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Chair of Legal Theory

Summary of the doctoral dissertation entitled: "Implicatures within the legal language" – prepared under the guidance of prof. dr hab. Tomasz Gizbert-Studnicki

Subject and principal notions:

In 1975 Paul Grice, a British philosopher, published his seminal work 'Logic and Conversation'. This work was a milestone in a strive to delimit the fields of interest of semantics and pragmatics respectively. Grice noticed that people usually convey much more than just the amalgam of the meanings of the words they pronounce. He labeled this surplus of meaning a conversational implicature. For instance, consider the following conversation:
A: Are you hungry?
B: I have just had breakfast.
What B has said is that he just had breakfast. However, B has conveyed something additional. Something that makes the two seemingly unconnected utterances very closely related. What B has implicated is simply that he is not hungry. According to Grice, hearers calculate 'what is implicated' with the use of some special rules called maxims of conversation and the conversational principle.

Research objective:

The purpose of the present study is to propose a descriptive theory of legal discourse in a modified, Gricean paradigm. This study adopts a chronological order. First, it considers implicatures as defined by Paul Grice. Next, it considers the neo-Gricean theories of implicatures and other pragmatic effects. Through "other pragmatic effects" I mean pragmatic enrichments, which are pragmatic developments of the notion of 'what is said'.
Through 'legal discourse', one can mean several types of discourse, for instance:

1. The exchange within a legislative body
2. The exchange between the legislature and courts
3. The exchange between the court and the parties
4. The exchange between the parties
5. Contracts and other legal declarations of intent

This study concentrates on the second type of legal discourse, namely the exchange between legislatures and courts. It builds a descriptive theory, a theory supposed to explain the mechanisms behind courts decisions, rather than a normative theory that states how those mechanisms should work.

Two elements are preserved from the Gricean ideas in sketching the theory. First, treating linguistic exchanges as communication. Second, the idea that there are strong pragmatic effects in language that take the form of conversational implicatures. However, important modifications to the Gricean way of thinking are introduced. First, the sketched theory adopts different notions of 'what is said' and different content of maxims of conversation. Second, the Gricean theory of meaning is rejected.

The sketched theory relies on a modified Gricean idea, updated with all the changes brought to the classical Gricean theory by neo-Gricean theorists. The theory will add a novel second-order, strategic framework to the picture. Let me now provide a roadmap of the construction of the above-mentioned descriptive theory of legal discourse.

This study consists of five chapters. In the first chapter, I give an outline of the classical Gricean theory and suggest that it is not directly applicable to the legal realm and needs a substantial modification. I also sketch a novel theory, including the strategic framework. In the second chapter, I question Grice's ideas on the number of maxims of conversations and on their content. In the third chapter, I question Grice's views on the notion of 'what is said'. Next, in the fourth chapter I depict that the Gricean notion of meaning is not applicable to the legal realm. The last chapter contains examples of pragmatic processes from the Polish legal system. It also contains an explanation of these processes through the lens of the theory sketched in this study.

Thesis structure:

Let me now provide a slightly more detailed roadmap. In the first chapter, I give an outline of the classical Gricean theory of implicatures. I sketch the points, in which it is not applicable to the legal realm. Next, I give an account of theories that have tried to modify the Gricean picture to fit it to the legal realm. The most important of them is Andrei Marmor's account of 'strategic speech'. I try to depict that Marmor's account has some problematic points that require modification so as to form a fully-fledged, descriptive theory of the legal discourse. Finally, I propose a second-order, strategic, descriptive framework that explains the linguistic exchanges in the realm of law.

In the second chapter, I deal with certain influential neo-Gricean theories. These are theories that discuss Paul Grice's idea of the maxims of conversation. I depict that the four Gricean maxims can be reduced to a lower number of rules of this type – namely Q and R principles, as proposed by Horn. I also argue that some theories that reduce the number of maxims such as Relevance Theory cannot be applied to the legal realm. Finally, I depict that the theory I sketched in the first chapter will be applicable regardless of the content or number of maxims we postulate at the 'first' level.

In the third chapter, I question the Gricean notion of 'what is said'. I give an outline of arguments backing the thesis that there are more pragmatic elements of the 'what is said' notion than just disambiguation and reference assignment. These additional elements are called 'pragmatic enrichments'. I argue that such pragmatic enrichments are subject to the same strategic framework as strong pragmatic effects such as conversational implicatures.

In the fourth chapter, I commence with an outline of the theory of meaning provided by Paul Grice. This is an inherently internalist theory, which means that meaning is determined by the speaker's intention. I show that the legal language needs an externalist theory of meaning. Thus, I argue that while the internalist may have a point in explaining what is going on in every-day linguistic exchanges, the externalist is in a much better position to give a coherent account of the legal language. In other words, I postulate an internalist theory of every-day language and an externalist theory of the legal parlance. I also argue that the Gricean theory of implicatures can be separated from his theory of meaning.

In those four chapters, I discuss some famous cases that appear often in the literature. Most of these cases are from common law systems. In order to demonstrate that the theory proposed by me is generally applicable, I have added a fifth chapter. In this last chapter, I provide examples of pragmatic effects in the law in the Polish legal system (a continental system). I pick examples from civil and criminal law. I hope that this depicts that the strategic framework is a universal mechanism, not restricted to any particular type of legal systems.

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