

1. Survey

In Chapter II, cf. Chapter I, I gave an account of fundamental proposition types. In the present Chapter IV, I shall be looking at some forms of language and argumentation that often lead to lack of clarity about *which* of these proposition types one is confronted with.

I use the compound term “*form of language and argumentation*” because the forms in question consist partly in particular words and expressions (“*language*”) and partly in connections in which the individual words may vary (“*argumentation*”). In some contexts I shall for the sake of brevity use only the term “*mode of expression*”. – Variation between “*form*”, “*mode*”, “*pattern*”, or the like, is mostly for stylistic reasons.

The main emphasis in what follows is on forms of language and argumentation that create lack of clarity in the *modality dimension*: between descriptive, logical and normative propositions. But also forms of language and argumentation that create lack of clarity about the relationship between *definitions and characterisations* will be touched upon (see for example sections 3.2 (1) and 3.3.3, below).

A recurring theme will be the *flight from the normative proposition*. In particular the emphasis will be on the tendency to avoid unambiguously evaluative and decisional propositions in the case of evaluations and choices, and instead to use either modes of expression that objectively interpreted are polysemous between the descriptive, logical and normative (section 2 below), or modes of expression that objectively interpreted are one-sidedly descriptive or logical (section 3 below). In both cases there is often the psychological consequence that the evaluations and choices are veiled, so that the supposedly greater intersubjective certainty in criteria and judgement that many connect with descriptive and logical propositions has the field to itself; the proposition gains an imagined authority.

On the use of the word “*normative*”, see section 2.1 (2) below, concluding remarks.

By the formulation “*logical proposition*” (“*mode of expression*”, “*argumentation*”, or the like) I mean in what follows partly analytically true propositions (section II D above); partly proposition patterns built with logical arguments, for example arguments from self-contradiction, circularity or infinite regress (section III 2.2.1 above); and partly language and argumentation which in any other ways or more indeterminately claims particularly strong necessity (see for example section 3.2 (1) below).

2. Use of polysemous modes of expression in the case of evaluations and choices

2.1. The concept. The topic: A factual tendency in the case of evaluations and choices: use of modes of expression that are polysemous between the descriptive, logical and normative

(1) By “*polysemous* use of language” I mean linguistic forms that are commonly used in several meanings, and where there is, at any rate in some contexts, a certain practical interest in keeping these meanings apart (see in more detail in the following item (2) and in section 3.1 (2) below, on some aspects of this concept and the terminology I use).

The *main emphasis* in what follows is on polysemy in the *modality dimension*, and on the tendency to use this polysemy *when one evaluates and chooses*; see section 1 above.

(2) Polysemy is something different from *fusion* of descriptive and normative propositions (section II F above).

Fusion is a feature of the *level of meaning*; it is propositions that may have fused descriptive and normative modality. Polysemy is a feature of *linguistic entities*; it is words, formulations, sentences, etc., that may be polysemous.

Polysemy and lack of clarity are *two sides of the same coin*. – Fusion, however, does *not in itself give rise to any lack of clarity* about what type of proposition one is confronted with: The fact that there is fusion means that one is confronted with a proposition type *sui generis*, that is to say, propositions that are distinct both from the purely descriptive ones and from the purely normative ones; it does not mean that the proposition type is unclear. Lack of clarity is only the result if one is not conscious of the distinctive nature of fusions and wants to force them into the dichotomy ‘descriptive propositions–normative propositions’ (section II F 3.2.4 above).

Fusion and polysemy can make themselves felt in *one and the same instance of language use*: Also in the case of lawyers’ propositions about what the law is, that is to say, in the paradigm case of fused descriptive and normative propositions (section II F 2 above), there is a tendency towards the use of modes of expression that are polysemous between the descriptive, logical and normative. – Once linguistic formulations are polysemous in the modality dimension, they

may therefore possibly be not only three-ways polysemous: between the descriptive, logical and (purely) normative, but also *four-ways*: between the descriptive, logical, (purely) normative, and fused. – The reason for my use of the weak formulation “they *may ... possibly* be” is that actually occurring language among lawyers exhibits few means of expression for the phenomenon of fusion, and as one aspect of this scarcity, exhibits few means of expression that are in fact used in several meanings, of which one meaning connects with fusion (section II F 4 above). Consequently (to the same extent) we lack, as I use the word “polysemous”, the factual basis for saying that lawyers’ modes of expression are “polysemous” (“four-ways polysemous”) between the descriptive, logical, (purely) normative, and fused (section 3.1 (2) below).

In the light of this, and taken together with the fact that in relation to the topic of the present Chapter IV it would be disproportionately complicated to specify the meaning of every single occurrence of “normative” in relation to the phenomenon of fusion, I use the word “*normative*” in two senses in the present Chapter IV and let the particular context show which meaning is the relevant one: the meaning ‘purely normative’, or the meaning ‘purely normative or fused descriptive and normative’. – When I speak of modes of expression that are polysemous between the descriptive, logical and normative, then it is basically the narrow sense of “normative” (‘purely normative’) that is intended, cf. the preceding paragraph. When I speak of the level of meaning alone (the modality dimension) and lawyers’ propositions *de lege lata* are an instantiation (explicitly adduced by me or possible to adduce), then it is basically the broad sense of “normative” (‘purely normative propositions or fused descriptive and normative propositions’) that is intended. However, these are simply points of departure. With a view to presenting in their interconnections those forms of language and argumentation, in those connections with the level of meaning, which in the perspective in the present Chapter IV are of the same kind, other linguistic usage may also be expedient. I refer to my individual discussions and the guidance that follows from them, partly from explicit statements and partly from the specific framework of the individual discussion.

<http://www.springer.com/978-1-4020-1490-1>

Analysis of Dis/agreement - with particular reference to
Law and Legal Theory

Eng, S.

2003, XXI, 610 p., Hardcover

ISBN: 978-1-4020-1490-1