



Institutional vs. Personal in Legal Discourse

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Abstract

The article deals with the characteristics of legal discourse and the linguistic status of its subject based on the texts of various legal genres. It aims at discouraging firm views on legal discourse as a purely institutional type of communication. The article suggests the term of personalized legal discourse, analyzes the characteristics typical of this form of communication. The topicality of the research is determined by the need to rethink the traditional views on legal discourse taking into account the modern achievements of Linguistics and Discourse Theory.

Keywords: Discourse; Legal Discourse; Institutional Form of Communication; Personalized Discourse; Subject.

Introduction

The view on the legal discourse as a purely institutional form of communication is popular among the researchers and supported by many authors (V. Karasik, 2004; E. Sheigal, 2000; O. Rusakova, 2008 et al.). However, it seems to be a result of unjustified disregard of legal genres where institutionality as a prototypical feature interacts with personality due to the presence of personal manifestations of the subject of discourse.

The present article aims at proving that in legal settings there are not only institutional genres with impersonal or hidden subjects but personalized ones as well.

Our analysis is based on the provisions of anthropocentrism with its issue of the human in the language. Anthropocentrism proceeds from the assumption set up by the Russian linguist Yu. Stepanov (1975, pp. 49) according to which the language is created after the human's measure, and this measure is chased on the language structure.

According to R. Wodak (1997), institutional discourse rarely exists in its pure form. Discourse may mutate in related ones. The degree of personality may vary depending on the discourse type and communication situation. The issue of discourse purity is of undoubted interest for those researching legal communication. It is a key problem of the present paper as well where we will try to prove that in legal settings institutional and personal are in dialectical connection rather than in opposition.

The corpus

The corpus I have examined is made up of the decisions of the Supreme Court of the USA and dissenting to these decisions published on the official website of the Supreme court of the USA. The reason why I chose these particular genres is that they seem to possess opposite characteristics being on two opposite poles – institutional and personal, however they take place in one setting – in a court.

Results

Contrary to what many researchers categorize legal discourse as an a priori institutional one, some legal genres (complaint, dissenting opinion, last will and testament) show the characteristics of personalized discourse. It should be noted that we distinguish between personalized and personal genres: in legal settings, all discourses have an institutional format; they involve of a subject of subjects playing certain institutional roles; the theme of the communication is limited. The above-mentioned characteristics prevent the subject from entering the personality sphere.

The balance of institutional and personal in legal discourse is conditioned by several factors. They are as follows:

- subject's involvement in discourse expert community,
- culture where the discourse is being generated,
- traditions and conventions of the discourse expert community determining the degree of subject's institutionalization.

Institutional discourse is, as defined by M. Foucault (1987) put it, a form of power that circulates in the social field and can attach to strategies of domination as well as those of resistance. It is a form of control over the course of nature. Foucault (1971) says that in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality." The subject of discourse seems to be unable to be a master of his or her own discourse. Social institutions are the source of a certain world view which is imposed on the subject, according to P. Bourdieu (2001).

S. Sarangi & C. Roberts define institutional discourse as a discourse containing "features which are attributed to institutional practice, either manifestly or covertly, by professionals", and is "characterized by rational, legitimate accounting practices which are authoritatively backed up by a set of rules and regulations governing an institution" (Sarangi & Roberts, 1999, p. 15).

The determinacy of a discourse by social institutions is emphasized by Russian linguists and philosophers of language as well (E. Sheigal, 2000; V. Dauletova, 2004; V. Karasik, 2004; O. Rusakova, 2008 et al.). O. Rusakova, for example, says that institutional discourse is a power resource influencing the process of attributing and interpreting meanings, evaluating, positioning and identifying the subjects and their relations (2008, pp. 261). She emphasizes three main characteristics of institutional discourse: firm relations with a social institution, control over subject's world view, and communication observing status-role relations.

V. Karasik (2004) defines institutional discourse as a special stereotyped form of communication of subjects who may be unacquainted with each other but have to communicate observing the rules of their community. Institutional discourse is a kind of communication in masks. V. Karasik says emphasizes such characteristics of institutional discourse as statuses and roles of subjects, a special nature, clichés, a control over subjects' behaviors.

Institutional discourse imposes on the subjects not only role characteristics and clichéd language but also communication strategies as a set of speech actions aimed at achieving certain communication purposes. The communication strategies of an institutional discourse are determined by the nature of the activities of a discourse expert community.

Thus, institutional discourse generates an institutionally determined subject that may be legitimated in discourse only as a producer of discursive practices of the expert community. Losing his personality characteristics the person, as R. Wodak (2, pp. 73) put it, feels "comfort" as he is under protection of the institution which deprives him or her personal characteristics.

Now let us emphasize the characteristics typical of institutional legal discourse. They are as follows:

- 1) stable relations of the subject with the discourse expert community that controls the hierarchy of institutional roles;
- 2) depersonalization conditioned by feeling of being deprived of his/her own thoughts, actions, ego;
- 3) normative nature of communication, controlled by the discourse expert community;
- 4) clichéd nature of communication;
- 5) imposed strategies of communication;
- 6) stereotyped communicative situation (court hearing, making of a will, etc.);
- 7) limited number of genres.

Перечисленные признаки можно проследить в следующем высказывании:

(1) *The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points (Case of Chamber v. Russia).*

The statement above illustrates the stable relations of the subject with its discourse expert community. As a result of the dependence on the Other, the subject depersonalizes the statements, eliminates his/her personality, hiding his/her personal ego behind the institutional name – *the Court*. The subject produces a discourse following the rules and norms of the discourse expert community, using clichés – *considers it appropriate, based on the aforesaid, in accordance with the articles* The subject produces a discourse within the stereotyped communicative situation – a court hearing.

Personalized legal discourse is a result of the discursive freedom of the subject which allows him/her to create statements expressing the subjectively colored reality. Let us give an example:

(2) ***I disagree with the Court's conclusion that the matter is within the dispensation of parents alone*** (Justice Douglas' Dissenting opinion, *Wisconsin v. Yoder*). ***The Court's ruling threatens to undermine the integrity of elected institutions across the Nation*** (Justice Stevens' Dissenting).

(3) ***I doubt they need to worry, because this Court has never come close to holding that any matter of public employment affecting public spending. ... But I am sure the majority would agree that that difference does not make a difference*** (Justice Kagan's Dissenting, *Harris v. Quinn*).

The subjects of the statements above are the judges of the Supreme Court of the USA. In their utterances, they express their own points of view on the case under consideration being unable to agree with the majority opinion, with the opinion of their discourse expert community (*I disagree with the Court's conclusion; The Court's ruling threatens to undermine the integrity...*), personalizing the utterances by using the first-person singular pronouns.

Thus, personalized legal genres as hybrid forms of legal communication are characterized by the explicit evidence of the subject freed from the speech strategies and codes of the discourse expert community. Let us cite as an examples one more utterance from the dissenting opinion:

(4) ***Nobody can deny that the question of citizenship in a nation is of the most vital importance. It is a precious heritage, as well as an inestimable acquisition, and I cannot think that any safeguard surrounding it was intended to be thrown down by the amendment*** (Justice Fuller's Dissenting).

The example shows that the choice of linguistic means in a personalized discourse is based on the world view of the subject, his/her personal feelings, is considered to be individual, while in institutional genres it is prescribed by the discourse expert community. The subject of a personalized discourse uses evaluations (the most vital importance, a precious heritage, an inestimable acquisition) expressing his opinion to the issue under consideration – the citizenship. The subject speaks his mind using the personal pronoun *I* accompanied with the modal verb *cannot* and mental predicate *think*.

The inherent characteristics of the language of an institutional discourse (terms, clichés, a low contextuality, etc.) give place to individuality, expressiveness, metaphoricity of the language of a personalized discourse.

The strict opposition “personal vs. institutional” which can be presented as an antagonism “individual self-expression vs. institutional dependence” is eliminated. Instead, we see their interrelation and interdependence. The institutional subject being a tennis-ball of the Other gives place to the personality producing utterances freed from the conventions of the discourse expert community.

Thus, the category characteristic of the personalized discourse is considered to be the active role of the subject producing personal meanings. Hence, we can suggest the characteristics of the personalized discourse. They are as follows:

- 1) The dominance of the phenomenological ego;
- 2) The linguistic choice is based on the world view of the subject;
- 3) Possibility of evaluations in discourse.

However, institutional format of communication, institutional roles of the subject, and a limited number of subjects of communication do not allow the subject to leave for the personal discourses.

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