

Qualitative methods in the characterization of legal documents

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Abstract: This paper describes scientific research developed in the scope of Information Science, and uses qualitative methods to address the issue of identifying what would grant a document its own legal characterization. The research methodology employs qualitative methods which are organized in two main stages, namely, bibliographical research and documentary research. As a result, a general manner to characterize legal documents was found based on six categories, which include the typology of documents encompassed in the research. It was concluded that legal documents are instruments able to regulate social aspects of life, establish rules of behavior in society, discipline the actions of public administration, resolve legal issues, develop business between people and companies, record natural and social facts of legal relevance and, additionally, record, accumulate, share and preserve theoretical legal knowledge.

Keywords: Legal document; Legal documentation; Legal Information; Qualitative methods; Document Tipology

1. Introduction

Legal rules are the main instruments to enforce legal decisions, and legal documents are a special kind of document to make Law effective. Using legal documents, one is able to establish rules of behavior in society, to discipline actions of public administration, to solve lawsuits, to initiate business between people and companies, and to record relevant natural and social facts. Accordingly, legal knowledge is accumulated, shared and preserved for future use. All of these documents just mentioned are not exactly descriptions of the reality, but a sort of tool to act on the reality, which generates different social, administrative and legal effects.

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The intrinsic qualities of legal documents are their context of production, purpose, content and the textual form. These qualities, in addition to the variety of demands from the public, create the need for developing new methodologies and instruments, as well as training employees of public and private companies, to enable them to come up with specialized information products.

The Law field is responsible for the generation and use of legal information, Information Science, particularly, the sub-field of Legal Documentation, is responsible for the organization, access and dissemination of legal information. In addition, Information Science deals with the preservation of that information in order that it can be used both as instrument of legal proof and historical record. This is with the aim of fostering public transparency and democratic rights. In the scope of this paper, we consider that legal information is any unit of human knowledge brought forth by the Law field and for the Law field (Passos, 1994; Nascimento; Guimarães, 2004). We also consider here that legal document is a record of legal information, that is, a textual document produced according to the Law in the public and private context. Such document consists itself in the very same legal act, or even in a record or study of legal facts. Its production and textual form can range according to its purpose, content and context of production (Torres, 2013; Torres, Almeida, 2013).

Considering the relevance of Legal Documentation for the Legal Field, as well as for the society as a whole, we believe in the value of performing further research within that field. This paper describes scientific research performed and identifies what grants the legal character to a document. This research is justified by the small amount of research about the theme, by the volume of information produced in the Law field, and by the many of librarians working in the field. Secondly it is justified by the need of offering theoretical grounds required to the construction of specific methodologies and instruments oriented for legal documentation. Then, it would be possible to create information services suitable for the aforementioned field.

The remainder of this article is organized as follows: the second section presents the theoretical background, emphasizing the main concepts that underlie the research; the third section describes the methodological steps that guide the research; the fourth section presents results; and finally the fifth section offers our final remarks and conclusions.

2. Background

Social facts give rise to the Law field. Indeed, within this field, there is a special sort of social fact called legal facts. These so-called legal facts can be natural facts, which generate legal effects (for example, birth and death), legal business (for example, the contracts and agreements), and the legal acts (for example legal rules as constitutions, laws, resolutions, to mention a few). On the one hand, in the scope of legal business a person or an institution exercises their intentions, after creating individual rights and obligations. On the other hand, in the scope of legal acts, the rights and obligations are instituted by the government through laws that allow the acquiring, maintenance, transfer,

modification and extinction of rights, according to obligated regulations. In this case, there is no need of agreements of will (Reale, 2011; Nader, 2002; Meirelles, 2009; Mello, 2004).

The most important social relations within the society are the legal relations ruled by legal norms, since they are essential for society and its inherent conflicts. The social order is due to two main kinds of norms: the norms of the first kind, called legal norms, are recognized and granted by the government; the norms of the second kind do not depend on any government, they are established through tradition. According to Reale (2011), legal norms of any kind are characterized by a propositional declaratory structure, which prescribes a mandatory method of organization or from behavior.

The expression “legal documentation” is widely adopted in the specialized literature, even though it is not accurately defined. However, there are efforts to better define this expression, which allows one to find four main meanings: i) a field of knowledge; ii) a set of technical processes for organizing documents; iii) a set of specialized documents; iv) the activity of recording legal information through documents (Atienza, 1979; Dias, 1980; Barros, 2004; Nascimento; Guimarães, 2007; Cunha; Cavalcanti, 2008). From these elements found in the literature, we offer our understanding and define legal documentation, in the context of this paper, as: a specialized sub-field of Information Science devoted to activities that encompass the study, organization and promotion of the use of different sets of documents produced by the Law field.

Concerning the term “document” in the context of Information Science, one must emphasize the pioneering work of Paul Otlet, who defines a document as the record of the human thought and of the external reality in elements of the nature of the material, a sort of a backbone of certain matter and dimension in which one can include signs representing intellectual data (Otlet, 1934, apud Ortega; Lara, 2010). Otlet proposed that the term “document” is a general term that encompasses not only textual documents, but also iconographic and audiovisual objects.

Smith (2005) explains differences between speech and the recording of that speech in documents. On one hand, speech is an occurrent entity, which means that it exists only during the very same speech; on the other hand, documents are continuant entities, which have the ability of enduring through time apart from the author. Documents can have multiple authors and can be expanded through the inclusion of appendices or through the incorporation (real or virtual) of other documents. So, one can contrast documents from speech according to the ways in which documents can be combined or bound in order to create a new document, mirroring the complexity of human relations. The Theory of Document Acts (Smith, 2005), an extension of the Theory of Speech Acts (Austin, 1990), explains how people use documents, not only to record information, but also to create the myriad phenomena in society. This theory aims to provide a better understanding of the role of documents in the context of human actions, in which documents are able to generate new kinds of social relations.

Legal documentation may be seen as an application of the Theory of Document Acts. Indeed, the legal norm is the instrument by which Law reaches its purposes, and documents are the main instrument to make effective such purposes. Legal documents are able to establish rules of behavior in society, to guide the public administration, to solve conflicts, to create business, and so forth. In addition, legal documents can also record natural and social facts, which are relevant to the Law, as well as they can accumulate, share and preserve the theoretical legal knowledge.

In addition to legal norms *per se*, a large amount of documents is generated through the complex processes that compose the Law, for example: rules of behavior for the society and public administration, solution of conflicts, establishment of business, record of legal acts, and even the study of how all of these processes are originated. Such documents are very useful resources both to record facts for legal purposes and to underlie all processes of the Legal system.

Legal information, throughout its several sources, is expressed in different kinds of documents, which are ordinarily gathered together based on Law, and in other legal and doctrinal documents. According to Torres and Almeida (2014), legal documents do not only provide elements for proof, but they are also able to create a variety of institutional and deontic powers (Searle, 1995). The legal doctrine, on the other hand, plays a distinguished role since it both acts as information source about Law and makes possible the information dissemination through books, thesis, articles, proceedings and so forth (Passos and Barros, 2009).

3. Methodology

Our research was oriented according to methodological steps classified as (Gil, 2002):

- a) Regarding the nature, it is an applied research, since it found result of directly practical application for the institutions dealing with legal information;
- b) Regarding the approach to the problem, it is a qualitative research, since the knowledge obtained in the scope of the research cannot be quantitative measured;
- c) Regarding the goals, it is an exploratory research, since we investigated the phenomena through an interdisciplinary approach;
- d) Regarding the technical procedures is is both a bibliographic and a documental research, since the research was performed in two stages: in the first one, we conduct a literature survey in order to create the theoretical model; in the second one, we tested the validity of the model in primary documents.

In the stage of bibliographic research, we conducted an analysis of the literature produced in the scope of Information Science, Archival Sciences, Law Science and Philosophy of Language, with the aim of finding elements for the

characterization of a legal document. From this, we proposed a conceptualization to legal documents, which unfolds in six categories of documents established according to their ends, contents and contexts of production. In addition, we identified characteristics of legal documents in all of these categories.

In the stage of documental research, we performed tests to validate our model. These tests consisted in analyzing a sample of real documents, which are representatives of the categories found before, in the prior stage. The corpus consisted of 15 documents about different themes, randomly selected in personal and institutional archives, databases, law documentation, and internet sites of the public administration. We collected documents from different sources in order that the sample was representative of public and private documents. Then, finished the documental research, we performed a comparison of our findings with the proposal of the literature and made some adjustments.

4. Results

Our research presents as results: i) a proposal of conceptualization for the legal document; ii) six categories of documents; iii) the description and characterization of those six categories; iv) a glossary of types of documents, as well as their definitions and respective related categories.

Based on the Theory of Concept due to Dahlberg (1978), we proposed a general concept for legal document, which was created through the synthesis of true statements found in bibliographic research. These statements represent the set of characteristics that allow one to distinguish a legal document from other types of documents. We defined the intention and the extension of the concept of document, considering the six categories in which it can be unfold. Then, we reached the understanding that a legal document is a textual document produced according to the established law, both in public or private context, which constitutes itself the own legal act. In addition, a legal document also constitutes itself either in the record or the study of a legal fact, which production and textual form range according to its purpose, content and context of production.

The categories in which the legal document can be unfolded were established according to, as we just mentioned, its purpose, content and context: legal acts, administrative acts, juridical acts, agreement acts, notary acts, and legal doctrine. The description of elements that characterize all of the six categories and the typology of documents are beyond the purposes of this paper, but can found in Torres (2013) e Torres e Almeida (2013).

5. Conclusions

The research we described here, while an exercise of understanding of part of reality, sought contribute to a better characterization of the legal document. We found grounds for reaching our purposes in the literature of Philosophy of Language, Law Science, Information Science, and Archival Science. Throughout the development of our research, we found not only “one legal document”, but six types of it, which are created for different purposes, textual

forms and contexts. Their characteristics are present in a large amount of species of documents. These documents share general characteristics, which in an unequivocal way, provide legal power to the document.

Legal documents are produced by the public administration (in cities, states or countries), by private organizations and individually by citizens. The set of these documents form a unit that reflects a complex legal reality to be examined and understood. The unit molded by the set of these documents can be delimited within the reality and it is composed by distinguished elements. Even though distinguished, these elements are co-related and play different functions that are essential to the social whole.

Once reached a better understanding about the general concept of legal documents and of the peculiarities of each category, we analyzed examples of documents. So, we tested the adherence of the developed criteria against several real examples. Through our research, one can conclude that Legal Documentation, while a sub-field of Information Science, is devoted to study of both a set of specialized documents and the complementary documentation generated due the legal processes (law, administrative, judicial, business, notary and register).

The bibliographic research contributed for improving the understanding about the role of document in our society, while it is considered a form of manifestation that not only describes the reality, but also produces effects on it. It makes possible one to note that legal documents are objects of studying both in Information Science and Archival Studies.

For future work, we plan to explore the possibilities of integration of both methodologies and instruments used for information organization in the fields of Information Science and Archival Sciences. In addition, we hope to conduct study cases in order to map and to characterize the legal documentation, which is produced in a real unit of public administration, in each of our categories of documents. Finally, we intend to check the applicability of the theory of document acts due to Smith (2005) in a set of documents originated in other knowledge fields.

The research we described in this paper consisted of an effort for the systematization of information about both the concept and the characterization of legal documents. Through multidisciplinary bibliographic research – conducted within Information Science, Legal Science, Archival Science and some complementary fields – we sought to clarify the theme. We hope that our findings can contribute to the studies about the legal documents that have been carried out in Information Science.

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