

A Semantic Analysis of Modality in Legal Texts

تحليل دلالي لمفهوم الموقفية في النصوص القانونية

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الملخص

يتناول موضوع البحث مفهوم الموقفية الذي يتعلق بالملفوظات التي لا تدل على الحقيقة. بمعنى اخر الملفوظات التي تعبر عن موقف ووجهة نظر المتكلم. ويرى العالم اللغوي البريطاني هاليدي (١٩٧٦) ان مفهوم الموقفية تعني المشاركة التي يقوم بها المتكلم في الحدث الكلامي. فالمتكلم من خلال هذا المفهوم يقرن الموضوع الذي يتكلم عنه بالموقف الذي يتخذه منه. اذن الموقفية هي عبارة عن موقف يتخذه المتكلم تجاه ما يقوله.

ان الغرض الاساسي للبحث هو بحث الطرق الممكنة لتحقيق الموقفية والمعاني التي تعبر عنها. والبحث يعسى لاستكشاف هذا المفهوم وتحليلاته ومعانيه في النصوص القانونية. وتفترض الدراسة ان المشرعين يسعون من خلال معاينة استعمال هذا المفهوم الى تحقيق اهدافهم واغراضهم وتقديم احكامهم ومعتقداتهم. والمعطيات التي تستخدم هي القانون المدني (١٩٦٤) بعنوان "مهن المحاماة". ولتحليل البيانات يقترح البحث نظرية العالم اللغوي هاليدي (١٩٧٦) لهذا الامر.

وتفيد النتائج التي توصل اليها البحث ان مفهوم Modulation الذي يتعلق بالإلزام والسماح اكثر استعمالا في النص الذي خضع لعلمية التحليل من مفهوم Modality والذي يتعلق بموقف المتكلم مما يقول، وتبين النتائج ان المفهوم الاخير لم يستعمل ابدا.

Abstract

The present paper is about modality. Modality is concerned with utterances of a non-factual kind, i.e. concerned with the opinion and

attitude of the speaker. In short, modality is a semantic concept. Halliday (1976: 197) views modality as "a form of participation by the speaker in the speech event". Through modality, the speaker associates with the thesis an indication of its status and validity in his own judgment; he intrudes and takes up a position.

The main concern of the paper is to examine the ways used to realized modality and the meaning which it expresses. Modality will be explored in legal texts. The study hypothesized that law makers use modal expressions to voice their goals and purposes, and give their judgments and beliefs. The data used will be the civil law "The profession of Advocate" (1964). The modal to be used for the analysis of the corpus is Haliday m(1976).

The findings which the present paper has come to have revealed that modulation are most frequently used, while modality has not been used at all.

1:1 Modality: Definition and Scope

Modality is a cover term for devices which allow speakers to express varying degrees of commitment to, or belief in, a proposition (Saeed, 1997: 125). Finch (2000,:103) views modality as " The way in which the verb expresses the attitude of the speaker towards the factual content of what is being communicated ". Halliday (1976: 197 f) sees it as " a form of participation by the speaker in the speech event. Through modality, the speaker associates with the thesis an indication of its status and validity in his own judgment; he intrudes and takes up a position".

According to Huddleston (1976: 68), modality consists of two components: modal and non-modal. The modal component is the subjective element of the sentence because it represents the speaker's comment on the thesis (non-modal). The non-modal component has to do with the objective element of the sentence because there is no involvement of the speaker. The non-modal is related to the propositional content of the sentence independent of the speaker's intrusion in assessing its factuality.

Modality can be expressed in a variety of ways. In addition to modal auxiliaries, it may be expressed by adjectives like possible, likely, necessary.. etc., or by adverbs likes perhaps, may be, possibly (Huddleston, 1988: 80). It is also expressed by prosodic and para-linguistic features such as stress or gestures (Lyons, 1977: 847). Nominal expressions like there is a necessity that..., there is a probability that... etc. can be used for this purpose.

1:2 Kinds of Modality

Palmer (1990:36) draws distinction between three kinds of modality: epistemic, deontic, and dynamic. Epistemic modality is concerned with the opinions; deontic is concerned with the attitudes of the speaker, while dynamic is concerned with the ability or volition of the subject of the sentence. Quirk et al., (1985: 219) makes a different division between "intrinsic" permission, obligation and volition, and "extrinsic" possibility, necessity and prediction. Intrinsic modality involves some kind of human control over events; extrinsic modality involves human judgment of what is or is not likely to happen. Halliday (1476) classifies modality into modulation and modality.

According to Palmer (1990: 20) epistemic and deontic modalities are the two most semantically fundamental.

1:2:1 Epistemic Modality

It is oriented towards the speaker; it expresses the opinion or attitude of the speaker, i.e. it is subjective. Its function is to express a judgment by the speaker about the truth of the proposition he presents; this means that this modality is modality of proposition rather than of actions, states, events, etc. (Palmer, 1987: 98). However, Lyons (1977: 793) argues that this modality is concerned with matters of knowledge or belief.

1:2:2 Deontic Modality

It is functionally used to give permission or lay an obligation. These two meanings of this modality expressed in terms possibility and necessity are logically related since giving permission involves making an action possible and to lay an obligation is to make it necessary (Palmer, 1990: 8). Deontic modality is preformative in the sense that the speaker gives permission or to lay an obligation; also there are no past forms because performatives take place at the moment of speaking. It is subjective because the speaker is involved.

Lyons (1977: 823) makes distinction between epistemic and deontic modalities. Epistemic is concerned with the speaker's relation to proposition, while deontic is concerned with the speaker's relation to events and actions. Both modalities are about the speaker's judgment, but epistemic is the judgment about the way the real world is, while deontic is the judgment about how people should behave in the world.

To make the difference clearer between epistemic and deontic modalities, consider the following examples:

1. The smiths must have a lot of money.
2. You may be right.

In (1), "must" implies that the speaker judges the proposition to be necessarily true. "Must", in this sense, means that the speaker has drawn a conclusion from things already known or observed that they must be rich. "Must" denotes necessity and can be paraphrased as "necessary that", but the meaning of "may" in (2) denotes the possibility of the proposition being true, and can be paraphrased as "possible that".

3. John may come in now.
4. John must come in now.

In (3), "may" gives permission for John to come in, while in (4), the speaker lays an obligation on John to come in. This means, "must" suggests that the speaker exercises his authority. "May" can be paraphrased as "possible for", while "must" can be paraphrased as "necessary for". The first two examples are examples of epistemic modality in terms of possibility and necessity, while the second two examples are examples of deontic modality in terms of permission and obligation.

	Epistemic	Deontic
Possibility	You may be right	John may come in now
Necessity	The Smiths must have a lot of money	John must come in now

1:3 Model of Analysis

The modal which will be proposed to analyze the data is Halliday (1976). Halliday (1976: 189-213) draws distinction between modality and modulation. According to him, modality is the speaker's assessment of the probabilities of what he is saying and his comments outside the thesis or the ideational meaning of the sentence. Modulation, on the other hand, has nothing to do with the speaker's assessment of probabilities and is part of the ideational meaning of the sentence; it forms part of the content of the clause expressing conditions on the process in the clause. For this reason, Halliday does not consider modulation true modality, rather quasi-modality. Yet, there is some overlap between the two systems where modulation is the condition imposed by someone and if that someone is the speaker himself, then it becomes a kind of modality, i.e. the speaker is interfering in the event.

Modality, being the speaker's comment, external to the content, interpersonal in function, is oriented towards the ideational because it is an attitude towards the content that is being expressed. Modulation is incorporated into the thesis as ideational meaning; it represents that part of it that is oriented towards the interpersonal, i.e. it is the content as interpreted by the speaker that is being expressed. That means, both modality and modulation are related to the speaker's role in the content of his speech. Consider the following examples:

1. John must be at home. His lights are on.
2. John is tired. He must rest.

In (5), the speaker predicts from the fact that lights are on that John is certainly at home. "Must" is used here to express modality. In (6), the speaker expresses an order, i.e. something which is not associated with the attitude of the speaker but with the content of what is said. "Must", here, expresses modulation.

Halliday (ibid.) subsumes three major meanings of modality: probability, possibility and certainty. For probability, the modals used are: "will", "would"; for possibility, the modals used are: "may", "might", "can" and "could". For certainty, the modals used are: "must", and "should". As for modulation, the main meanings are" willingness, ability, permission and obligation. For willingness, the modals used are: "will", "would"; for ability, the modals used are: "can", "could". For permission, the modals are: "can", "could", "may" and "might", while obligation is expressed by the modals "must", "should", and "ought to".

Finally, Hilliday (ibid.) restricts modality to epistemic class, while modulation is limited to deontic class.

1:4 Data Analysis

The main concern of the paper is to examine the kind of modality more widely used in the data under analysis. The data which will be brought under analysis is the law no. 157 of 1964 for the Profession of Advocate, taken from the Weekly Gazette of the Republic of Iraq (No. 18, 4th. May, 1966). The paper will take some extracts from the law to explain the meanings and functions of modality and modulation, and then make a comparison between the two systems in terms of frequency of occurrence to identify the type of modality which the lawmakers prefer to use more than the other to show their goals and purposes.

(1) The court - on the demand of the Association - shall impose on the person who contravenes, to pay a civil compensation to the Association's fund estimated by the court.

The use of "shall" is to denote obligation. The lawmaker lays an obligation on anyone not exercising the profession of advocate unless they are licenced. Therefore, anyone who breaks the law will expose themselves to a punishment that is, paying a civil compensation. It is used here modulationally where the lawmaker takes up a stance towards that they legislate.

(2) An advocate must abstain from defaming his clients, opponent or mentioning the personal matters which are abusive to him,.....

"Must" here is used to express obligation. The legislator lays an obligation on the advocate not to do the things said above otherwise he will be punishable by law. It is a strong obligation which an advocate has to meet because it is a duty to which he sticks. "Must" is also used modulationally to point out the attitude of the lawmaker to what is provided in the law.

(3) The committee may summon the two parties to listen to their sayings or submitting their statements.

The use of "may" is to give permission. That means, the committee is allowed by law to do its duty. The lawmaker enables the committee to exercise the duty of summon without which they can do nothing. So "may" is used here to express modulation. That suggests that the lawmaker interferes in the event and takes up his stand.

(4) An advocate who is covered by the provisions of this Article, should submit a statement to the Association there-of within two weeks of the date of enforcement of this law,.....

The modal "should" is used here to express modulation where the legislator gives advice or recommendation to the advocate to inform the Association within the said period. It is well - known that "should" expresses obligation; it is not a strong obligation but a weak one which means the concept of advisability, i.e. there is a choice whether to do or not to do the job. Finally, it expresses an avoidable obligation, not imposing any penalty on the advocate when choosing not to submit the statement within the period above.

(5) Anyone who is entitled to a pension salary and he is not a minor or insane,.... his right for that period shall fall, except if he approves that he could not receive it for forcible reasons that the Aesopian's council is convinced with it.

The modal "could" is used to express modulation. It is used here in negative form to mean "not permitted". The whole point is that the pensioner, due to challenging circumstances, has not been allowed to receive his pension salary for a period of time. So the lawmaker prefers the use of "could" in modulation terms to decide his position in case such matters occur in the future as well.

(6) If he leaves a widow or widows only, she or they will receive half of the pension salary, in equal among them.

The legislator uses the modal "will" to express willingness, i.e. he is willing to give to the widow or widows the amount of money said above. Some scholars say that in legal documents "will" as a modal is used informally when "shall" is supposed to be used formally instead. Anyway the lawmaker is inclined to see the reality shape according to his views and opinions, and that is exactly what modulation is. Viewed from another aspect, "will" can be used to mean "insistence" approaching the meaning of obligation.

(7) An advocate has to defend his client with honesty and sincerity, and he is responsible for his gross fault, or when he exceeds the powers of his procuration.

The modal "has to" is used to mean obligation. The legislator, in this article, lays an obligation to defend his client, i.e. it is his duty to do the defending act otherwise the advocate will be punishable by law. Therefore, it is an escapable obligation. The use of "has to" raises an important issue as to the source of obligation whether it comes from the association or a third party. According to the text, the one which makes such instructions is the association on the face of it, but actually it is the lawmaker who issues such instructions, and consequently that is what makes difference between "have to" and "must".

A part from the modals extracted above, the legislator also used a number of modal expressions such as "entitled, permissible, obliged, required" to expresses the positions and stances he takes up towards the content or the thesis of what he says or states. Also the legislator used some phrasal modals like "should be obliged to, shall have to". The paper doesn't deal with such expressions owing to the model (Halliday 1976) which focuses only on the modal auxiliaries although they give the same meanings.

Table (1): Breakdown of Modals Expressing Modulation

Willingness		Ability		Permission				Obligation			
Will	Would	Can	Could	May	Might	Can	Could	Must	Should	Shall	Have to
2	0	0	0	78	0	0	1	35	23	354	2

Before bringing the data under analysis, one special remark should be made about modals used to express modality. These modals have not been used in the data and that may arise from the fact that legislators fashion out the law to express meanings like obligation, permission, willingness, in an attempt not to let the slightest chance for the advocates act on their own or at will. So the meanings they target are to get advocates do things, or behave as the law states.

In the table above, the meanings of modulation are used except for ability which doesn't occur at all. Obligation comes first in terms of frequency of occurrence (414) times followed by permission by (79) occurrences, whereas willingness stands third with only (2) occurrences. The frequent use of obligation refers to the fact that the lawmaker wants to impose his will on the advocates to get things done to emphasize his authority, and also to realize his wishes and desires made in the provisions of the law. In the second place, comes permission which the legislator give to the advocates to act according to the law. Finally, the use of willingness which refers to the inclination of the lawmaker to let the advocates behave as it ought to be.

Of obligation expressing modals, "shall" is the most frequently used with (354) occurrences, whereas "have to" is the least used. The other modals "must" and "should" occur in varying degrees with (35), (23) occurrences for each respectively.

The wide use of "shall" indicates its great significance in legal documents where some scholars view it as a characteristic of the language of law. In the data, it is used in different forms: positive, negative, passive and even perfective.

"Must" comes second as an obligation modal compared to "shall" since "shall" is more formal and a more prominent feature of the language of law. They mean the same thing but differ in style.

"Should" stands third in the data giving a choice for the advocates to act within the limits of the law. Or it is used to soft down the impositive nature of "shall " or " must ", i.e. it is used to express politeness whenever the legislator deems it necessary.

"Have to" is not of great significance since it refers to the association not as the one which issues the instructions or rules but a third party. Hence the legislator tries to ascribe everything to himself rather than the Association.

Of permission expressing modals, "may" makes up the large majority of occurrences. Its importance stems from what the legislator sees it permitted or not. This means that he grants permission for the advocates to make things possible, i.e. he enables them to apply or enforce the instructions according to what he views permitted.

"May" is more formal than "could", and therefore 'could' is used less in the data because it refers to the pensioner.

There remains only the modal "will" which expresses willingness. It is used only once in the whole data. The reason why it is used less may result from the fact that when the law states the pension rights of the widow or widows, the legislator shows his being inclined with them to receive that amount of money. On the other hand, when the law refers to the rights of the deceased parents, the legislator prefers use "shall" to "will".

After the analysis has been carried out, the findings which we can draw are that modulation is highly dependant rather than modality. The reasons behind the much use of modulation are that legislators and lawmakers are most keen on enforcing the law using modals denoting obligation which leave no choice for the advocates to circumvent the law. The same can be said about permission which allows the legislators determine the permissible.

Conclusions

The main concern of the paper is to examine the meanings of modality in legal texts. Modality as a semantic concept is concerned with the attitudes of the speaker towards the content of what he talks about. The findings which the paper has come to are that modulation which is

subsumed under different meanings is highly dependant, whereas modality has no occurrence at all.

It has been found that modals denoting obligation are the most frequently used while the modals denoting permission stand second, and modals denoting willingness come third, but modals denoting ability don't occur. The emphasis upon the use of obligation and permission in legal texts shows the interlinking relation between the two meanings. These two meanings are used in relation to how the advocates should behave in connection with the laws and instructions and that accounts for why modality is not used in the data where it is about how things are not how things ought to be. Hence, legislators show no interest in its use.

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