

Philosophical Roots of Dynamic Interpretation (Original Research)

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Extended Abstract

The subject of legal interpretation and its methodology has always been an important issue in legal philosophy research, and valuable works have been written in this field. In international law, as a field that includes a dynamic and evolving legal system where those making the rules and enforcing it are the same, the issue of interpretation has a special place in theory and practice. Today, there are three main schools of thought in treaty interpretation, including the "intentionalist", "textualist" and "ultimist". According to the Vienna Convention on the Law of Treaties, the methods of interpreting treaties under the two general categories of "mental" and "objective" interpretation are included under Articles 31 to 33. During the drafting of the Convention, the temporal aspects of the interpretation and the effect that the element of time can have on the interpretation were discussed, but ultimately removed from the final act, making the Convention silent on this matter. This is despite the fact that the concepts in a given treaty change over time, and this makes the correct understanding and effective implementation of the treaty require the use of a specific method of interpretation. From the perspective of the role of time in the interpretation of treaties, two methods of interpretation can be mentioned: "static" and "dynamic", which are rooted in two common approaches to treaties, respectively, the "principle of the contemporaneity of treaties" and the "doctrine of the living document". The theory of "dynamic interpretation" or "evolutionary interpretation" by considering treaties as living documents with social life aims to base the interpretation on the semantic changes of the terms of the treaty over time.

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Since each of the theories and methods of interpretation are rooted in philosophical opinions and legal logic, one of the important issues about dynamic interpretation is to find solid theoretical foundations for this new theory from the point of view of methodological issues and hermeneutic; an issue which has received little attention in the legal literature. The existence of controversies surrounding the concept, nature and basics of dynamic interpretation underpins the importance of research in this field. Additionally, the normative strength of the dynamic interpretation has been widely criticized. Even in the literature of international law, it is not specifically defined and its application is justified based on one or more different interpretative approaches. Notwithstanding, in the legal texts, it is not clearly specified how each of the interpretation approaches are the basis for choosing the dynamic interpretation. The silence of the VCLT on this issue adds to the existing ambiguities and challenges. In this situation, the behavior of the main actors of interpretation, especially judges of international courts, is influenced by the assumptions and intellectual and philosophical foundations that they believe in.

The current research was conducted with a descriptive-analytical approach, in order to find the roots of this theory in the philosophy of international law. The paper tries to answer the question that, in which approaches and schools of international law the dynamic interpretation is rooted? To this end, the following two general sections have been presented. The first part provides an overview of the challenging concept of dynamic interpretation in international law, and the second part examines dynamic interpretation from the perspective of schools of treaty interpretation, hermeneutics, and the philosophy of international law.

The present study has reached the following conclusions:

- The method of "dynamic interpretation" by considering the semantic changes of the terms of the treaty during its life, fulfills the mission of updating and ensuring the flexibility of its provisions and acts as a gate-way for reflecting the common values of the international community in international law and a path to achieving justice in this legal system.
- Analysis of the philosophical foundations of the theory of dynamic interpretation has shown that dynamic interpretation is a methodology of the "natural law school" due to its consideration of the developments in contemporary international law and the reflection of values in this legal system, because this school emphasizes the primacy of values such as justice and morality in understanding legal rules.
- Among hermeneutic theories, the theory of dynamic interpretation is most closely related to "interpreter-centered hermeneutics".

- The methodology of dynamic interpretation has shown that dynamic interpretation of value-based Generic Terms, which are often used in human rights and environmental treaties, is carried out with the attachment to the "natural law school". While the dynamic interpretation of non-value-based Terms may have roots in the school of "modern positivism" or "legal sociology", depending on the case. Positivists choose to use the method of dynamic interpretation when it is consistent with the intention of the parties. Objectivists emphasize the changeability of treaty provisions and their relationship to social developments, and consider dynamic interpretation as a solution for harmonizing international contractual law with these developments.

Keywords

Dynamic Interpretation, Evolutionary Interpretation, Methodology, Legal Interpretation School, Philosophical Schools of Law

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