Now in the historical courtroom

Users and functions

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The investigation of the pragmatic marker *now* in trial proceedings from 1560 to 1800 shows a genre-specific usage profile with regard to its uses and functions. Courtroom “professionals” (lawyers, judges and other officials) use *now* significantly more frequently than lay speakers (witnesses, victims and defendants). The former use it to segment and highlight stages in the argumentation, as well as to control and to disalign with others’ interactive behaviour. Self-defending litigants share these functional preferences to some extent, while all other lay persons use *now* for structuring their answers and dominantly in direct-speech contexts. *Now* in professional legal speech thus functions as a strategic metapragmatic framing strategy.

Keywords: argumentation, conversational control, disalignment, framing, legal language, pragmatic marker

1. Introduction

Pragmatic markers are a diverse group. Although Fraser’s (1996: 169) general characterisation of pragmatic markers as “the linguistically encoded clues which signal the speaker’s potential communicative intentions” holds for all of them, they may specialise for certain genres, styles and effects. With regard to *now*, Aijmer (2002: 69) suggests that it prefers more formal, structured and public speech interactions, as it is more frequently found in such contexts in the London-Lund Corpus.¹ Courtroom speech is formal, public and it has a strict genre-specific structure based on a highly asymmetric question-answer pattern – thus one might expect it to be one of the contexts that favours the occurrence of pragmatic *now*. Indeed, Hale’s (2004) data from local court hearings in New South Wales,

1. Face-to-face and phone conversations: 4.5 and 10.9 occurrences per 10,000 words; debates, interviews and spoken commentary: 15.5 to 18.9.

which showed *now* to be more frequent than the markers *well* and *you see* (forty-eight *versus* thirty-one and twenty-one instances, respectively). The association of *now* with certain speakers, such as interviewers, debate moderators and lecturers (i.e., the dominant participants in a given interaction) has been noted by Aijmer (2002: 95). Within the professional-lay cline in the courtroom, *now* may thus be one of the leading “participants’ strategies of negotiating their institutional roles” and “indicative of power relationships as they help to structure and control the interaction” (Tkačuková 2015: 146–147).

The aim of this paper is, therefore, to shed more light on the use of *now* in the Early and Late Modern English courtroom. Specifically, it pursues the questions of who uses *now*, how frequently and for which functions. The hypothesis is that it is indeed the speakers in the institutionally dominant roles (judges, lawyers) that use it more and do so for the purpose of interactional control.

2. The uses of *now*

What is in focus here is the adverbial use of *now*, in which role it has temporal (propositional) and (bleached) non-temporal meanings. The temporal meaning comprises both the immediate and extended present, like “nowadays” in Example (1):

- (1) Mr. Wiseman, who wrote on surgery, makes use of the word slitting for what we **now** call dividing. (OBC 17650710)²

The following instances are, in contrast, clearly different, showing typical uses of *now* as a pragmatic marker:

- (2) a. Thank you for welcoming me here; **now** the subject of my talk is ...
 b. It’s nice there. **Now** our street isn’t that nice. [comparison between locations]
 c. So Russia was split down the middle. **Now**, the reason why Catholicism was able to creep into Poland (...)
 d. They’re using socialism t’fight capitalism. **Now** can you understand that?
 ([a] is from Quirk et al. 1985: 634; [b] to [d] are from Schiffrin: 1987: 231, 237, 240)

As Example (2a) shows, instances like these develop from temporal uses and often still have traces of temporal meaning present, but the main function realized here is marking the transition between speech acts and initiating a new discourse phase. Pragmatic uses of *now*, as in Example (2), have been investigated by Schiffrin

2. The numbers referring to OBC files indicate year, month and day; thus this example is dated 10 July 1765.

(1987), Aijmer (1988, 2002), Schourup (2011) and Waring (2012) from a synchronic or theoretical perspective. In Schiffrin's (1987: 230–246) account, *now* functions within cumulative content structures by marking at least one subordinate topical unit, implying a comparison or contrast to another (expressed or unexpressed) unit, for instance, in the contrast between locations in Example (2b). Thus, *now* also plays a role in argumentative discourse, as in Example (2c), marking contrasting arguments and differing opinions, in shifts of orientation such as from narration to evaluation, and in moves assisting speaker control of the interaction and affecting changes in the participation framework (e.g., by introducing questions), as in, for instance, Example (2d). Aijmer's findings (2002) are, on the whole, similar, with *now* indicating topic changes and shifts (Aijmer 2002: 74, 76) as well as minor additions (justifications, explanation) (Aijmer 2002: 85–86), marking steps in an unfolding description (Aijmer 2002: 83) or in an argument (Aijmer 2002: 81). Subjective and intersubjective uses in her data include shifts to a speaker metacomment, affective intensification, evaluation, also of a contrastive kind and thus marking disagreement as well as disclaiming – in other words, disaligning with another's opinion (Aijmer 2002: 87, 91, 92, 94). For Waring (2012: 271), *now*-prefaced utterances also do disaffiliation (=disalignment) work, which can be other- or self-directed. In the latter case, this involves "revising, retracting, or rejecting one's own prior talk" (Waring 2012: 267), while the other-directed type criticizes, challenges or corrects utterances of another speaker. Schourup (2011), proceeding from a relevance-theoretic perspective, concludes that the indication of discontinuity and novelty carried by *now* can be interpreted in the following way: *now* "would point the hearer toward a context that is notably new, but would not, in so doing, cue the hearer to set aside all assumptions that are already highly accessible" (Schourup 2011: 2122). Among other things, this also leads him to propose a speaker-control function of *now*: by focusing hearer attention, the speaker takes charge of the direction of talk, implying something along the lines "Mind you, put other considerations aside, don't give me an argument on this" (Schourup 2011, citing Bolinger 1989: 132).

Generalizing from the descriptions above, pragmatic *now* may be described as having uses that range over a continuum from more discourse-structuring to more interaction-managing uses, as shown in Figure 1.

The functional Types 1 to 3 may all structure monologic discourse, namely with regard to content by marking the introduction of a new topic(al aspect) (1) or by explicitly marking the steps of an argument such as the conclusion (3), and with regard to speech functions by switching to a new type of move such as evaluating, questioning or quoting (2). While they can also work in dialogic contexts, it is the fourth functional group that always works within dialogic discourse only. Seen from left to right in Figure 1, the orientation develops from a more speaker-based and text-orientated one to a more interaction- and addressee-focused one.

Figure 1. The functional network of pragmatic *now*

All functions, except the topic function (1), potentially involve or even necessitate the (dis)alignment of the speaker. For the legal context, functions 3 and 4 are of special interest.

The OED attests to the long-established nature of such pragmatic uses of *now*, going back to at least Middle English. It lists six (sub-)senses (5. to 7.) of adverbial *now* under the heading “II. with temporal sense weakened or lost”, which may be assigned to the functional Types 2 to 4 above. Defour (2008a, b) has looked more closely at the historical development of *now* in utterance-initial position and found the discourse-structuring function already in Middle English (2008a: 31), also in contexts highlighting a specific speaker perspective and thus heightened (inter)subjectivity (2008a: 31–34, 2008b: 75–77). What all pragmatic uses have in common is that they can be regarded as an extension of the original temporal use, in the sense that they point forward in discourse, to something new (Brinton 2006: 312) and in that they often still have traces of temporal meaning.

3. Pragmatic markers in the courtroom

Pragmatic markers in the English courtroom have received relatively little attention. With regard to the modern courtroom, there is research on *well* (Tkačuková 2015; Innes 2010), on *and-* or *so-*prefaced questions (Johnson 2002 quoted in Holt and Johnson 2010), and on *well, you see* and *now* (Hale 2004: Chapter 4). Historical studies are provided by Kryk-Kastovsky (1998) on *pray/prithee* and *well* inter alia, by Culpeper and Kytö (2010) on *why* and by Lutzky (2012) on *marry, well* and *why*.

Hale (2004) found *now* to be commonly used in prefaces to lawyers’ questions (Hale 2004: 85), with the functions of guiding the witness towards a particular way of answering, of indicating dissatisfaction or disagreement with a given answer

(Hale 2004: 67, 84). Lawyers were trying to control the interaction and the flow of information, but without sounding too impolite. Hale regards *now* as more indirect and less aggressive as it is used more often in examinations-in-chief with the lawyer's own witnesses than in cross-examinations, where *well* and *you see* are more common (Hale 2004: 67). Nevertheless it has a controlling and challenging function, which is also shared by other markers (e.g., *pray* and *well*) used in this way by judges in the historical courtroom (Kryk-Kastovsky 1998: 49–52) and *so*- and *and*-prefaces, which are also used by legal professionals to elicit agreements and “desirable” statements (Holt and Johnson: 2010: 25–27). While *well* and *why* are not necessarily restricted to lawyers, they also share the challenging nature of the items just described. They are used to comment on other speakers' contributions, which are seen as in some form unpleasant and to be disagreed with (Tkačuková 2015: 148), unco-operative or irrelevant (Culpeper and Kytö 2010: 383).

Although not dealing with pragmatic markers, Janney's (2007) concept of metapragmatic framing strategies (MFS), which are “used by the prosecutor to frame questions in ways that steer the defendant's answers while at the same time commenting on their adequacy, clarity, relevance, or truthfulness” (Janney 2007: 223), is also of interest here. The non-exhaustive list of strategies he provides include (i) insinuation about incorrectness of statements (e.g., “supposedly made this call”), (ii) explicit objection to how questions are being answered (e.g., “he is not answering my questions”), (iii) interpellation, that is, negatively coloured items casting doubt (e.g., “your infamous ride”), and (iv) direct accusation (“so you lied”) (Janney 2007: 226). Their ultimate function is to influence the jury's point of view by making assessments of witnesses and others more manifest and by making their answers seem untrustworthy (Janney 2007: 224, 231). In so far as pragmatic markers are highly versatile, it may also be the case that *now* plays a role in the MFS.

4. Data

Trial transcripts from two corpora provide the data basis of this investigation. The *Corpus of English Dialogues* (CED) provides 285,660 words of courtroom speech spread across five forty-year periods from 1560 to 1760. This is complemented by another forty years (1761–1800) and about three-million words from the *Old Bailey Corpus* (OBC, offline version 2.1), which is a much larger corpus spanning the period 1720 to 1913 and containing about fourteen-million words. The combined word count of the two sources is 3,323,391 words. The rationale for combining these corpora is (i) to extend the investigation as far back as possible,

and (ii) to enable a comparison between the results that may be achieved by a small and a large dataset. Table 1 shows the make-up of the data.

Table 1. The data basis

	CED				OBC	
	1560–99	1600–39	1640–79	1680–1719	1720–60	1761–1800
No. of trials	3	4	10	11	12	86
Words	19,940	14,430	70,010	96,630	84,650	3,037,731

Needless to say, the situation in the Early Modern courtroom was different from today (cf. Emsley et al. 2003–2017). Of particular importance is the fact that lawyers often were not involved before the end of the eighteenth century; in cases where a lawyer was present, they would stand for the prosecution. The prosecuting and defending in most cases would have been conducted by the victim of the crime as the prosecutor and by the defendant, both presenting their case and conducting the examination of witnesses. The judge, as the only person with extensive experience of legal procedures, necessarily became a very important person in this context – which explains his greater involvement in affairs in the past, such as questioning the accused and witnesses, summing up the case at the end and evaluating the prosecution. Lawyers became more frequently involved over time, however, and the 1836 Prisoners’ Counsel Act granted the right to counsel to defendants. Thus, people taking the questioner’s role in the data employed here may be judges, lawyers or lay people involved in the crime. Even if they were lawyers, as in fact was mostly the case in these data, they were not yet as professionalised as their modern counterparts. As the institutional and functional roles were thus still evolving, we may assume that also the strategies commonly employed were still in the making.

All uses of *now* were concordanced with the help of WordSmith (Version 5) and OBC’s own offline search interface. They were then classified into different uses, namely temporal adverb, pragmatic marker and ambiguous cases. As CED is a multi-genre corpus and makes possible comparison to another genre, occasional frequency comparison will be made to the drama comedy section with its 238,590 words.

5. Results

5.1 Frequencies, functions and users of *now*

Table 2 presents all occurrences of the form *now* (i.e., regardless of function).

Table 2. Frequencies of *now* (all instances), normalization per 10,000 words

	1560–99	1600–39	1640–79	1680–1719	1720–60 *	1761–1800
Occurrences	35	35	134	120	60	2,135
Normalized	17.5	24.3	19.1	12.4	7.1	7.0

* The corresponding period of OBC for comparison yields 1,647 instances (in 2,505,470 words) or 6.6 per thousand. This difference is very small and not statistically significant.

The item is not as frequent as one might have expected, especially when compared with the normalized frequencies of *now* in comedies, which range between 44.2 and 28.9. The decline evident in Table 2 is not restricted to trials but is evident similarly in comedies.

Table 3 and Figure 2 chart the distribution and development of the different uses of *now*, namely the temporal and the pragmatic marker use, as well as a third category which is ambiguous between those two, see Example (3).

- (3) a. **Now** shall you also see, for further proof thereof, the Bishop of Rosse's
Letter to the Scottish Queen: (CED d1tnorfo)
- b. **Now** from your skill and practice in writing, do you take these two
conclusions, beginning at the words, *In witness* to be wrote by the same
hand, [...] ? (CED d5taylif)
- c. **Now** my Lord, if your Lordship please, I desire to call the Sword-Bearer.
(CED d4tpilki)

Example (3a) illustrates the temporal use, *now* here carrying an immediate futurity sense indicating the following action; the fact that *now* is a temporal adverb here and integrated into the syntactic structure is also shown by the inversion it triggers. The pragmatic marker is found in Example (3b): *now* does not have a temporal sense and is not integrated into the sentence structure. Contrast this to the formulation “do you *now* take these two conclusions...” (i.e., at present, as opposed to an earlier assessment). Example (3c) finally is somewhat intermediate between those two uses, as *now* could be read in the immediate future (i.e., temporal) sense, but it could also be seen as a marker of topic transition, or as an attitudinal marker; the latter interpretations are supported by its position before two further pragmatic elements, the vocative *my Lord* and the polite parenthetical *if*-clause. Uses like Example (3c) illustrate how the pragmatic meaning is based on

the original meaning and represent interesting bridging contexts. The results of the breakdown show that the decline seen in Table 2 and Figure 2 is overwhelmingly due to temporal uses becoming less frequent. Pragmatic marker uses are characterised by a very low frequency, but they seem to be stable on a low level; the difference between periods is not significant.

Table 3. The distribution of functions of *now* in the data (occurrences and normalized frequencies)

		1560–1599	1600–1639	1640–1679	1680–1719	1720–1760	1761–1800
Temp(oral)	occ.	28	25	116	79	52	1,767
	norm.	14	17.3	16.6	8.2	6.1	5.8
Pragmatic marker (pm)	occ.	0	3	12	21	4	307
	norm.	–	2.1	1.7	2.2	0.5	1.0
Amb(iguous)	occ.	7	7	6	20	4	61
	norm.	3.5	4.9	0.9	2.1	0.5	0.2

Figure 2. Development of functional types in trials (normalized)

Ambiguous uses are declining, which may speak of a clearer separation between temporal and discourse uses, and thus for a pragmatic marker that is more established overall. However, in comedies both temporal *and* pragmatic uses are declining (albeit both on higher level than in trials), while ambiguous uses seem stable there. The stability *versus* decline of the pragmatic marker in these two genres may indicate the special usefulness of *now* for the courtroom context. The lower overall incidence of pragmatic markers in trials *versus* comedies (there ranging from 3.2 to 9.0) is in line with similar findings by Culpeper and Kytö (2010: 268, 377) with regard to pragmatic noise and hedges, where in both cases comedy shows the highest and trials the lowest incidence of all CED registers.

The discussion from now on will only deal with the pragmatic uses (including the ambiguous ones) – that is with 452 instances. Table 4 shows how these 452

occurrences are distributed across speakers³ by providing the raw frequencies. Normalization is not possible due to the fact that CED does not provide word counts for different speaker roles. For OBC (i.e., the period 1761–1800), however, such normalized figures can be added: the normalized frequency of *now* with judges is 5.6 and with lawyers 5.3 *versus* defendants 1.1, victims 0.2 and witnesses 0.3.⁴

Table 4. Users of *now* (raw frequencies)

Period	Judge	Lawyer	Court other*	All court	Defendant	Victim	Witness	All lay
1560–99	–	6	1	7	–	–	–	0
1600–39	4	–	5	9	1	–	–	1
1640–79	3	7	1	11	6	–	1	7
1680–1719	8	20	9	37	3	–	1	4
1720–60	–	3	4	7	1	–	–	1
1761–1800	115	189	2	306	22	8	32	62
Total	130	225	22	377	33	8	34	75

* “Court other” refers to serjeants and recorders in CED and to an unspecified court official and a jury member in OBC. Serjeants and recorders, although legal professionals, were put into this category, because their exact status in the respective trials was not unambiguously clear.

Both these normalized figures and the raw ones in Table 4 indicate a very clear difference in usage, with courtroom officials or professionals using *now* much more than lay people. Despite the fact that lay people speak more than double as much as judges and lawyers combined, they use only 16.6 percent of all pragmatic *now* in contrast to 83.4 percent used by professionals. The OBC difference between judges/lawyers on the one hand and lay people on the other is statistically significant, as is the difference between defendants and witnesses.⁵ These results indicate that *now* performs more useful functions for professionals. The greater usage by defendants as compared to witnesses and victims can then also be seen in light of

3. OBC provides speaker roles in its concordance output, which were manually corrected in some few cases. For the CED data, speaker “tags” are usually provided in the original prints, but in some cases needed to be established from the overall context.

4. The word counts for the speaker groups are as follows: judges (205,792), lawyers (356,263), defendants (195,260), victims (489,342) and witnesses (1,096,536). The fact that relatively little speech by judges, lawyers and defendants is recorded is due to the fact that many Old Bailey proceedings omit most of the questions asked. This practice together with the likelihood that many pragmatic items may have been lost in the original transcription process (Culpeper and Kytö 2010:377) means that the actual occurrence of pragmatic markers in the courtroom will have been higher than attested by our sources.

5. At 700.201 and 27.63 respectively, at the $p < 0.01$ level. The difference between judges and lawyers is not significant.

the fact that, in the historical courtroom, defendants acted on their own behalf, without a counsel, and thus had to perform actions similar to lawyers, such as questioning of witnesses.

5.2 Judges and lawyers

Legal professionals used *now* in several ways, which can be sorted into two major types, namely (i) uses that function within the speaker's own utterance and (ii) directly interactional uses within the question-answer pattern.

The first type is characterised by structuring and moving forward the discourse. *Now* here performs the functions identified for modern usage by Schiffrin and Aijmer (i.e., shifting between topics or aspects of one topic). In Example (4a) it introduces the fourth member of a list (see Aijmer 2002: 83), the one which is noticeably different from the others because of its effects and thus implies a contrast of sorts (see Schiffrin 1987). *Now* in Example (4b) ushers in important background information on the topic at hand (see Schiffrin 1987: 74), namely the legal definition of robbery. Cotextual elements relevant to the use of *now* are underlined in examples.

- (4) a. The first was lost; the second you sent him by Rawlins; and the third your self took at Buly: Now a fourth, which was sent by Davis, was that that made him so sick, and gave him so many Stools; and that was Poison, and sent three Weeks after [...]
(CED d2tcarr)
- b. The prisoner in the close of what he has said certainly meant to leave it to the court to consider whether under the circumstances of this case the taking the money is in point of law a robbery. What is or what is not a robbery is in general a question of law. Now, gentlemen, the general definition of a robbery is, that money must be taken by violence [...]
(OBC 17790217)
- c. they wished to ordain, that apprentices should always be boarded with their masters, because they should be under the controul of their masters, otherwise, persons of young and tender years would be liable to go astray, they would be liable to get into bad company, and commit those sort of depredations, which would make them liable to the pains of the law. Now Gentlemen, let us see whether the mutual interests of the journeymen and masters go hand in hand, [...]
(OBC 17980704)

In Example (4c), *now* accompanies the move to another, but related aspect of the topic under discussion (see Schiffrin 1987: 76). It can be argued that in each case *now* also serves a highlighting function, marking the point introduced as important and worthy of attention (see also the address term *Gentlemen* in Examples (4b) and (4c)). One could say that such examples work within the

argumentation of the speaker, but there are instances (as in Example (5)) where the argumentative use of *now*-prefaced clauses is even clearer. The *now*-clause in Example (5a) presents the third and crucial premise that leads to the negative conclusion to the argument introduced by *and so*.

- (5) a. one that is mention'd, he is intituled, by the Apprehension, to the One thousand Pound. If any one that is mention'd apprehend another, then he is to bring him to Justice; **now** Mr. Harris is not named in this Proclamation, and so, as to the One thousand Pound, he stands in the same Condition as any other Person that Discovered or Apprehended [...]
(CED d4trookw)
- b. they do declare that the Common Hall was held, according to Custom, For the Election of Sheriffs, to hold that Office from the Eve of St. Michael, for the year next ensuing: **Now**, my Lord, that is not so in Fact, nor never was, for the Election is for a year to commence on Michaelmas Day.
(CED d4tpilki)

In Example (5b), the *now*-sentence counters an argument adduced by another party. While the instances in Examples (4) and (5) were factual, content-based argumentation, *now*-prefaced utterances can also play a role in more emotive uses. In both instances in Example (6), *now* introduces a rhetorical question, which forms an affective climax to the argument; *now* adds affective meaning of its own, as well as a note of surprise and disalignment with the opposing view. It seems that the presence of *now* makes the rhetorical question even more challenging.

- (6) a. L. C. J. Holt: Well, and what said Rookwood then? – Mr. Phipps: Porter says, he then said, There's an End of it. **Now**, my Lord, what Evidence is this of a Consultation and Agreement? and this is all that Porter says.
(CED d4trookw)
- b. [...] because it is ridiculous to common sense, to say that any thing is taken in violence: **Now** what in God's name, and the name of common sense, doth this differ from Mr. Danvers's case? (OBC 17850406)

Examples (4) and (5) show that *now* is important for structuring content – for meaningfully highlighting connections and thus for supporting argumentation. Structuring of this type is more relevant for longer stretches of talk (i.e., for monologue rather than dialogue). Thus it is unsurprising that *now* in monologues was found to be twice as frequent as another common initiator, *well* (Aijmer 2002:70, quoting Bäcklund and Stenström).

In the second type mentioned above, *now* is found in more clearly interpersonal uses, in the first item of an adjacency pair (i.e., in directives of judges and lawyers to other participants in the trial). These are contexts in which one interactant tries to control the verbal behaviour of the other in a certain way and thus,

- c. Now which do you mean to stick by; were you a little in liquor, or were you perfectly sober? (OBC 18000528)
- d. It was dark – a late hour of the night – you had been drinking. – Now are you able to recollect the persons of these people with so much certainty as to be able to swear. (OBC 17700912)

Example (8d) shows the lawyer challenging the witness by stating aversive circumstances first and then following with a challenging question. *Now* here takes on a certain causality: if X is the case, then (=now) you should conclude that you are not able to recollect.

The third and last type of control context works by “restricting the answer”. In these cases, the introductory *now* is immediately followed by a prepositional phrase or subordinate clause, which specifies the scope of the following question.

- (9) a. Now during that time had you an opportunity of observing the prisoner’s person? (OBC 17860719)
- b. What sort of meat did you leave behind in the shop? – A rump of beef, and a sirloin, a pair of quarters of mutton, an edge bone of beef, a leg of mutton, a neck of mutton, and side of lamb. – Now about this side of lamb, be particular. What lamb had you that day, one or more? (OBC 17950218)
- c. Now, from your seeing him a single minute, and in the confusion you was in, can you take upon you to say he is the man? (OBC 17870110)
- d. Now when you came to this woman’s you did not drink any thing there? (OBC 17931204)
- e. Now if you had met him by accident any where else, should you have known him? (OBC 17830430)

In Example (9), the addressees are asked to suit their answer to one specific aspect only (a certain time, object or condition), meaning that any other way of answering may be construed as inappropriate, evasive, obstructing or similar. In all of these cases, the addressee is manoeuvred into a vulnerable position, where they can potentially be presented as untrustworthy to the judge and jury. Expressions like those underlined in Examples (9d) and (9e), with the subordinators *if*, *whether*, *though* or *since*, were also noticed by Defour (2008a: 32) and interpreted as adding the specific perspective under which the contents of the main clause should be viewed. Such frame expressions occur ninety-eight times in the OBC data, making up 27 percent; they are less common in CED. It may be argued that *now* deictically points especially to the immediately following framing expression and thus emphasizes it.

Certain co-occurring items, namely address terms, other pragmatic markers and performative verbs, as in Example (10), may have an impact on the control

uses. Address terms highlight who is being addressed, thus strengthening the directedness of the utterance; they can be interpreted as neutral or respectful (Examples (10a) and (10b)), friendly or patronising (Example (10c)), but also less polite (e.g., *prisoner*, bare name). The presence of another pragmatic element may also have either a mitigating (Example (10c)) or a reinforcing (Example (10d)) effect in combination with *now*. Such immediate co-occurrence is not common, however (there are seventeen cases in total).⁶

- (10) a. *Now, sir, I ask you this*, Rabbitts there was brought up in irons, was not he? (OBC 17931204)
 b. *Now, I warn you* that you have sworn already that this girl was never out of your sight that evening from seven to eleven, above a quarter of an hour? (OBC 17931204)
 c. *Pray now, good woman*, when you heard where the father's house was, why did not you search his house next morning (OBC 17620224)
 d. *Now then, I ask you*, where was that place that he met with you? (CED d4tcolle)

Performative verbs such as *warn* and *ask* are found in 7.7 percent of all occurrences. They make the intended perlocutionary effect explicit and thus also strengthen the overall impact. The use of *warn* can also be seen in an MFS context, as it insinuates that the witness may be planning to produce inadequate statements and it is, thus, an implied accusation.

5.3 Lay interactants

As indicated above, defendants might be more similar to professionals than other lay people in their use of *now*. Indeed, one finds them using *now* in their questioning strategy, as in Example (11).

- (11) Q. Pray, Mr. Buchanan, did you see any body attempt to interrupt me previous to this address? Mind I ask you positively to speak to that question, because that you must know? – Yes, I think Mr. Newman did.
 Q. Are you positive that Mr. Newman did? – I think so.
 Q. You seem to be extremely positive in some other things why not in this? did you or did you not see some person interrupt me? – Yes, they drank the King.
 Q. That did not interrupt me? – It was done to that effect.
 Q. Was nothing else done? – I see Mr. Newman interrupt you.
 Q. Was this before or after I addressed the company? – It was before.

6. Types in CED are *how*, *nay* and *well*; in OBC, *and*, *damn you*, *look* and *there*; and in both, *pray*, *then* and *why*.

Q. Now, sir, Pray what was the manner of that interruption? – He told you you was a bad man or you would not have been guilty of giving that toast.

(OBC 17931204)

This *now*-prefaced question occurs in a longer sequence where the defendant tries to “nail down” an answer, regarding an “interruption”. The nailing down is indicated by the repeated use of *pray*, direct address forms, admonitory formulations and conducive questioning. The whole context thus is coercive and controlling. To a lesser extent, but of similar kind to this overall, is the case in Example (12), where *now* is accompanied by an admonitory phrase:

- (12) Did not you swear that you offered the buckles to several people in the house, before the justice? – I did not.

Now mind what you are at: Did not you say first to the landlord, will you take these buckles into pawn for the reckoning for me and my wife? – I did not say such a word.

(OBC 17920113)

Similarly to the lawyers’ examples in Example (7), this can be seen in the context of MFS as the reminder serves to frame the witness as potentially unmindful of the seriousness of the court context. While such controlling instances are not especially common, they show that it is the functional role taken on at a given moment that determines the *now*-related strategy. If defendants are questioners (≈lawyers) they act accordingly.

Thus, defendants can also use *now* in argumentative contexts. King Charles I, in the role of defendant, uses *now* in Example (13) to introduce his argument-cum-plea that he should receive a proper hearing in parliament before sentence is passed. The *now*-passage marks a change of course in the King’s strategy (see the underlined phrases), giving up factual defence in favour of a procedural request.

- (13) Since that I see that you will not hear any thing of debate concerning that which I confess I thought most material for the peace of the Kingdom, and for the Liberty of the Subject, I shall wave it, I shall speak nothing to it, (...) **Now** Sir I conceive, That an hasty *Sentence* once past may sooner be repented then recalled, and truly, the self-same desire that I have for *the Peace of the Kingdom, and the Liberty of the Subject*), more *then my own particular*, does make me now at last desire, That having something for to say that concerns both, I desire before *Sentence* be given, that I may be heard in the *Painted-Chamber* before the Lords and Commons, this delay cannot be prejudicial to you whatsoever I say, [...]

(CED d3tcharl)

Similarly, a defendant in the Old Bailey uses *now* to mark a change from a narrative with an explanatory function to an argument based on (hypothetical) premise and conclusion.

- (14) I received a paper from a porter, who came and requested a permit for seventy-five gallons of brandy; I carried it to Mr. Norris, who wrote the same; I carried it to that person, who brought it back and said, he wanted another for the next morning; I wrote the other by Mr. Norris's desire, and delivered it to the person who came for it; **now**, if this note had been a false note, so long after as a month or six weeks, it might have been destroyed, but I believe it to be a true one; it was fairly wrote and posted as the usual course of business was. (OBC 17870110)

Many occurrences with lay speakers (55 percent of the OBC lay data) occur in the context of speech reporting (also attested in modern [Aijmer 2002: 88] and historical [Defour 2008b: 72–74] data), either preceding the *inquit* phrase (Examples (15a) and (15c)) or following it (Examples (15b) and (15d)). In the latter case, *now* is clearly part of the reported speech and thus does not function as a strategy within the courtroom discourse.

- (15) a. *Coke* sent his Boy for me to come to him; and between Eight and Nine, in the Morning, I went to him. He was in his green Room. **Now, said he, John**, we shall have the fairest Opportunity to kill Mr. *Crispe*. I told him, I was loth to do it; (CED d5tcooke, defendant)
- b. after we had got all these things, **he said, Now**, gentlemen, as I have been so open, I hope you will not take me before a magistrate; (OBC 17661022, witness)
- c. I told Mr. Priddle that he would not give any thing; **now says I**, you are like to fight it out; (OBC 17870418, witness)
- d. I let him get up, after which he clapped another pistol to my breast, **and said, now d – n you**, I'll shoot you dead. (OBC 17630413, victim)

In cases where *now* precedes the *inquit* phrase, like Examples (15a) and (15c), *now* could either be part of the quote or part of the present speaker's own speech. In this case it might carry a function within the ongoing discourse. In either case, it might of course simply be an additional delimiter of quoted speech *versus* surrounding text (i.e., a frame marker).

The final type of use identified for lay speakers, usually witnesses, is the function of structuring their answers more explicitly by marking shifts of various sorts. In Example (16a) the *now*-preface clause adds a more precise, detailed explanation for the previous statement and in Example (16b), where the witness/victim identifies his stolen goods, it marks both a move from one item to the next, and, more importantly, a contrast between items he is less or more certain of as being his.

- (16) a. My Lord, to give you an account of the import of this Letter, it was writ in *Latine*, and in it there were thanks given to Father *Lechees* for the Ten Thousand Pounds which was given for the propagation of the Catholick Religion, and that it should be employed for no other intent and purpose but that for which it was sent, **now** that was to cut off the King of England;
(CED d3tcoleml)
- b. [identifying stolen goods:] This work bag, I am positive, is mine; (...) this only has I. M. H. I am sure this is my property that was lost; also this pint mug is mine, it is marked; these silver salts are mine; they have no marks upon them; here are four silver tea spoons, there are two of them that I can positively swear to, one is marked S. H. and the other is marked M. H. the other two I do not know so well; **now** this silver milkpot I am sure is my property, I never could make out the mark, and I cannot tell it now;
(OBC 17860719)
- c. I went to the prisoner Clarke's lodgings, in Cow-heel-alley, Golden-lane, on the 6th of June, in company with other officers; we searched the house, but found nothing in the house except a broken crow, a large gimblet, and a false key for taking impressions off, there is some wax upon it; **now** his wife's sister lived in the house too; it was a deplorable place to see.
(OBC 17980704)
- d. He did not turn me out, he opened the door and let me out; he had me at his house to write an inventory of his goods to the amount of 334l. and he told me I had not put down the linen or the plate; **now** I should like to know where he got money to buy all those things.
(OBC 17970920)

In Example (16c) the speaker very abruptly brings in a new aspect connected to the defendant's lodgings after having first narrated and described the search; narration and new information are separated by *now* and by a semi-colon, the latter probably highlighting the scribe's assessment of the shift. The utterance in Example (16d) is rather confrontational, as it is spoken in direct contradiction to another witness, whom the speaker had assessed earlier as untrustworthy; in line with this, the utterance switches from narrative to an implicitly negative assessment introduced by *now*.

The uses shown above may also be linked with two formal characteristics, namely the position of *now* and clause types. As to position, the overwhelming number is clause-initial (99 percent), which is the most logical place for a marker of transition, thus indicating the beginning of the new or next step in the discourse. *Now* is therefore also usually preceded by a punctuation mark such as semi-colon or full stop (65 percent of *now* are capitalized); "weaker" punctuation like the comma occurs but is rare. The position within the turn is divided almost equally between turn-initial (49.2 percent) and turn-medial uses. Turn-

initial use is the domain of control uses, as they often preface the questions in fast question-and-answer exchanges. This is shown in almost all cases in Examples (7) to (11). Turn-medial occurrences, in contrast, are of the argumentative, discourse-structuring or speech-introducing type. Regarding clause types, the data shows the distribution of 43 percent declarative (e.g., Examples (5) and (13)), 50 percent interrogative (e.g., Examples (8) and (11)) and 7 percent imperative (e.g., Examples (9a) and (12)). Whereas declaratives are found in argumentative, structuring and quoting functions, interrogatives and imperatives usually realize control functions. There is no total correlation, however, as some interrogatives, like those in Example (6), can also function as rhetorical questions in argumentative contexts. Despite such exceptions, the tendency is for interrogatives and imperatives to be turn-initial and for declaratives to be turn-medial.

6. Conclusion

Although pragmatic *now* is not a frequent phenomenon in the historical courtroom, it seems fairly stable over time and could be even said to gain in prominence as waning uses of temporal *now* make it seem relatively more common. Although the frequency of *now* in CED is low, the general types found in CED correspond almost exactly with those found in the much larger OBC. The difference with regard to the missing functions in CED might not necessarily be due to the quantity and nature of the data, but also with evolving characteristics of the courtroom – which, in terms of linguistics, still needs more research.

The most interesting finding regarding *now* is its genre-specific user distribution, in so far as it is used overwhelmingly by the speakers representing institutional power. Judges and lawyers thus join Aijmer's interviewers and lecturers as dominant users. The functions realised are in line with those identified in the literature, but with a genre-specific twist. Lawyers use it in the argumentation process: *now* highlights transitional points between evidence and conclusion, evidence and its evaluation, or a legal principle and its specific application to the case in hand. Lawyers use *now* even more prominently in the interaction with witnesses and defendants in the function for introducing utterances that in some sense dominate and restrict the other interactant. That such usage is not speaker-specific, but due to the functional role in the courtroom is shown by the fact that defendants are the only group among lay people who also use the arguing and controlling functions. In the controlling uses, *now* often highlights the lawyer's or judge's dissatisfaction with what has previously been said and thus disaffiliation with, for example, the witness's behaviour. Together with co-occurring formulations (e.g., "which do you mean to stick by" in Example (8c), and "I warn you that you have sworn

already” in Example (10b)), *now* can be a signal of metapragmatic framing in Janney’s sense. In this case, the more *now*-prefaced utterances a witness receives, the more untrustworthy he or she might be made to appear to the judge and jury. The usefulness of *now* in the courtroom is thus clearly evident.

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