

Denotation in Normative Texts. From Legal Semiotics to Legal Ontology

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Abstract: Denotation in Normative Texts. From Legal Semiotics to Legal Ontology.

This essay aims to investigate denotation in normative texts by examining a subset of the noun phrases that appear in normative texts: the denoting phrases. In particular, I will examine the noun phrases that occur in the *Charter of fundamental rights of the European Union*. In the text of the *Charter*, I have identified five different types of denoting phrases, which I have distinguished according to the type of entity that the phrases denote: (i) phrases denoting *ontic entities*, (ii) phrases denoting *values*, (iii) phrases denoting *deontic entities*, (iv) phrases denoting *institutions*, (v) phrases denoting *institutional entities*.

Keywords: Denotation, Normative Texts, Legal Semiotics, Legal Ontology.

Summary: 1. Five types of denoting phrases in normative texts. – 2. First type: phrases denoting *ontic entities*. – 3. Second type: phrases denoting *values*. – 4. Third type: phrases denoting *deontic entities*. – 5. Fourth type: phrases denoting *institutions*. – 6. Fifth type: phrases denoting *institutional entities*. – 7. From *semiotics* to *ontology*: five types of *Bedeutungen* in normative texts.

1. Five types of denoting phrases in normative texts

This essay aims to investigate denotation in normative texts by examining a subset of the noun phrases that appear in normative texts: the denoting phrases¹. In particular, I will examine the noun phrases that occur in a particular normative text: the *Charter of fundamental rights of the European Union*, proclaimed in Nice on 7

¹ The basis of the present study is G. Frege's famous conceptual pair: *sense* [*Sinn*] and *denotation* [*Bedeutung*], proposed in the essay "Über Sinn und Bedeutung" in *Zeitschrift für Philosophie und philosophische Kritik*, 100 (1892), pp. 25-50. I would also point out that U. Scarpelli already spoke of "designative signs in the language of normative use" in his book *Contributo alla semantica del linguaggio normativo*, in *Memorie dell'Accademia delle Scienze di Torino*, series III, volume 5, Turin, 1959. Re-edition edited by Anna Pintore: Giuffrè, Milan, 1985, p. 119. In the *Common Core Ontologies (CCO)*, these terms are called "designative information content entities". See, for example, R. Rudnicki, "An Overview of the Common Core Ontologies", CUBRC Inc., Buffalo, 2019 https://www.nist.gov/system/files/documents/2021/10/14/nist-ai-rfi-cubrc_inc_004.pdf [Consultation date: 15/03/2022].

December 2000 and entered into force on 1 December 2009, along with the *Treaty of Lisbon*.

Which types of denoting phrases appear in the text of the *Charter of fundamental rights of the European Union*?² In the text of the *Charter*, I have identified at least five different types of denoting phrases, which I have distinguished according to the type of entity that the phrases denote. The five types are:

- (i) phrases denoting *ontic entities*,
- (ii) phrases denoting *values*,
- (iii) phrases denoting *deontic entities*,
- (iv) phrases denoting *institutions*,
- (v) phrases denoting *institutional entities*.

2. First type: phrases denoting *ontic entities*

The first of the Charter's five types of denoting phrases consists of noun phrases denoting *ontic entities*³. In the lexicon of Elizabeth Anscombe and John Searle, we could also speak of "brute entities"⁴.

Determining whether a phrase is a phrase denoting an *ontic entity*, a *brute entity*, is itself a difficult philosophical problem. Alongside phrases unambiguously denoting *ontic entities*, there are terms whose denotation of *ontic entities* is doubtful. A term uniquely denoting an ontic entity is the term 'age', which occurs in art. Consider article 21:1 of the Charter:

[1] Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other

² I made use of the research on the language of the *Charter* carried out by P. Di Lucia in his essay: "La carta dei diritti fondamentali. Linguaggio axiologico e linguaggio deontico", in M. Siclari (edited by), *Contributi allo studio della Carta dei diritti fondamentali dell'Unione europea*, Giappichelli, Torino, 2003, pp. 19-38. In this essay, I investigate denoting phrases in normative texts. For a survey, instead, of *deontic verbs* in normative texts, see A.G. Conte, "Valori non-normativi di verbi deontici in testi normativi", in M. Barbera, E. Corino, C. Onesti (edited by), *Corpora e linguistica in rete*, Guerra, Perugia, 2007, pp. 363-370.

³ The adjective 'ontic' (which appears in the expression 'ontic entities') has a transparent etymology: it derives from the second member of the Greek syntagm τὸ ὄν 'tò ón' "that which is", the "being", the second member being the neuter of the present participle of the verb εἶμι "to be".

⁴ See G.E.M. Anscombe, "On Brute Fact", in *Analysis*, 18 (1958), pp. 69-72; J.R. Searle, *The Construction of the Social Reality*, Allen Lane, London, 1995; J.R. Searle, *Making the Social World. The Structure of Human Civilization*, Oxford University Press, Oxford, 2010.

opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

It is doubtful, however, whether the phrase ‘human body’ (which appears in Art. 3 of the Charter) is properly a phrase denoting an *ontic entity*. It could, in fact, also have intrinsic axiological or normative connotations.

3. Second type: phrases denoting *values*

The second of the Charter’s five types of denoting phrases consists of noun phrases denoting *values*, noun phrases denoting an *ἀξία* (*axía*)⁵. The relevance of the phrases denoting *values* for the language of the Charter already appears from the *Preamble*, which reads:

[2] The Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity.

Four terms appear here:

- (i) ‘human dignity’,
- (ii) ‘freedom’,
- (iii) ‘equality’,
- (iv) ‘solidarity’

These terms do not, of course, denote ontic entities. But what do these four terms mean? The nature of the entities to which these four expressions refer is already made explicit in the text of the Charter itself: they are *values* (“indivisible, universal values”).

These four terms are, therefore, *terms denoting values*: the *value* of *human dignity*, the *value* of *freedom*, the *value* of *equality* and the *value* of *solidarity*, respectively.

4. Third type: phrases denoting *deontic entities*

The third of the five types of denoting phrases in the Charter consists of noun phrases designating *deontic entities*. Three examples of deontic entities are: the prohibition of access to laymen, mandatory prosecution, and the duty to pay tithes.

⁵ From the terms denoting values (e.g. ‘freedom’), terms which are non-evaluative, one can distinguish “evaluative terms” (e.g. ‘depraved’), or axionyms, in the terminology of M.-E. Conte, “Deissi testuale ed anaphora”, in *Sull’anafora. Atti del Seminario, Accademia della Crusca, 1978*, Accademia della Crusca, Florence, 1981, pp. 37-54. Second edition in: M.-E. Conte, *Condizioni di coerenza. Ricerche di linguistica testuale*, La Nuova Italia, Florence, 1988, pp. 13-28, p. 23.

Let us now examine Article 9 of the Charter:

[3] The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

What does the syntagm ‘the right to marry’ denote? The syntagm ‘the right to marry’ obviously denotes neither an *ontic entity* nor a *value*. What the syntagm ‘the right to marry’ denotes is a *deontic entity*. In the language of Amedeo Giovanni Conte, it could be called a *deontic status*⁶. *Deontic statuses* are ‘the [deontic] *análoga* of facts (i.e. obligations, prohibitions, ...)', they are *deontic states of affairs*⁷.

Three other examples of nouns denoting deontic entities, *deontic statuses*, which recur in the Charter are:

- (i) ‘the prohibition of the reproductive cloning of human beings’,
- (ii) ‘the obligation of the administration to give reasons for its decisions’,
- (iii) ‘the freedom to seek employment in any Member State’.

I identified four phrases denoting deontic entities: ‘the right to marry’, ‘the prohibition of the reproductive cloning of human beings’, ‘the obligation of the administration to give reasons for its decisions’, and ‘the freedom to seek employment in any Member State’.

These four phrases denoting deontic entities appear in the following four articles:

[3] Art. 9: The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

[4] Art. 3:2: In the fields of medicine and biology, the following must be respected in particular: [...] – the prohibition of the reproductive cloning of human beings.

⁶ The term ‘deontic’ is derived from the second member of the Greek syntagm τὸ δέον ‘*tò déon*’ (‘that which is necessary’, ‘that which is owed’).

⁷ A. G. Conte, ‘*Studio per una teoria della validità*’, in *Rivista internazionale di filosofia del diritto*, 47 (1970), pp. 331-354. Reissued in *Filosofia del linguaggio normativo I. Studies 1965-1981*, Giappichelli, Turin, 1989, pp. 55-74, p. 62. In this essay, Conte investigates which *entities can act as denotation of the term ‘norm’*. He distinguishes four types of entities that act as denotations of the term *norm*: (i) deontic sentences, (ii) deontic propositions, (iii) deontic utterances, (iv) deontic *status*. To this list, Conte then added a fifth denotation of the term ‘norm’: deontic noema. See A. G. Conte, ‘Norma: cinque referenti’, in L. Passerini Glazel (edited by), *Ricerche di Filosofia del diritto*, Giappichelli, Torino, 2007, pp. 27-35. On deontic noema, see L. Passerini Glazel, ‘Normative Experience: Deontic Noema and Deontic Noesis’, in *Phenomenology and Mind*, 13 (2017), pp. 96-107. https://doi.org/10.13128/Phe_Mi-22432.

[5] Art. 41: Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This right includes: [...] the obligation of the administration to give reasons for its decisions.

[6] Art. 15:2: Every citizen of the Union has the freedom to seek employment [...] in any Member State⁸.

5. Fourth type: phrases denoting *institutions*

The fourth of the five types of denoting phrases in the Charter consists of phrases denoting *institutions*⁹. The study of “*mots qui désignent les institutions*” dates back to *Essai sur la structure logique du code civil français*, published in 1926 by the French jurist and deontic logician *ante litteram* Jean Ray¹⁰.

Let us now analyse two statements of the Charter (which appear in Art. 5.1 and the *Preamble*).

[7] Art. 5:1: No one shall be held in slavery or servitude.

[8] *Preamble*: It places the individual at the heart of its activities, by establishing the citizenship of the Union.

What do the two syntagms ‘slavery’ and ‘the citizenship of the Union’ denote in the above two Charter statements? These two phrases are irreducible to the three previous types of denoting phrases that we have distinguished (denoting phrases of ontic entities, denoting phrases of values, denoting phrases of deontic entities).

The terms ‘slavery’ and ‘the citizenship of the Union’, in fact, denote neither an ontic entity, nor a value, nor a deontic entity. What they denote is a *quartum quid*, and precisely, an *institution*: respectively, the *institution* of *slavery* and the *institution* of the *citizenship of the Union*.

Let us now turn to the term ‘citizenship’¹¹. As the *Preamble* to the Charter states, the term ‘citizenship of the European Union’ is a denoting phrase of an

⁸ The term ‘freedom’ can denote both axiological entities and deontic entities. Unlike the term ‘freedom’ that appears in the *Preamble* of the Charter, here ‘freedom’ denotes a deontic state of affairs.

⁹ Incidentally: in the text of the Charter, the term ‘institution’ appears 8 times: art. 24: 2; 41: 1; 41: 3; 41: 4; 42: 43; 51: 1; 52: 5.

¹⁰ J. Ray, *Essai sur la structure logique du code civil français*, Félix Alcan, Paris, 1926, p. 233.

¹¹ Curiously, the term ‘citizenship’ appears only once in the text of the Charter. (By contrast, the syntagm ‘citizen of the Union’ appears 10 times in nine articles: 12:2; 15:2; 15:3; 39:1; 40; 42; 43; 44; 45:1; 46).

institution established by the European Union. This new reality (the *institution*: European citizenship) was created by means of a constitutive rule: namely, by Article 8 of Maastricht Treaty of 1992¹²:

[9] Citizenship of the Union is hereby established.

More precisely, it is athetic-constitutive rule, according to the typology of Conte's constitutive rules, i.e. a rule that is a sufficient condition of what it concerns.

6. Fifth type: phrases denoting *institutional entities*

The phrases denoting institutions are distinguished from the phrases denoting *institutional entities*: they are the fifth of the five types of denoting phrases in the Charter. An example of a phrase denoting *institutional entities* is the syntagm 'citizen of the Union'.

Consider, for example, Article 39:1 of the Charter:

[10] Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

What kind of denoting phrase is the noun phrase '*every citizen of the Union*'? What kind of entity does this phrase denote? Certainly, this phrase does not denote either a value or a deontic entity.

Moreover, this phrase does not seem to denote a mere ontic entity either. Unlike ontic entities, the *Bedeutung* of the syntagm 'every citizen of the Union' is made possible by rules, and more precisely by the constitutive rules of EU citizenship contained in the EC Treaty (Maastricht Treaty of 1992) and in the *Charter of Fundamental Rights of the European Union*¹³.

One of these constitutive rules is found in the Art. 8 of the Maastricht Treaty (a metathetic-constitutive rule in Conte's philosophical lexicon, i.e. a rule that sets a sufficient condition of Union citizenship)¹⁴:

¹² Cf. Article 20 of the *Treaty on the Functioning of the European Union*.

¹³ The revolutionary idea that there are entities made possible by rules goes back to the Polish-speaking legal philosopher Czesław Znamierowski, who in his work *Podstawowe pojęcia teorii prawa. I. Układ prawny i norma prawna* [*Fundamental concepts of legal theory. I. Legal system and legal norm*], Fiszer i Majewski, Poznań, 1924, introduced the concept of constructive norm [*norma konstrukcyjna*]. Forty years later, this idea would reappear in J.R. Searle's essay, "How to Derive 'Ought' from 'Is'", in *The Philosophical Review*, 73 (1964), pp. 43-58.

¹⁴ Cfr. Article 20 of the *Treaty on the Functioning of the European Union*.

[11] Every person holding the nationality of a Member State shall be a citizen of the Union¹⁵.

This constitutive rule shows the logical form of the institutional entity: citizen of the Union: “*X* [any person having the nationality of one of the Member States of the European Union] counts as *Y* [European citizen] in the legal order of the European Union”. I recall that, according to Searle, “*X counts as Y in the context C*” is the logical form that characterises institutional entities.

Finally, the phrase ‘every citizen of the Union’ does not even denote an institution. What it denotes are *institutional entities*: the citizens of the Union.

But what is an institutional entity? An institutional entity is an entity that, for its existence, presupposes the existence of an institution¹⁶. For example, a *five-euro banknote* is an *institutional entity* because the existence of this banknote presupposes the existence of the institution of *money*.

In the light of this characterisation of institutional entities, it is necessary to distinguish *institutions* (e.g. citizenship of the Union) from those entities that are not institutions but that are made possible by institutions, i.e. *institutional entities* (e.g. citizens of the Union). There is a categorical difference between institutions and institutional entities: for instance, institutions are by their nature *res incorporales*, whereas institutional entities are generally (though not necessarily) *res corporales*.

To shed some light on this, let us now look at two statements in the Charter:

[10] Art. 39:1: Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

[8] *Preamble*: It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

Let us compare the two nominal syntagms: ‘every citizen of the Union’ and ‘the citizenship of the Union’. These two syntagms, although apparently related, are (as can be deduced from what I have previously said) heterogeneous. The

¹⁵ This is an interesting case of thethetic ‘*shall*’. The English verb ‘*shall*’ here has not a *deontic meaning*, but a *thetic function*. Cf. A.G. Conte, P. Di Lucia, “Thetic Function of Deontic Terms”, in *European Journal of Law, Philosophy and Computer Science*, 5 (1995), pp. 220-221.

¹⁶ The idea that there are entities that presuppose, for their existence, an institution is due to Elizabeth Anscombe (*On Brute Facts*, cit.) and J.R. Searle (*How to Derive ‘Ought’ from ‘Is’*, cit.). To the investigation of institutional entities and institutional reality, Searle will also dedicate his two books *The Construction of Social Reality*, cit. and *Making the Social World*, cit. On the ontology of institutions and institutional entities, see also G. Lorini, *Dimensioni giuridiche dell’istituzionale*, CEDAM, Padua, 2000.

Bedeutungen of the two syntagms are heterogeneous. The syntagm ‘every citizen of the Union’ denotes all European citizens, *institutional and tangible entities*, while the syntagm ‘citizenship of the Union’ denotes, instead, an intangible entity: the institution of citizenship of the Union. And it is precisely the existence of the institution of Union citizenship that makes the existence of individual Union citizens possible.

7. From legal semiotics to legal ontology: five types of *Bedeutungen* in normative texts

As we have seen, the investigation of the denoting phrases in the text of the Charter has allowed us to construct a pentadic typology of the denoting phrases that appear in normative texts: (i) phrases denoting *ontic entities*, (ii) phrases denoting *values*, (iii) phrases denoting *normative entities*, (iv) phrases denoting *institutions*, (v) phrases denoting *institutional entities*.

Moving on from *words* to *things*, this empirical research of mine into the semiotics of the Charter also makes it possible to correlatively distinguish five types of *Bedeutungen*, five types of “extra-textual entities” to which the words that make up the text of the Charter refer:

- (i) *ontic entities* (e.g. age),
- (ii) *values* (e.g. human dignity),
- (iii) *deontic entities* (e.g. the right to marry),
- (iv) *institutions* (e.g. European citizenship),
- (v) *institutional entities* (e.g. European citizens).

But what is the relevance of this pentadic typology of *Bedeutungen* of the denoting phrases present in normative texts for the investigation of legal texts and, more generally, for the investigation of law?

This typology is particularly relevant to the ontology of legal texts and law as it highlights the ontological wealth of the background of legal texts and reveals the complex structure and ontological entanglement underlying legal texts.

Every normative text with its words refers to a set of heterogeneous extra-textual entities that are not produced by the text itself, but rather are presupposed by the text. These heterogeneous entities are conditions of possibility and comprehensibility of the text to which the phrases referring to them belong. Behind a legal text such as the Charter lies a world populated not only by factual entities, but also by values, deontic entities, institutions, and institutional entities.

From an ontological point of view, the identification of this world of extra-textual entities (populated, in particular, by non-ontic entities) opens up the way for a new, more extensive investigation of each normative text. Each of the non-ontic entities (values, deontic entities, institutions, institutional entities) that populate

these referential worlds would in turn require an individual investigation into its genesis and type of existence.