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WHAT CAN WE SAY LAW IS: DOES LINGUISTICS HELP IN THE ANALYSIS?

Abstract: From a wide range of different sources, including a number of different countries, customary law, religious law and international law, linguistic analyses of legal discourse can deepen not only the understanding of the nature of law but also widen the understanding of legal topics. Thus, the paper aims to analyse the key aspects of legal discourse and the importance of its understanding through the analysis and examination of the language of the law, as well as why language or its linguistic analysis is important to law.

1. — *Introduction.*

W.H. Auden's poem "Law Like Love" ends with the statement "Law is The Law".

However, does Law really equate with The Law and if not what is the difference, and does it really matter? If you were to ask a non-lawyer what does law mean they would probably have a good stab at it. The emphasis would be on certain types of law, more likely criminal law than, say, the law of intestacy. Perhaps they would mention the notion of justice or rights. If you asked a legal scholar (sometimes known as Jurists) or a lawyer you would probably get the answer "well, it's difficult to say exactly what law is", or "that is an issue of jurisprudence", otherwise known as the philosophy of law. As Zane stated: «No jurist has yet achieved a definition of law that does not require the use of the idea of law, either implied or expressed, as a

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part of the definition»[1]. We seem to be back to Auden's "Law is The Law". If you ask the same question to a law student you tend to get the answer that law is to do with legislation produced by governments and what judges say it is. This is not surprising as this is generally how law students learn The Law. Dictionaries tend to define law as; the exercise of authority or power over peoples in a territory; the maintenance of rights of individuals; authoritative administration of law; impartial adjudication of conflicting rights; and the punishment of wrong. But we still do not seem to be able to answer the question, what is law? What we can say is that there seems to be a set of properties that the word law contains, which are given as an answer to our question. If then you change the question to what does law do, sometimes the answer is to punish wrong doers, other times the answer revolves around securing ownership, as say when something is purchased.

For lawyers, there are practical issues because a lawyer needs to know what sources or materials can be relied upon in legal argument, whether in giving advice to a client, during negotiations, or presenting a case in court. To think of law then is to think of lawyers, judges, policemen, parliaments, justice, rights, crimes, property, and the list goes on. None of these tells us what law is. There are, of course, more general statements that can be discovered such as law is a mode of regulating human conduct; law is normative in that it prescribes rather than describes; law indicates the range of allowable or possible forms of human conduct; and law acts through prescription and sanctions expressed by political governments. Furthermore, we have not even begun to consider the difficultly of discussing law and morality and law and religion; for example, are laws and morals different modes of regulating human conduct? It is clear then that if we are going to discuss why language or its linguistic analysis is important to law, or The Law, and what linguistic analysis can tell us about law, we need some form of classification. This will not answer the question of what is law, in the end this is an issue for jurisprudence, however, linguist analysis will inform the debate. For the present we need some form of

[1] J.M. Zane, *The Story of Law*, Ives Washburn Inc., New York, 1927, p. 1.

general notion of what is covered by the word law which will act as our sources for linguistic analysis.

2. — *Classifying Law's Form and Content.*

What we seem to have discovered so far is that law has both form and content. By form I mean that law has legal sources which, in some way, have been created and in that creation process has acquired the tag 'law' or 'this is law'. By content I mean those issues which are described within the legal sources. We can consider this in terms of criminal law, contract, torts, or property law to mention just a few. So that one form of classification is to say that for a territory which we will consider as a nation state such as Chile, The United States, The United Kingdom, France, Iran, or China, there are a set of laws which govern the nationals and visitors of those states. These laws have been created by certain means within the state. This is often called public law, divided into administrative law and constitutional law. The type of laws created then fall into the category of private law, which includes such things as contracts, property, family, civil wrongs known as torts, and criminal law, which includes those aspects of human conduct which become punishable by the state. What we have then is a nation state with its own set of laws governing its own peoples. However, it should not be forgotten that this has an historical process that has led to different legal traditions in different nation states.

Consider the United Kingdom, which according to Cruz is the oldest national law in existence common to a whole Kingdom. In fact the English legal system is thought to begin in 1066 when the Normans under William defeated the Anglo-Saxons at the Battle of Hastings[(2)]. The nature of English law is therefore seen as an historic development, principally developing though cases decided in courts. This type led to the development of what is

[(2)] P. De Cruz, *Comparative Law in a Changing World*, Cavendish Publishing Ltd., London-Sydney, 1999, p. 99.

called the Common Law, i.e. the Common Law of England. Cruz describes this common law as a tradition typically identified with a case based system which although court cases played a dominant role, the primary sources of English law include not just case law, which is a body of principles derived from court decisions regulated by the doctrine of precedent (*stare decisis*), but also statutes, which is the law contained in legislative enactments [3]. This Common Law tradition has, primarily due to colonialism, been exported to other countries including the United States; Australia; South East Asia, particularly Malaysia and Singapore; the far East in Hong Kong; and the Indian sub-continent. These countries laws have of course undergone profound changes; however, the underlying tradition of these countries can still be seen as a Common Law tradition.

What is noticeable from this list of Common Law countries is the lack of other European Countries. Consider the French legal system which also has a rich historic tradition. It was, however, the revolutionary events of 1789 which led to the production of a set of Codes written down. This type of legal tradition, known as Civil Law, describes the substantive body of private law based on the French Civil Code of 1804 (as amended). The phrase Civil Law has different meanings. Cruz states, «it is important to clarify the terminology that is used to describe Civil law systems and the Civil law tradition, because the term 'civil law' is susceptible to several different meanings. Civil law, in one sense refers to the entire system of law that currently applies to most Western European countries, Latin America, countries of the Near East, large parts of Africa, Indonesia and Japan. It is derived from ancient Roman law jus civile – the private law which was applicable to the citizen, and between citizens, within the boundaries of a state in a domestic context. It was also call the jus quiritum, as opposed to the jus gentium – the law applied internationally, that is, between states» [4].

It is clear then that when we consider the word law, outside its jurisprudential contexts, we see that it is not one type but many. Note what

[3] *Ibidem.*

[4] *Ibidem.*

Cruz writes about China: «Chinese codes appeared at the time of the Han dynasty, but dealt only with administrative and criminal law matters. It continued to dominate all aspects of life for the next 2,000 years. In an attempt to unshackle themselves from Western ideas and Western domination, the Chinese adopted a series of Codes, ironically based on Western prototypes. They passed a Civil Code in 1927-31 (dealing with private and commercial law), a Code of Civil Procedure in 1932 and a Land Code in 1930»[5].

The common and civil law traditions of Europe determined, in great measure, the laws of its colonies. These traditions, however, come up against the laws already in existence, i.e. the indigenous law. Such laws were frequently of an oral tradition, that is, they were never written down. Indigenous law, or sometimes called customary law, has been said to be oral, flexible, anonymous, old, primitive, folk, peasant, and rural. This category therefore covers a wide scope of what is now called folk-law; from laws of villages to laws of great regions; from issues of pigs to issue of marriage, there is a great wealth of law within this category. Folk-law, or Volksrecht, may point to the origin of a rule, an institution, or a legal system. However, it is not a system of abstract concepts and normative propositions, such as the legal system we have so far been discussing, but of perceptible, formal acts and words, natural institutions, symbols, symbolic procedures and objects, and proverbs based on popular consciousness. As Rentelin and Dundes state: the characteristics of folk law are the same as the characteristics of folklore in general, that is for myths, folktales, legends, folksongs, proverbs, riddles, and the like[6]. You would be hard pressed to write this about English, French or American law.

Another category of law is religious law. In the Christian tradition, we have Canon law, or perhaps more generally, ecclesiastical law. These is laws which, governs the nature of the Christian Churches, differ in their order and their constitution. These laws, have their roots in the early Church, in

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[5] *Ibidem*, p. 204.

[6] A.E. Rentelin, A. Dundes, *What is Folk Law?*, in A.E. Rentelin, A. Dundes (eds.), *Folk Law: Essays in the Theory and Practice of Lex Non Scripta*, WI, University of Wisconsin Press, 1995, Vol. 1, p. 2.

which, decisions made by the Church became legal norms and rules. These norms and rules then became written down in the form of Canon Law and were the means, by which, Christians should live their lives, both clergy and laity. After the Reformation, the various divided churches developed their own juridical instruments and regulatory instruments. We have, therefore, a range of church laws which govern the Catholic Church, both Roman and Orthodox, The Anglican Communion, and The Protestant traditions[7]. Apart from the Christian tradition another great religious legal tradition is Jewish Law. The earliest sources of Jewish law are the Pentateuch, the Torah, sometimes known as the Law of Moses. The written Torah, Torah Shebiktab is distinct from the extra-Pentateuch law, or oral Torah, Torah Shebea'l-peh contained in the Mishnah, in the Baraithoth and in the Gemera. They form the nucleus of Jewish law whose development has been undertaken by prophets, scribes, the Tannaim, the Amoraim and their successors.

Recently Islamic law has become of interest to jurists and lawyers. Islamic law starts with the proposition that all law comes from Allah as revealed through the prophet Muhammad and is immutable. These laws have been subject to inquiry by Islamic jurists but only to the extent that they discover and explain the law not create it. Islamic law reflects the will of Allah and is therefore of wider application than Western law, including the religious observance and devotions. The most important source of Islam law is the Koran, the collection of the utterances of the prophet Muhammad. There are four roots of Islamic law: two sources, the Koran and Sunna, the inspired practice of the prophet; one method, the giyas, which is the application of like cases to like by analogy; and one judgement the igma where the legal scholars have agreed upon a principle. Finally, another religious law is that of the Hindus. Classical Hindu law, called the dharmasastra in Sanskrit, derives

[7] The nature of these laws govern a wide ranges of activities including the rights, duties and functions of the clergy and laity (known as the People of God), ecclesial structures and institutions, discipline, offences and sanctions, the nature and forms of worship, such as The Eucharist, builds, state/church relationships *inter alia*. N. Doe, *Christian Law: Contemporary Principles*, YEAR Cambridge, University Press Cambridge.

from the works of legal scholars called the smritis. This was linked to the divine revelations of Veda, providing rules of behaviour and laying down the customary law. During the British rule of India much of the Hindu law was changed, in part, areas such as property and the law of obligations were taken up from English common law, but other laws, such as family law and the law of succession were subject to court decisions. Such decisions were initially aided by the pundits trained in Hindu law. After independence much of the Hindu law has now been codified.

When we use the word law therefore, we are not confining ourselves to a particular legal system. One nation state's laws will differ, in varying degree, from another nation state – a study of such difference and commonality is called comparative law. Furthermore, indigenous peoples have developed their own laws and religious communities theirs. When nation states get together, agreements often develop into law, in this case international law or jus gentium, which covers a large area of transnational concern including traditional topics, such as, the position of states, state succession, state responsibility, peace and security, the laws of war, the laws of treaties, the law of the sea, the law of international watercourses, and the conduct of diplomatic relations. Beyond this international law deals with issues related to international organizations, economy and development, nuclear energy, air law and outer space activities, the use of the resources of the deep sea, the environment, communications, and last but not least, the international protection of human rights. Much of these sources of this type of law are to be found in Treaties signed, or ratified, by the Member States who join[8].

The word law, therefore, outside its jurisprudential context, covers a wide range of human social activities where these activities somehow acquire the tag 'law'. This means that anyone interested in the linguistic application to law may draw upon a wide range of topics and sources; be it for legal analysis, sociology, or anthropology. It is not possible to give a list of all the types of sources there are, I have already mentioned a few. However, for

[8] Like other aspects of law, international law consists of form and content. The Vienna Convention contains four major substantive sections which consider treaty formation, treaty compliance, treaty modification or amendment, and treaty lapse.

the most part the sources fall into four categories. The first two are what we might consider as constitutional and administrative law. A constitution usually means a document which sets out the framework and the principal functions of the government and its agencies. It is also a statement of principle. In countries like the United States, Canada, and Western Europe there are written constitutions. However, in the United Kingdom there is no such document as the United Kingdom Constitution. The constitution of the United Kingdom is found in many sources. The second category is legislation consists of acts created by governments or international organizations such as the United Nations and the European Union. A number of terms are used for these acts. In the United Kingdom, they are called Statutes or more minor or explanatory acts are called Statutory Instruments. The United Nations form Resolutions, while the European Union enacts Regulations and Directives. These are just a few terms used for legislation. In International law agreements are called Treaties which are governed by an overall Treaty, for example, the Vienna Treaty.

The third category is case law which interpreters and applies all forms of law to certain circumstances in courts and tribunals or other forums. Nation states frequently have a hierarchy of courts leading to one Supreme Court although this court may have different names[9]. Many of the decisions of these courts, principally the high courts, are recorded and printed in Law Reports. Such reports include the facts of the case and the decisions of the Judge or judges. In common law countries, the principal or main ruling of the decision, which is considered binding, is called the *ratio decidendi* (reason for the decision), while the other comments which are considered important but non-binding are called *obiter dicta*. Within this court system the binding decisions not only bind those subject to the law but also the courts, known as the doctrine of precedent (*stare decisis*). The Civil law courts report differently from those of the Common law. In France, which has a number of different courts the judgement will contain a concise statement of the issue

[9] Up until 2008 the highest court of England was the House of Lords. This has now been replaced with a Supreme Court. In the United States there is also a difference between the Federal and State courts.

before the court, a collective judgement ("the court hold") and no dissenting judgement, which is often found in Common law reported decisions.

The fourth category includes other documents associated with the law, are interviews with suspects of criminal activity, eye witnesses to such events or statements given by such persons. There is also testimony given in courts. Many documents are prepared before legislation is enacted, in the form of expert advice, policy documents and the like. Although we have some idea of the coverage of law, before we can embark on the linguistic analysis of law we must consider how law 'acts'; why language is important to law, and what are the linguistic theories that are going to be useful to our enquiry.

3. — *Laws Content and Linguistic Analysis.*

In one form, law is an argumentative discipline[10]. Legal questions put in terms of a proposition seek legal answers through argumentation[11]. Can we then ever say that a legal proposition is true, in the sense that there can ever be legal certainty? Legal decisions also have to have legal justifications that come from argumentation; argumentation that is based on rationality and reasonableness[12]. There is, therefore, an evaluation of competing arguments, and it is because of this process of argumentation that we need to consider the linguistic analysis of law. First argumentation is about being persuasive, convincing others that your position is the correct one, or at

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[10] N. MACCORMICK, *Rhetoric and The Rule of Law: A Theory of Legal Reasoning*, (2005) Oxford University Press, Oxford.

[11] *Ibidem*: «Legal arguments are always in some way arguments about the law, or arguments about matters of fact, of evidence, or of opinion, as these have a bearing upon the law, or as the law has a bearing on them», and «[…] Chaim Perelman emphasized that arguments are necessarily addressed to an audience, and that persuasiveness is audience-relative. This is especially obvious in legal practice, where trained advocates put cases before courts as persuasively as possible, and judges decide after weighing their rival arguments on points of law.».

[12] R. ALEXY, *Theory of Legal argumentation*, 1989, Clarendon Press (R. Trans Adler & N. MacCormick), Oxford.

least a better position than any competing one. Second, argumentation is based on Vorverstandnisse[13] or pre-understanding. By using the techniques of linguistic analysis we can identify the nature of the pre-understanding or in linguistic terms the presupposition. However, in a legal context no one starts with a blank sheet and tries to work out a reasonable conclusion *a priori*. A solution offered must ground itself in some proposition that can be at least colourably presented as a proposition of law, and such a proposition must be shown to cohere in some way with law as already determined.

But law is not only argumentation, it is also about testimony. Testimony either in the form of court evidence, i.e. evidence given by those involved in the case and expert witnesses for example, or testimony in the form of evidence, that is giving evidence before a governmental or parliamentary committee on proposed legislation for example. Such testimony is the assertion of a declarative sentence by a speaker to a hearer or to an audience and requires that the hearer or audience relies on the sincerity of others, often strangers or acquaintances. In doing so we tend to have a default rule: if the speaker S asserts P to the hearer H under normal conditions the hearer H accepts S's assertions unless H has reasons to suspect S's assertions. Linguistic analysis can tell us a great deal about testimony, the default rules we use and the types of assertions made. In law or during the legal process these assertions may have considerable consequences.

Another form of law is that it is a social phenomenon. This can come in the form of social control by state governments through regulation or through the role of legal actors such as the police, lawyers, judges, lawmakers, and many other agencies involved in the maintenance of the law. Law therefore is concerned with a range of social relationships. Consider for a moment the following three examples of social relationships. First your relationship with your doctor of medicine and your consent to treatment. In the US case *Schloendorff v New York Hospital* (1914) 105 NE 92, Justice Cardozo stated «Every human being of adult years and sound mind has a

[13] J. Esser, *Vorverstandnig und Methodenwahl in der Rechtstindung*, Suhrkamp, Frankfurt, 1970.

right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault […]» However, what if you were not of sound mind? Should you then still have the final say as to receiving treatment? The English Mental Health Act 1983, Section 63 states «The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering».

In the second relationship consider your relationship to a manufacturer of a good you have purchased. What happens if you are harmed by the product? The English Consumer Protection Act 1987, Section 2 states «[…] where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage […]». Subsection (2) includes, among others, the producer. And finally, your relationship with the police. Cotterrell states the «Police constitute one particular important kind of enforcement agency, that which is typically most visible to citizens…and is entrusted with the most general range of criminal law enforcement»[(14)]. This not only involves your direct relationship with the police, should you be burgled, assaulted, or be the perpetrator of such events, but also it involves your rights, your individual rights such as liberty and freedom of speech among many other issues.

Such legal social relationships thus surround us as we go about our daily business. Just consider a normal day. People wake up in their own bed say, which was purchased. This involved a contract between them and the supplier, product liability relationship between them and the manufacturer. They may have listened to the radio or watched TV while eating their breakfast. This will have involved a range of broadcasting rights; in the United Kingdom, they will have had to purchase a TV licence. Their breakfast they will have purchased, involving more contracts, product liability, and food safety standards. They may have caught a bus or train to college or work, involving yet more contracts or they may have driven a car, in which case

(14) R. Cotterrell, *The Politics of Jurisprudence*, 1989, Butterworths, London-Edinburgh, p. 120.

they would have been subject to a number of road traffic laws. If they have gone to work then this will involve employment contract laws, taxation, and health and safety regulations among many others depending on their job. At the end of the working day they may have gone to a bar for a drink, yet more contracts and also alcohol licensing laws. If they eat out, more contracts, product liability, and food safety laws along with other laws governing restaurants. I could go on but we think you get the point. Law affects us on a daily basis.

This could of course all sound rather invasive; however, it provides each of us with a degree of legal certainty and security. In the end unless you have specific reason to be involved in the law or be involved in some legal issue, most people will never think about all of the direct and indirect laws that affect them throughout their daily life. The point I wish to make is that law affects us all and has significant consequences for us all. And it is for this reason that the linguistic analysis of law is important. To demonstrate this, consider the word abortion. I realize that this is an emotive word which is why I wish to consider it. I shall quote from a number of sources which will form part of the text analysis exercises below which, I should like you to consider. In Hursthouse we find, «The simplest view on the issue of abortion, the one often expressed explicitly or implicitly by non-philosophers in letters to newspapers, discussions on the wireless and so on, is that the moral rights and wrongs of abortion can be unproblematically settled by determining the moral status of the foetus [or embryo]».[15]

Brazier states, «The difficulty is that the dispute is itself incapable of any conclusive resolution. Perception of the status of the embryo derives in many cases from the presence or absence of religious belief. Most, but not all, proponents of the belief that the embryo is from fertilization a genetically unique individual as fully human as you or I, rest that belief, at least in part, on the embryo's potential possession of an immortal, immaterial soul…Thus the argument on abortion becomes for opponents: 'How can the law permit the wanton destruction of human life'? And supporters of

[15] R. Hursthouse, (1987) p. 15.

liberal abortion law respond: 'By what right do you seek to impose your personal unprovable claims about God and the Soul on others'? The dispute reaches stalemate […]»[16].

Glover notes, «Perhaps what matters is not some property an embryo now has, but what it has the potential to become. Their claim seems to imply that disposing of an embryo is wrong because it prevents the existence of a particular developed person, namely the one the embryo would have become. But this argument rules out contraception. You are a particular developed person, and contraception would have prevented your existence. The apparently innocuous word 'potential' turns out to be very slippery».[17]

Returning to Rosalind Hursthouse, «The confusion of questions about morality and legislation is particularly common in arguments about abortion […] One reason why the questions become readily confused in debate is because of the tactics of opposition. Many people, particularly women, do think there is something wrong about having an abortion, that it is not a morally innocuous matter, but also think that the current abortion laws are if anything still too restrictive, and find it difficult to articulate their position on the morality of abortion without, apparently betraying the feminist campaign concerning legislation. To give an inch on a woman's right to choose, to suggest even for a moment that having an abortion is not only 'exercising that right' (which sounds fine) but also 'ending a human life' (which sounds like homicide) or even 'ending a potential human life' (which sounds at least serious) plays into the hands of the conservatives […]»[18]

These three sources highlight first a number of issues we have already discussed. Consider for example the nature of argumentation here regarding the moral, if not legal, status of the embryo; the nature of the testimony that these authors provide; the socio-legal issues and questions that the passages present, for example the relationship between women, embryos,

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[16] M. Brazier, (1990).

[17] J. Glover et al., *Report to the European Commission on Reproductive Technologies, Fertility and the Family*, 1989, Fourth Estate (The Glover Report), London, p. 97.

[18] R. Hurst House, (1987) p. 15.

doctors and the law. However, this is not the only aspect that these passages present. A particularly acute question derives from the last quoted source: "The confusion of questions about morality and legislation". The issue of morality and the law occupies a great deal of writing in jurisprudence; however, it is not a topic I intend to consider here. What is important to understand is that, like all disciplines, law has its own legal theories which have developed and changed over hundreds of years. One of the current and important legal theories is known as positivism[19]. Although it is not possible to consider here the nature of positivism a brief description will be given here since much of the legal theorizing, and therefore much of the sources is informed by positivism.

Positivism develops the idea of the 'is' and the 'ought', i.e. how thing are, the 'is' case, and how things should be, the 'ought' case. The 'is' can be identified through investigation and examination, based on the ideas of scientific analysis, investigation, and observation, while the 'ought' depends on propositions, or norms; statements about how one should act. For law these propositions of the ought can particularly be seen in legislation. In discussing the word abortion, the original English Abortion Act 1967 stated in Section 1, «Subject to the provisions of this Section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith […]».

Which is a clear proposition, or norm; the ought case[20]. Positivism, therefore, distinguishes between the facts, the 'is' case, and values, the 'ought' case. For legal positivists the law is all about the is case; the law as it is, the law as we can identify it, particularly through the judgement of judges, and

[19] Positivism was first used by Comte [see A. Comte, (1842) Positive Philosophy], a French philosopher who stated that valid knowledge relies upon using the scientific method based on observation. Theories should be subject to empirical investigation.

[20] Probably some of the most well known propositions of the ought case, at least in the Judeo-Christian faiths are the laws given to Moses on Mount Sinai. At Exodus Chapter 20 Verses 13 to 15 we read: Thou shalt not kill. Thou shalt not commit adultery. Thou shalt not steal.

the law as an analysis of the legal system or systems as they exist in different countries or internationally. Twining, (2009) states, positivism in the present context involves no more and no less than two well-known propositions, first that there is no necessary connection between law as it is and law as it ought to be (the separation thesis); and second that the existence of law is a matter of social fact (the social sources thesis).

Here then law and morality stand apart. Law is different from morality[21]. As MacCormick (2005) notes «Law does not, of course, have conclusive moral value, since legally established rules can sometimes, perhaps even often, fall some way short of any reasonable moral ideal, and can even stand condemned by that test sometimes»[22]. Law then, with its doctrines and principles established in legislation and judicial judgements stands apart from moral principles which do not have «Statue-book[s] and does not afford libraries full of recorded [moral] decisions to serve as precedents»[23].

This is not to say that this is the view of all jurists, lawyers, and judges. In fact, Cotterrell (1989) notes, that in contrast to legal positivism stands a tradition of thought that law cannot be properly understood except in moral terms; that it is fundamentally a moral phenomenon; that questions of law's nature and existence cannot be isolated from questions about its moral worth[24] (Cotterrell, R., 1989).

However, many of the issues assume a positivist thesis, a presupposition of legal positivism. To what degree should morality inform law I leave to you to make up your own mind. One final comment is that of Twining (2009) who noted that the separation thesis, that is between law and morality, and between the is and the ought, is particularly important when looking at legal orders and phenomena from the outside of the law. Describing, and where appropriate evaluating legal orders other than one's own, considering

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[21] N. Maccormick, *Rhetoric and The Rule of Law: A Theory of Legal Reasoning*, cit.

[22] I*bidem*.

[23] *Ibidem*.

[24] R. Cotterrell, *The Politics of Jurisprudence*, 1989, Butterworths, London-Edinburgh, p. 120.

them as the product of other people's power, comparing legal phenomena from two or more legal orders and mapping law in the world are activities that require relative detachment so far as is feasible. On the other hand, if one is participating in one's own legal system as citizen, lawyer, judge, reformer or critic, one's concern may indeed be to make the system 'the best it can be', to emphasise aspirations such as respect for rights or the Rule of Law or fidelity to law. There are some contexts in which the is/ought distinction breaks down, for example in presenting an argument or justifying a decision on a disputed point of law[25] [Twining, W., (2009) p. 26]. Each of these positions is informed by an analysis of the language of the law, a linguistic analysis which will provide a deeper understanding of the law and inform its social practice.

I have, therefore, identified a great deal from the four passages quoted on the topic of abortion: that there are a number of arguments and testimonies, both legal and moral, and that law and morality, important here in the consideration of abortion, are not so obviously connected as may be initially thought. All of this will be inform by a linguistic analysis of law. If we are going to create laws on abortion, as many states have, how then are we going to go about it? How would you advise a government in its production of abortion law? Should it be a criminal offence to abort an embryo? In the United Kingdom, as in many countries, abortion is, in fact, *prima facie* a criminal offence. So how does this leave a pregnant woman seeking an abortion or the doctor who terminates the pregnancy? These at least are socio-legal questions which can be investigated though a linguistic analysis.

4. — *Conclusions.*

The key aspects of legal discourse and the importance of its understanding through the analysis and examination of the language of the law show

[25] W. Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, 2009, Cambridge University Press, Cambridge, p. 26.

that law and its political forum is special in that it affects all of us every day and that, although often conceived as uncontroversial, rarely is a product of persuasion and argumentation through particular linguistic means and practices. Law is also a product of choice and a range of linguistic skills which can be decoded, understood, evaluated, and put to practical use within professional practice (understanding testimony, negotiations, and determining legal texts), academia (in research, teaching, and consultancy), and in providing students with an enhanced learning experience either as potential lawyers or linguists and a deepening of their knowledge whether legal or linguistic. Thus, from a wide range of different sources, including a number of different countries, customary law, religious law and international law, linguistic analyses of legal discourse can deepen not only the understanding of the nature of law but also widen the understanding of legal topics. It can provide new understanding of legal concepts, as I hope the consideration of the concept of abortion shows and thereby how words can or cannot be put together and what this means for law. How different theoretical approaches to analysing meaning and use of language provide different means of understanding and providing insights into how new and given information and themes identify hidden meaning or what is presupposed or implicated highlights background and what that means for the text. Finally, it can provide practical knowledge of how to apply linguistic theories of meaning to legal texts. I hope I have demonstrated that law is, therefore, much more than The Law in Auden's poem.