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The Language of International Law; Monologue or Polyphonic Test

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Abstract

The encounter of a publicist with language is not similar to a linguist, literate, philosopher and logician. Limitations and ambiguities of the natural language in formulation of legal concepts and explanation of realities and values of international law cause the publicist to exceed the real boundaries of law knowledge. Therefore, in a context of logics, linguistics, and linguistic analytic philosophy, the publicist presents concepts, propositions, texts, rationalism models, and legal theories and attempts to recognize nature, type, and rational implications of them. This means that legal language must have phenomenal expressiveness capacity, exploration of meaning and decoding of legal texts for the exact description of realities and facts of collective life and should also represent and codify legal necessities and values. Legal language that is a special type of natural languages, just like any other natural language and even more than others, does not have degrees of certainty, precision level, and transparency that is found in symbolic and formal languages that logicians have used it in order to explain relations in context of mathematics, logics, and modern physics based on formal rationalism. However, international law faces a more difficult test that recognizes dialogism, multiplicity of readings, and diversity of meanings, it gets degraded through the suppressive language of arrogant speakers.

Keywords

Legal Language, Analytic and Synthetic Propositions, Dialogism, Communicative Rationality, Meaning, Text, Explanation, Monologue, Polyphony Test

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Introduction

Fundamentally, legal language is a type of natural languages that despite dominance of Aristotle logics on history of epistemology and methodology of international law Science has not been much successful in formation of a language free from overt and hidden ambiguities in legal propositions and concepts. The inefficiency of Formal rationalism models for obtaining maximum rational transparency, precision, clearness and correctness in context of international law language, is result of different factors and reasons. Of course, complex interaction of value reality in form of legal positivism paradigm that merely includes discovery of possible and definitive symmetry as causative among legal phenomena and reduction of legal system to legal rules, is an obstacle to development and optimal evolution of substructures of legal language that has decreased capability of codification and representation and decoding of dialectic among these levels of reality, validity, rationalism models and optimal understanding of legal texts in context of legal logics and linguistics of international law Science.

Typology of legal propositions

In an introductory and initial study, apparently a combination of Declarative /Descriptive and Inventive /Prescriptive propositions describes social event and reflects legal necessities resulted from legal rule. The Descriptive propositions are classified to two groups, analytic and pre- and post- Experimental Synthetic propositions in terms of content and form.

Analytic propositions

The most law philosopher analyzes legal system as a set of propositions or sentences and even believe that developments existing in legal systems confirm existence of a rational and general form for law. [(2)] But it seems that this is not much right. Because in Scientific Field such as mathematics which its propositions are in line with rational propositions, existence of pre-Experimental propositions have been accepted. Kant in book of pure Reason criticism shows that pre-experimental Synthetic propositions are seen in the

most simple and conventional calculation operations and the best Known Geometrical Theorems. For example, when in arithmetic we say; 5+7=12, if we exactly consider, we will see that this proposition is not analytic but is Synthetic, because in this equation, 12 in fact is nit inserted in 5 and in 7, but our mind deals with an activity that indicates its special creativity; i.e., from combination of 5 and 7 has obtained the result. But on the other hand, since we have not used external experience, so this combination proposition is pre-experimental too. (3)

In context of law, can we believe existence of pre- or post experimental Synthetic propositions in addition to analytic propositions that there is no doubt about it? We can't answer this question simply. Because any explanation of this requires the study and analysis of concept of legal theory and proposition and generally it depends on explanation of problem in a framework of legal epistemology and logics and an important issue is duality of imperative order (what must be; solen) and fact (what is; sein) in context of legal studies.

This inevitable separation in legal propositions is appeared as necessity and causation and logic language in form of Descriptive and Prescriptive that it leads to Duality of legal propositions. The propositions governing imperative order that have analytic nature and propositions governing a fact which rationally contains information and documents related to subject and consequently are raised from creativity of mind or are product of experience that can be classified to two groups; pre- experimental Synthetic propositions that are obtained from mental activity and post- experimental propositions that are obtained during a scientific process based on sociological induction, however generality and permanence of these propositions is doubtful.

Challenges of rational definition in international law language

The logic science is reasoning science and correct reasoning is the most important product of human thought. (4) But use of logics is not merely unique to this matter Aristotle and ancient Greeks, when found that language can be filtered and it can be so exact that is suitable for rational inferences, they took a big step. (5)

This Aristotle legacy increased enthusiasm of Publicists for modification of legal language. But an issue that could be inspirational, converted to an epistemology difficulty. This fact that rational definition is not adaptable to structure of social science and international law; because this science doesn't try to recognize social world or task world or it doesn't attempt to indicate collective phenomena as rational definitions. It is interesting that this claim is not realizable.

Which legal concept can be clarified through rational definition? Does social science deal with nature of collective phenomena? So, presentation of social event as rational definition isn't possible. Therefore, we affirm emphasis of positivists on the importance of precision in language and their warning about this; if language ignores rational precision, it may be meaningless. But maybe they don't attend to this, in science we must approach this ideal, but we never can this, because a language which is used to describe our experiments, contains the concepts that their domains can't be defined exactly. (6)

The prominent instance international law literature is aggression concept that led to numerous challenges among countries and Publicists. This concept doesn't have any rational definition. And in fact there is not possibility of presenting a rational definition for this concept and all other legal concepts. It is better to say that legal concepts don't have any Aristotle rational definition. For example, legal definition of concepts such as state, territorial sea, boundary, trans- border pollutions, international security and peace, human rights, development, transfer of technology, humanitarian intervention, national sovereignty, violation of obligation, aggression, genocide, good faith, military necessity, pre-emptive War, order, justice and hundreds and thousands of other instances are not according to rational definition.

The reality and legal language

One of main traits of modernity is analytic language, unlike pre- modern times that language had allegorical trait, and this epistemology trend was accompanied by rethinking the role of language in context of Science, so that one of main concerns of analytic philosophers is to explain proportion of

language to Knowledge and consequently reality. So reality show of nature languages is evident and certain; a claim that its proof reasons have not been obtained. The semantic scope of reality is so extensive that sometime has opposite interpretations and a type of semantic diversity and disparity in definition is observed.

Proportion of reality and legal language

In any legal rule, Conceptions are bases of legal events and related sentence. Since Fictions record social realities, legal system is formed through creation of relationship among, jurist must express legal concept and Fiction so that it be according to its external counterpart exactly, in other words, to express words that contain legal concept, he/she must act so that the words which he/she uses as instrument, have universality and impediment trait in order to obtain inference from rational proposition and to reach legal rule. (7)

Of course, it is clear that adaptation of fact to legal concepts and Fictions i.e. obtaining legal concept from objective case and adaptation to rule is very difficult. (8) – with respect to this difficulty and other difficulties, is it time to review proportion of reality to legal language? Does legal language indicate reality of a language? In other words, how realities in legal language are formulated? And what proportion there is between legal language and reality? Which limitations of legal language are used to express reality?

Responding to these questions depends on this that proportion of reality to language is specified. It is evident that in this position, reality and truth have same meaning. For explanation of reality, there are two main theories; correspondence theory and coherence theory; According to correspondence theory, truth is to correspond propositions with reality; while in coherence theory, truth is to cohere all its components altogether and with experience. (9)

First view claims that truth is not something other than adaptation of propositions to objective reality. This picture of truth is according to traditional epistemology that mission of mind restricts to discovery of this adaptation. Second view that is affected by Logical positivism and analytic philosophy puts subject in superior status. Therefore, intervention of mind in discovery of

coherence of reality elements and its test based on experience is resulted from this new treatment.

But both these theories rely on a unproven assumption. The Naive realism of Bertrand Russell believes that correspondence theory is a semantic picture of truth and coherence theory is a syntactic picture of truth. One searches meaning of assessment and other expresses the truth which like a dam is made in mind and reality is stored behind it. (10) These two trends have special treatment of language and its proportion to reality. The language amounts to a picture of reality that imagines the world can be represented as the words or by other. (11) As we said earlier, picture theory of language is based upon Naive realism idea and indicates that language is successful to represent reality of world. There is other view that shows not merely as a picture of reality, but as a means to realize reality. (12)

Ernest Cassirer says, in a war between metaphysics and language, language has won; the sentimental looking at world has substituted by symbolic looking gradually. Here symbolic functions of language are used, and participation of language to realize reality substitutes picture of reality idea in language. In this new picture of language, language exactly is a single right that connect mental world to objective world. (13) In addition to, Merloponti expresses language as a complete instance of dialectic relation between us and the world. (14) So, what we can say about legal language and its proportion to reality?

Is legal language merely used to represent and express legal ideas and realities or does this language have role to make and realize legal reality. This distortion of reality that we say, legal language is not something other than representation of reality, since law world is not mere reality world, but it is Value world, too. In legal world. There are realities and values.

The equality of states is not a reality, but it is a credit fact, since, there is not post- history language, in other words, a language that has formed outside time, environment and social relations, we must study reality and value in a dialectic and interactive relation by this conventional language. The propositions such as human is free, freedom is natural right of humans; freedom of expression is a background for better life; the states equal; the wide of territorial sea is 12

miles; violation of obligation requires liability; do these proposition contain claim about reality (Description of a situation) that generally and by rational language are correct or false? Or include moral or legal value, necessity and validity?

It is clear that these propositions are not related to external world which inform about it. The proposition informs external world (reality) that describe it. For example, aluminium doesn't conduct electricity; boiling point of water is 100 degrees, the metals have free ion to conduct electricity; and the earth turns around the sun; are describer propositions. Therefore, to study correctness and falseness of them, we can indicate their adaptation to external world according to correspondence theory and according to coherence theory; we express their internal adjustment and experience. But criterion of studying adaptation of non-describer and task propositions of international law to reality and existence of proposition between prescriptive propositions and reality has not been determined. It seems that criterion of correctness and falseness is not used for these propositions. The only criterion related to validity of these propositions is scientific consensus or contract.

Value and legal language

The language of positivism science doesn't have value, while legal language has role in listing of values and also controls realities. This duality is subject to nature of scientific subjects of international law that coherence and interconnection of reality and value in this context is exhibited. Therefore, legal language has special nature which is different from mere scientific language. From this perspective, international law propositions in terms of their proportion to value and reality are classified to two groups; descriptive propositions and prescriptive propositions.

a) Descriptive propositions

Descriptive proposition or propositions controlling proportion among legal phenomena are propositions that deal with a reality from collective life and legal phenomenal realities. The law scientist deals with legal issues from two perspectives. Sometimes he/she explores social reality and sometimes does

credit analysis from Values and credits of international community. When he/she deals with reality and tries to obtain cognition based on casual mechanisms or meaning- exploring processes; uses descriptive propositions. These propositions reflect impudent guess.

That Publicist or jurist obtains it in encounter with a difficult situation. The status of Publicist in this context is the status of a scientist who wants to discover constant causal relations among natural and sometimes social phenomena. These propositions have an important relationship with being scientific of international legal system. That is these propositions that indicate a causal proportion between two social variables can be scientific and can't convert to an unscientific fact.

b) Prescriptive propositions

Prescriptive propositions or propositions adjusting or controlling values of legal system are propositions that show necessity. In other words, sometimes they indicate causation and causal relation and sometimes reflect task and legal necessity. The existence of these propositions in legal language has caused that legal language is not merely a language to explore reason and discovery from reality.

Given that science deals with material objective world and it wants as to say exactly about objective reality and obtain its correlations. But law matter from one perspective is the world of values and it deals with what must be or what must be done; not deals with what is; so, the language of these contexts is different. Legal language is a special language that has capacity of expressing reason- exploring and also can represent task, order, necessity and behavioral prescription and can explore meaning and decode social texts. Being- legal of legal system is based on this linguistic trait that orders, prevents, validates and controls and combination of legal language is controlled by a process which through relations among texts, extracts meanings. The legal language in the most technical interpretation is dialectic and multi- Dimensional language that deals with reality, value and text and meaning and it creats rationalism for reason and explores meaning behind intent of Agencies and structures. This language is rightly a dialectic and multi- levels and multi- constructs language

that among epistemological peers of law Knowledge and especially international law even ethics Knowledge is unprecedented.

Meaning and legal language

Legal language in fact is a free text that its Signification Criterion doesn't Reduces meaning or regardless of proportions among this text and other texts, General Than Phenotext and Genotext we can't obtain a meaningful relation. This difficult situation frees legal language from play of reality show and discovery from fact and Aristotle equation of meaning and form based on linguistic formalism. So, title of free language requires dynamism of practices and new discourses such as intertextuality theory and discourse analysis theory and importantly is affected by legal hermeneutics that by its interpretation and construction consequences has changed reading and Pluralism of legal texts and also has led to new understanding of contexts escaping from reason and cause constructs of legal language. While, proportion of legal language and meaning subject is a complex and indefinite proportion that in addition to multiplicity of readings and Dialogism of legal language and discussion logics that includes conversation and dialogue among non- absolutes of international law whether classic unconditional sovereignty and Sectional -personal benefits and power of state- centered Westphalian system followers and in some cases and situations, authoritarian Agencies of The Charter pattern, it requires expurgate of preconditions of legal Knowledge, too that direction of meaning must be Drawn in this proposition and according to Drida, any referent doesn't fixate meaning and reader doesn't discover meaning; but he/she follows rote of meaning.[(15)]

Therefore, text theory requires a theory on intertextuality [(16)]; because meaning must be explored in intertextual Context. Therefore, legal texts like development, peace and security, human rights, sovereignty, and Human Rights not only increases multiplicity and Pluralism of meanings; but any text whether legal or non- legal, is based on diversity of discourses that its understanding, interpretation and decoding depends on external and internal components of text and behind it, any impression is not final impression and any legal

language in reading of its texts, uses a network of intertextual, intratextual and transtextual interactions and relations and it hopes that by relying on differentiation and recognition of dissent identities and so partial context identities of international law, effective interpretation of human attempt to create a Dialogical and diverse world through discourse of indefinite proportions about meaning of life and collective identity along with human non- reducible individualization is done which is a glorious experience in context of legal language and important meaning in text of humanity free from monologue and dominance of speaker subject.

Conclusion

Formulating of concepts and codification of legal propositions is first mission of legal language that in term of common patterns of natural languages and rational interception set, has received this task. But in more complex levels of legal language, social identity and human non- reducible individualization issue is posed that is explained, analyzed and interpreted in indefinite interaction of value, reality and legal text in a framework of reason- exploring, cause- exploring and meaning- exploring patterns. For codification and in stage of legal theories test, legal language has mixed with methodology, anthropology, ontology, epistemology and legal axiology so that concepts and propositions whether true, credit, analytic and Synthetic, are proportional to explanatory, interpretive and imperative dimension of this epistemological context.

On the other hand, legal language requirements are defined with respect to subordination, coordination and in-ordination- based patterns of order that decode and explore meaning of human correlation, cooperation and co-existence logics in different levels and Dimensions. In conclusion, multi-Dimensional and complex interactions among reality, value and meaning in context of international law have led to creation a dialectic language that not like natural sciences language, is reducible by science language, because of necessity and value, ignores social reality; but this special language tries to redefine and codify social reality through values and is affected by various

texts of peace and humanity to provide justice order in order to regulate biocollective figures in global and individual context based on the rule of law.

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