

**DIRTY TALK:  
A CRITICAL DISCOURSE ANALYSIS OF  
OFFENSIVE LANGUAGE CRIMES**

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**A thesis submitted to the University of Technology Sydney  
in fulfilment of the requirements for the degree of  
Doctor of Philosophy in Law**

**March 2017**

**Faculty of Law  
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## **CERTIFICATE OF ORIGINAL AUTHORSHIP**

I certify that the work in this thesis has not previously been submitted for a degree, nor has it been submitted as part of requirements for a degree except as fully acknowledged within the text.

I also certify that the thesis has been written by me. Any help that I have received in my research work and the preparation of the thesis itself has been acknowledged. In addition, I certify that all information sources and literature used are indicated in the thesis.

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Date: 02 March 2017

## **ETHICS APPROVAL**

Ethics approval for this research was granted by the University of Technology Sydney (HREC UTS 2011-498A).

## ACKNOWLEDGEMENTS

I would like to acknowledge the dedication and ongoing support of my doctoral thesis supervisors: Professor Katherine Biber, Associate Professor Penny Crofts and Associate Professor Thalia Anthony at the Faculty of Law, University of Technology Sydney ('UTS'). I cannot overstate the benefit that I have derived from their constant generosity and mentorship. Thanks are due to Professor Alastair Pennycook, who provided invaluable feedback on the linguistic component of my research, and allowed me to audit his subject, co-taught with Emeritus Professor Theo van Leeuwen, 'Language and Power'.

Whilst undertaking this thesis, I was privileged to be a Quentin Bryce Law Doctoral Scholar and Teaching Fellow at UTS Faculty of Law. The Faculty deserves significant recognition for their support, especially Dean Professor Lesley Hitchens and Professor Jill McKeough. I would also like to thank Professor Jenni Millbank for her six months of supervision, especially for her help with navigating the ethics approval process. I also appreciate the support and advice of Professor Isabel Karpin and Dr Karen O'Connell at the UTS Faculty of Law.

My colleagues at Macquarie University School of Law deserve special thanks for providing me time and space to complete the PhD, especially Dean Professor Nathalie Klein. I also express thanks to Professor Brian Opeskin and Senior Lecturer Carolyn Adams for their mentorship at Macquarie University. I am grateful to Dame Quentin Bryce, for the personal interest she showed during the production of this thesis. I also thank Dr Diana Eades for providing invaluable feedback on parts of my research.

This experience has been greatly enriched by the friendship, advice, and invaluable help in the final weeks before submission of my fellow inaugural Quentin Bryce Doctoral scholars: Dr Anthea Vogl and David Carter. I am incredibly fortunate to have shared this experience with you. I would also like to thank Starla Hargita for her assistance in the final stages of editing.

I acknowledge and thank Matthew Sidebotham and Margy Horton for their editorial assistance. Thanks also to barristers Peter Lochore and Andrew Boe, for providing me copies of court materials, to the NSW Bureau of Crime Statistics and Research for providing detailed statistical analysis of offensive language crimes, as well as to the staff at NSW, Queensland and Western Australian court registries for their assistance when accessing texts to analyse.

A special thank you to Alison McCallum, for sparking my interest in starting this PhD, and to John Giorgiutti, for enabling me to undertake the PhD during my employment at the NSW Crime Commission.

I am grateful for the love, patience and encouragement of, and inspiration provided by, my partner Tim, my parents Kathryn and John, and my sister Finola. I also appreciate the love and support of my grandparents—Kerry, Patricia, Ken and Alice, and of other family members and friends.

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1849 Act	Vagrancy Act 1849 (NSW)
1849 Ordinance	Police Ordinance 1849 (WA)
1851 Act	Vagrancy Act 1851 (NSW)
1861 Ordinance	Police Ordinance 1861 (WA)
1902 Act	Vagrancy Act 1902 (NSW)
CDA	Critical discourse analysis
CIN	Criminal infringement notice or penalty notice
Criminal Code (Cth)	Criminal Code Act 1995 (Cth)
Criminal Code (WA)	Criminal Code Act 1913 (WA)
CP Act (NSW)	Criminal Procedure Act 1986 (NSW)
LEPRA	Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)
NSWLRC	New South Wales Law Reform Commission
Police Act	Police Act 1892 (WA)
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SO Act (NSW)	Summary Offences Act 1988 (NSW)
SO Act (NT)	Summary Offences Act 1978 (NT)
SO Act (Qld)	Summary Offences Act 2005 (Qld)
SO Act (SA)	Summary Offences Act 1953 (SA)
VG00 Act	Vagrants Gaming and Other Offences Act 1931 (Qld)

## ABSTRACT

This thesis analyses criminal justice discourse as it relates to offensive language crimes in Australia. Across Australia, and elsewhere, it is a crime to use offensive, indecent or obscene language in or near a public place. These crimes are governed by broadly drafted provisions that allow police and judicial officers significant discretion in determining offensiveness. Although offensive language crimes can theoretically target a multitude of words and phrases, in practice, the laws are used to police and punish a small selection of swear words.

Provisions that circumscribe offensive speech have a linguistic dimension. This dimension has been under-theorised in previous scholarship on the topic. Accordingly, my thesis places *language* at the centre of offensive language crimes, by interrogating how such crimes are represented and legitimised as a particular discursive formation within the criminal justice system. My thesis asks two questions: Firstly, how is offensive language represented in criminal justice discourse? Secondly, how are offensive language crimes legitimised in criminal justice discourse?

I employ a distinct approach to these questions by employing critical discourse analysis ('CDA') as my primary methodological tool. CDA is not strictly a 'method', but rather, a loosely grouped body of work that views language as both shaping and shaped by society. Analysts work from the premise that we cannot neutrally represent reality. Instead, we construct (and reconstruct) reality, including social identities, subject positions, social relationships and systems of knowledge and belief, through language. I use the phrase 'criminal justice discourse' to describe socially constructed ways of signifying reality, through language, in the criminal justice system.

My thesis situates its linguistic analysis of offensive language crimes in broader social, political and historical contexts. I draw into the frame linguistic research on swearing, and literature relating to metaphors, purity and disgust. The thesis structure is based on the following themes: language interpretation in the courts; swearing, danger and disgust; context; objective standards; and power, order and authority. These themes are derived from my doctrinal analysis of offensive language crimes and ideas that inform and legitimise the criminal punishment of swearing.

My thesis reconceptualises how offensive language is interpreted in the criminal law. I extend existing scholarship by highlighting how criminal justice discourse creates and entrenches power inequalities, augments judicial discretion, ignores difference and promotes unfairness. I demonstrate how discourse shapes perceptions about things, people, ideas and words that are deemed 'out of place' and worthy of criminal sanction.

