

SOL AZUELOS-ATIAS. A pragmatic analysis of legal proofs of criminal intent (Discourse Approaches to Politics, Society and Culture, vol. 25). Amsterdam: John Benjamins, 2007.

Reviewed by Jacob L. Mey

This book-length monograph is a pragmatically-based study of legal practice as embodied in Israeli juridical texts and transcripts (court proceedings, judges' sentences, lawyers' and prosecutors' pleadings, and commentaries by Israeli legal scholars).

Immediately, one notices that this work is solidly anchored in fact, that is to say, in real life practice. The sources on which the author bases her considerations are not only referred to, but quoted verbatim and at length; moreover, they are placed in their proper context in an Appendix, where the original Hebrew texts are presented in their entirety in the author's own English translation. All of this creates the impression of solid work and accountable, data-based reasoning.

Sol Azuelos-Atias demonstrates a solid knowledge of her particular subject area, legal discourse, to a degree that must be said to be uncommon in one who is not professionally trained in law. The author is well-versed not only in the domains where she hails from: linguistics and pragmatics, but also shows her familiarity with the current literature of the legal world. She extends her forays into the legal domain to the theoretical ambiance of linguistics and pragmatics by referring to both Levinson's 'generalized conversational implicatures' (2000) and Sperber and Wilson's much-acclaimed theory of 'relevance' (1995 [1986]).

The author discusses the contemporary concepts of Israeli jurisprudence in an intelligent and critical fashion. I enjoyed particularly her dissection of the notion of the 'reasonable Israeli person' *ha-adam ha-saviv ha-yisraeli* (p. 51 and *passim*). This notion (like other, similar ones, such as *ha-yisraeli ha-memuca* 'the ordinary Israeli'; fn. 1 on p. 51) clearly opens the way to certain manipulative uses (as

do indeed even some of the everyday terms the author quotes (like *afilu* 'even')).

Such controversial notions imply a number of sexist and national-chauvinistic assumptions – notions that are agreed on as rational and universally valid for the community as a whole, without regard to the various parts that the community in question is composed of.

In the Israeli case, it is clearly an unwarranted assumption that 'Israeli' (in the sense of the law, that is, denoting a citizen of the country of Israel) represents a common denominator for all people carrying Israeli passports – not even speaking of the Palestinian minority living inside Israel, who must be said to be 'Israeli' in some sense, even though they are not ethnically part of the population of *erec yisrael*, 'the land of Israel'. Such manipulative aspects, which the author does not explicitly thematize, would deserve a critical and unbiased deconstruction (which probably only would be possible from outside the existentially-bound internal Israeli political discourse).

Within the terms and bounds of her own discourse, however, the author has been eminently successful in dealing with her chosen material. In an eclectic mode, she appeals to pragmatic/linguistic notions such as Gricean/Levinsonian implicatures, and relies on concepts originating in discourse analysis, linguistic pragmatics, argumentation theory, as well as functional linguistics. Viewing the problem of 'criminal intent' from these different angles enables her to synthesize a reasonable interpretation of the ways the notion is accepted as the legal basis for judgment and sentencing in the Israeli courts.

The features of Sol Azuelo-Atias's work that interest, not to say fascinate, the present reader most are most visible where she discusses the 'dialectics' of the judicial system. The discourse of law is in a dialectical relation (or even opposition) to the societal discourse of the country as a whole. 'Israeli society is a society in conflict', says the author (p. 109) and its legal system carries the burden of its multiple and conflicting origins: Ottoman and British/American

jurisprudence, along with the Jewish legal traditions of *halakha*, the Jewish Oral Law. Here, Bakhtin's concept of *polyphony* comes in useful: while the various societal 'voices' are in partial disharmony, they all join in a constructive orchestration through a discourse which is not just 'informative but interpretative' (p. 25). As any interpretation obeys the general laws of the institution that carries it, the dialectics of a particular society naturally become exemplified and instantiated in the dialectics of each of its sub-systems: in this case, the legal institution. Elsewhere the author has remarked that the conflicts plaguing Israeli society have resulted in a certain legal 'inconsistency', such that a strict causality, based on temporal co-occurrence, cannot be maintained in a legal context.

But neither can pure linguistic cohesion (such as defended by Halliday and his school) furnish the necessary underpinning here. The factual realities of the societal context entail that the language of the majority is necessarily determinative; as the author acknowledges on p. 81, 'the "reasonable person" is used as a normative empirical-descriptive test based on the democratic values of the determination of the majority'. What is missing here is an acknowledgment of the vital role that is played by language in determining valid and workable legal conceptualizations. Above, I referred to the 'Israeli responsible person'; in another context, the talk is of an 'evaluative barrier' (*balam erki*; p. 54 and *passim*), erected *ipso facto* by the existence of certain Israeli conventions and accepted norms for legal reasoning. Language is of the essence here: as the author remarks on p. 106, when discussing the 'barrier' and the 'reasonable person', these notions are said to 'function according to the meanings accepted in the general Hebrew lexicon'. But by establishing the Hebrew language as the final arbiter in these matters, the author clearly excludes those members of the population whose mother tongue is another (e.g. Arabic or Russian), representing minorities of several millions living within the boundaries of the Israeli state, and legally entitled to the same judicial privileges that the speakers of Hebrew have. This 'existential blindness' in political matters is,

however, not something one can accuse the author of: it is built into the very fabric of Israeli society, where the struggle for survival for many decades has partially silenced much of what in other countries would have erupted as normal, critical discourse.

It comes thus as no surprise that the conflicts underlying Israeli society tend to manifest themselves in the above-mentioned inconsistency in legal matters: the determinations of the courts have to deal with 'unspoken assumptions' (as the title of another of the author's publications has it) that may vary from generation to generation (and of course, from population to population; this latter aspect is not thematized). Thus, the 'rationality' of legal argumentation, as discussed by Sol Azuelo-Atias, is likewise subject to a certain inconsistency; but what's worse, this inconsistency is tolerated in Israeli legal discourse, e.g. when it comes to accepting the 'unspoken assumptions' of the roles assigned to the sexes (as exemplified in marital conflicts, and skillfully illuminated by the author's choice of legal proceedings and the accompanying texts), notwithstanding the fact that in another cultural context, the assumptions may be rather different. As an example, take the discussion on p. 130, where a discrepancy between a defendant's police station deposition and her conflicting court testimony is explained by the defendant saying that in her language [Arabic], 'over him' is the same thing as 'facing him' (the Hebrew-speaking judge was obviously not able to follow this distinction).

As the present review has hopefully demonstrated, the book by Sol Azuelo-Atias demonstrates the author's clear ability to deal with intricate theoretical matters of legal philosophy and practice. The author knows how to relate these theoretical issues to questions of ordinary, everyday legal practice; in doing this, she draws on her linguistic and pragmatic backgrounds. The result of this 'polyphony' is not only extremely interesting (also for a relative outsider), but it carries weighty theoretical implications for the study of the dialectical character of societal discourse in general. A few misprints and typos mar the otherwise excellent production (e.g. *art* in French is

masculine, hence no *art engagée* (p. 113); on p. 9, read 'carrying' for 'caring out the intellectual activity...'; on p. 53, read *memuca* for *memutca*; on p. 148, read 'led [past] to her death', not 'lead'; and so on). The references to Bakhtin's work are not to the original text, but to a paraphrase by Osvald Ducrot, based on a French translation. The Appendices contain useful and in general correct (as far as I can judge) translations of the original court proceedings; the Bibliography and Index are impeccable and very helpful.

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