Ascriptive speech act and legal language

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Abstract. In this article the author explicates Herbert Hart's theory of an ascriptive language as it has been developed in his influential early paper "The Ascription of Responsibility and Rights". In the section 'Discussion' the author argues that the theory of ascriptive legal utterances, which is grounded on Austin's and Searle's theory of a speech act, provides the methodological basis for his analytical approach to philosophical and legal issues. In the section 'Results' the author justifies that *an ascriptive* is a specific speech (illocutionary) act. In the section 'Conclusion' the matter concerns the original linguistic formula of an ascriptive that accurately reflects its nature. This article elaborates on the interpretation of ascriptive speech acts in legal language by evaluating the influence of philosophy of language on the formation of modern legal philosophy, along with evaluating the contribution of conceptual development of legal philosophy in the speech acts theory.

Introduction

Herbert Hart is best known for his fundamental work "The Concept of Law" [1]*,* which led to the establishment of a new trend in legal theory – analytic legal philosophy. This specific movement, originally a part of analytic philosophy and then an independent branch of scientific knowledge, is characterized by an extensive use of innovations and methodologies in linguistic analysis of the language applied to the study of issues in philosophy of law, in normative and conceptual contexts. Explicating legal language using the tools gained through philosophical study of ordinary language has become one of the primary objectives of analytic legal philosophy of the kind done by Hart. Therefore, a philosophical explication of the content of legal language, taking into account its features that distinguish it from an ordinary language, is the main project of modern analytical legal philosophy [2].

In this essay, we explicate Herbert Hart's theory of an ascriptive language as it was developed in his influential early paper "The Ascription of Responsibility and Rights" [3]. In the section 'Discussion', it is necessary to argue that the theory of ascriptive legal utterances, which is grounded on Austin's and Searle's theory of a speech act, provides the methodological basis for his analytical approach to philosophical and legal issues. In the section 'Results', it is supposed that *an*

ascriptive is a specific illocutionary act. In the section 'Conclusion', the linguistic formula of an ascriptive that accurately reflects its nature will be articulated.

Discussion

In his 1955 William James lecture series, which was later published under the title "How to Do Things with Words", John L. Austin argued against a positivist philosophical claim that utterances always 'describe' or 'constate' something and are thus always true or false. After mentioning several examples of sentences that are not used in this context, and are not truth-evaluable, he introduces 'performative' sentences as another instance.

According to Austin, a performative utterance is a sentence that neither describes nor affirms a fact, but contains a felicity condition that must be fulfilled when the performance takes place. According to Austin, a performative utterance is a sentence that neither describes nor affirms a fact, but contains a felicity condition that must be fulfilled when the performance takes place. There are five characteristics of a performative sentence:
1) The subject of performative sentence must be in the form of a first person pronoun.
2) The verb must be in the same category with performative verbs such as 'tell,' 'say,' 'demand,' 'advise,' 'ask,' etc.

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3) The object of a performative sentence is always a second person pronoun.
4) It must be in the form of affirmative not negative.
5) It must be in the present tense.

In the study of the ordinary language, Austin concluded that not all true or false statements are descriptions. Even in a grammatical form, these statements are not meant for reporting direct information about facts (e.g., in the case of ethical statements). As a result "many philosophical perplexities have arisen through a mistake of taking straightforward statements of fact as utterances that are either (in interesting non-grammatical ways) nonsensical or intended as something quite different" [4].

To resolve these perplexities, Austin distinguishes between statements that say and statements that do. He calls the former 'constatives' (declarative or descriptive) and the latter 'performatives.' Unlike the constative sentences, the performative sentences are neither true nor false. A performative is both an action and an utterance. The fundamental distinction between performative sentences and constative sentences is grounded in their different verification conditions. The performatives can be verified only in terms of correct or incorrect. A constative sentence, instead, is a sentence that affirms facts, reports events, and describes situations and conditions. It must contain truth-values. Let us consider, for example, the sentence 'It is raining.' It is true if it is a fact in the actual world that it is raining right now. If in fact it is not raining now, it is simply possible to say that the sentence is false. However, when we take a deeper look at the constative, we will find that it also fulfills the five criteria for a performative sentence, since the above-mentioned sentence is constative only in terms of its surface structure. In a deep structure, it will become: 'I tell you that it is raining.' In this form, the constative sentence also satisfies all the criteria to be a performative sentence. Therefore, in short, we can say, somewhat roughly but accurately, that the set of constative sentences is also included in the set of performative sentences. The principle of maximum ease of articulation is reflected in this pattern. The metrical phrase 'I tell you…' is unnecessary and therefore is omitted. A sentence 'I tell you that it is raining right now', modified and disposed of the phrase 'I tell you', appears only in the surface structure of 'it is raining'.

Austin does not provide a complex definition of an illocutionary act, and just claims that to perform a locutionary act is to perform an illocutionary act, that is, performing an act of speaking in opposition to the actions of speaking. Therefore, to determine whether a locution performs an illocutionary act, one must ascertain whether the locution asks, answers, warns, informs, etc. Revealing the grammatical form of explicit performative verbs is the means of selecting those verbs that explicate the illocutionary force of an utterance or show what illocutionary acts are to be done. Austin considers two lists as complete: a list of "explicit performative verbs" and especially a list of illocutionary forces of an utterance. The old distinction, however, between primary and explicit performatives 'will survive the sea-change' from the performative/constative

distinction to the theory of speech acts quite successfully. But what will not survive the transition, unless perhaps as a marginal limiting case, and hardly surprisingly because it gave trouble from the start, is pure performatives. This was essentially based on a belief that the dichotomy of performatives and constatives must be abandoned in favor of more general families of related and overlapping speech acts, which only recently have been attempted to be classified. Using then the simple test of the first person singular, present indicative active form, Austin gets a list of verbs. He distinguishes five more general classes and calls them classes of utterance, according to their illocutionary force, with the following names: *verdictives, exercitives, commissives, behabitives, and expositives* [4]. But Austin finds that even then some fresh classification altogether is needed, and he is not putting any of this forward as minimally definitive.

Searle's differentiation of the illocutionary force of a statement and the propositional content used by him as the basis for classification of speech acts allows him to reveal the weaknesses of Austin's taxonomy and to offer an alternative taxonomy [5]. What are the criteria by which we can tell, of three actual utterances, that the first is a report, the second - a prediction, and the third - a promise? Searle answers that in order to develop higher-order genera, we must first know how the species of promising, predicting, reporting, etc. differ one from another. He attempts to answer that question by discovering that there are several quite different principles of distinction, that is, there are different kinds of differences that enable us to say that the force of this utterance is different from the force of that utterance. Searle notices that "the most important weakness of the taxonomy is simply this: there is no clear or consistent principle or set of principles on the basis of which the taxonomy is constructed" [5]. Another source of confusion relates to the tendency to mix illocutionary verbs with the types of illocutionary acts [5]. Searle points out that in the case of two nonsynonymous verbs, there is no need to describe them as two different illocutionary acts. His diagnosis is that: "[T]here are (at least) six related difficulties with Austin's taxonomy; it is in an ascending order of importance: there is a persistent confusion between verbs and acts, not all the verbs are illocutionary verbs, there is too much overlap of the categories, too much heterogeneity within the categories, many of the verbs listed in the categories do not satisfy the definition given to the category and, most important, there is no consistent principle of classification" [5]

Searle wants to maintain a clear distinction between illocutionary verbs and illocutionary acts, because illocutions are a part of the language as opposed to particular languages. But illocutionary verbs are always a part of a particular language: French, German, English, etc. The clear differentiation of illocutionary verbs and illocutionary acts serves as the basis of Searle's research strategy. Searle offers three 'significant' dimensions as the basis for the classification of speech acts: the illocutionary purpose, the direction of fit, and the condition of sincerity. This provides the opportunity to

prove the existence of the following 'basic' illocutionary acts instead of illocutionary verbs: *representatives; directives; commissives; expressives; and declarations*.

Further analysis of translating such semantic methodology into legal language is now needed to make it possible to establish the relevance and validity of some utterances falling under the approach adopted, and to make clear the special status of the ascriptives in Hart's legal language [6]. Strawson [7] and Grice [8] present the idea that the 'overt intention' of the speaker in unconventional acts is to elicit some reaction from the listener, or to induce the performance of any action by the listener. The sentence 'All rise, Court is now in session!' would be an unconventional act. Although, in fact, all acts are conventional, as performed in accordance with constitutive rules in Searle's opinion, the utterance of the sentence 'All rise, Court is now in session!' does not require the listener to know the illocutionary force and propositional content of the utterance (this is due to what is peculiar to legal discourse). Though the intended effect of the speaker's will be realized because an unwillingness to obey the speaker can cause some negative legal consequences, for example, removal from the courtroom. In general, many legal procedures, which are often accompanied by such sentences, do not require the recognition of the intention or illocutionary force of the utterance, because the legal language involves the principle *ignorantia juris non excusat*. Therefore, if the effect is realized (the explicit performative verb indicates the realization of the intentions, indicates the performing of the act), the perlocutionary effect is reached naturally. The sentence 'All rise, Court is now in session!' is a performative utterance with the perlocutionary effect that casts doubt on Austin's idea that for many perlocutionary acts there is no corresponding performative formula in the first person singular. The alternative answer is 'I command you to rise, Court is now in session!' However in the one case (the conventional case), the explicit performative form may be the name of the very act that is performed if and only if the speaker's overt intention is effective; but, in the other case (the nonconventional case) it cannot be the name of this act. Consequently, the utterance 'All rise, Court is now in session!' is a conventional performative act with the perlocutionary effect. This thesis well confirms Austin's idea that one should reject the proposed performative/constative distinction, but also means that one should refute Austin's own thesis that the explicit performative verb cannot be detected in a perlocutionary act.

We have at least two ambiguities – a switch of the perlocutionary effect (or of the addressee), and two ways of characterizing the distinction perlocution/illocution. How is it possible to consider the removal from the courtroom as a perlocutionary effect of the declaration (1) 'All rise, Court is now in session!'? The perlocutionary effect of this declaration will be that all the people in the court rise, and not that the ones who decide not to obey are removed! And of course they should understand both the meaning content and the force of the utterance in order to comply with the pattern of behavior that is prescribed. If they do not understand,

the communication does not take place (there is no uptake). Moreover, the removal of the people from the court is more likely to be the result (or the perlocutionary effect) of a second order that the judge might issue, which will be addressed to the police officer – something like (2) 'Officer, get this sitting man out of the court!' If the officer forces the people to go out solely on the base of utterance (1), without (2), then (1) was not really a speech act addressed directly to the people of the court, but to the officer. This implies that the meaning content will be considered to be different from the literal content [9].

The application of analysis of speech act theory to the utterance of some legal sentences shows that the uniqueness of legal discourse – that is, such *prima facie* descriptive sentences as 'All rise, Court is now in session!' – cannot be studied without exploiting certain analytical tools, and without the need to assume a special meaning of the legal concepts and their ontological and epistemological characteristics. The most successful strategy for explaining these characteristics about the legal concepts is Hart's ascriptive approach [10], presented in the article "The Ascription of Responsibility and Rights" [3].

Speech act analysis was Hart's starting point for the elaboration of his legal antireductionism (he consistently held that legal language cannot be reduced to nonlegal language and that legal terms are not descriptive) and it is commonly noted that since this early approach his jurisprudence "moves gradually away from its emphasis on speech acts" [11]. Hart's goal is to further understand performative utterances entailed by some ascriptive legal concepts: "My main purpose… is to suggest that the philosophical analysis of the concept of a human action has been inadequate and confusing, at least in part, because sentences of the form 'He did it' have been traditionally regarded as primarily descriptive. Whereas their principal function is what many venture to call an ascriptive, being quite literally to ascribe responsibility for actions, much as the principal function of sentences of the form 'This is his' is to ascribe rights in property" [3]. From Hart's view two important methodological conclusions can be supported. First, the ascription of responsibility or rights is performed by saying something; action verbs are important especially in the descriptive use of present and future tenses. Second, the ascriptive use occurs mainly in the past tense, where the verb is often both timeless and genuinely referring to the past as something distinguished from the present.

Results

Searle offers three significant dimensions as the basis of the classification of speech acts: illocutionary purpose, direction of fit between words and the world, and sincerity condition. And these dimensions according to an ascriptive justify introducing of the illocutionary act, a new speech act – namely, the ascriptive speech act – to the taxonomy.

It would appear that the illocutionary purpose of an ascriptive is the obligation to do a specific action in the

future or to follow a certain line of conduct. In this sense, ascriptives are similar to both Searle's directives and commissives, but only in terms of the illocutionary point. Like directives, ascriptives are attempts by the speaker to get the listener to do something. They may be very modest attempts, as when I invite you to do it or suggest that you do it, or they may be very fierce attempts as when I insist that you do it. Like commissives, ascriptives are those illocutionary acts which point is to commit the speaker to some future course of action. Saying 'Guilty', the judge determines not only the *new* legal position of the listener, but indicates that he or she must be responsible for an offense or misdeed.

Since the illocutionary force determines the way how the propositional content of an illocution should relate to the world, it is possible to single out two areas of adaptation: 'word-to-world fit' and 'world-to-word fit'. The example of saying 'Guilty', discussed above, proves that the ascriptives adapt 'the world to the words' as in Searle's directives or commissives. Indeed, the use of such statements as '*X* is guilty of *Y* murder', '*X* and *Y* have the contract', '*X* is obliged to pay taxes' and so on shows that the world adapts to words: after such expressions are made, *X* and *Y* have a legal status that did not exist before. Like Searle's declarations, the performance of the an ascriptive is established by the fact of successful performing of the act.

The interpretation of the third dimension of an ascriptive – the conditions of sincerity – is of special interest. Revealing the content of this parameter of a speech act, Searle notes that in doing any illocutionary act with some propositional content, the speaker expresses his or her certain attitude towards this propositional content. Is it possible to determine ascriptives through the condition of sincerity? How applicable is this condition to ascriptives? As for declarations (or commissives), there is no characteristic of sincerity in terms of ascriptives, because it is impossible to say that the judge, who had pronounced someone guilty, or a referee, who had sent a player off, were insincere or simply lied. It is impossible to say: 'I convict you for a crime but I have lied'. Extralinguistic conventions, which constitute the basis of legal language in addition to the rules of an ordinary language, determine the nature and the success of an ascriptive.

The analysis of taxonomy of illocutionary acts, ascriptives have much in common with Searle's declarations. As well as declarations, ascriptives presuppose the existence of extralinguistic conventions necessary for success of this type of the speech act that postulate the special social statuses of speaker and listener. But despite this *apparent* similarity of ascriptives and declarations, it should be taken into account that the interpretation of ascriptives is possible only in the context of legal language specifying their linguistic content. In this sense, one might get the idea (misinterpretation) that in some cases ascriptives can take the form of declarations. For example, the sentence 'I declare the XXX Olympic Games open in London' uttered by Queen Elizabeth II should be considered as an ascriptive, because there is a speaker and listeners.

Besides, there are extralinguistic conventions pointing to the success of the speech act (the games *officially* started at that point) and to the social status of the speaker (a particular status of the subject). Nevertheless, this speech act is not an ascriptive but a remarkable example of Searle's declaration because it is done in the context of nonlegal language. And the sentence 'I now pronounce you husband and wife', uttered by the priest during a church wedding, when this wedding is not recognized by the legal system as equal in legal consequences to the civil wedding, will be considered a declaration, but if it is uttered by an official, it is an ascriptive.

Conclusion

Searle's symbolic representation allows presenting the linguistic formula of an ascriptive that accurately reflects its nature:

$$As \uparrow \emptyset \ (L \text{ has to do } Ac).$$

Where **As** is an ascriptive illocutionary purpose, $\uparrow$ is the direction of a world-to-words fit, **Ø** is the absence of conditions of sincerity, while the propositional content indicates that the listener has to do an action (in the broad sense), to fulfill an obligation, to suffer restrictions or encumbrances, to bear responsibility, etc. Here **L** is the listener and **Ac** is the action that has to be done by the listener. For example, the sentence 'I declare war' uttered by the president is the good example of an ascriptive, because there is a speaker with an official position, a particular group of listeners (the population of the country), an ascriptive illocutionary purpose as well as the propositional content of the illocution that indicates the obligation to do or to follow a certain line of conduct; the direction of fit as world-to-words (something is changing); and the need for listeners to perform some actions or follow a certain line of conduct.

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