

The Study of Language for the Analysis of Institutions

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Abstract

The study of rights and law through language is typical of legal philosophy. This perspective affords the possibility of studying the universe of juridical language from a scientific (descriptive/explanation) point of view. It typically uses, in constructing its theories, prepositions of didactic and frequently evaluative nature, dealing with linguistic discourses that resolve themselves into “deontic predicates” of various kinds. It is therefore also possible to analyze an apparently evaluative/prescriptive phenomenon from a descriptive/explanatory perspective. There is, therefore, no objection to the study of law from an analytical and non-evaluative, non-cognitive point of view. In other words, from one that does not claim to know what is “good” and what is “right” from their opposites, following the ethical principles of non-truth, of that which abstains from making value judgments. In this way, ideological traps can be avoided, which are hidden in the practice of designing apparently fundamental discourses about descriptive propositions that in reality represent specific value judgments. For the analysis of deviant behavior too, and for the mechanisms of social control (amongst others, the law), the analytical tool of language appears to represent a useful means by which various phenomena can be explained. If the deviant behavior in question concerns social action that does not respect the normative requirements of the social pact, we find language that is principally “prescriptive”. Thus, certain findings of the linguistic analysis of the language of the law can assist social theory in the comprehension of phenomena of deviant behavior. The play of utterances, of “promises”, represents new analytical modalities for exploring, through the use of the tools of the philosophy of language (particularly didactic language), particular moments in which the law deals with deviant and criminal behavior by means of threats and punishments. These represent, therefore, new and useful methodologies for an analytical approach to institutional problems, that may be able to illuminate shadowy areas of institutional communication, which often seem to characterize the specific areas in which authoritarian legal decisions are reached. This new approach is an attempt to provide the alternative of linguistic analysis to the traditional pathways followed by North-American functionalism.

Keywords: law, language, institutional analysis, organisation, deviance

Riassunto. *Lo studio del linguaggio per l'analisi delle istituzioni*

Lo studio del diritto e della legge attraverso l'analisi del linguaggio è tipico della filosofia analitica del diritto. In questa prospettiva c'è la possibilità di studiare da un punto di vista scientifico (descrittivo-applicativo) anche l'universo del discorso giuridico. Esso, per la propria specificità, si avvale, nella costruzione delle proprie teorie, di proposizioni di tipo precettivo e spesso anche valutativo, avendo a che fare con enunciati in lingua che si risolvono in una serie di “predicati deontici” di varia maniera. Insomma è possibile analizzare con occhio descrittivo-esplicativo anche una fenomenologia che si presenta fortemente valutativa e prescrittiva. Così nulla vieta che il diritto possa essere studiato in un'ottica analitica a-valutativa e non-cognitivistica (che non pretende quindi di conoscere ciò che è “buono” e ciò che è “giusto” rispetto a ciò che non lo è, secondo i principi dell'etica della non-verità) che si esima dal dare giudizi di valore. Così si evita di cadere nelle trappole ideologiche che si nascondono nello strutturare discorsi fondamentali in apparenza su proposizioni di tipo descrittivo, attraverso quelle che sono, invece, determinate opzioni di valore. Anche per l'analisi del comportamento deviante e per i meccanismi di controllo sociale (tra i quali il diritto) lo strumento analitico del linguaggio appare un utile mezzo per la spiegazione di vari fenomeni. Se il comportamento deviante è l'azione sociale che non adegua la propria condotta ai comandi normativi del patto sociale, siamo al cospetto di un linguaggio principalmente “prescrittivo”. E perciò alcuni spunti dell'analisi del linguaggio della legge possono aiutare la comprensione dei fenomeni e dei comportamenti devianti da parte della teoria sociale. Il gioco degli enunciati, della “promessa” rappresentano tutte nuove possibili modalità per analizzare in maniera diversa attraverso gli strumenti della filosofia del linguaggio (in particolare del linguaggio precettivo) particolari momenti in cui si dispone la legge nei riguardi della devianza e della criminalità anche attraverso la minaccia e l'uso delle sanzioni. Questi rappresentano quindi nuovi modi e utili strumenti per un approccio analitico ai problemi delle istituzioni e sono forse capaci di illuminare la zona d'ombra della comunicazione istituzionale che sembra sovente caratterizzare le aree peculiari in cui vengono prodotte decisioni autoritarie vincolanti e perciò il diritto. E questo nuovo possibile tentativo perché l'accostamento analitico possa diventare un mezzo per non percorrere soltanto il binario del vecchio funzionalismo di stampo nord-americano

Parole chiave: legge, linguaggio analisi istituzionale, organizzazioni, devianza

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1. Law and language (an analytical approach)

The present notes are to be considered prolegomena to an exploratory study on the contribution that the analytical philosophy of language can give to the organizational analysis of institutions.

It is possible to study law by means of language; indeed, law is, in its essence, *language*. This language is mainly *prescriptive* in kind, and is often mediated by the language of morality. This very point may aid social theory in its understanding of judicial phenomena, according to an analytical approach. This paper, therefore, will pay special attention to: 1) The use of the *performatives* of John Langshaw Austin; 2) “The promise game” of John Rogers Searle; 3) the distinction between *phrastico* and *neustico* of Richard Mervyn Hare (1952).

Austin defines as “performatives” certain expressions whose particularity consists in the fact that their enunciation, when realised according to the prescriptions of a series of widely accepted conventions, leads to the realisation of specific social and juridical consequences. Classic examples of performative expressions are the words “promise”, “swear”, “name”, “bequeath”, “baptise”, and so on. According to Austin, such expressions are not used just to ‘say’ something, but also to ‘do’ something concrete. In terms of the distinction between factual and evaluative propositions: in performatives, the verb is generally conjugated in the present indicative and in the first person singular. They frequently have a solemn role within the structures of ritual, though they have no intrinsic, directive or evaluative function, nor deontic predicate (Sbisà, 1978). To sum up, it is possible to say that:

- a) As far as the promise game is concerned, it includes the whole of rights discourse, because the “should be” is projected into a future concerning the reciprocal expectations of a social community.
- b) As far as the distinction between phrastic and neustic is concerned, the law is based on propositions composed of statements of prescriptive type.
- c) As far as performatives are concerned, they are able to explain what, at times, is the great illusion of the law, which believes itself able to do things with words, and does

not always take care of the effectiveness of rules, nor their actual application. Very often, in fact, the law remains on paper, and rules are simply manifesto-laws, analogous to Manzoni's "grida"¹.

2. Non-cognitive ethics and law

The above discussion can explain how it is possible to study, from a scientific (descriptive-explicative) point of view, entire realms of ethical, juridical and political discourse. Each of these, in their own specific way, uses propositions that are prescriptive and often also evaluative, being concerned with statements in language that resolve themselves in a series of deontic propositions of various kind.

Hence, it also becomes possible to analyse, from a descriptive-explicative perspective, a phenomenology that appears to be markedly evaluative and prescriptive. Nothing, in fact, prevents fields such as law, ethics and politics from being analysed from an a-valutative and non-cognitive perspective² which avoids value judgements, and hence avoids potential ideological traps that are hidden in the act of analysing apparently descriptive discourses by means of what are, instead, intrinsically evaluative choices (Searle, 1969). Often in the past, to explain the law it has been necessary to have recourse to theology or human nature (natural law), but from a more correct perspective the law brings to mind codes, legal documents, judges' sentences and lawyers' phrases; in short words, written words. The law is, then, pre-eminently, if not substantially, language, but this truth is not immediately perceptible; the fact that the law is language has been a necessary discovery.

We can, finally, also try to apply linguistic analysis to juridical realities of institutional-organizational type. At first, the concept of "institution", or "organization", because of its treatment in the relative literature, brings to mind a series of different references that can

1 These were the laws issued by the Spanish authorities in Manzoni's masterpiece "I Promessi Sposi", which were numerous and not widely observed because not enforced.

2 That is, one which makes no claim to distinguish good and right from their opposites, according to the principles of non-cognitive ethics.

only with difficulty produce a rigorous definition of the concept. There would be nothing easier than to arrive at an unclear definition, because of the opacity of the concept itself. If a conclusion from the point of view of definition is not reached, then neither the concept of organisation, nor that of institution can be understood. In this way, the meaning of organisation becomes confused with something different (for example building, structured group, headquarters), or tautological definitions can be proposed (for instance «the organisation is the manner in which something is organised»). Here we are trying to identify the organisation from an analytical point of view, as a fundamental attribute of the institution in a sort of juridical translation of this last, as a collection of behavioural norms and secondary rules (of organisation) and hence, through prescriptive propositions that delineate the overall design with a strong emphasis on the theoretically analysed organisation. In short, in line with our overall approach, we propose to study and analyse the organisation as law and, explaining the law as a collection of prescriptive statements, we propose the study of the organisation as language, and specifically as an examination of that kind of prescriptive language that is also essential in the morphology of communication in every kind of complex institution.

In this way it is possible to purify the concept of organisation from the ideological superstructures which are “often advanced by the specialised literature”, through the operation of a kind of linguistic cleansing of the very concept, by unblocking certain conceptual pathways which are often based on extremely obscure use of certain elements of language.

Here it can be added that the use of the term “organisation” itself, which refers to classical theory from Taylor to Weber, is often characterised in highly emotive, even evaluative, terms, and hence certain logical and linguistic errors have become stratified in the empirical social sciences, and do not allow us to see how a complex organisation can be analysed in terms of its legal structures. From this perspective, it is precisely the juridical-normative structure, viewed as prescriptive, which disappears from the various analyses, which have never been able to provide, in the theory of organisations, a precise definition of this term. Thus, it is very often the case that certain characteristics have been arbitrarily

attributed to the concept of organisation without specifying the meaning which must be attributed to it, following only common sense and ordinary language. In effect, however, even if a rigorous definition is lacking on the part of theory, a meaning can be traced of the concept of organisation as form, structure, disposition of part in the whole, and hence as an order.

The organisation, therefore, is a specific way in which a series of social actors structure themselves by means of rules with which they attempt to fix standard ways of behaving, which govern their collective work, whose aim is to achieve one or more goals based on their common values. In short, then, the “organisation” can be translated into a collection of organisational rules which contain specific rules of behaviour. We are, therefore, faced in this case too, by a set of prescriptive propositions which we can study precisely through their reflections in a certain kind of language, that of prescriptions. The analysis of the organisation thus becomes identified with the analysis of its own prescriptive language.

3. Analytical Theory and analysis of deviance

Phenomena that emerge in the analysis of deviant behaviour and mechanisms of social control may also be explored using linguistic tools. Thus, if deviant behaviour – which neither respects the law, nor conforms with the pre-requisite rules of the social pact – is not susceptible to prescriptive linguistic analysis, we see that mechanisms of social control may be found in normal processes of interaction, in a social system that is institutionally integrated (as suggested by Talcott Parsons). It is important to note that the general phenomena of such mechanisms operate on motivational aspects of behaviour that is conditioned by norms; hence, they operate on the norms themselves and, in the final analysis, on the law, which is nothing if not a series of prescriptive linguistic propositions. It is therefore clear that the form of behaviour under examination, i.e. deviant behaviour, may be analysed with linguistic tools.

4. Philosophy of language and institutional analysis

The play of utterances, of “promises”, represents new analytical modalities for exploring, through the use of the tools of the philosophy of language (particularly didactic language), particular moments in which the law deals with deviant and criminal behavior by means of threats and punishments. These represent, therefore, new and useful methodologies for an analytical approach to institutional problems, that may be able to illuminate shadowy areas of institutional communication, which often seem to characterize the specific areas in which authoritarian legal decisions are reached (Selznick, 1969). This new approach is an attempt to provide the alternative of linguistic analysis to the traditional pathways followed by North-American functionalism.

Many north-American sociologists (from Selznick to Evan) have, in their studies, favoured an approach that translates complex organisations into norms of behaviour and norms of organisation. Hence, they may also be translated into prescriptive language, suitable for exploring the social processes that operate in various spheres linked to the complex institutions, where the norm itself occupies a dominant position, and is therefore susceptible to analysis using the tools of analytical linguistic theory.

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