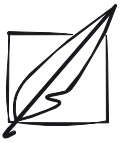

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This is a contribution from *Token*: *A Journal of English Linguistics*
Volume 6/2017.
Edited by John G. Newman, Marina Dossena and Sylwester Łodej.
Guest Editors for volume 6: Minna Nevala and Matylda Włodarczyk.
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Constructing the defendant role in the trial proceedings of the Old Bailey: Guilty or not guilty

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ABSTRACT

This paper explores the construction of the defendant role in the trial proceedings of the *Old Bailey Corpus*, *1720-1913*. The aim is to find out how defendants position themselves discursively in the courtroom and in relation to the crime they are accused of. With keyword, phrase frame and cluster tools we map linguistic patterns comparing them in time and between men and women. The usage of two keywords *innocent* and *guilty* are analysed more closely in context as they explicitly position the defendant in relation to the charges. The analyses highlight various aspects of the defendant role construction on different levels of granularity and link findings to the changing context of the courtroom and the judicial system.

Keywords: Old Bailey proceedings, legal language, defendant role, language practices, linguistic patterns.

1. Introduction[1]

This paper focuses on the construction of the defendant role in the trial proceedings of the *Old Bailey Corpus, 1720-1913* (Huber et al. 2012). We are interested in how the defendants express themselves discursively, whether there are diachronic changes in language practices associated with the defendant role, and how these linguistic practices can be captured

[1] This research was supported by the Academy of Finland (Dynamics of Change in Language Practices and Social Meaning 1700-1900, DYLAPS, no. 256825), the Faculty of Arts and the Helsinki Collegium for Advanced Studies, University of Helsinki.

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with various analytic tools. We analyse the defendant role construction on different levels of language starting from linguistic patterns including keywords, phrase frames and clusters that can be observed only with quantitative methods. We then move on to the utterance level to see how two particularly telling keywords, *innocent* and *guilty*, are used in context to negotiate the defendant's position in relation to the charges.

The methodology reflects an integrative understanding of language as a social practice that relates to the speaker's characteristics and communicative intent, to the nature of the situated activity and its institutional context as well as broader contextual resources and societal structures (cf. Layder 2003/1997: 76-82; Fairclough 1992). We also adopt the broadly-accepted view that identities are constructed in interaction and that linguistically they may be indexed through labels, implicatures, stances, styles, or linguistic structures and systems (Bucholtz – Hall 2005). As role identity means "fulfilling the expectations of the role" (Stets – Burke 2014: 69), we believe that quantitative corpus analyses of the data can reveal habitual patterns of defendant speech that relate to the defendant role. On the utterance level, then, we can perhaps see interactional negotiation in action and capture more nuanced defense strategies. These various analyses are assumed to reveal and relate to larger ideological structures and legal processes.

As an institutional role, the role of the defendant is restricted in many ways, e.g., by the legal system and courtroom practice, but the time period also saw many changes in this respect and the role of the defendant changed. Most importantly, the assumption of innocence (rather than guilt) gradually became part of the judicial system and the role of the defense council developed (Beattie 1986, 2001). It is then meaningful to ask whether the discursive construction of the defendant role changed and how specifically. In addition to the defendant role, people facing charges in the courtroom had other facets to their identity as well. While role identities are constructed in interaction vis-à-vis other roles, such as teacher-pupil and doctor-patient, group identities based on broad social categories such as race, class and gender do not necessarily require interaction with group members, but they are still part of a person's social identity across situations (Stets – Burke 2014: 69; Stets – Burke 2000). As the data provide us access to gender as a salient group identity of the defendants, this feature is included in the analysis.

We shall first discuss the legal system in the eighteenth and nineteenth centuries in order to depict the institutional and ideological circumstances pertaining to the defendant role in different time periods in the Old Bailey.

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Earlier studies on historical courtroom language provide insights and points of comparison to the defendant role especially in the context of the pre-nineteenth-century courtroom, but the nineteenth century covered in this study has not been explored to any great extent so far.

2. The legal background

2.1 The Old Bailey

The Old Bailey Central Criminal Court was a court house in West London, and the main district court of the urban area. Unlike the rural courts, the Old Bailey carried the same legal staff from assize to assize, and it met more frequently than any other court in the country at the time. The growing urban population of the eighteenth and nineteenth centuries kept the court busy, and the Old Bailey quickly became notorious for its haste and industrial scale of dispensing justice: "The unseemly hurry of Old Bailey trials in the early nineteenth century was disgraceful; the average length of a trial was few minutes" (Baker 1979: 417).

The defendants passing through the Old Bailey were often either working class or poor residents of the London area (Emsley 1989; Beattie 2001). This was reflected in the crimes documented in the *Old Bailey Proceedings*: the court dealt largely with larcenies, pickpocketing, and other thefts. Both men and women were represented among defendants, albeit women much less frequently and in terms of somewhat different offences. The average Old Bailey defendant of the eighteenth and nineteenth centuries was a white male, from a working class or poor background, and accused of theft, grand larceny in particular. And, more often than not, he was judged guilty of the offence and either executed or transported to the colonies. Likewise, the average female defendant was white, poor or working class, and accused of grand larceny. What sets the genders apart, excluding the difference in numbers, is that women were rarely accused of violent crimes such as murder or assault, and the objects they stole were domestic in nature, whereas men had a much wider social context and thus much more varied criminal opportunities (Emsley et al.: https://www.oldbaileyonline.org/static/Gender.jsp).

The trial proceedings were formal, and the judge had the responsibility to act as the overseer of the formalities, as well as make sure that the jury obtained all the information it needed to reach a verdict. The judge

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was also expected to act as the authority ensuring that both parties were granted an equal and fair hearing. The trial started with rounding up the defendants from the prisons, and charging them with the bill formulated at the magistrate's office. The defendant was expected to plead guilty, or not guilty, with heavy persuasion towards the latter, since a guilty plea meant that the sentencing would happen immediately without any mitigation. If the defendant pleaded not guilty, the actual trial commenced.

First, the prosecutor offered his account of the events, which in turn was followed by testimonies of the prosecutor's witnesses. The defendant was supposed to cross-examine the witnesses, and at the end deliver their own version of the events. The jury was expected to decide which narrative of the alleged crime was the truth, and the judge would decide whether the narrative mitigates or aggravates the guilt (Beattie 1986: 95). In practice, however, the judge had considerable power in influencing the jury to reach the verdict he preferred, and many judges made their preferred verdict clear in the summary they provided at the end of the trial.

During the beginning of the period defense lawyers were not allowed to help the defendant in the trial, and before the end of the eighteenth century they were rarely involved in the formulation of the defense in general. The use of a lawyer in itself was seen as suspicious in the eighteenth century still, since "plain and honest defence" (Hawkins 1721: 400), with a nearly supernatural belief in truth always coming through, was seen as the only acceptable way of defending oneself.

Finally, the physical layout of the Old Bailey court room(s) also warrants a mention, since the physical reality of the defendant at the time of the trial helps to understand some features of the data. The building itself was located at the immediate vicinity of the Newgate Prison, which housed most of the accused between the assizes. The courtroom was organised to emphasise the adversarial nature of the trial, juxtaposing the defendant with the prosecutor and his witnesses at the centre of the room, and with the barrister students and other members of the audience at the wings. The jurors sat at the vicinity of the defendant, in stalls to her or his right. Prior to the installation of gaslight in the nineteenth century, a mirror was used to reflect light on the face of the defendant so that the members of the jury could see her or his face better, and a sounding board was also used to amplify the defendant's voice (Emsley et al.: https://www.oldbaileyonline.org/static/The-old-bailey.jsp). These peculiarities may help to explain some of the short speech acts of the defendants in the data, since it can be assumed that this physical reality was rather overwhelming, especially for first-time offenders.

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2.2 The judicial system and the legal principles of the eighteenth and nineteenth centuries

The main guiding principles and the way people conceptualised judicial issues and the question of guilt of the accused prior to the eighteenth century were a mixture of Aristotelian logic and Germanic legal principles. The legal focus had been on royal offences up until the sixteenth century (Baker 1979), and not on criminal offences concerning individuals. The non-political crimes were traditionally dealt with communally, within the social context of the accused and the defendant in village gatherings. All of these crimes were, at the core, a conflict between two parties: the plaintiff and the accused. In order to take the matter to a trial, there had to be a point of disagreement between the two. Most often this point was the narrative of the events leading to the alleged crime. The jurors, originally the neighbours or fellow tribesmen of the accused and the plaintiff, had to decide which narrative was the truth. Physical factors did not usually feature in the process, excluding crimes involving extreme physical harm. As a matter of fact, the word *evidence* referred still in the early nineteenth century largely to testimonials rather than forensic evidence, which has become the primary meaning of the word today. Furthermore, the principle governing the trials was the assumption of guilt, unless the defendant could prove her- or himself innocent.

As the power of the crown solidified further and the administration became more centralised, the upheld social harmony was realised in the form of King's Peace. Felonies were thus reconceptualised as crimes against the King's Peace (e.g. Archer 2005; Langbein 2003), and thus the parties of felony cases were conceived to be the crown and the accused. The victim, although he served as the prosecutor, was merely a witness, and witnesses were ordinarily regarded as disinterested (Langbein 2003: 38). This helps in part to explain the different treatment of defendants and prosecutors in terms of disallowing or allowing legal counsel. Furthermore, as the defendant was expected to prove his or her innocence, it can be argued that criminal offences were regarded as a question of the defendant's general morality rather than essentially legalistic in nature.

As the crown took over as the prosecutor, other changes also took place: the jurors were, especially in the urban courts, not the peers of the defendant, but affluent men and often veterans of multiple trials, and a judge was appointed to precede over the trial and its formalities (Baker 1979; Beattie 2001). The assumption of guilt was still the main guiding

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principle, as was the adversary, conflict-centred trial. As a matter of fact, the trial could not proceed if the defendant refused to plead not guilty, since no logical conflict could be identified without it. Furthermore, while pleading guilty was possible, in the eighteenth century most judges discouraged this plea, since a guilty verdict in a felony always carried either a death penalty or transportation to the colonies.

As a whole, the judicial system of the eighteenth century was an institutionalised version of the medieval legal system and an interesting combination of the central power of the crown and the common law tradition. The king was the highest authority and the crown was often the *de jure* plaintiff in the criminal trials, since it was the King's Peace that was broken by the criminal, but the king did not hold absolute power over his subjects, at least when it came to sentencing them to death. Due to this mixture, the English legal system was considered particularly fair, as defendants were allowed and required to defend themselves and they could not be condemned to death without the verdict of their peers (see Baker 1979; Beattie 1986, 2001).

The vivid discussion around the main judicial principles of the eighteenth century culminated in the turn of the century, first in the Penitentiary Act of 1779, which enabled incarceration as a punishment for felonies instead of a capital punishment, and in 1820 as official assumption of innocence until proven guilty. This change reflects the change in the conceptualisation of criminal behaviour and its causes: instead of removing an irredeemably immoral person from society, the aim now was to rehabilitate the individuals and address the reasons behind criminal behaviour. Additionally, with the growing population and the loss of the North American colonies in 1776, it is quite likely that capital punishment, i.e. death or transportation, was no longer a viable option even from a logistic point of view.

Another major development of the time was the institutionalisation and acceptance of lawyers as a standard part of trial proceedings (Gallanis 2006; Rama-Martinez 2013). The chair of law, which was established in 1828, paved way to a more uniform legal education in universities, but as noted by Baker (1979: 149), the most distinguished lawyers of the time were still largely lacking legal formal education. Unlike in the earlier centuries, the nineteenth-century defendants were allowed a lawyer, who assisted them throughout the trial. Some proceedings of the trial were transferred solely on the shoulders of the lawyer, such as cross-examination of the witnesses.

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In spite of the growing role of legal counselling in the trials, the defendant was still expected to deliver the end speech.

3. Language practices in the courtroom and the defendant role

Historical courtroom language and the linguistic construction of various courtroom roles have been studied especially in the pre-nineteenth-century context, but the nineteenth-century developments are covered to a lesser extent from the perspective of language. Culpeper – Kytö (2010), for instance, use the *Corpus of Early English Dialogues 1560-1760* to map recurrent word combinations (i.e. lexical bundles / clusters) in Early Modern English courtroom discourse and compare findings with the present-day courtroom data available in the *British National Corpus*, but the nineteenth century is not included.

Their analysis shows clear diachronic changes in the language practices, which reflect the roles in the courtroom as well as the general institutional context and the principles governing the activity. For example, there are very few interpersonal bundles (e.g. I THANK YOU, I AM SURE, I DON'T WANT) compared with the genre of plays regardless of the period, which probably relates to the rigid turn-taking structure of the trials (Culpeper – Kytö 2010: 120). Early Modern and Present-day trial proceedings are also similar in that they show bundles relating to question-answer adjacency pairs. However, these bundles are somewhat different in the two periods as the Early Modern English question bundles relate to eliciting a crime narrative (with the most frequent question bundle being DO YOU KNOW), while the Present Day English ones focus on cross examination (with the most frequent question bundle being WHAT DID YOU) (Culpeper – Kytö 2010: 127)[2]. Moreover, present-day trials have lost most of the narrative lexical bundles (e.g. THERE WAS A, HE DID NOT, THAT HE WAS) and emphasise circumstantial (e.g. AT THE TIME, AT THAT TIME, NINETEEN EIGHTY EIGHT) and organizational bundles (e.g. IN RELATION TO, A MATTER OF, IN THIS CASE) (Culpeper – Kytö 2010: 139, 121). Culpeper – Kytö (2010: 139) conclude that their findings may reflect a "shift in the courtroom from giving crime narrative to cross-examination, and a shift towards a more formal and formalised register".

Gender is another aspect covered in Culpeper – Kytö (2010: 332), where they hypothesise that "in public and formal discourse, women

[2] Culpeper – Kytö (2010) include all the speaker roles, not just the defendant role.

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generally speak less than men in mixed-sex interactions, *except* in situations, such as the courtroom, where cooperation can be coerced". Their data, just like ours, is predominantly between men, whereas women are only a small minority. Their results are not quite straightforward, and the low amount of female speech complicates comparisons. On the one hand, male examined have 25.1 words per utterance, while female examined have 26.9 words per utterance, but the social status of the examined seems to affect the length of utterances. Male high examined have 41.3 words per utterance and male low examined 21.8, but for women the social status seems to have the opposite effect as female high examined have 15.0 words per utterance and female low examined 58.7 (Culpeper – Kytö 2010: 335).

Archer's (2005) study on question-answer patterns in treason trials from 1640 to 1760 is another extensive source of early courtroom practices in England. She suggests that new discursive practices were emerging at the time and that the speaker roles shifted. At the beginning of the period the judges were the primary examiners and the defendants were responsible for their own defense, but the introduction of lawyers in the 1730-1740s led to the "flowering of the art of interrogation" (Archer 2005: xvi). Archer (2005: 166) shows that from 1720 to 1760, the witnesses have the most prominent role in the courtroom as they produced the majority of the utterances. The defense counsel was the second most prominent role, the judge the third, the prosecution counsel the fourth and the defendant the sixth. According to Archer (2005: 91) the prosecution counsel from the 1720s did what the judge had previously done.

The defendants remained in a difficult position as they had no power to shape responses in the courtroom. Even if they had a right to request a response, they did not often succeed in obtaining the relevant information to secure their freedom. The introduction of the defense counsel helped to alleviate some of the problems of the defendants. Witnesses appear to be questioned more thoroughly by the lawyers than they had been by the judges and they began to display self-protective strategies when interacting with the lawyers such as resolute denials and/or emphasising the accuracy of their account. Moreover, Archer (2005; 2007: 206, 192) suggests that defendants tried to remain active especially in times when there were no defense counsels. In practice, this meant that they did not merely answer questions but also actively questioned witnesses and even (re)initiated new exchanges when interacting with judges.

In Archer's (2005: 168-170) data the judges have a very prominent role as questioners, which is different from today's courtroom where defense and

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prosecution counsel perform the questioning. During the timespan covered in Archer's study the judges' role changed and the interaction mostly transferred to defense and prosecution counsel, and the jury. In particular, the prosecution counsel's role as examiners of witnesses became more and more important, whereas defense counsels were only slightly more active than the defendants they were defending. All in all, various speaker intentions include, for example, seeking information, seeking clarification, seeking confirmation, querying, undermining, accusing, providing information, denying an allegation, and evading (Archer 2005: 267).

In addition to the studies cited above, the English legal context before the nineteenth century has been studied at least by Kryk-Kastovsky (2009), Cecconi (2012), and Chaemsaithong (2014). For earlier centuries, we also have several studies of historical American courtroom discourse as various interactional aspects of the Salem witch trials of 1692-1693, in particular, have attracted researchers' attention (e.g. Hiltunen 1996, Kahlas-Tarkka – Rissanen 2007, Chaemsaithong 2009, Doty – Hiltunen 2009, and Grund 2012). Other individual trials, such as Chaemsaithong (2012) on the construction of the expert witness identity in one Philadelphia trial of 1787, have also been studied.

These studies are more qualitative, discourse analytic studies on specific strategies adopted in the courtroom and by defendants. Cecconi (2012) focuses on selected seventeenth century trials and explores them as a type of verbal duelling where, interestingly, even low status defendants may challenge the court's authority. Kahlas-Tarkka – Rissanen (2007) show how the defendant's cooperativeness was crucial for successful defense in the Salem witchcraft trials of 1692. Unsuccessful defendants, on the other hand, resorted to quite opposite discourse strategies denying their guilt and all involvement in witchcraft, or even questioning the validity of the evidence or the intelligence of the court. In the Salem trials, like in the Old Bailey trials of most of the eighteenth century, guilt was assumed, and as a result resorting to negative politeness seems to have been the best strategy, as Kahlas-Tarkka – Rissanen (2007: 4) claim. Many successful strategies identified by Kahlas-Tarkka – Rissanen (2007: 6) as well as Hiltunen (1996: 35) can be observed in the *Old Bailey Corpus* data. These include cooperativeness in providing the court with sufficient but not too many details, minimizing one's own involvement and implicating other people and/or the devil and being humble, repenting and willing to help. The Old Bailey data, however, often contain very little defendant speech per trial, and it is not necessarily possible to follow the development of specific strategies through the trial.

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4. Data and methods

The Old Bailey trials from 1674 to 1913 have been recorded in *The Old Bailey Proceedings*. The accounts of the trials were published after each session and they were originally a popular commercial success. In the course of the nineteenth century the audience of the periodical was narrowed down from the general public to lawyers and public officials as the growth of newspapers provided a new channel for popular news distribution (Emsley et al.: https://www.oldbaileyonline.org/static/Publishinghistory.jsp).

The Proceedings are generally regarded as a reliable source of early courtroom practice although they hardly present a comprehensive account of everything that was said during a trial (see Emsley et al. https://www.oldbaileyonline.org/static/Value.jsp). Culpeper – Kytö (2010: 52) and Cecconi (2012: 25), for example, discuss the nature of historical trial records as evidence of language use, considering different aspects of the process of transcribing speech that have most likely affected the outcome. Producing an entirely accurate transcription in the noisy circumstances of the courtroom was hardly possible without any technical support apart from shorthand writing. Most likely, transcripts were also cut down, and all speech uttered in the courtroom has not been recorded in the Proceedings. Nevertheless, the ability to provide the public a convincing account of the actual trial has been considered one of the commercial assets of the Proceedings.

Even if it is difficult to know for certain how faithfully the scribes wrote down the words uttered during the trials, Huber's (2007) study suggests that scribes treated spoken language and prose separately and that reported passages to some extent can be taken as representation of speech although they clearly lack some spoken features such as hesitations, false starts and fillers (see also Traugott 2011, for the audiences of the Old Bailey trials). To quote Culpeper – Kytö (2010: 52), for purposes of our research it is important "that the text purports to be authentic spoken interaction", but the scribal influence has to be kept in mind when interpreting results.

The dataset for this study was extracted from the *Old Bailey Corpus Online, version 1.0* (Huber et al. 2012) by searching for the speaker role 'defendant' in the online search interface. The search yielded 17,738 defendant speech events (as they are called in the *Corpus*), ranging from the year 1725 to 1919. Example (1) illustrates a speech event, which in this trial is also the only speech assigned to the defendant:

(1) I made no Operations in taking the Mare: I did not break the Stable, nor take the Mare. It was a young Man who used to go with me to

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> Emmery's House; he told me what he was going about, and I have had no Friends this 17 Years, 'till I kept Company with this young Man. I am but 17 Years old, and never wronged any body in my Life before (t17360721-29; Male; Theft, animal theft; Guilty)[3]

As illustrated in Fig. 1, women are underrepresented in the data. There is also a clear decrease in speech events just before the turn of the twentieth century, which can be explained by the lack of surviving *Proceedings*: only around one third of the publication has survived and been digitized (Hitchcock et al. 2012). In 1875, less than 20 trials can be found in the data, and some years, like 1879, are missing from the material altogether. Despite these gaps, it is evident that the role of the defendant has decreased in time in the *Old Bailey Corpus* data, with fewer speech events and words.

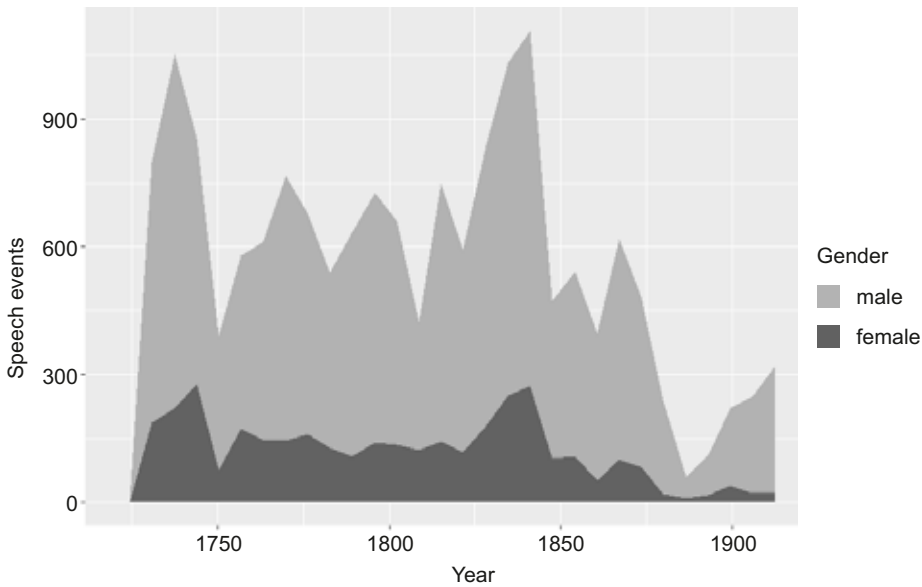

Figure 1. Overview of the defendants' speech events in the *Old Bailey Corpus* by gender

The defendant role is not the most prominent role in the courtroom. The *Old Bailey Corpus Stats* provided online (Huber et al. 2012) show that in terms of word count the most prominent speaker role in the corpus data is the witness, followed by victims, defendants, lawyers and judges. The bulk of

[3] The references in the examples give the following information: the trial code in the *Old Bailey Online*; Gender of the defendant; Charge; Verdict. The first four digits after t in the trial code give the year of the trial.

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words in the corpus produced by witnesses is about nine times more than the word count of the defendants.

We used *WordSmith Tools 6.0* to explore the data (Scott 2012). The specific tools used include keywords, phrase frames and clusters as well as collocates. Keywords are words that occur unusually frequently or infrequently in the corpus in comparison to a reference corpus. In keyword analysis the defendant statements extracted from the *Old Bailey Corpus* were compared to British texts of a comparable period in ARCHER 3.1, which is a multigenre diachronic corpus representative of historical English registers. This analysis highlights characteristic language of defendant statements in comparison to "general" English in the eighteenth and nineteenth centuries and answers the question what is discursively typical of the defendant role. Phrase frames are groups of wordgrams identical but for one word and they show in more general terms than clusters what kind of patterns occur frequently in the data. Clusters are recurrent combinations of words, in this case three-word clusters were searched for[4]. Finally, two keywords, *innocent* and *guilty*, were chosen for a more nuanced inspection on utterance level, and collocate analysis was used to help identify patterns of use. For diachronic comparison the turn of the eighteenth and nineteenth centuries was deemed as an appropriate, albeit artificial, dividing line on the basis of legal developments. The "eighteenth century" includes *Old Bailey Corpus* data from 1725-1799 and the "nineteenth century" covers the years 1800-1919.

5. Analysis

5.1 Distribution of defendants' talk in the *Old Bailey Corpus*

Table 1 (and Fig. 1) illustrate the reality of the Old Bailey: the defendants were largely male, and the trials were numerous and speedy, with little input from the defendant. Furthermore, when women were prosecuted, they did not perform as many speech events, nor did they use as many words as the male defendants. On average women have around 20 words less per defendant than men. While the average speech event of the defendant in the data is very short, there are great individual differences in the length of the speech events: the word counts per speech event range between 1 and 1653 words for women, and between 1 and 3529 words for men. However, long and wordy

[4] For a discussion and methodology concerning clusters (or lexical bundles), see e.g. Culpeper – Kytö (2010: 104-111), and for keywords, see e.g. Archer – Culpeper (2009).

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speech events are the exception in the data. Most of the lengthy speeches were associated with complex crimes and the defendant's relatively high status in society, such as a doctor accused of manslaughter when his patient died (t18360404-906; Male; Killing, manslaughter; Guilty, with recommendation), but high social status and complex crimes are both rare in the data.

Table 1. The average word counts of defendants' speech events in the *Old Bailey Corpus* by gender

	Women	Men
Word count	141 469	624 887
Word count per defendant	58.4	77.4
Word count per speech event	39.7	47.4

The gender difference in the amount of talk is partly due to the different criminal profiles of women and men. Men engaged in various criminal activities, whereas women were rarely accused of violent crimes, such as murder or manslaughter, which in the data tend to correlate with longer speech events. Likewise, the educational gap between the genders meant that women were less likely to be involved in complex crimes such as forgeries or accounting crimes, which by their very nature require lengthier explanations than a simple robbery. However, since the most common crime for both genders was larceny, it seems that the accused women were linguistically less prominent in the trial environment than men in a way that is not explained solely by the different criminal profiles. One possible reason for this difference comes from the physical and social reality of the Old Bailey: an overwhelming courtroom, with all male judicial staff and an audience staring down on the defendant, must have been a difficult situation for a woman facing charges.

If the word counts of the trials from the eighteenth and nineteenth centuries are compared (Table 2), a change can be observed: the speech turns are slightly longer, and both women and men seem to participate more actively as defendants in the eighteenth century.

This change in word counts can most likely be traced to the changing judicial principles and logistics of the court room: during the eighteenth century defense lawyers were rare and not allowed to help in the cross examination, but in the nineteenth century their role in the proceedings grew. Furthermore, with the changes in laws and sentencing at the beginning of the nineteenth century, the defendants did not have to literally argue

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for their life. With the official codification of the presumption of innocence, the defendants also did not have to argue for their innocence in the same manner as they did under the presumption of guilt.

Table 2. The word counts in the eighteenth and nineteenth centuries in the *Old Bailey Corpus*[5]

	18th century			19th century		
	Women	Men	Total	Women	Men	Total
Total word count	69 822	230 982	300 804	71 647	353 602	425 249
Word count per defendant	60.7	73.7	70.2	56.3	71.9	68.7

However, Fig. 2 shows clearly that despite the trajectories of change and the famed fairness of the English legal system, the reality was bleak for most people brought before justice in the Old Bailey.

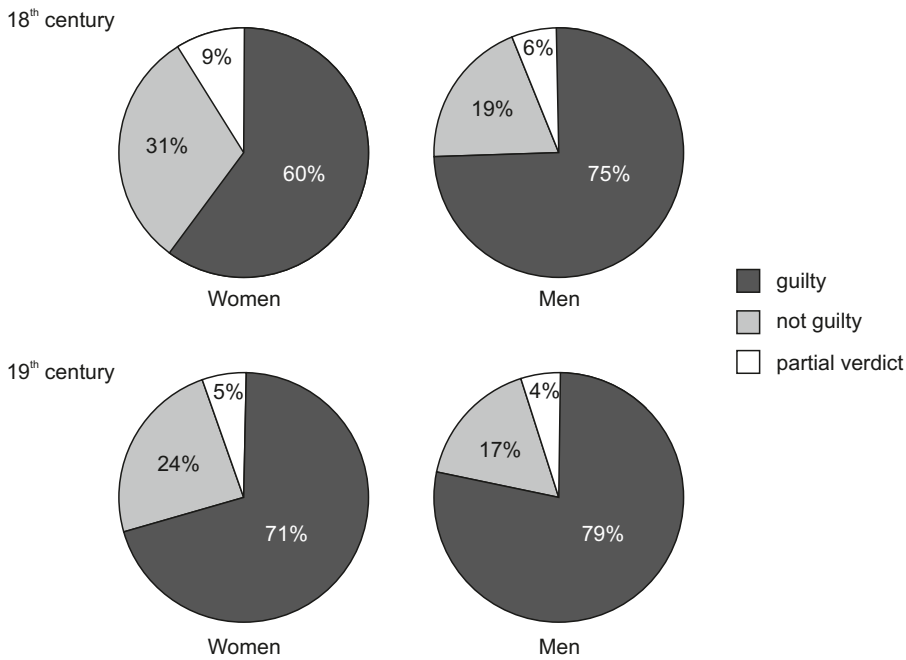

Figure 2. The verdicts in the eighteenth and nineteenth centuries in the *Old Bailey Corpus* by gender

5 Without the 20 outliers with over 1,000-word speech turns.

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The conviction rates were high with less than 20% of men found not guilty. With the limited death penalty, the jurors clearly felt even more comfortable sentencing defendants in the nineteenth century than in the eighteenth century as the conviction rates increased from 75% to 79% for men and from 60% to 71% for women. This can be interpreted as a rather fixed societal concept of the defendant role, with a strong bias towards the idea of the defendant's guilt. Thus, it is natural that many defendants chose to communicate their stance on this imposed role, even if they were not otherwise vocal during their trials, as discussed below.

5.2 Keywords, phrase frames and clusters

So what did the defendants say in their defense? We used keywords, phrase frames and clusters to observe typical patterns in defendant speech and hence characteristic language use constructing the defendant role. Table 3, first, lists the top-35 most keywords, and Table 4, the twenty most frequent three-word phrase frames in the eighteenth and nineteenth centuries. Table 5 then compares the most common three-word clusters in the *Old Bailey Corpus* with findings in Culpeper – Kytö (2010) providing a time line of courtroom discourse extending from the end of the sixteenth century up to the present.

The keywords listed in Table 3 exemplify the top keywords in both centuries by gender. They are all highly significant, with keyness of the last item indicated in the table. In general, men produced many more highly significant keywords than women, probably because of the higher amount of speech by men in the data. On the basis of the keywords, there seems to be a lot in common between the genders as well as diachronically, which highlights the continuities in the genre. This is not to say that there are no differences, but they are likely to be on a finer level of detail. We can say that the defendants typically narrate past events (various past tense verbs) in the first person (keywords *I*, *me*) with specific references to people (e.g. *he*, *man*, *woman*), objects (e.g. *money*, *watch*), and places (*street*, *house*, *shop*).

It is evident that defendants are concerned with "what happened" and "who did" (cf. also (1) above) as part of establishing the "truth" – as well as their innocence in most cases. The keywords support this idea as they seem to pertain to the observable "reality". Moreover, the verb *know* emerges as a specific stance item contributing towards the construction of a strong epistemic stance of certainty, and another verb *saw* indicates how important evidential stance and first-hand experience were in defendant

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statements. In addition, negation is a salient feature of defendant speech, as in (2) and (3) (keywords included in Table 3 are in italics).

(2) *I was* drinking a pint of Beer, and the *Man* and this Slater *came* in together, and we drank together; but when *I would go* home, *he* started *up* and *said*, *he had* lost his *Money*; *I said*, *I* had *not* wrong'd him, but he call'd the *Watch*, tho' *I saw* none of his *Money*, nor do *I know* the *Man*. (t17370114-32; Male; Theft, pocket picking; Not guilty)

(3) I left the prosecutor at the public-house in company with two women; *I* afterwards *saw* a *mob* in the *street*, and *was* taken – nothing *was* found on *me*. *I know* nothing of *it*. (t18180909-217; Female; Theft, pocket picking; Guilty)

Table 3. The top-35 keywords in defendants' speech in the eighteenth and nineteenth century by gender

18th century		19th century	
Women	Men	Women	Men
1	2	3	4
I	I	I	I
me	me	me	me
said	said	said	was
went	did	did	did
he	went	he	said
did	was	gave	he
asked	he	went	went
money	came	my	not
came	my	was	my
woman	took	money	had
she	asked	came	asked
took	up	asked	came
gave	man	not	**saw**
house	house	*she*	took
up	him	took	him
watch	money	had	street
my	going	told	money
things	there	shop	gave
pawn	not	out	got
was	know	**saw**	told
go	street	prosecutor	house

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1	2	3	4
them	watch	**never**	shop
would	had	house	them
never	go	*woman*	up
prosecutor	told	got	man
shop	them	them	prosecutor
husband	**saw**	policeman	going
had	coming	up	out
not	prosecutor	pawn	road
out	would	know	get
know	out	it	**know**
stairs	got	street	bought
going	**never**	things	policeman
saw	nothing	him	**never**
street (keyness 216,63)	bought (keyness 328,17)	watch (keyness 237,13)	it (keyness 370,69)

Some gender differences pinpointing to the different realities and positioning in the world emerge in keyword comparisons. Particularly salient keywords in female defendants' statements include *she*, *woman* and *child*[6], which suggests that women's lives and crime scenes involve other women and they are more domestic than in the case of men, as shown in (4)-(6).

(4) The *woman* that pick'd him up, was a little *Woman* big with *Child*, and her Husband brought the Watch to me, and desired me to Pledge it for him. (t17340911-47; Female; Theft, theft from a specified place; Guilty, theft under 40s)

(5) I was taken very bad in Bed, between 5 and 6 in the Morning. I came down Stairs, and call'd for help as well as I could, but there was Nobody else in the House. The next Door was an Ale-house, and a Noise being there, I believe they could not hear me. And being violent ill, and in great Extremity of Pain, I was deliver'd in the Kitchen. I never saw the *Child* move, nor never laid Hands on it; but it got that Bruise on the Head by falling from me, and then in a fright I took it up and carried it to the Vault. (t17340424-21; Female; Killing, infancticide; Guilty)

6 *Child* is the 63rd and 99th keyword in the eighteenth and nineteenth centuries respectively.

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(6) I was at the fire, and a *woman* with a *child* asked me to hold the bundle; I could not find her afterwards. (t18030914-29; Female; Theft, grand larceny; Not guilty)

Men, on the other hand, frequently refer to their life and crime on the street and in public: e.g. *horse*, *road*, *thief*, *goods*, *work*, *business*, *trade* and *cart*. Other people involved in their statements tend to be men (*mr*, *man*) more so than in women's statements, apart from *wife*. Examples (7)-(9) show some of these keywords in context and how they evoke the male sphere.

(7) I was a stranger about that part. I was looking for work. I met two or three of my *trade*, and they made me intoxicated at the Castle. I am a native of Gloucester. (t18360404-1005; Male; Theft, simple larceny; Guilty)

(8) I was on the stand at ten o'clock in the morning, came home at half-past six o'clock in the evening. I know nothing about these *goods* being moved. I went in the evening to have a glass of liquor. I met a porter in the gate-way, who asked me to go and fetch something out of the loft which my mate had to take care of. I was out the whole day in Barker's service at the East India Docks. (t18360509-1164; Male; Theft, simple larceny; Guilty)

(9) I was running down the *road* to go home to warm myself, being very cold, and a gentleman stopped me. I asked him what he stopped me, for as I had not stolen any thing. (t18380129-5760; male; Theft, simple larceny; Guilty)

Phrase frames further reiterate the same narrative orientation with several first-person frames (I WAS *, I WENT *, I HAD *) as well as prepositional phrases (IN THE *, OF THE *, ON THE *), which can be used to specify locations as well as time points and relations between various entities (Table 4). Similarly, negative frames are prominent including I * NOT, DID NOT * and I NEVER *. Negative expressions relate to the denial of guilt or intent to do wrong, or to some part of the charges or participation in criminal action as illustrated in (10):

(10) He sent me to get his coat as he was tipsy – I got it, and gave it to him; *I never saw* it again. (t18320705-36; Male; Theft, simple larceny; Guilty)

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Table 4. The top-20 phrase frames in defendants' speech in the eighteenth and nineteenth century

Phrase frames	
18th century	19th century
I WAS *	I WAS *
I * NOT	I * NOT
I HAD *	I HAD *
IN THE *	DID NOT *
I WENT *	IN THE *
DID NOT *	I WENT *
AND I *	I * TO
I HAVE *	AND I *
OF THE *	I HAVE *
THE * AND	THE * AND
I * TO	THE * OF
I * THE	HE SAID *
HE * ME	I SAID *
I DID *	OF THE *
I NEVER *	ME TO *
ME TO *	HE * ME
I * A	TO THE *
I AM *	IT WAS *
A * OF	I * IT
I * IT	ON THE *

Finally, diachronic changes in the discursive construction of the defendant role are not evident in our analysis of keywords and phrase frames as the eighteenth and nineteenth-century results in Tables 3 and 4 are very similar. Major changes seem to have taken place only after the nineteenth century. In Table 5, Culpeper – Kytö's (2010) analysis provide a point of comparison even though their data include courtroom dialogue in general. In spite of this, their Early Modern English results and ours are very similar. In the pre-twentieth-century courtroom all the roles seem to be constructed interactively between *I* and *you*, whereas the present-day data shows a preference for topical and circumstantial ideational clusters.

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Table 5. The top-twenty rank-ordered three-word clusters in the defendant speech in the *Old Bailey Corpus* and in Culpeper – Kytö (2010)

EModE trials (Culpeper – Kytö 2010: 116-117)	18th century Old Bailey defendants	19th century Old Bailey defendants	Present-Day English trials (Culpeper – Kytö 2010: 116-117
DO YOU KNOW	I DID NOT	I DID NOT	IN RELATION TO
I DID NOT	I KNOW NOTHING	I WENT TO	WOULD HAVE BEEN
DID YOU SEE	I WAS GOING	I DO NOT	AT THE TIME
I DO NOT	I WENT TO	DID NOT KNOW	YES MY LORD
HE TOLD ME	HE SAID HE	I SAID I	MY LORD I
AT THAT TIME	I SAID I	I WAS GOING	AT THAT TIME
OUT OF THE	I HAD BEEN	ASKED ME TO	NINETEEN EIGHTY EIGHT
I TOLD HIM	OUT OF THE	I WAS IN	PART OF THE
HE DID NOT	DID NOT KNOW	HE SAID HE	A MATTER OF
THERE WAS A	I NEVER SAW	I WAS NOT	THE END OF
I WENT TO	KNOW NOTHING OF	I HAD BEEN	THERE WAS A
IT IS NOT	IN MY LIFE	WAS GOING TO	MY LORD THE
THAT HE WAS	I WAS COMING	I KNOW NOTHING	IN THIS CASE
WHAT DO YOU	I WAS IN	DO NOT KNOW	OUT OF THE
DID YOU EVER	IF I WOULD	I HAVE BEEN	I DON'T KNOW
HE SAID HE	AS I WAS	OUT OF THE	AS FAR AS
AN ACCOUNT OF	WAS GOING TO	WENT TO THE	IN NINETEEN EIGHTY
DO NOT KNOW	ASKED ME TO	I COULD NOT	BE ABLE TO
I CANNOT TELL	I TOLD HIM	I TOLD HIM	GOING TO BE
I DON'T KNOW	DID NOT YOU	AT THE TIME	IN RESPECT OF
I CANNOT SAY	I WAS NOT	I HAD NO	IT WOULD BE
I DESIRE TO	ME IF I	I NEVER SAW	WHAT DID YOU
GIVE AN ACCOUNT	I NEVER WAS	WAS IN THE	THE FACT THAT
ONE OF THE	SAID HE WOULD	HE DID NOT	A HUNDRED AND
YOU KNOW OF	I AM A	I HAD NOT	MY LORD YES
THE BISHOP OF	THERE WAS A	TOLD ME TO	AS TO THE

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5.3 Innocent or guilty: A closer look at two keywords and their collocations

Finally, we shall focus on the individual words *innocent* and *guilty* and their use in context as they most explicitly highlight the defendant role and link defendants directly to the crime and the charges against them. These words are also keywords in defendant speech in the sense that they are statistically more frequent in defendant speech than in the comparison corpus (ARCHER). They are not among the top 35 keywords and therefore not included in Table 3, but they are still highly significant, with keyness values ranging from 45.00 to 277.49.

As the trial aims at establishing whether the defendant is guilty or innocent, the defendants somehow need to position themselves in relation to the crime and to the culprit role imposed on them. However, they do not necessarily use the words *innocent* or *guilty* to indicate how they feel about their position, but can say e.g. *I do not deny it* to indicate guilt, or *I never stole a horse in life* to take an innocent stance. Between these two extremes we can see other stances to the crime including a factual approach like *I pawned them for a man*, where the defendant admits at least some involvement in the crime. Alternatively, the defendant can adopt an ignorant stance and deny knowing anything at all. Many of the defendant speech events in the data fall between the two extremes, with defendants contesting the presented narrative, or otherwise distancing themselves from it. Fig. 3 exemplifies these different stances.

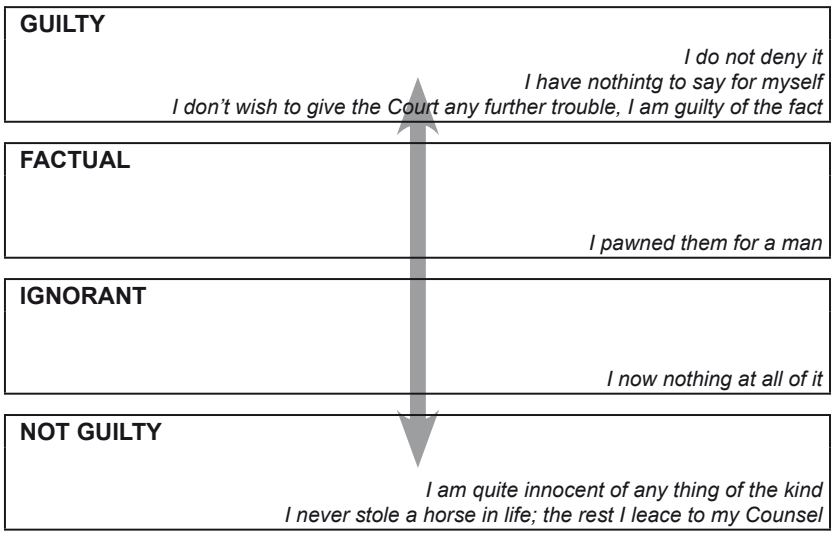

Figure 3. Stance cline from guilty to not guilty in defendants' speech events in the *Old Bailey Corpus*

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The words *innocent* and *guilty* can be regarded as indicative of affective stance as they cannot just simply be taken at face value as factual statements (cf. Jaffe 2009). In addition, affective stance emerges in a few clusters including *am very sorry*, *beg for mercy*, *I hope you*, which often show the defendant's remorse, whether they directly admit or deny guilt, as in (11) and (12).

(11) I had no intention to defraud Mr. Shaw; I meant to pay him. *I am sorry*; I should have paid him if I had had time. (t18500506-1024; Male; Theft, embezzlement; Guilty, with recommendation)

(12) and two girls said "Are you stabbed?" I could not speak, and they said, "The boy is stabbed". When I came to my senses I said, "I am not stabbed". I heard no more till I was taken by the police. That is all I have to say, *I beg for mercy* and I know I shall get justice. Have mercy upon me my Lord, have mercy; don't hang me; my father is an old man and I have no one to help my mother and my little brothers and sisters and what am I to do. (t18620303-306; Male; Killing, murder; Guilty, with recommendation)

Perhaps due to signalling an extreme stance, both *innocent* and *guilty* are relatively infrequent in absolute terms in the data, occurring only 633 and 309 times respectively in the entire dataset of over 17,700 speech events. Both words typically occur with the same most common orientational lexical units, which identify the speaker, and other elements that link the speaker to the crime. Utterances such as *I am innocent of the crime* and *I am not guilty of the charge* are very common during the eighteenth and nineteenth centuries. Amplifying and affective adverbs, including *very, quite,* and *never*, are frequent collocates of both *innocent* and *guilty*, and they are slightly more common in the nineteenth century (Table 6).

Table 6. Collocates of *innocent* and *guilty;* collocate horizon 5L 5R

Innocent		Guilty	
18th century	19th century	18th century	19th century
1	2	3	4
I	I	I	I
am	am	of	the
the	the	not	of
of	of	the	not
as	it	am	to

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1	2	3	4
it	was	was	am
my	as	to	was
child	a	and	have
to	me	my	it
was	and	that	**pleaded**
unborn	to	**never**	**plead**
is	my	a	me
and	**charge**	in	had
me	**quite**	been	in
affair	is	any	if
very	in	me	this
a	not	you	a
quite	that	thing	aged
thing	never	such	but
that	have	it	and

A closer analysis of the collocates reveals that *innocent* and *guilty* were used in different defence strategies. Furthermore, the use of the word *guilty* changes from the eighteenth to the nineteenth century. This supports the idea that 'defendant' as a societal concept and social role as well as the judicial reality are different than in the latter period.

The word *innocent* is more common of the two, occurring 252 times in the eighteenth century and 381 times in the nineteenth century. It is used to convey a not-guilty stance, and it is often accompanied by an amplifying adverb, such as *very, entirely,* or *quite*. The *innocent* construction most often occurs either at the beginning or at the end of a more complex speech event (Examples (13)-(16)) that either presents an alternative narrative to the one given by the prosecution, or questions the integrity of the witnesses of the prosecution. Sometimes the word *innocent* and the extreme stance it signals are mixed in the same speech event with less extreme stances, such as an ignorant stance (16).

(13) I am *quite innocent* of it. (t18690816-711; Male; Royal Offences, coining offences; Guilty)

(14) How they came there I know not; I am *as innocent as the child unborn*. My fellow-servants conveyed them there, in order to get rid of me. (t17700425-66; Male; Theft, grand larceny; Guilty)

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(15) If she has got the Foul Disease, *I am innocent*; for I am a clean Man; and if she is rotten with it, *I am innocent as an Angel*. (t17390117-25; Male; Sexual Offences, rape; Guilty)

(16) *I know nothing about these things; I am innocent of it*; girls used to frequent the house as well as me[…] (t17771015-26; Female; Theft, theft from a specified place; Guilty, lesser offence)

The comparison structures (*(as) innocent as*) are characteristic of the eighteenth century, and so is firmer stance taking. Facing death or transportation overseas, most defendants had a good reason to fight the presumption of guilt as strongly as possible. Furthermore, the speech events are slightly longer during the eighteenth century, and the comparison structures contain supernatural allusions within the Christian moral framework: the defendants compare themselves to an unborn child, either generally or to unborn Jesus, and angels (Examples (14) and (15)). This can be interpreted as a response to the surrounding conceptions of guilt and criminality of the time: since the question of the eighteenth century trial was of the morality of the defendant, they framed their defence accordingly.

During the nineteenth century, the use of the word *innocent* changed. As the judicial process was further institutionalised and formalised, the defendant speech events likewise show elements of technicalities. Instead of pleading general innocence, the defendants argued innocence of a particular charge, and sometimes even mixed a guilty stance with the statement. Likewise, the comparison structures found in the earlier century are much rarer, and the reference is not necessarily to a supernatural being but to an ordinary child as in (17):

(17) I am as *innocent as the child my wife has in her arms*. It is all villainy and spite; he told them what sort of a man I was, and got them to perjure themselves. It is an old grudge. (t18610408-360; Male; Theft, animal theft; Guilty)

Finally, sometimes the word *innocent* is not used to characterise the speaker, but a co-defendant (Examples (18) and (19)). This behaviour seems to be somewhat more typical in women's speech, as they claim that their family member is innocent, but due to the underrepresentation of women, nothing conclusive can be said about gender differences. During the nineteenth century these uses of the word *innocent* are also often accompanied with a confession of

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the speaker's guilt, as it no longer carried a death penalty for the speaker. As can be expected, similar cases in the eighteenth century are extremely rare, occurring only a few times under uncommon circumstances (19).

(18) *Whatever I am, my mother is quite innocent*; indeed she is. (t18231022-164; Female; Theft, theft from a specified place; Guilty)

(19) *I own myself guilty of the Charge. I am willing to dye, and beg that I may dye. But Tripland is an innocent Man*. When we were in New Prison, I said to Beck, why will you swear against Tripland, when you know he is innocent? And says Beck to me again, I must hang Three, or else I shall never get my Discharge. (t17320223-35; Male; Violent Theft, highway robbery; Guilty)

The word *guilty* occurs less often in the material, appearing 126 times in the eighteenth century and 183 times in the nineteenth century. This can be explained by the unwillingness of the defendants to adopt a guilty stance, and an intuitive aversion towards any lexical items that might align the jurors against them. However, this particular word is used quite differently in the eighteenth century from the nineteenth century. In the earlier period, the word almost always appears in a negative construction, *I am not guilty of* or *I never was guilty of*. As the nineteenth-century defendants also had the option of partial pleading – and many of them used this strategy in their defence (21) – the defendant acknowledged their guilt in one part of the indictment, but argued other parts. This type of behaviour is predominantly male in the data; only one female uses the word for negotiating the specifics of her indictment. Furthermore, in the nineteenth century many of the male defendants who chose to use the word *guilty* did so with more varied structures, using conditionals and rhetorical questions more than in the earlier period (Examples (22) and (23)). This can perhaps be explained with more widespread literacy, and also the judicial procedures that now allowed the use of written speeches and defense lawyers.

(20) *I am not guilty of the charge* – the words were put into the child's month [sic] at the office. (t18271206-221; Male; Theft, simple larceny; Guilty)

(21) I lived with Mr. Hider six months ago; I left and came back again; *I am guilty of the ring and waistcoat, the others I know nothing about*. (t18451027-2062; Female; Theft, stealing from master; Guilty, with recommendation)

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(22) *If I was guilty I should plead guilty*, but I am totally innocent of it. (t18730407-271; Male; Theft, pocketpicking; Not Guilty)

(23) I was always given to understand that burglary was breaking into a house violently. *I admit the robbery, but do not consider I am guilty of burglary*. (t18920307-389; Male; Theft, burglary; Guilty)

As mentioned earlier, during this era pleading guilty in order to prove co-defendants' innocence is much more common than before. Since a guilty verdict no longer meant the end of the defendant's life and the question of guilt had been reconceptualised as a judicial technicality rather than a question of morality, many defendants felt comfortable confessing crimes. Many also apparently pleaded not guilty prior to trial, but then used their defense speech to confess the crime but contest the narrative and "set the record straight".

(24) *I pleaded guilty before the Magistrate*. I have declined to bring any one to speak to my character, as it would be hurtful to their feelings. I throw myself on the mercy of the Court. I have been in great distress, and was in liquor at the time. (t18380129-596; Male; Theft, simple larceny; Guilty)

(25) I don't care. I am not a man to lie. I own to the truth of what I done. What I done I done in a drunken fit. All I have to say is what is written on that paper. […] *But what I plead guilty to is a different thing to what I plead unguilty to*, and that is the evidence given against me by a couple of liars who knew nothing whatever about the fire until they were told how it came alight by the police […] (t19100426-16; Male; Damage to Property, arson; Guilty)

(26) I shot the woman because she was fifty times worse than a common street harlot, and her husband knows it, and he is a bigger liar than I am. *I am guilty, my lord*. (t19020407-349; Male; Killing, murder; Guilty)

6. Summary and conclusion

In this study we set out to explore the linguistic construction of the defendant role in the *Old Bailey Corpus* of the eighteenth and nineteenth centuries. The aim was to find out how defendants positioned themselves in the courtroom and in relation to the crime they were accused of and whether there were

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any changes in time as courtroom practices changed. Defendants' language practices were understood as complex acts which can be observed and interpreted on several levels including broader social and societal practices, specific contexts in place and time as well as in defendant discourse and individual utterances. We started off by contextualizing defendants in the contemporary courtroom and in the Old Bailey and proceeded to the linguistic analysis using both quantitative methods on the whole data set to reveal typical patterns in the defendant role, as well as a close reading of examples of statements containing explicit claims of innocence or guilt.

On the whole, we can say that the defendant role is about constructing a position where past events are narrated from the speaker's point of view and often through denial; in essence, the evidence or counter-evidence is in the defendant's narrative. This is a constant feature of the defendant role in both centuries – as well as before –, and major changes in courtroom discourse and the linguistic construction of the defendant role seem to have taken place only after the nineteenth century. Conviction rates showed that guilt was deeply embedded in the defendant role, but as the defendant's status in the courtroom changed we assumed that there might be linguistic changes as well. We did observe a slight shortening of defendant speech events in the data as well as changes in discourse strategies where *innocent* and *guilty* were used to take an overt stance towards the charges. Both of these changes possibly relate to changes in courtroom practices and the legal system as in the nineteenth century the defendants' status improved: they were assumed innocent until proven guilty; they were allowed lawyers that assisted them throughout the entire trial; and death penalty was less often the only option for those found guilty. For example, the extreme denial of guilt and claiming to be *innocent* (*as a babe unborn*) is more characteristic of the eighteenth century, which seems to reflect the moralistic nature of the earlier trials and the basic assumption of defendants being guilty unless they can prove themselves otherwise. During the nineteenth century neither the societal nor the judicial context required such an extreme stance.

Furthermore, the analysis showed evidence of gender differences in the judicial proceedings, as well as a more general separation of spheres of life between women and men. Women are far less present in the proceedings and thus the data they have produced is scantier, but in general they were far less often involved in serious crimes and their conviction rates were lower than those of men. Moreover, they seem to have been slightly less vocal in the courtroom than men. To us, this gender difference seems plausible as the courtroom was a male-dominated arena with judges and lawyers being men.

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However, this result in the amount of speech is somewhat contradictory to the findings in Culpeper – Kytö (2010), but the difference to their study may stem, for example, from a different social composition of the defendants and different type of crimes dealt with. Finally, the analysis of the words *innocent* and *guilty* showed some gender differences as women were more prone to admit guilt and speak for the innocence of others, while men were more likely to resort to a technical "trick" of admitting guilt on some parts of the charges but not on others.

Zooming the analytic lens from a distant to a close view we can capture simultaneous but slightly different processes. In this case the changes in the judicial system seem to have had an impact on some aspects of the linguistic construction of the defendant role, which could be observed when closely inspecting specific discourse strategies, but the more global change of the courtroom discourse was not yet clearly evident in the nineteenth-century data and the findings suggest that the nineteenth-century courtroom still links to the past discourse traditions and that discourse traditions in such an institutional context change gradually.

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