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Law and Language

A Linguistic Phenomenon in Legal Systems

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Law and its Dependency on Language

Law is dependent on language.

- Von Wright: "The existence of norms is dependent on language" (Wright, 1963).
- Carnap: Language can be analyzed through:
 - 1. Syntax: Structure of symbols.
 - 2. Semantics: Meaning of symbols.
 - 3. Pragmatics: Use of symbols in context.

Natural vs Artificial Language

Natural Language: Used in law (e.g., Spanish, English).

Artificial Language: Precise and rigorous (e.g., math, propositional logic).



The Technical Nature of Legal Language

- Legal language includes:
 - 1. Pure technical terms: e.g., "Preterition of inheritance."
 - 2. Common words with legal meanings: e.g., "Murder" (criminal law).
 - Legal definitions rely on common language conventions.

Legal Language as an Administered Language

Legal communication is directed to everyone.

- It is influenced by authority:
- Authority defines meanings (e.g., 'vehicle' in legislation).
- Judges co-produce legal language through decisions.

Legal Language: Natural vs Technicalized

1. Ordinary words with legal meanings: e.g., ‘execution’ (homonym). Ordinary meaning: The act of carrying out a plan or task. Legal meaning: The process of completing or formalizing a legal document, or carrying out a death sentence.
2. Modified common words: Narrower or broader meaning.
3. Unusual syntax: Legal constructions sound awkward in ordinary language. Example: The party of the first part hereby covenants and agrees to indemnify and hold harmless the party of the second part.

Syntax in Legal Language

Definition: Syntax studies how symbols combine to form sentences.

- Ambiguity Example:
 - • "Andrej and Victoria are married."
 - - Meaning 1: Married to each other.
 - - Meaning 2: Each married to someone else.
 - Famous Case: Second Amendment (U.S. Constitution):
 - A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Semantics of Legal Language

Vagueness: Words with borderline cases.

- Example: What counts as 'rich' or 'cruel'?
- Lexical Ambiguity:
- • Example: 'Moon' (Earth's satellite vs reflection in a mirror).

luna

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Artículo

Sinónimos o afines

1. f. Único satélite natural de la Tierra, que se encuentra a 384400 km de esta, tiene un diámetro de 3476 km y realiza un giro completo alrededor de aquella cada 27,32 días.
2. f. Parte de la superficie de la Luna que se ve desde la Tierra.
3. f. Luz del Sol que la Luna refleja en la Tierra por la noche.
4. f. lunación.
Sin.: lunación.
5. f. Satélite natural de un planeta. *Júpiter tiene numerosas lunas.*
Sin.: satélite, astro.
6. f. Espejo cuyo tamaño permite ver a las personas de cuerpo entero.
Sin.: azogue¹, espejo.

Pragmatics of Legal Language

Speech Acts (Austin & Searle):

- 1. Locutionary: What is said.
- 2. Illocutionary: What is done (ordering, advising).
- 3. Perlocutionary: Effects produced (e.g., convincing).

Problems of Legal Language

1. Vagueness

- Quantitative: 'Rich' has no sharp threshold.
- Multidimensional: 'Elegant' depends on factors.
- Potential: Open texture (Hart).

2. Ambiguity

- Syntactic: Structural uncertainty.
- Lexical: Multiple meanings.

Legal Interpretation

Legal interpretation is an activity carried out by certain subjects, which focuses on texts with official and binding value (the "sources of law") and results in a specific outcome (an attribution of meaning). In fact, even though interpretation is primarily an activity, the term "interpretation" is often used to refer to the outcome of that activity as well.

Interpreting legal texts means assigning meaning.

Three Approaches:

- 1. Cognitivism: Meaning is fixed; discovered by the interpreter.
- 2. Skepticism: Interpretation creates meaning.
- 3. Eclectic Theory: Balances discovery and decision.



Cognitivism

Cognitivism asserts that the meaning of legal texts is fixed and objective, existing independently of the interpreter. The interpreter's role is to uncover or discover this pre-existing meaning, viewing interpretation as a cognitive process. Within this framework, interpretative statements are deemed either true or false, depending on their alignment with the objective meaning. The cognitive theory also addresses concerns about the indeterminacy of law and the discretion of legal officials, emphasizing that legal meaning is not subject to the interpreter's choice. Instead, it argues that legal provisions inherently possess a meaning that the interpreter is tasked with discovering.

Skepticism

There is no meaning before interpretation

Skepticism challenges the notion of fixed meaning, asserting that legal interpretation is inherently a creative act. According to this view, meaning is not discovered but constructed by the interpreter. Skeptics argue that legal texts are fundamentally indeterminate due to ambiguity, vagueness, or open texture, leaving interpreters with the discretion to decide their meaning. This perspective emphasizes the subjectivity and variability of legal decision-making, highlighting the role of power and context in shaping legal outcomes.

Different theories associated with legal realism defend a sceptical approach to legal interpretation. For example, Guastini argues that norms can always be indeterminated (in the sense explained by Hart) and that judges discretionally decide which cases can be considered instances of it. However, he adds that legal texts are always equivocal (i.e., there are different possible interpretations for a text).

Eclectic Theory

The eclectic approach seeks a middle ground between cognitivism and skepticism, recognizing that legal interpretation involves both cognitive discovery and discretionary decision-making. This approach distinguishes between "easy cases," where meaning is straightforward and can be objectively discovered, and "hard cases," where ambiguity or vagueness necessitates interpretative choices.

Hart's attempt at finding a middle ground between formalism (or conceptualism) and scepticism in legal interpretation is a paradigmatic example of an eclectic theory.

Conclusion

- Legal language is:
 - 1. Dependent on natural language.
 - 2. Technicalized for precision.
 - 3. Indeterminate due to vagueness and ambiguity.

Interpretative strategies are essential to resolve meaning.