutional misunderstanding: that they derive not from deficits in understanding but from a failure of both the professional (judge) and lay participants (jurors) to project their voice effectively. In doing so, I set out a new understanding of the critical concept of voice centred around the notion of **projection**, or the way one's voice carries to an audience. Projection involves both agency and structure: while we can actively project our voice (as through rhetoric), our voice can also fail to project due to factors beyond our control (as when we lack authority to speak). Projection is

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[3] A few examples: 'Are some people just too stupid to serve on a jury?' (James Delingpole, *Daily Express* Feb 22); 'Do we need IQ TESTS for juries? Vicky Pryce trial has exposed a breathtaking level of ignorance and stupidity' (Melanie Phillips, *Daily Mail* Feb 20); 'Eight women, four men … and not much of a clue' (*Daily Mail* Feb 20); 'Juries? It's time they went the way of the ducking stool.' (Simon Jenkins, *Guardian* Feb 21); 'The Pryce of a jury's failure' (Joshua Rozenberg, *Guardian* Feb 21).

[4] 'My guess is that these questions were submitted by perfectly intelligent people, who were being driven slightly mad by the warped logic and limited understanding of some fellow jurors' (Victoria Coren, *Guardian* Feb 24); 'his lordship [showed] a fundamental deficit in understanding what happens when a random, disparate group try to grapple with unfamiliar circumstances and concepts' (Ruth Dudley Evans, *The Telegraph* Feb 21).

linked very closely with the embodied aspects of voice – voicing and hearing – but it also depends greatly on questions of authority and accommodation. To 'have voice' in everyday terms is to have the capacity to project one's perspective effectively. That requires both an opportunity to voice one's perspective (including the authority to do so in a particular institutional context) and for that perspective to be responsively understood by an audience.

In setting out this account of projection as a central element in voice, I attempt to ground the critical capacity of voice in everyday experience and understanding and to find continuity between descriptive and critical approaches. I begin by showing how elements from diverse approaches to discourse and context can be drawn together into an integrated model of voice. I then discuss the key elements of the Voice Projection Framework. Finally, I apply the model to the Vicky Pryce jury questions first by analyzing the judge's voicing in his summing-up to which they respond and then by exploring aspects of projection in relation to both the jury's questions and the judge's answers.

2. Having, Losing and Projecting Voice

The concept of 'voice' is central to both descriptive and critical understandings of discourse. In descriptive terms, voice originates in the body as the articulation of sound in speech and, in turn, can be used to describe the characteristic tones of an individual speaker ('a mellifluous voice'). By extension, voice becomes the discursive style of the individual speaker and, particularly, writer ('the writer's voice') or even the style of a professional role ('reporter's voice'). In critical terms, voice is often equated with an individual or group's right to speak ('give voice to'). However, the right to speak in no way guarantees that the speaker will be heard, in the sense of being responsively understood, and it is the communicative response that determines social inequalities. Voice is thus also seen as an individual and social resource, as a capacity to be heard and understood ('have voice'). Indeed, much of the recent discursive work on voice, influenced by Dell Hymes, has focused on the 'strange phenomenon in which someone may lose voice even while he or she is using it' (Blommaert 2005a: 233).

The idea of losing voice while using it highlights both the link and the disconnect between descriptive and critical-discursive notions of voice: critical voice is (or should be) an extension from descriptive voice but while the latter is primarily a property of the speaker, critical voice necessarily implicates the hearer and society at large. This is clear in Hymes' association of voice with a fundamental linguistic freedom: not freedom of speech but 'freedom to have one's voice heard' (Hymes 1996: 64). While Hymes did not actually present a formal definition of 'voice', Blommaert has interpreted Hymes' understanding of voice as 'the capacity to make oneself understood in one's own terms, to produce meanings under conditions of empowerment' (Blommaert 2008b: 17). Blommaert explains this critical notion more clearly in an article on Bernstein:

People use language and other semiotic means in attempts to have voice, to make themselves understood by others. This process is complex and only partly predictable, because whatever is produced is not necessarily perceived or understood, and having voice is therefore an intrinsically social process – that is a process with clear connections to social structure, history, culture, power. (Blommaert 2008a: 427)

Voice is therefore an unequally distributed resource that a speaker has more or less of in a given context. Institutions in particular tend to '"freeze" the conditions for voice' so that if you do not speak or write in the normatively imposed way, you will not be heard (Blommaert 2008a: 428). This is a vitally important insight and one that has helped reveal serious discursive inequalities in many different contexts (e.g. Hymes 1996; Blommaert 2008b; 2009; Bartlett 2012).

However, this critical concept of voice that links it ineluctably with power also 'freezes' the conditions for *analyzing* voice. Voice tends to be analyzed in terms of powerless groups lacking voice and thus the capacity to be heard and understood. It is generally assumed, though, that powerful figures who *have* plenty of voice in power terms *will* be heard and understood (and that this will influence the course of events). In other words, voice is seen as a 'transformative capacity' (Giddens 1979). Yet one of the key features of late modern society is precisely that people increasingly distrust the powerful (politicians, police, professionals) (Marková, Linell and Gillespie 2007) and it is almost axiomatic that if someone is distrusted they will not be heard in their own terms. Having voice, then, does not automatically lead to being heard.[5] We need a way of analyzing voice that will not just account for the presence or absence of discursive power but will also analyze the extent to which it might lead to understanding in a given context. In other words, we need an analysis of how voice *projects* to an audience.

Critical accounts of voice could also be said sometimes to lose voice, or at least the embodied sense of voice, while analyzing it. While they rightly focus on the distinction between speaking and being heard, the notion of voice has often become disembodied from the agents who presumably 'have' or 'lose' voice. Frequently, the analytical artifact (word, text, transcription, grammar, style) replaces the speaker as the originator of voice. Bakhtin, who first put critical notions of voice on the research agenda, personifies and prioritises the word over the agent; he talks of 'the nature of the word, which always wants to be *heard*' and states that '[f]or the word (and, consequently, for a human being) there is nothing more terrible than a *lack of response*' (Bakhtin 1986: 127). If the word appears prior to the voicing agent in Bakhtin, in Bernstein voice is effectively not even voiced. Bernstein rightly counterbalances the focus in Bakhtin and Hymes on voice-as-understanding by stressing that voice also concerns the pre-textual, or 'the discursive rules regulating

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[5] Hearers, though, will be strongly motivated to do so in cases of self interest, where they will gain or suffer as a result of (not) understanding.

and legitimizing the form of communication' (Bernstein 1990: 190). But for Bernstein pretextual conditions are not an element in voice but *are* voice. 'Voice', which applies to a 'social category' rather than an individual, is a 'mode' of 'recognition' rather than 'realization' (which he calls 'message') (*idem*). Blommaert does make the link between pretextual 'resources' and their realization in speech when he says that 'voice is best seen materialistically as the practical conversion of socially "loaded" resources into socially "loaded" semiotic action, every aspect of which shows traces of the patterns of distribution of the resources' (Blommaert 2008a: 427). However, this 'practical conversion' sounds rather like a financial transaction that has nothing to do with the subjectivity of the speaker and hearer. There is a need, then, to return voice to its agents while simultaneously recognizing the fundamental importance of structural conditions.

Finally, if it is true that any 'critical analysis of discourse in contemporary societies' is effectively 'an analysis of *voice*' (Blommaert 2005b: 4), then it needs to be understood by a wider circle of researchers. Unfortunately, much theoretical work on voice, though often extremely insightful, is written in such an opaque fashion that it fails to project effectively beyond specialist audiences. For example, Hymes notes that Bernstein, already suffering from a reputation as a 'deficit theorist', disadvantaged his case further by the fact that he 'deploys a terminology and conceptual framework that has remained much his own, and his written use of it can be formal and severe' (Hymes 1996: 188). It is not easy to resist the 'constant mass production of new terminology, as countless academic word processors hum through day and night' (Billig 2013: 46). However, there is an onus on academics, who have voice in a power sense, to project their voice to a wider audience.

3. The Voice Projection Framework

In the approach I set out here, I intend both to re-embody voice by returning it to its human speaking and responding agent, and to account for the way it projects to an audience in a given context. I propose that voice comprises three key elements – perspective, projection and understanding – as indicated in Figure 1. In contrast to conceptions of voice that are effectively, if not explicitly, focused on **perspective** (e.g. 'dissenting voices', 'alternative voices') or **understanding** (e.g. Hymes/ Blommaert's 'capacity to be understood'), this model focuses on how voice gets from perspective to understanding: what I call **projection**. In short, according to the Voice Projection Framework, an individual or group's perspective (set of ideas, identities, styles) is projected to an audience, who understand it to a greater or lesser extent. Successful projection leads to responsive understanding, but very often a perspective fails to project, and projection is a gradable rather than binary category. The model aims to permit a nuanced understanding of projection that can help explain both how individuals and groups can lack or lose voice but also how a voice can be powerful. In Figure 1, the diagonal line connecting perspective, projection and understanding indicates a simple theoretical sequence: in order to have voice, one must have a perspective to project and the projection will lead to some form of understanding (or lack of).
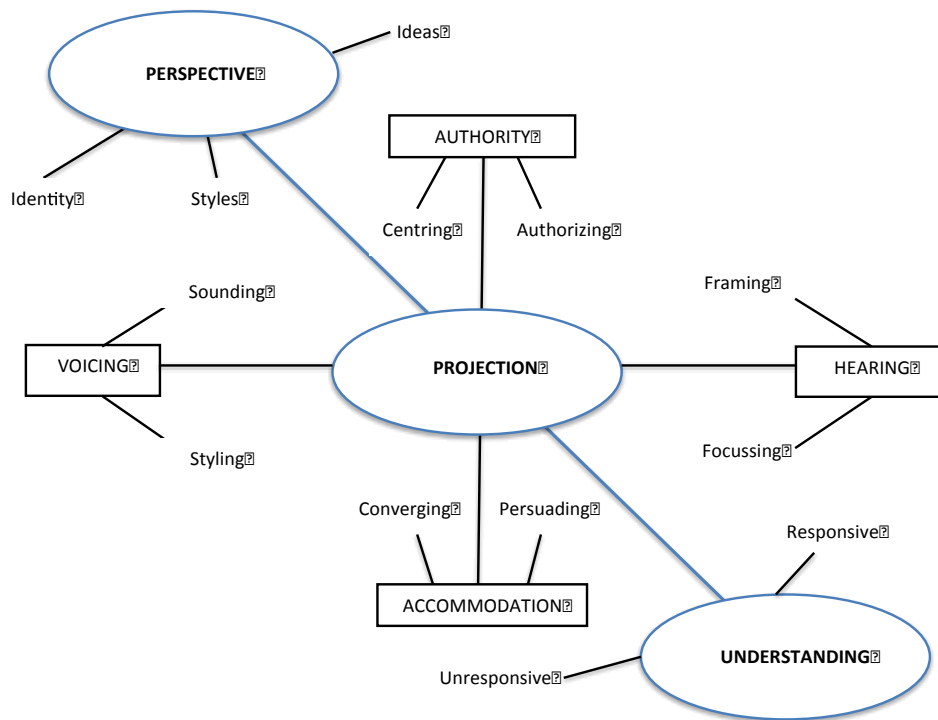
Figure 1: The Voice Projection Framework

     Perspective in this model broadly covers the ways of being (Identity), ways of thinking (Ideas) and ways of speaking (Styles) that the speaker or group of speakers projects to a listener or audience. When we 'give voice' to an individual or group we are generally talking of giving them an opportunity not simply to perform verbally (as with a news reader) but to convey their perspective to an audience. Note that I include 'ways of speaking' (Bartlett 2012), or Styles, under Perspective since they are part of the speaker's pre-existing repertoire rather than their attempt to project in a given context. What is involved with situated *projection*, on the other hand, is *styling*, as discussed below. From this angle, when Bernstein, Bourdieu and Blommaert talk of institutions normatively imposing legitimate *styles*, they are effectively showing how Perspective, as defined here, is structurally conditioned. However, ways of being, thinking and speaking, though conditioned, are not *determined* by structure and this leaves considerable room for agency.

     Understanding is ultimately beyond the control of the individual or group whose perspective is being projected, but it is what we hope to achieve in the audience. Furthermore, what we seek from our interlocutor or audience is not simply to be heard acoustically (as in hearing a language we do not know) or an immediate semantic understanding of our words, but the type of pragmatic understanding that Bakhtin calls 'actively responsive understanding':

…all real and integral understanding is actively responsive, and constitutes nothing other than the initial preparatory stage of a response (in whatever form it may be actualized). And the speaker himself is oriented precisely toward such an actively responsive understanding. He does not expect passive understanding that, so to speak, only duplicates his own idea in someone else's mind. Rather, he expects response, agreement, sympathy, objection, execution, and so forth… (Bakhtin 1986: 69).

This is probably the best way of understanding Blommaert's notion of making oneself understood *in one's own terms*. He does not mean that the interlocutor or audience should *agree* with what we have to say but that they are put in a position where they have understood what we are 'getting at' to the point where they are able to actively respond – positively or negatively – to what we have said. To have voice is not necessarily to succeed in being persuasive: voice is not rhetoric, though rhetoric helps project voice. Nor does voicing necessarily lead to responsive understanding. Very often an interlocutor's understanding can be 'unresponsive': they may register what you say but ignore it, fail to comprehend it in whole or part, or simply (or willfully) misunderstand it. Whether or not voicing a perspective leads to actively responsive understanding depends on how it is projected.

Projection is the way voice is both actively projected and passively projects (or carries) to an audience. Or, in terms of Figure 1, it is the way voice travels from perspective to understanding. The distinction between active and passive projection is an extension from the projection of physical voice. One can actively 'throw forward' (*pro iacere*) one's voice but the extent to which it will 'carry' to the audience will be very different in a concert hall or a noisy pub. Similarly, one can expend a very significant effort in trying to make oneself understood, but one's perspective may still not carry to the audience for a multitude of reasons. The distinction between actively controlled projection and projection that is structurally conditioned or otherwise outside the control of the speaker is not indicated in Figure 1 since most of the elements of projection can be both within and beyond the control of the speaker. For example, a speaker may style their message in a way that they believe is maximally effective but that style might index incompetence for the audience. In terms of projecting *across* discursive contexts, the agent is even less in control of how the voice carries. Successful projection will lead to actively responsive understanding (ideally also across space and time). Unsuccessful projection will fail to reach the audience or lead to unresponsive understanding.

Voicing, or giving semiotic expression to one's perspective, involves projecting both physically (**sounding**) and discursively (**styling**). However, the voice has to be heard and there are important **hearing** practices, notably schematic **framing** and selective **focusing**, that affect how meaning, and thus voice, carries. Working in conjunction (or disjunction) with a communicative axis of voicing and hearing is a power axis of authority and accommodation. **Authority**, the source of institutional power, constrains the possibilities for both voicing and hearing (and thus projection) by imposing discursive and other norms through the practices of **centring** (working

centripetally towards increasing normativity) and **authorizing** (conferring authority and legitimacy on speakers and discourse). Since authority constrains communicative possibilities, it can often hinder successful projection, particularly in cases where speaker and hearer do not belong to the same institutional community. In tension, then, with authority is **accommodation**, or the extent to which the speaker adapts their speech to the audience. I note here practices of **converging**, or adapting to the communicative norms of the speaker, and **persuading**, or being rhetorically efficacious. I do not wish to suggest that these are the *only* elements involved in projection. For example, a voice may fail to project because the listener's hearing is impaired or because the listener is not paying attention. However, these are the elements I have identified as critically salient.

I have labelled these elements of projection mostly with everyday participles. This is partly in agreement with Billig's campaign against 'puffed up' words in academia (Billig 2013: 43), but mainly (as a corrective to much critical work on voice) to stress the agentive nature of these practices. As indicated above, most of these elements are subject most of the time to both structural constraints and agentive possibilities. But there is considerably more scope for individual intervention than is sometimes suggested. For example, as we shall see in the case study below, legal professionals often hide behind authority to avoid having to accommodate to lay participants, while lay participants in the legal process often converge to a surprising extent with legal communicational norms.

In the remainder of this article, I shall focus on projection and will say little more about the relation between voice and perspective and voice and understanding, which might be developed elsewhere. I proceed in the following section by discussing in more detail the key elements of voicing, hearing, authority and accommodation.

4. Key Elements of Projection

Projection can be viewed along a communication axis of voicing and hearing and a power axis of authority and accommodation. I shall begin with the communication axis.

4.1 Voicing

Voicing involves both physical projection (**sounding**) and discursive projection (**styling**).

Sounding (physical projection)

Sounding is physically conveying voice through sound, sign and other forms of semiosis.[6] At its most basic, sounding is *animating*, breaking the physical and

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[6] Sounding applies equally to signing. Signing is animation that, like writing, makes primary use of the visual rather than oral channel but which, like speaking, makes ample use of meaning-making resources beyond the lexicogrammatical (particularly the intense use of facial expression). Other semiotic means of sounding include art forms and emotional cries (a cry of pain will project successfully provided someone both hears it and recognizes it as a cry of pain rather than frustration or anger).

figurative silence. It is not only 'a body engaged in acoustic activity', Goffman's 'animator' (Goffman 1981: 144), but can also be 'a multimodal sight-and-sound phenomenon' (Kuipers 2004). Animation is necessary since although silence itself can help project voice (note the pregnant pauses of a cross-examiner), it is only meaningful *as part of* the overall performance.[7] Yet the opportunity to sound one's voice in no way ensures successful projection. Sounding will not project, or project weakly, if people do not want to hear what we have to say or, as with rape stories in court, it is 'untellable' (Norrick 2005), or, as with hate speech, it is 'unspeakable' (Langton 1993).

Sounding is more likely to project voice successfully if it is *performed*, since it attracts the audience's attention by saying in effect 'hey look at me! I'm on! Watch how skillfully and effectively I express myself' (Bauman 2004: 9).[8] When these performative aspects of sounding are mediated through indirect discourse or writing, it can mean not only loss of physical voice but also loss of meaning: the loss of 'all the emotive-affective features of speech' in indirect discourse (Voloshinov 1973: 128) or the loss of structure, emphases and implications in transcription (Tedlock 1983). So Tedlock (1983) and Hymes (1996; 2003) tried to 'show voice' (Blommaert 2006: 10), and thus project it, by transcribing Native American oral narratives in poetic lines that respected the oral performance.

Styling (discursive projection)

Styling, or the selecting and arranging of words, involves a continuum of originality from *conforming* (following standards) to *creating* (showing individuality). Hymes notes that many people 'spend much of their waking life in "verbal passing", employing a style constrained by job or group, and unable to satisfy felt needs for use of language in other ways' (Hymes 1996: 51). Corpus linguistics has certainly demonstrated the extent of routine patterning and formulaic language in everyday styling (Hunston 2002), while close analysis of patterns of meaning-making linguistic resources in habitual genres has led to the identification of defined 'registers' (Halliday 1978) and 'styles' (Coupland 2007). Hymes sees such stylistic conformity as a form of linguistic oppression, and he calls for a 'freedom to develop a voice worth hearing' (1996: 64). Such valued voices are generally more creative and it is here that we talk of 'finding one's voice', 'speaking in one's own voice' and even 'writer's voice' in academic discourse (Hyland and Sancho Guinda 2012). However, conforming is more likely to project successfully in most bureaucratic and many institutional contexts where the listener/reader wants to achieve very rapid

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[7] Performed 'silence' such as John Gage's 4'33" (four minutes thirty-three seconds) only works within the animated frame of the performance slot. In fact, Gage's composition in three movements is about the sounds of the environment in a chamber hall rather than silence as such.
[8] Performance, though, can also project inauthenticity in such forms as mimicry and irony; this may be a deliberate or accidental projection.

understanding. Furthermore, creative styling tends to work *against* a background of habitual formulas and generic style conventions required by the institution.[9]

Another crucial continuum in styling is that of *vocality*, or the extent to which a text draws on other voices and other perspectives. Bakhtin famously argued that 'the word does not exist in a neutral and impersonal language... but rather it exists in other people's mouths, in other people's contexts, serving other people's intentions; it is from there that one must take the word, and make it one's own' (Bakhtin 1981: 294). It is not possible, then, to voice without assimilating absent voices with their own ideological accents (Voloshinov 1973; Bakhtin 1981). However, one can acknowledge that appropriation to a greater or lesser extent. *Dialogic discourse* (Bakhtin 1981) is *open* to two or more different perspectives or 'voices' and thus facilitates projection of the voices within. *Monologic discourse*, on the other hand, presents a single *logos*, 'reason' or perspective, and this will tend to silence other voices within the text. In suppressing other voices, though, it may project the author's voice more clearly. For example, in his Socratic dialogue *Gorgias* (a polyvocal but monologic text), Plato effectively strengthens his argument by voicing the character Gorgias in such a way that he becomes a straw man in his argument for the supremacy of dialectic over rhetoric (Heffer 2013b).

4.2 Hearing

Hearers can actively or unreflectively impose their own interpretations and interests on what they hear and this can result in weakened projection, though interaction can result in greater alignment. However, speakers can also anticipate and guide the hearing.

Framing (interpretation)

Framing shapes the interpretation of discourse by providing a contextual scheme for understanding that can guide both the speaker and hearer (Tversky and Kahnemann 1981; Tannen 1993; Butler 2008). In Geertz's (1983) simple example, the rapid closing and opening of an eye can be interpreted as a 'blink' within a purely physical frame but as a 'wink' within a social frame, and the consequences of misframing the event can be embarrassing. [10] For Gumperz, 'all understanding is framed understanding [that] ultimately rests on contingent inferences made with respect to presuppositions concerning the nature of the situation, what is to be accomplished and how it is to be accomplished' (1992: 43-4). Frames, then, help to interpret the unsaid within an activity in a given 'community of practice' (Lave and Wenger 1991). However, since frames are often community-specific, the same type of speech event can be framed in very different ways by different individuals and communities, and

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[9] As a student I was most disappointed when the 'academic essay' I submitted in the form of a 'sophisticated' dialogue between a human and a computer received a 'Fail' – a clear case of failed projection of voice.
[10] Nice as this example is, the difference between blinking and winking is not purely a matter of sociocultural framing: winking is done with one eye only, staring directly at the recipient and usually in a slower and more deliberate manner than blinking. Accordingly, we can say that Tourette Syndrome sufferers wink involuntarily.

with different values: the Chinookans used to apply a religious rather than developmental frame to infants' babbling with the result that it was valued highly and shamans were appointed to interpret it (Hymes 1996: 136).

Although framing occurs cognitively through the hearer's *inferencing*, the speaker can actively *index* (point to) a particular aspect of the language or context that provides a preferred frame of interpretation. Words can index something about their linguistic form (metalinguistic) or use (metapragmatic), about how they should be interpreted, how they relate to context or how they should be valued. Gumperz (1982; 1992) demonstrated how relevant context could be invoked through 'empirically detectable signs' he called 'contextualization cues' (Gumperz 1992: 42). For example, winking to a third party might index that what you are saying to the addressee is a lie and that you are complicit in keeping the truth from her. However, what signs are construed to index is contingent on the changing context, the particular interpretive community as well as the individual. Winking to index complicity might be misconstrued as flirtation. Gumperz and his followers were particularly keen to show how minority groups in cross-cultural encounters effectively lost voice, or failed to project their voice in my terms, due to a mismatch in group-based contextualization practices (Gumperz 1982).

Focussing (salience)

Focussing is an aspect of hearing that makes salient certain aspects of the voicing and backgrounds others. Goodwin (1994), talking of professional vision, puts this neatly when he says that '[a]n archaeologist and a farmer see quite different phenomena in the same patch of dirt' (1994: 606). It is not just that they frame the patch of dirt in different ways (as a dig or as arable land, say) but they notice different features of the patch (e.g. stains, features and artifacts versus soil quality). In cognitive terms, what I am calling **focussing** depends on the perceptual phenomenon of figure-ground organization, or our ability to distinguish a figure from a background, and work in gestalt psychology has famously shown how figure and ground can be reversed in some contexts (Rubin 2001). Goodwin and Duranti note how 'the fundamental asymmetry of the figure-ground relationship of focal event and its context has had enormous consequences on how these phenomena have been studied' (1992: 10), with linguists focusing overwhelmingly on the segmental aspects of language and ignoring the more fluid and amorphous background of context. Similarly, the process by which texts are created by extracting them from their interactional context, or 'entextualization' (Bauman and Briggs 1990: 73), foregrounds the extracted text as the focal event at the expense of the surrounding text and context. Ehrlich (2013), for example, shows how a rape complainant's single act of consent is extracted from a context of multiple acts of resistance and becomes the focal event in the trial with the resistance becoming lost in the background. The counterpart to focusing, then, we can call *forgetting*. If aspects of what we hear are not salient to us, they recede into the background and will either not be noticed or will be noticed and then forgotten.

Although focusing occurs cognitively through the hearer's *foregrounding*,[11] the speaker can actively *highlight*, making 'specific phenomena in a complex perceptual field salient by marking them in some fashion' (Goodwin 1994: 606). Through these highlighting practices, 'structures of relevance … can be made prominent, thus becoming ways of shaping not only one's own perception but also that of others' (1994: 610). Professional practices in particular tend to highlight institutionally relevant details and let the personal stories that lay people bring recede into the background.

4.3 Authority

As the key source of institutional power, **authority** constrains the possibilities for both voicing and hearing (and thus projection) by imposing discursive and other norms.

Centring

Centring is the process by which 'centring institutions' (Silverstein 1998; Blommaert 2005b) such as family, peer group, profession and State work centripetally towards normativity. With respect to language, the notion of centring is a critical response to the dominant myth that language is a communal treasure trove from which we freely select words to create our own new discourse. This 'illusion of linguistic communism' (Bourdieu 1991) has been dispelled by sociolinguistic and linguistic anthropological work demonstrating both that we belong to heterogeneous speech communities and that access to linguistic resources is extremely unequal. Linguistic communism assumes a powerful centre to which we all orient equally: the 'standard' language as inscribed in monolingual dictionaries and grammars and expressed in the media. Whether through consent or coercion, 'orienting towards such a centre involves the (real or perceived) reduction of difference and the creation of recognizably "normative" meaning' (Bommaert 2005: 75). But society, particularly in a globalized and increasingly specialized world, is *polycentric*: we orient to the linguistic norms of the (sometimes immigrant) family, the (sometimes counter-culture) peer group, the (sometimes powerless) social class, the (often esoteric) professional group, and we only have the capacity (and the time) to orient to some centres and not others. Moreover, these centres to which we orient are not equal but stratified: some are valued much more highly than others. Orienting to local community discursive norms in styling (whether in using a non-standard dialect, a restricted code, a 'foreign' language or a specialized professional language) will inevitably lead to loss of voice in the wider community if the norms diverge (Silverstein 1998). Bernstein, Hymes and Blommaert all use the notion of voice primarily to discuss the mismatch between the right to be heard and the realization of that right through non-standard linguistic styles and codes that have no status in the linguistic marketplace. However, even if a

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[11] One could also call this 'figuring' to link it more closely with the figure-ground phenomenon and avoid confusion with the stylistic technique but 'figuring' has its own ambiguities and is also ugly in participle form.

'local' code such as a specialized professional language has high status in the linguistic marketplace it will still hinder voice projection if speakers and hearers are not orienting to the same norm-enforcing centres.

Authorizing

Authorizing, or the conferring of authority and legitimacy on speakers and discourse, both helps to project voices across space and time and can hinder projection in a given context. Bourdieu argues that authority comes to language not from within but from the social field and that the performative power of an institutional speaker's utterances derives not from the linguistic forms used but from the fact that 'his speech concentrates within it the accumulated symbolic capital of the group which has delegated him and of which he is the *authorized representative*' (1991: 109-11). In other words, he is an authorized representative of an authoritative centring institution. An *authorized voice* such as a judge is empowered to effect change, such as 'making law' by issuing judgments that deviate from the prior authoritative discourse of earlier judgments (Heffer 2013a).[12] They then project their voice through others by acting as 'principal' in Goffman's terms (1981: 144). This *authoritative discourse*, originating in the agency of an authorized voice, is then perceived by speakers as a structural constraint on voicing: 'it binds us quite independent of any power it might have to persuade us internally; we encounter it with its authority already fused to it' (Bakhtin 1981: 342). Accordingly, it 'permits no play with the context framing it, no play with its borders, no gradual and flexible transitions, no spontaneously creative stylizing variants on it' (1981: 343). As Voloshinov puts it, '[t]he stronger the feeling of hierarchical eminence in another's utterance, the more sharply defined will its boundaries be, and the less accessible will it be to penetration and commenting tendencies from outside' (Voloshinov 1973: 123). In short, it will project, relatively intact *in form*, across time.[13]

Voices without such authority behind them are liable to be lost or distorted as the texts they are conveyed through are decontextualized and recontextualized as they 'travel' through institutional processes (Heffer, Rock and Conley 2013). At the same time, though, authoritative discourse, precisely because it is impervious to context, can soon fail to project to audiences beyond a specialist community. What is required in such cases is contextual **accommodation** to the audience.

4.4 Accommodation

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[12] It is this power to effect change that I am trying to capture with the term 'authorized voice' rather than Bourdieu's 'authorized representative'. The latter suggests delegation of voice whereas I am stressing the agency of these representatives.

[13] Probably not all authority is institutional or relates to the normative powers of centres. It is possible to be *authoritative* without necessarily being *authorized,* as might be the case with independent writers and artists. Note, though, Grayson Perry's point in the BBC's Reith Lectures that one of the key indices of a work being considered 'art' is that the producer is recognized as an 'artist' i.e. she is authorized to produce art (Perry 2013).

I define accommodation very broadly as the extent to which the speaker adapts their speech to the audience. This includes both adapting to the communicative norms of the speaker (**converging**) and being rhetorically efficacious (**persuading**).

Converging

Converging, or adapting to the communicative norms of the speaker, can facilitate both comprehension and solidarity, and thus help to project voice. The notion of converging originates in Speech Accommodation Theory (Giles and Powesland 1975) – subsequently Communication Accommodation Theory (Giles and Baker 2008) – which was concerned primarily with the way people emphasise or minimize social differences by making micro-changes in accent, style, gesture and so on. Here I extend the notion to communicative norms in general. In institutional contexts, converging can involve lay participants moving towards professional discourse norms or professionals moving towards everyday discourse norms.

Converging is dependent on two main factors: capacity and motivation. Regarding capacity, converging is predicated on *communicative competence* (Hymes 1972), or the combination of lexical, grammatical, sociolinguistic and strategic competence (Canale and Swain 1980) that speakers require to 'pass' as members of a given discourse community. Converging, though, does not require passing but merely approaching communicative competence in a given discourse community. Indeed, communicative competence is not a binary but a continuum in any community and assessment is relative to the normative centring institutions. For example, facility in the use of urban slang might be a necessary marker of competence in a given peer group, but a marker of incompetence for a teacher at school. A speaker might be able to narrate effectively in conversation but not in court. The relativity of communicative competence becomes particularly significant when different languages are involved. Blommaert (2005) notes that what passes as 'prestige' English in Tanzania becomes 'poor' English in a British context and many of the problems connected with the interviewing of asylum seekers stem from language differences. In other words, non-native speakers may feel that they are projecting their voices quite well while failing to get across to their audience. In other words, they are not able to discern that they are not converging adequately with their audience.

Converging is also dependent on motivation since, in many contexts, it would be possible to converge even where this is not done. Where communicative competence is known to be lacking for one reason or another, an agent can *delegate voice* to another agent who is better able to voice in a way that is likely to be heard in the (usually) institutional context. For example, the trial lawyer is better able to accommodate to the frames and focuses of the legally relevant hearers in court: judge and jury. Consequently, it is the lawyer's voice that is projected through the trial, not the client's, even if the client gives testimony. Professionals often suggest that authority prevents them from converging with lay participants, but this is seldom the case. For example, when judges are given discretion in wording their legal instructions to juries, some will converge towards everyday communicational norms while others will *diverge* from them (Heffer 2002).

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Persuading

Converging with the local community's discursive norms is likely to facilitate comprehension. However, successful voice projection generally requires an orientation to *rhetoric*, to persuading rather than simply informing the audience. Where speakers are motivated to respond to a rhetorical situation, as with trial lawyers determined to win their case in adversarial courts, audience-oriented rhetoric will naturally ensue. Where extrinsic motivation is lacking, though, institutional speakers may hide behind authority and 'impermeable' authoritative discourse. Where voicing is not oriented towards being heard, towards actively responsive understanding, we can call it *recitation*, or voicing to be voiced. Re-citing what has been said before, particularly in ritual, can occur irrespective of audience understanding. Indeed, Bourdieu (1991: 113) stresses that it is neither necessary nor sufficient for authoritative discourse to be understood, since it only obtains its 'authorizing effect' if it is recognized by its receivers as legitimate. Authoritative discourse, then, is always in danger of not projecting when it is recited rather than communicated rhetorically.

The key elements of projection outlined above combine communicational aspects (voicing and hearing) with power aspects (authority and accommodation). The proposed sub-categories (sounding, styling, framing, focusing, centring, authorizing, converging and persuading) have been drawn from wide-ranging work in discourse analysis, linguistic anthropology and related fields. They have been brought together here, though, in an analysis of voice, and specifically to understand the way voice projects from perspective to understanding. The interaction of these elements can be very complex and there is no easy way of assessing the chances of successful projection. However, the object of the model is to encourage consideration of a variety of factors rather than just, for example, styling or converging. At this point, then, we need to consider how the Voice Projection Framework can be applied to a specific institutional context.

5. Jury Questions and Deficits of Understanding: The Vicky Pryce Case

At first sight, the jury might seem an unusual context for an analysis of voice. Most contemporary critical linguistic accounts of voice study the 'ways of speaking' (Bartlett 2012) of established minority communities particularly when they come into contact with dominant discourse communities. However, the jury are not a community and they barely speak. Jurors are certainly drawn from '*the* community', where community is understood purely as 'locality', but otherwise they may have little in common in a globalized world. Southwark, the London locality in which the Vicky Pryce trial took place, is particularly heterogeneous, with, for example, 34% of the population born outside the UK, and 32% belonging to ethnic minorities.[14] Jurors

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[14] *The Guardian* Data Blog 26/5/2011at
http://www.theguardian.com/news/datablog/2011/may/26/foreign-born-uk-population# and
18/5/2011at http://www.theguardian.com/news/datablog/2011/may/18/ethnic-population-england-wales. Some of the right-wing tabloids made an implicit or explicit link between the visible ethnic

are thrust together 'from all walks of life' (as judges are wont to say) to form a forced and fleeting virtual community. There is a hidden heterogeneity, then, in the singular 'jury' that defies attempts to conceive it as a 'common' community with shared conditions or interests. As for speaking, jurors do speak in the jury room but their deliberations are hidden from public (and even researcher) hearing. As an institutional entity, the jury only speaks to deliver, through the 'foreman', the binary verdict of 'guilty' or 'not guilty'. In contemporary English courts, the only discursive evidence of jury voice is in the form of written questions submitted to the judge to ask of witnesses during testimony and, as here, about law and procedure during deliberation.

Stripped bare of the richness of face-to-face oral communication, though, the jury context affords an opportunity to examine the analytical utility of the critical concept of voice beyond simply ways of speaking. As Blommaert argues, an analysis of voice goes beyond the traditional linguistic focus on a text in context and takes into account 'forgotten contexts' that 'are not features of single texts but of larger economies of communication and textualization' (Blommaert 2005: 57) such as the availability and value of linguistic resources and the travels of texts across contexts (Heffer, Rock and Conley 2013). It can thus give a fuller picture of what is 'going on' in a particular discursive context even where textual data itself is relatively sparse. Furthermore, just as I have argued elsewhere that an analysis of narrative practice can be crucial to understanding institutional contexts in the comparative absence of narrative discourse (Heffer 2012), so I argue here that an analysis of voice can be crucial to understanding institutional contexts in the comparative absence of voicing.

6. The Voice of the Judge

> 'it is actually all there and has been there the whole time'
>
> (Judge Sweeney, *R v Vasiliki Pryce*)

We cannot hope to understand the jury's questions (see Appendix) without some understanding of at least the immediate communication to which they respond: the judge's summing-up on the law (his 'legal directions', 'instructions' or 'jury charge'). It is also helpful to compare this with his Ruling on Marital Coercion, written for a legal audience.

6.1 Authority and the Judge's Instructions

Authority is clearly central in judges' instructions to juries and very significantly determines both the **styling** and the degree to which judges can **accommodate** to jurors. In many US jurisdictions the judge can merely *animate* 'pattern' legal instructions authored by legal committees (Dumas 2000). In England and Wales,

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minority status of most of the jurors and their 'deficits' in understanding. E.g. 'We don't know how many of the jurors in the Pryce case have English as a second, or even third language. … only two of the 12 jurors in this case could be described as "white British" — which is a graphic illustration of the way in which London's ethnic make-up has been transformed since Labour deliberately abandoned all controls on immigration in order to "rub the Right's face in diversity"' (Littlejohn 2013).

judges have considerably more discretion to **style** their own instructions and the recent move has been *away* from pattern instructions rather than towards them.[15] Judges are, though, still highly constrained by *authoritative discourse* and, as in the US, there is still the risk that the wording they choose will be criticized by the **centring** institutions of the higher courts. There is accordingly a discursive tension in judges between merely **sounding** authoritative legal discourse and using their *authorized voice* to **style** the instructional texts. Individual **styling** is essential for projection to a lay audience since it permits the judge to **accommodate** to that audience (a point taken up in the following section).[16]

The *authoritative discourse* at the heart of the judge's directions in this trial is that relating to marital coercion. Marital coercion was originally a legal presumption that a man's wife was under his control and so would naturally be coerced into conspiracy and consequently be morally if not legally innocent. There had long been dissenting voices against this presumption, not least Mr Bumble in *Oliver Twist* who railed that 'If the law supposes that, … the law is a [*sic*] ass – a idiot' (Dickens 1837-39/1970: 489). Several controversial cases eventually led to the presumption being abolished by statute in 1925, but that statute at the same time introduced the possible *defence* of marital coercion:

> … on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband. (Criminal Justice Act 1925, Section 47)

The defendant, then, in claiming this defence rather than relying on the previous presumption, now had to prove as more likely than not that she was under the coercion of her husband.

Judge Sweeney, in his directions to the jury in *Pryce*, points out that 'the defence of marital coercion' is 'the critical issue in this case'. He then directs them as follows:

(1)[17] The law recognises, via the defence of marital coercion, that a wife is morally blameless if she committed an offence **only** because her husband was present and coerced her - that is put pressure on her to commit the offence in such a way that, as a result, her will was overborne (in the sense that she was impelled to

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[15] Judges used to be provided with 'Specimen Directions' that *suggested* (but did not impose) wording on key instructions (JSB 1999). Actual wording of these directions varied considerably among judges though many judges would use formulaic phrases taken directly from the specimen directions (Heffer 2002, 2005). These specimen directions, though, were abandoned in the 2010 edition of the *Crown Court Bench Book* (JSB 2010) in favour of detailed guidance on the substance of the directions as well as 'Illustrations' of summing-up on different points.

[16] As illustrated in this paragraph, higher-level categories of Projection (indicated in Figure 1) are in **bold**. Sub-categories and emphases are in *italics*.

[17] I have numbered the paragraphs for ease of reference. There is no numbering in the document available online, which I assume is the written version of the directions made available to the jury.

commit the offence because she truly believed that she had no real choice but to do so).

(2)   A wife's will would not have been overborne (in the sense that I have just described) if, for example, she was persuaded by force of argument to choose (albeit reluctantly) to commit the offence rather than to take another course, or if she was persuaded (albeit reluctantly) to commit the offence out of love for, or loyalty to, her husband or family, or to avoid inconvenience (whether to herself or others). Her will must have been overborne in the sense that she was impelled to commit the offence because she truly believed that she had no real choice but to do so.

(3)   It is not, however, for the defendant to prove that Mr Huhne coerced her - rather it is for the prosecution to prove that he did not do so. The Prosecution may do that (as they seek to in this case) either by making you feel sure that Mr Huhne was not present when Ms Pryce committed the offence, or by making you feel sure that her will was not overborne (i.e. that she was not impelled to commit the offence because she truly believed that she had no real choice but to do so).

(Summing-up, *R v Pryce*. Emphasis in original.)

The three paragraphs in turn: 1) define 'marital coercion'; 2) indicate what it does not cover; 3) indicate that the burden of proof is on the prosecution. Paragraph 3 is clearly in contrast with the 1925 statute, a point to which I shall return.

One might expect at least the definitional paragraph to be dominated by the *authoritative legal discourse* of statutes and judicial judgments. However, as the annotated paragraph below shows, only a few words in the direction come from the 1925 Act – 'wife' (not husband or partner), 'present' (husband), 'defence' (not presumption), 'coercion' (not duress) – and the lack of definition of 'coercion' in the Act leads to the inclusion of three key terms from judicial judgment: 'pressure'[18], 'will was overborne' and 'impelled'.

The law recognises, via the **defence** of marital **coercion**, that a **wife** is morally blameless if she committed an offence only because her **husband** was **present** and **coerced** her - that is *put pressure on her* to commit the offence in such a way that, as a result, *her will was overborne* (in the sense that she was *impelled* to commit the offence because she truly believed that she had no real choice but to do so).
(**Bold** = statutory discourse; *italics* = judicial opinion; underline = legal terms; dotted underline = formulaic phrases found in legal register)

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[18] Lord Simon distinguished marital coercion from the closely related defence of duress in terms of 'the method of pressure', that of coercion being 'any force that overbears the wish' (*D.P.P.For Northern Ireland v. Lynch (1975) 61 Cr.App.R.6, 29, [1975] A.C. 653, 693*.). The specific formulaic phrase 'put pressure on' can be found in judgments on duress.

The remaining words, then, are not merely *animating authoritative legal discourse* but are also **stylistically** *conforming* to legal *register*. There are specific legal terms such as 'the defence of marital coercion' and more general ones such as 'commit an offence'. A term such as 'morally blameless' is not found in legal dictionaries but is either explicitly or implicitly opposed to 'legal blame', particularly in the expression 'legally culpable but morally blameless', and goes to the heart of the distinction between legal and moral accountability (Arenella 1991). We also find formulaic phrases that are not exclusive to legal *register* but are typically found in legal discourse across common law countries and in particular textual environments: 'The law recognizes'; 'only because'; 'in such a way that as a result'; 'because [s/he] truly believed that [s/he]'; 'had no real choice but to do so'.[19] Finally, the paragraph conforms to the typical definitional syntax of legislation (Bhatia 1994): it is one long sentence with multiple complex embedding that, as psycholinguists have shown, can cause problems in comprehension.

We might predict that such a paragraph, heavily permeated as it is with *authoritative legal discourse* and legal *register*, will not project well to a jury unversed in such language. The communicative burden, then, would seem to be on the judge. However, the judge is also engaged in communication with the legal community. He is fully aware of his *authorized voice* as he *creates* a new, judicially authored direction. He is also likely to be aware, given the rarity of the marital coercion defence, that he is *creating authoritative discourse* in the process.

7.2 Accommodation: Reciting Rules v Persuading People

We have established in the last section that even in the paragraph of the judge's directions that is most highly constrained by **authority**, there is room for **styling** and thus for **accommodation**. However, **styling** does not presuppose **accommodation** since the author might orient towards *reciting* rather than **persuading.** As is often the case in legal definition, we hear different strata of **voicing** lying awkwardly on top of each other like an ancient building that has been extended piecemeal over the centuries. Thus the 'coercion' of the statute is first defined by a trial judge as the 'will'

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[19] I have chosen examples from different jurisdictions as I am suggesting that legal register across common law legal systems is similar in many stylistic respects, even if specific terms may be quite different. The examples are from, in order, South Carolina, Ireland, Canada, California and Scotland: 'The law recognizes racial instinct' (Tucker v. Blease, 81 S.E. 668 (SC. Sup. Ct. 1914)); 'But the defence may apply although the occasion for the use of force arises only because the person does something he or she may lawfully do, knowing that such an occasion will arise.' (Non-Fatal Offences Against the Person Act, 1997); 'The accused pushed the deceased (a second time) in such a way that as a result of the push he fell between the second and third (cars),' Border said. (Crown Prosecutor in trial of Nathalie Pasqua, reported by Kevin Martin, 'Pasqua pleads guilty to manslaughter' in *Calgary Sun* 9/11/09); 'This instruction gave Woo's motive all the weight it deserved, and all the room she needed to argue that she was insane because she truly believed that she was protecting her children by killing them.' (*People v Woo* 2012); 'They were obliged for the sake of their child to defend the action and had no real choice but to do so' (http://www.scotcourts.gov.uk/opinions/A163_00.html).

being 'overborne' (*R v Richman*)[20] and then this is *authorized* by a High Court judge (*R v Shortland*)[21]. Next, 'overborne' is defined in terms of being 'impelled' (*D.P.P. For Northern Ireland v Lynch*)[22], which in turn is recognized as needing glossing. In his full direction on marital coercion (cited above), the judge tries to **focus** jury hearing by *highlighting* his definition of 'coercion' through slightly reformulated repetition reflecting the slightly different contextualizations of the three paragraphs:

> her will [was/must have been/was not] overborne ([in the sense/i.e.] that she [was/was not] impelled to commit the offence because she truly believed that she had no real choice but to do so).

This is reminiscent of the famous Rule of Three enunciated by the Bellman in the *Hunting of the Snark*: 'What I tell you three times is true' (Carroll 1898/2006: 15).[23] He repeats this formula again in his Route to Verdict at the end of the summing-up. However, the legal-linguistic belief that *highlighting* a phrase through repetition, both within a summing-up and across time, will make it cognitively salient and thus comprehensible to the jury confuses salience with comprehension (Heffer 2013a). The syntax here is complex and there is a reversal of everyday definitional and rhetorical practice: rarer words are used to explain a more common word. 'Overborne' occurs only 13 times in the British National Corpus of English (BNC) and 9 of these citations relate to legal reports on cases involving coercion or consent. 'Overborne' is then explained with the still uncommon word 'impelled'.[24] While such less-than-comprehensible legal language might be attributed to the *authoritative discourse* of statute and precedent, it is notable that, in his response to the jury's question on marital coercion (discussed below), the judge simply removes the discursive layer of 'overborne' altogether:

> **A1.** …The law requires that a husband was present and coercion was to such an extent that she was impelled to commit an offence because she truly believed she had no real choice but to do so.[25]

Even more illuminating is the fact that the judge's written Ruling on marital coercion includes almost identical paragraphs to those he would deliver in the

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[20] 'she had to prove that her will was overborne by the wishes of her husband' (*R v Gary Richman and Ann Richman*).

[21] *R v Shortland* ([1996] 1 Cr. App. R.116)

[22] Lord Simon: 'Coercion' in its popular sense denotes an external force which cannot be resisted and which impels its subject to act otherwise than he would wish.' (*D.P.P. for Northern Ireland v. Lynch* [1975] A.C. 653).

[23] My thanks to Alison Wray for this example.

[24] According to the frequency bands of the *Collins English Dictionary Online* (Collins 2013) 'overborne' is 'used rarely' (top 50,000 words), 'impelled' is 'used occasionally' (top 30,000 words), while 'coercion' is 'in common usage' (top 10,000 words), though not in the stipulated legal sense.

25 He might even have gone further and removed the discursive layer of 'impelled', saying something like: 'The law requires that her husband was present and coerced her; in other words, he put so much pressure on her that she truly believed she had no real choice but to commit the offence.'

summing-up,[26] *except that* in the Ruling, designed to be read by fellow legal professionals, the judge glosses the two uncommon terms 'overborne' and 'impelled' with the two very common words 'overcome' and 'forced'[27]:

> Her will must have been overborne *(i.e. overcome)* in the sense that she was impelled *(i.e. forced)* to commit the offence because she truly believed that she had no real choice but to do so. (my emphasis)

The judge thus appears to recognize the need to provide assistance with the language for his fellow legal professionals in the Ruling but not for the lay jury in his summing-up. A likely explanation for this is that in the summing-up, or at least in the part where he sets out his legal directions, he is oriented to **authority**, to the legal **centring** institutions and thus to *reciting* rules, whereas in the Ruling he is oriented to *rhetoric*: to **persuading** his audience of fellow legal professionals.

   In summary, then, at least with regard to the crucial legal direction on marital coercion, the judge, probably both mindful of the dangers of appeal and following his legal-linguistic habitus, was pulled discursively towards **authority** and away from **accommodation** and this will have hindered his attempt to project his legal perspective to the jury. There are few if any signs in this direction of **converging** with everyday communicational norms and his Ruling for fellow professionals is more persuasive than his summing-up to the lay jury.

8. The Voice(s) of the Jury and Judicial Hearing

The jury's questions come in response to the judge's oral and written summing-up and were construed by the judge as evidence of serious mishearing. I argue in this section that, though the questions constitute limited evidence,[28] several of them suggest actively responsive understanding of the judge's directions while the judge's own responses are likely not to have projected well.

8.1 Sounding the Jurors

In the media reaction to Judge Sweeney's comments, the jurors' own voices were silenced by the Contempt of Court Act 1981, which, unlike in the US, prohibits any interviewing of jurors in any form. Even at trial, the jurors had little chance to physically project their voices beyond the jury room. The circumstantial evidence available from the textual records points to a situation of discursive conflict: the deliberation was long for a legally simple case; it passed to a majority verdict phase;

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[26] The ruling was made orally (but with the jury sent out) before his summing-up on 19 February 2013 but was written up and published on 7 March 2013. It is not clear, then, whether the direction in the summing-up is a recontextualization of the paragraph in the ruling or vice versa.

[27] The *Collins English Dictionary Online* puts both 'overcome' and 'forced' in their band of most frequent or 'very common' words (top 4,000) (Collins 2013).

[28] While the evidence is limited, if we confine our analyses to richly available textual and situational contexts, such consequential contexts as jury questions will be forgotten or under-researched.

Question 5, as discussed below, was **styled** in a way that suggested distance between the author of the questions and the principal behind this question; the jury ultimately failed to reach agreement; and the forewoman *highlighted* tensions by underlining 'highly unlikely' twice in her final note to the judge about the possibility of reaching a verdict. The *polyvocality* of the deliberation, though, is for the most part lost as the questions travel back to court and beyond. First, most of the questions are lifted from their interactional situation of conflict and entextualized in a univocal and ordered written list. The requirement to present their questions in written form means that the distinctive voices (physical, discursive and rhetorical) of the individual jurors are lost. We cannot know for sure whether the person who wrote out the questions is merely *animating* the questions of other jurors or authoring them, nor how many principals are involved (theoretically, each question might represent a different juror's voice or a combination of different voices), nor how much conflict and negotiation went into the **styling** of the questions. We can speculate that at least eight of the questions are authored by the forewoman – typical jury group dynamics would predict the foreperson drawing up the questions (Levett and Kienzle 2013) and impressionistic accounts of the trial through the media suggest the forewoman was particularly attentive and well-spoken – and I shall make this assumption in my analysis.[29]

If that is the case, though, some of the jurors will have already lost voice in the process of converting oral sentiment into rational text from a given authorial perspective. Question 5 in particular seems to be **styled** by the forewoman to convey a metapragmatic comment on the juror who is the source of the question:[30]

> **Q5.** Can <u>a juror</u> <u>come to a verdict</u> based on a reason that was <u>not presented in court</u> and has <u>no facts or evidence to support it</u>?

Firstly, by using the indefinite article ('Can **a** juror') in place of the collective 'we' or 'the jury', the forewoman appears to be deliberately singling out the discordant voice of an indefinite individual juror. Secondly, this discordant voice is projected as not merely wanting to 'consider' or 'take into account' the proffered reason as one of many elements that might support a given verdict but quite simply to 'come to a verdict' based on this reason. Finally, that 'reason' is presented in an entirely negative fashion: '*not* presented in court'; '*no* facts or evidence to support it'. The styling of the question, then, seems to *index* it to the hearer as 'stupid'. Consider how the question might have been **styled** if the author had aligned with the principal (and the forewoman demonstrates through her other questions that she is perfectly capable of styling in this manner):

[29] The first eight questions were sent out by the forewoman and show certain stylistic similarities. The last two questions were sent by individual jurors. I shall focus on the first eight questions here.
[30] It is quite possible that we can hear the original voice of the juror in the individually submitted Question 10: 'Would religious conviction be a good enough reason for a wife feeling she had no choice i.e. she promised to obey her husband in her wedding vows, he ordered her to do something and she felt she had to obey?'

Q5B <u>Can we</u> <u>consider</u> <u>a possible form of coercion</u> that was not presented in court <u>but might be inferred from the evidence as a whole</u>?

This is a far more reasonable question. The answer would still be 'no' but due to the specific law of evidence (factfinders should consider only reasons presented in court) rather than universal laws of reasoning (basing our decisions on facts and evidence rather than pure conjecture). It is quite possible, then, that the forewoman has distorted one or more dissenting voices in the jury, thus preventing that voice from projecting effectively to the judge. And those voices may not actually be stupid but might be challenging the very nature of the controversial law on marital coercion.

    Once the questions are written, they are further decontextualized as they are removed from the jury room. They are subsequently recontextualized by the judge who will have read them out in court (*animated* but probably not *performed*) with new accents and intonations and without knowledge of the discursive history of deliberation that led to their entextualization. They are now perceived as a univocal *monologic* text that conforms with the legal institutional view of the jury as a single counterbalancing side of the judicial scales: the judge determines the law, the jury determine the facts. In its institutional role, the jury, like the judge, is singular and speaks with one voice through the 'foreman'. The judge tells the jury that, in deciding the facts 'you bring, and are entitled to use, your joint experience of life and your common sense'. However, the *polyvocality* of deliberation remains locked in the jury room and traditionally the only voice the jury has is to declare a 'guilty' or 'not guilty' verdict through the 'foreman'. The judge's metapragmatic comment on the questions as demonstrating 'absolutely fundamental deficits in understanding' then steers their recontextualization in the media through the metapragmatic frames of 'stupid jury' and/or 'defunct system'. The voice of the individual jurors has by this stage long been lost.

    In the following sections I shall attempt to give at least minimal voice to the jury as a unit, if not as a group of heterogeneous individuals, by analyzing their questions through the prism of the Voice Projection Framework outlined in Figure 1 above.

8.2 Converging with Legal and Lay Discourse

A lay jury might be excused for struggling with legal language. Yet the jury's questions demonstrate a considerable degree of *legal communicative competence* and thus clear signs of an attempt to **converge** with legal discourse. This is evident from the first question, which tackles the critical legal issue of marital coercion, focused on in the previous section:

    Q1. You have defined the defence of marital coercion on page 5 of the jury bundle and also explained what does not fall within the definition by way of examples. Please expand on the definition, provide examples of what may fall

within the defence, specifically 'will was overborne' and does the defence require violence or physical threat?

The question uses both legal terms used by the judge ('jury bundle'[31], 'defence of marital coercion', 'will was overborne') and, perhaps more significantly, formulaic phrases that are *not* used in the summing-up and that appear to belong to a legal *register*. 'Fall within the definition' and 'fall within the defence' are almost exclusively used in legal contexts: all 14 citations of 'fall within the definition' in the BNC are in legal contexts[32] while 'fall within the defence' does not occur.[33] Use of such terms as 'at the material time' and 'notice of intent to prosecute' in other questions confirm this *legal communicative competence*.

The question also demonstrates an orientation to legal-institutional **framing** of the trial events. In a discursive process he describes as 'diagnosis', Agar notes that 'the institutional representative fits the client's ways of talking about the encounter to ways that fit the institution's' (1985: 149). The judge's summing-up could be seen as his diagnosis of the more fully-voiced personal testimony of witnesses that has been presented to the jury. The question shows an ability to orient to the judge's institutional **framing** by identifying a substantial oversight in the judge's directions. It is legally perspicacious. *Authoritative* legal opinion has established that judges should define not only what the defence of marital coercion does *not* include (as the judge does in the second paragraph of his direction above) but also what it *does* include (e.g. psychological bullying) (*R v Shortland*).[34] It has also established that judges should make quite clear that the defence does *not* require violence or physical threat (*R v Cairns*). So the jurors are quite rightly identifying gaps in the judge's directions – the judge may well have felt constrained to include some *authoritative* legal opinions, but evidently not others. In placing this question first and **styling** it in a legal fashion, the forewoman is *indexing* that she has at least acquired some 'interactional expertise' (Collins and Evans 2007) in the law. Yet the judge does not appear to perceive this competence, perhaps because it is part of his own background legal *competence* and thus not perceptually salient.[35]

Another *institutionally* **framed** directive question showing **convergence** with legal discourse is the one on the criminal standard of proof:

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[31] The 'jury bundle' is the collection of documents relating to the case provided to each of the jurors.
[32] Some examples from the BNC include: 'A statutory payment under section 106 did not fall within the definition of pay in article 119'; 'Assault must be proved to fall within the definition at (B) 3 ante'; 'Consists of other types of confidential material which does not fall within the definition of excluded material in section 11'; '… the road verges were part of the highway, and so did not fall within the definition of 'common land' in section 22(1) of the Act'; 'for you to be genuinely redundant, your case must fall within the definition of redundancy contained in the Consolidation Act.'
[33] Interestingly, 19 of the first 20 hits on Google for 'fall within the definition' are quotes from this Pryce jury question, since the questions were quoted in numerous publications. (Searched from Cardiff, Wales on 18 July 2013; Google hits vary according to location and date).
[34] The judgment cited the trial transcript in which the defendant said: '... if I disagree with him he torments me, he keeps on and on at me until I've had enough and I agree with anything he says.'
[35] Alternatively, he might be defending himself from a potential loss of face.

Q4. Can you define what is reasonable doubt?

This is probably the most frequent question asked of judges across the common law world because it is an expression very poorly understood by both lawyers and lay people (Solan 1999; Heffer 2007). The Judicial Studies Board recommends not using the phrase at all and replacing it with the paraphrase 'the prosecution must make you *sure'*. However, judges are allowed to point out the equivalence between the legal term and the lay paraphrase (usually because a barrister has used the term in his closing speech), and this is what Judge Sweeney does in his summing-up:

> The standard of proof that the Prosecution must achieve before you could convict is simply this – the prosecution must make you feel sure of guilt (that is the same as, but no more than, the proof of guilt beyond reasonable doubt).

Although the **styling** here is superficially clear, the co-existence of these two ways of conveying the standard of proof is justifiably confusing for jurors where both are included since one ('make you feel sure') is straightforward and perfectly comprehensible while the other ('proof of guilt beyond reasonable doubt') is abstract and difficult to construe. Yet it is reasonable that a jury, in trying to **converge** with legal discourse, should want to grasp this crucial and well-recognised (though not well understood) term. If the judge in turn had been oriented to **persuading**, he might have told the jury simply to consider whether the prosecution had made them feel sure of guilt and not to worry about the meaning of 'reasonable doubt'. Instead, he seeks the apparent safety of **authority**:

> **A4.** The prosecution must make you feel sure beyond reasonable doubt. A reasonable doubt is a doubt that is reasonable. These are ordinary English words that the law does not allow me to help you with, beyond the written directions.

First, against legal advice (e.g. JSB 2010), he qualifies plain English 'sure' with the legal term 'beyond reasonable doubt' (which the jurors have already indicated they do not understand). Second, he utters the common tautology 'A reasonable doubt is a doubt that is reasonable', which in fact is only true if 'reasonable' is understood as 'rational' rather than its more common contemporary meanings of 'moderate' or 'fair' (Heffer 2007). Third, he utters the common judicial phrase 'These are ordinary English words', which has been shown to be empirically false in the case of 'beyond reasonable doubt' (Heffer 2013a). Finally, he points out that 'the law does not allow me to help you with' the term. Unlike the jury, then, with respect to legal discourse, he shows few signs of **convergence** with everyday communicational norms.[36]

8.3 Styling Obligation

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[36] My object here is not to criticize the judge, who has clearly made an effort to accommodate to the jury in much of his summing-up, but to suggest that, in providing such an unhelpful response, he must have been focused on authoritative recitation rather than rhetorical projection.

A second pair of questions (2 and 7) is styled in terms of legal obligations in assessing the evidence:

> Q.2 In the scenario that … what *should* the verdict be…?;
> Q.7 Does the defendant have an *obligation* to present a defence?

These show an orientation to legal-institutional **framing** but request clarification on legal points that are not self-evident, or betray some ambiguity for the non-expert. Question 7, on the defendant's obligations, illustrates this well. The judge's Ruling on marital coercion is a 28-page document arguing the case for reversing the persuasive burden of proof from the defence to the prosecution (Sweeney 2013b). This constitutes a significant change in the law and is an example of a judge using his *authorized voice* to 'make law'. The carefully argued Ruling, like judicial judgments or opinions, is a piece of *rhetorical* discourse that engages with other voices. As Mertz points out with regard to US judicial opinions, 'The reference within the texts of many opinions … indexes an exchange in which multiple points of view have been acknowledged' and 'the hegemonic voice' of the judge is forced 'to explicitly recognize and respond to these alternative views' (Mertz 1996: 139). We thus hear the arguments put forth by defence and prosecution and the various competing voices on the issue through time. This is a classic dialogic text, a fine exercise in rhetoric. In the summing-up, though, this is recontextualized for the jury as *authoritative monologic discourse*:

> It is not, however, for the defendant to prove that Mr Huhne coerced her – rather it is for the prosecution to prove that he did not do so.

In response to the jury's question on the issue, the judge is categorical:

> **A7.** There is no burden on the defendant to prove her innocence and there is no burden on her to prove anything at all. The defendant does not have an obligation to present a defence…

This is technically true in the 'tribal language' (Ihde 2007) of the law in that 'timeless' moment of judicial history, but it is not contextually persuasive. Firstly, while the defendant does not have a *legal* obligation to present a defence, if she does not do so in this case she must be found Guilty, so she has a *rhetorical* obligation to present the defence of marital coercion as her only chance of being found not guilty. Secondly, while the judge has just reversed the *persuasive* burden on the defence (now the prosecution rather than the defence have to prove that she wasn't coerced), the *evidential* burden (the requirement to adduce evidence) remains with the defence: the defence has to be *raised* or the defendant will be found guilty.

Thus the many conflicting voices that contributed to the judge's eventual decision on this matter, and that are engaged with openly in the Ruling, are silenced and the persuasive burden (which has only just been switched by the judge) is

presented as a timeless truth. This is the *authorized voice* of the judge that is speaking rather than the *authoritative discourse* of legal history and it would be particularly confusing for the forewoman if she did in fact have some experience with the law.[37]

8.4 Focussing the Evidence

A third set of the jury's questions (3, 6 and 8) is **styled** in terms of what is legally permissible in assessing the evidence:

> Q.3 … *can* inferences be drawn to arrive at a verdict? …
> Q.6 *Can we* infer anything from the fact that…
> Q.8 *Can we* speculate about the events…

These do orient to *institutional* **framing** but also engage *narrative* **framing**, which considers all aspects relevant to an overall narrative understanding of events. The questions address an area where the law of evidence lacks certainty: the difficult line between inference and speculation.

Question 3 is a case in point:

> **Q3.** If there is debatable evidence supporting the prosecution case can inferences be drawn to arrive at a verdict? If so can inferences/speculation be drawn on the full evidence or only where you have directed us to do so?

The forewoman **focuses** on *inferences* being drawn but then, in referring back to her main question, she makes the institutional 'mistake' of mentioning 'speculation' alongside 'inferences'. In doing so she is recognizing that it is not at all easy to draw the line between the two. Indeed this difficulty is well recognized in the law: 'The difference between an inference and mere speculation is a fine line to distinguish … At some point, the link between the facts and the conclusion becomes so tenuous that we call it "speculation." When that point is reached is, frankly, a matter of judgment' (Watt 2011: 104-5). In academic discourse, to 'speculate' often means to apply a lower evidential standard but not one that is wholly uncalled for. In legal discourse, on the other hand, others are seen to speculate while 'we' draw valid inferences.[38]

The judge, though, responds to the question with a firm binary categorization:

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[37] This legal moment might, in fact, prove to be a fleeting one. The judge's ruling has opened up much legal discussion as to whether his decision is 'binding' or merely 'persuasive'. If the latter, and later courts decide to reject it, the judge has disguised his unique voice as a univocal voice.

[38] For example, Dworkin dismisses intentionalism in statutory interpretation by saying that 'it hardly damages the contemporary legislature's ability to work its will if judges decline to *speculate* about how to read cloudy rules from the dead past or what the intentions of people very different from contemporary legislators would have been if they had thought about a problem they actually ignored' (Dworkin 1986: 158. My emphasis). Yet intentionalists themselves would certainly not see this method as speculation but inference. In short, the distinction between inference and speculation is an extremely subjective and murky one.

A3. The drawing of an inference is a permissible process. Speculation is not.

…

Against a murky background of real life evidence with all its epistemological nuances and uncertainties, the judge *highlights* through parallelism the 'permissible process' of inferencing: Inferencing, the logical drawing of conclusions from the evidence, is the permissible legal *figure* against a background of impermissible speculation, just as admitted 'material' evidence is the *figure* against a background of 'immaterial' evidence. However, the judge is not the only voice on this. The lawyers in the trial encourage jurors to think in narrative as well as logical ways. Prosecuting counsel told the jury in his closing speech that ultimately 'you have to look hard at her and decide what kind of person she is and that exercise will probably tell you the answer'. He is relying on the folk narrative script that 'when two powerful, clever, affluent people decide on a course of action you probably conclude that they do that with their eyes open'. Defence counsel replied in his own closing argument that 'Bullies, domineers, don't just use their fists. They don't have to. Clever people like Mr Huhne have other ways of controlling and domineering.' In deciding such narrative scenarios (Pennington and Hastie 1991), it is very difficult indeed to draw the line between inference and speculation. The perspective, then, on evidential interpretation that is projected through the trial is a mixed one, so it is perhaps unreasonable to put a lack of categorical distinction between inference and speculation down to 'deficits of understanding'.

8.5 Forgetting Equity
One reason for imputing 'stupidity' to the Pryce jury is that legal professionals considered the case a 'simple' and clearly delineated one. Yet that is only the case if you orient to the law as your normative **centre**. Some jurors orient instead to morality or their common sense of justice (Finkel 2001). The defence of marital coercion in particular appeals to natural law and justice and the distinction between legal culpability and moral blamelessness. Some of the jurors, then, might have been applying 'equity', or 'the recourse to principles of justice to correct or supplement the law as applied to particular circumstances' (Garner 2009). However, while judges are said to draw on equity to 'supplement' existing law to bring about a just result, juries (at least in the US) are said to 'nullify' the law, to make it void or invalid. In other words, judicial equity is projected as resulting in a gain to society while jury equity is considered to be a loss. Yet the history of jury equity (as much as this can be known – (Finkel 2001)) suggests that the jury's silent but empowered voice in such cases has frequently been a gain. The jury made their voice heard in 18th-century England when they refused to convict for petty capital crimes and again in the 21st century when they refuse to convict in euthanasia cases. In the Vicky Pryce case they may have objected to the requirement that the husband needed to be physically present to apply overbearing psychological pressure, as this fails to take account of what we know about controlling and domineering spouses (Follingstad and DeHart 2000). Or they may have simply disagreed with the judge's view of Pryce, as suggested subtly in his

summing-up and stated explicitly in his sentencing remarks after the retrial, that she was 'controlling, manipulative and devious'.[39] It is perhaps significant in this respect that eight of the twelve jurors were women and ten appeared to belong to ethnic minorities.[40] Rather than the jury *forgetting* the judge's instructions then, the judge may have been *forgetting* jury equity.

9. Failed Projection

It is this last point about forgetting jury equity that is the key to interpreting the judge and jury's failure to project successfully to each other. Figure 2 below summarises the key elements of voice projection in this case, with plain type indicating points relating to the judge's projection and italics indicating points relating to the jury's projection.

The central issue is one of **authority**. Whereas the judge orients to the law alone as his normative **centre**, the jury orient not only to the law but also to the community's (or communities') sense of morality and natural justice. However, in the trial context, the judge has the full weight of **authority** behind his orientation, both as an *authorized voice* 'making' the law on marital coercion and as a reciter of *authoritative legal discourse*. The jury, on the other hand, only have **authority** to deliver a verdict. This power imbalance has consequences for both **hearing** and **accommodation**. In terms of **hearing**, the judge fits the evidence he has heard in the trial into a *legal-institutional* **frame**, backgrounding any elements that do not fall tightly within that frame. The jury index an understanding of that *legal-institutional* **frame** but (like lawyers in closing arguments) also frame that evidence in narrative terms that go beyond legal-institutional strictures; this may lead to *foregrounding* elements in the wider evidential context that are not 'heard' by the judge. In terms of **accommodation**, the judge has no immediate need to risk going beyond *authoritative legal discourse*. Taken as a whole, his summing-up is a model of instructional clarity but his key legal directions (those for the most part queried by the jury) **converge** little with everyday communicational norms despite the jury's own attempt to **converge** with legal discourse. He thus *recites* rather than **persuades**, *highlighting* legal salience through repetition of formulas not understood by the jurors. His **styling** consequently *conforms* with legal *register*, which the forewoman succeeds in emulating, but which is not necessarily understood by the other jurors. Finally, while the forewoman seems to fail to convey her perspective to the judge (who, apparently focused on the legal semantics, does not appear to grasp the pragmatics of Question 5),

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[39] A less 'worthy' form of equity that might have been applied is that there is a mismatch between the 'serious criminal offence' described by the judge in his sentencing remarks after the retrial and the way the swapping of driving penalty points has been perceived by the public. It is an extremely common practice – one survey by an insurer (http://www.directline.com/about_us/news_03032010.htm) suggests that as many as 1 in 8 motorists with penalty points may have swapped them – and one that has not tended to be perceived as 'serious'. There was a clear message from the judge that 'this is the type of offence which requires the court to underline that deterrence is one of the purposes of sentence' (Sweeney 2013a). One or more jurors may have disagreed with this message.

[40] The ethnic composition, as well as the gender composition, can only be anecdotal since it is not possible to obtain any information on jurors in England and Wales.

we must not forget that the other jurors' voices are filtered through (and perhaps suppressed by) the forewoman herself.
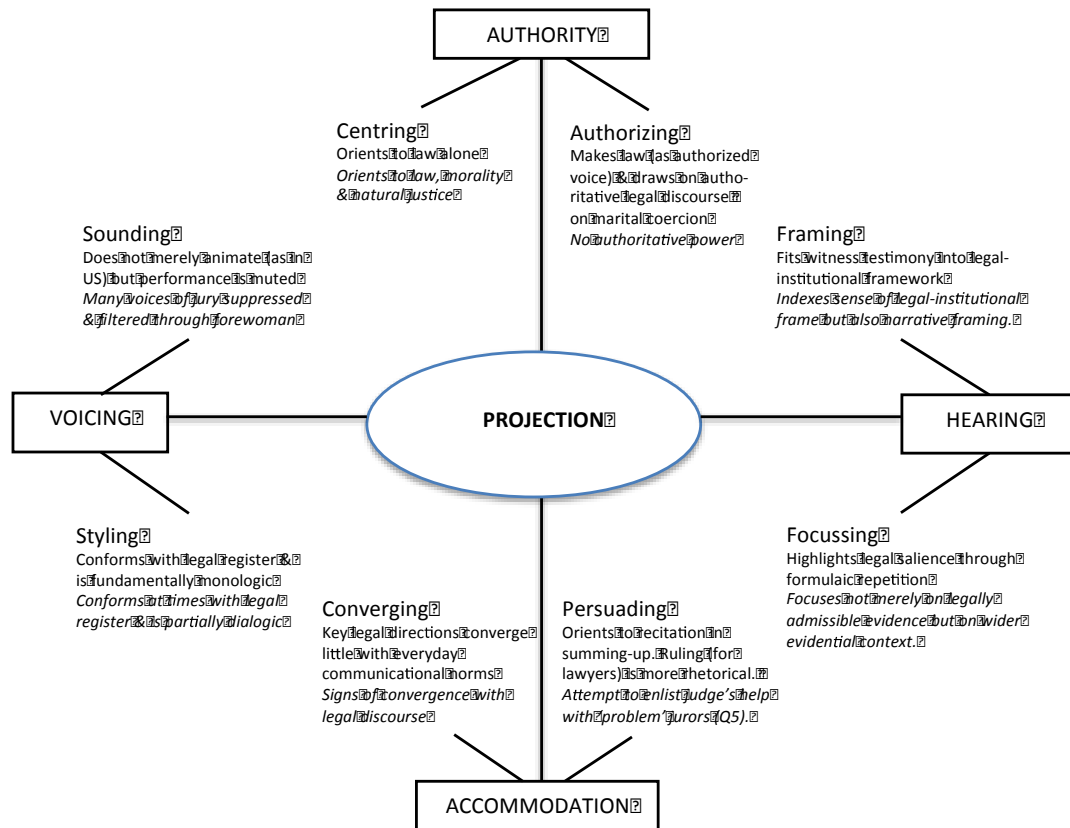

Figure 2: Key Elements Affecting the Judge and *Jury*'s Voice Projection

The above interpretation of voice projection in the Vicky Pryce trial is based on two fundamental, though partially unwarranted, assumptions about Perspective and Understanding in this case. Firstly, it is assumed that the key perspective the judge wishes to convey to the jury is the legal-institutional framework within which they should normatively decide the case. However, judicial identity and judicial style are also an important part of a judge's perspective and are, to some extent, in tension with conveying the ideas themselves. Ways of being a judge are enmeshed with ways of speaking *as* a judge and both can prevent judges from achieving the required degree of convergence and rhetorical efficacy that will convey their ideas most effectively to a lay jury. Judges are locked into a legal-linguistic habitus, an accumulated, normalized, and unquestioned experience of discursive practice in legal settings, which makes it difficult for them to see things from a juror's perspective, just as it is difficult for jurors to see things from a legal perspective (Heffer 2013a). Secondly, it is assumed that the judge is primarily seeking responsive understanding from the jury. It is well recognized, though, that judges are speaking also, if not primarily, to their peers and judicial superiors, who have the power to overturn the jury's decision if the

judge is seen to have misdirected them. What may project poorly to a lay jury, then, may project very well to a legal audience, and vice versa.

10. Conclusion

In their seminal study of the American jury, Kalven and Zeisel (1971: 219) noted that 'in many ways the jury is the law's most interesting critic' and that jurors are often critical of 'the nicety of the law's boundaries.' What we see in the Pryce jury's questions is a group of individuals struggling with the niceties of these boundaries. Considering the way the judge projects his own voice, with a preference in the key directions for recitation of rules over persuasion of people, and the way he appears to fail to hear (and thus respond to) the jury's narrative framing of events, the jury, rather than forgetting the judge's directions, appear to be actively responding to them as best they can. The questions they ask show an awareness of the law but also challenge its subtle distinctions and even its very foundations. This is precisely what is required of the jury as a democratic institution. Nevertheless their perspective clearly failed to project to the judge and they also clearly failed to persuade each other.

The Voice Projection Framework outlined here can help produce a richer and more holistic analysis of such institutional contexts. One could certainly discuss the linguistic complexity of the marital coercion direction or the nicety of the law's legal and linguistic boundaries without recourse to such a model. The claim, though, is that the Framework can help 'give voice' even to those who mostly remain silent. The advantage of the model is that it encourages the analyst to consider multiple aspects of the discursive context, not only at the time of the speech event but through its discursive history (to the extent this can be established). It thus opens up avenues of investigation that go well beyond a single text in its immediate (institutional) context and is particularly useful in cases where opportunities to voice are restricted and/or the possibility of alternative interpretations is considered limited.

One of the key points made salient in this model is the tension between authority and accommodation. That tension is particularly strong with respect to jury instruction but it can be found in discursive encounters throughout the legal process, from delivering the caution (or Miranda Warning in the US), through police interviewing to interpreting in court. I suspect that this tension is equally important in other institutional contexts but it will play itself out in myriad new ways according to the situational constraints and affordances of those contexts. Furthermore, in each new context I would predict (though it needs to be established) that the powerful agents (lawyers, doctors, professors, editors) have considerably more power to accommodate to other audiences than everyday reference to authority might suggest. It would also be interesting to see to what extent lay participants converge with professional/institutional discourse in such contexts. There has been a long tradition of comparing conversational speech with institutional talk and concluding that lay participants will not be able to understand, but this probably underestimates our ability to adapt to institutional contexts.

Ultimately, the aim of this model is to raise awareness of contexts where people's voices are not projecting successfully and to help promote change that will

ensure actively responsive understanding. However, I have indicated here that this does not just concern minority 'powerless' voices but also powerful voices. Powerful speakers have far more resources at their disposal to ensure that their voices do project successfully to less powerful audiences, but in many cases they need to be made more aware of this. The Voice Projection Framework can help articulate why even powerful speakers can find themselves losing voice while using it, often with serious institutional consequences.

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Appendix: The Pryce Jury Questions

Q1. You have defined the defence of marital coercion on page 5 of the jury bundle and also explained what does not fall within the definition by way of examples. Please expand on the definition, provide examples of what may fall within the defence, specifically 'will was overborne' and does the defence require violence or physical threat?

A: The pressure applied by the husband need not involve violence or physical threats. The law requires that a husband was present and coercion was to such an extent that she was impelled to commit an offence because she truly believed she had no real choice but to do so.

Q2. In the scenario that the defendant may be guilty but there may not be enough evidence provided by the prosecution at the material time when she signed the notice of intent to prosecute to feel sure beyond reasonable doubt, what should the verdict be, not guilty or unable or not safe to bring a verdict?

A: Turning to page three of my written directions, the direction is combining the burden and standard of proof with the need for a majority verdict. If, having carefully considered all of the evidence, at least 10 of you feel sure of the guilt of the defendant then it would be your duty to return a verdict of guilty. On the other hand, if after careful consideration at least 10 of you were feeling less than sure of guilt, then it would be your duty to return a verdict of not guilty. And so it follows that if at least 10 of you are not sure, the appropriate verdict is one of not guilty.

Q3. If there is debatable evidence supporting the prosecution case can inferences be drawn to arrive at a verdict? If so can inferences/speculation be drawn on the full evidence or only where you have directed us to do so?

A: The drawing of an inference is a permissible process. Speculation is not. In this case the evidence on which the prosecution relies is largely undisputed, and where you are willing to draw inferences from that is entirely a matter for you."

Q4. Can you define what is reasonable doubt?

A: The prosecution must make you feel sure beyond reasonable doubt. A reasonable doubt is a doubt that is reasonable. These are ordinary English words that the law does not allow me to help you with, beyond the written directions.

Q5. Can a juror come to a verdict based on a reason that was not presented in court and has no facts or evidence to support it?

A: The answer to that question is a firm no. That is because it would be completely contrary to the directions I have given you.

Q6. Can we infer anything from the fact that the defence didn't bring witnesses from the time of the offence, such as the au pair or neighbours?

A: You must not, as I have now emphasised many times, speculate on what witnesses who have not been called might have said or draw inferences from their absence. Her evidence is that no one else, other than Mr Huhne, was present when she signed the form.

Q7. Does the defendant have an obligation to present a defence?

A: There is no burden on the defendant to prove her innocence and there is no burden on her to prove anything at all. The defendant does not have an obligation to present a defence, in this case the defendant has given evidence and it is for you to judge the evidence from her in the same way you would any other witness.

Q8. Can we speculate about the events at the time Miss Pryce sent the form or what was in her mind when she sent the form?

A: The answer to that is an equally firm no. The position in a criminal is that no one must speculate. There is a difference between speculation, which is not permitted, and inference, which is the drawing of common-sense conclusions from the facts of which you are also sure. Speculation is guesswork. That is not the same as inference at all.

Q9. The jury is considering the facts provided but is continuing to ask the questions raised by the police. Given that the case has come to court without answers to these questions please advise on which facts in the bundle the jury should count on to determine a not guilty or guilty verdict.

A: You must decide the case on the evidence [put before the court]. It is for you to decide which you consider to be important, truthful and reliable then decide what common-sense conclusions you can safely draw. It is not for me to tell you which piece or pieces of evidence are important and which are not. That is a matter for you to decide.

Q10. Would religious conviction be a good enough reason for a wife feeling she had no choice i.e. she promised to obey her husband in her wedding vows, he ordered her to do something and she felt she had to obey?

A: This is not, with respect, a question about this case at all. Vicky Pryce does not say that any such reason formed any part of her decision to do what she did. Answering this question will not help you in any way whatsoever to reach a true verdict in this case. I must direct you firmly to focus on the real issues in this case.

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