Area 6. Philosophy of law

Natural or artefactual? The meaning of 'marriage' as a legal term

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Abstract

In our presentation, we argue that pace the standard view, there are no linguistic constraints regarding the extension of the legal term 'marriage'. We reconstruct the standard view based on the assumption that the semantics of the legal term 'marriage' is (at least somewhat) like the semantics of natural kind terms. This issue implies semantic magnetism between 'marriage' and the necessary extension of a corresponding legal kind. We argue, however, that this assumption is mistaken. We argue that the standard view embraces a picture of the semantics of legal terms like 'marriage', in which their meanings are linguistically constrained by the ordinary meanings of the corresponding common language terms (marriage). If one accepts those semantics of natural kind terms apply to marriage, one may conclude that there are some essential marriage features as a legal institution. We argue, however, that marriage, as a legal kind, has no essential features. State of the art Putnam famously claimed that not only terms like 'water' have natural kind-like semantics. He applied a similar mechanism to artefacts (like pencils). Legal institutions are often considered prototypical artefacts. Recently, in an interesting case in Canada (Halpern v. Canada), a court called as an expert witness a philosopher Rob Stainton who argued that calling same-sex unions 'marriages' is not justified due to the meaning of the word 'marriage' in contemporary Canadian English. Stainton's views are representative of the standard view. In response, for instance, Adele Mercier argued against Stainton's views on meaning. In our presentation, we argue that there are necessary linguistic (and probably metaphysical) constraints on the extension of marriage. We base our argument on conceptual analysis. We also employ some examples that present different uses of 'marriage' both as a legal and ordinary term. We hope to demonstrate that a popular, linguistic argument against calling same-sex unions 'marriage' is ill-justified.

References

Mercier, Adele. (2007). Meaning and necessity: Can semantics stop same-sex marriage? *Essays in Philosophy*, *8* (1), 14.

Putnam 1975. The meaning of 'meaning'. *Mind, Language and Reality*, *2*. Cambridge UP.

Schwartz, S. (1978). Putnam on artifacts. *Philosophical Review*, *87*(4), 566-574.

Station R., Expert witness Affidavits in Egale v. Canada (A.G.), filed in the Supreme Court of British Columbia, in the matter of Applications for Licences by Persons of the Same-Sex who Intend to Marry; and in the matter of The Marriage Act and The Judicial Review Procedure Act (Vancouver Registry No. L001944;

L002698; L003197), August 2001; and in Halpern v. Canada (A.G.), filed in the Ontario Superior Court of Justice (Court files 684/00,30/2001), November 2001.

Keywords: marriage; legal terms; legal kinds; natural kinds; artefacts

Biodata

Pawel Bana's, PhD, is a graduate in law, philosophy and psychology; he is also interested in general linguistics. He received his PhD from Jagiellonian University (his thesis was about truth-makers within legal discourse). Currently, he works at the University of Warsaw (as a Principal Investigator in a SONATINA research project funded by the National Science Centre of Poland (*Analysis of the concept of a legal person from an ontological and linguistic perspective*; no 2020/36/C/HS5/00600). He also works at the Jagiellonian University as a Coordinator of the Law-Language-Philosophy Research Network. He specialises in the philosophy of law, the philosophy of language, and social ontology.

Bartosz Biskup is a PhD student at the Jagiellonian University where he works in a PRELUDIUM BIS project funded by the National Science Centre of Poland. Currently, he focuses on his thesis regarding some metaphysical and semantic problems relating to the legal institution of marriage.

The destructive narrativity of (Polish) pandemical legislation

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Abstract

Our purpose is to discuss the `constitutional narrativity' of the Polish Covid-19 era, as it furnishes pandemical legislation and practices and decisions of officials. After exposing the dominant constitutional narrative of the 'Good Change' movement represented by the Law and Justice (PiS) government, we will show that factual misrepresentations and deviations from established canons of interpretation have caused dramatic ineffectiveness of current anti-Covid-19 public policies. The paper draws on authors' jurisprudential research and narratological studies (Anonymous). Following Brooks (1996, 2008), we assume that narratives (as a genre) are principal ways of ordering discourse about the world. There are as many different modes of storytelling in law as possible 'legal contexts'. Certain modes of storytelling are more restricted (bound by specific rules) than others—e.g., certain procedural rules of a trial, especially rules of evidence, may impose constraints on ordinary ways of storytelling (Conley & O'Barr, 1990). However, even though the narrativity in law is perspectival, we argue that the narrative-oriented theorist who wishes to understand the shortcomings of certain public policies should seek general narratives provided by lawmakers and officials. Such are 'constitutional narratives' formed out of sequences of constitutional arguments provided in various legal (both public and private) contexts, relying on various kinds of reasoning

and evidence. Narratives are seeking to ground outcomes in (memorable) origins and take us (retrospectively, using 'reverse logic') to primal moments in order to determine the future. Our claim is inspired by the idea of 'constitutional narrativity' developed by Brooks (1990) and recently by Crowe (2019). We will compare the constitutional narratives developed in the pre-'Good Change' era (1997-2015) and during the 'Good Change' era (2015-now). By invoking multiple examples, we will show that the older narrative would have better served the demands of the ongoing pandemic crisis. Amongst all, we will argue that the narrative of 'Good Change' is a highly Rousseau-lian type of narrative (the motto 'Let's get rid of all facts' motivates constitutional arguments that refer to 'original intent' or 'original context'). The application of a narrative-oriented approach to analysing current problems of national legislation has yet not been widely recognised in the context of Polish legislative policies. It might also allow for a deep comparison of various national legislative policies in this respect. This paper asks three questions: 1) What is the constitutional narrative? 2) How does it influence the actual practices of governments, officials, judges? And 3) How to compare and evaluate actual and historical constitutional narratives? As for the methods employed, the paper uses comparative arguments, conceptual analysis, and literature and legislation analysis. The dominant 'Good Change' narrative has caused dramatic ineffectiveness of anti-Covid-19 public policies. It largely diminished public trust in institutions and triggered a large-scale social 'free-rider effect'—e.g., concerning Covid-19 vaccination procedures, which has earlier been observed only in micro-scale—e.g., in case of judicial (official) disobedience. It is fruitful to compare various narratives for their practical impact on the functioning of institutions.

Keywords: constitutional narrative; constitutional argument; Covid-19 legislation; public policy; Poland

Biodata

Marta Dubowska is a third-year PhD student in legal philosophy at the Jagiellonian University in Kraków, Poland, where she is working on her thesis on law and literature and narrativity of law. Apart from holding an M.A. in Law (2017), she also holds a B.A. in Theatre Studies (2017) and an M.A. in Performativity Studies (2019), all from Jagiellonian University. Her current research focuses on the structure of legal narratives, for which she has received a grant from the National Science Centre. Her publications touch on the connections of law and humanities (law and theatre, law and visual media), legal education, legal narratives and ethics of belief. She was awarded a scholarship to participate in the 2018 edition of the Literature Summer Programme at Cambridge University. She attended three IVR world congresses (Washington 2015, Lisboa 2017, Luzern 2019) and a couple of Law & Literature conferences on the Continent.

Dr. hab. Adam Dyrda's research interests include neopragmatism, epistemology, ethics of belief, general jurisprudence, and legal realism. He completed his PhD at Jagiellonian University (Cracow, Poland) in 2012. In 2018, he obtained a degree of doctor habilitatus based on the monograph on metaphilosophical underpinnings of theoretical disagreements in jurisprudence. He is a professor in the Department of Legal Theory at Jagiellonian University. In recent years Dr Dyrda has worked on holistic pragmatism developed by Morton G. White (1917-2016) and on the contemporary reinterpretations of American legal realism. In 2020, as a Fulbright scholar, Dr Dyrda visited the University of California-Irvine. Currently, he works on the project entitled *Ethics of*

Institutional Beliefs. The project combines epistemological and ethical inquiries over the status of 'institutional beliefs', namely beliefs—or attitudes, intentions, among other things—regarding the existence and functioning of social and legal institutions. Married without children (but with cats), loves tennis, skiing, swimming, and conferences on language and law.

The categories 'common law' and 'civil law' as pseudo-justifications in international criminal procedure

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Abstract

It is a popular tool for legal argumentation to refer to the nature of criminal proceedings before the International Criminal Court (ICC). This nature is usually categorised by the terms adversarial-inquisitorial and common-civil law. I will show that these categories lack clarity and definition and have proven limited descriptive value. The presentation is based on Heinze (2020). This paper is about the definition, terminology, deconstructionism, and the arbitrary use of concepts and terms. The discussion aims to define the internal system of procedural rules at the ICC. To this end, it is necessary to identify the best model that describes what the ICC process is. The internal system of rules is still underrepresented in interpretation before international criminal tribunals. The ICC lacks a 'general jurisprudence' or *Rechtsdogmatik* in that regard. The paper raises the following hypotheses: 1) The terms 'common law' and 'civil law' have various meanings and are used either as Nominal definition or as Real definition without the ensuing reflection on the possibility of other (pragmatic) meanings. 2) Models of criminal procedure are not free from considerable ambiguity, and their authors seldom disclose their methodology. 3) 'Common law' and 'civil law' or 'adversarial' and 'inquisitorial' do not qualify as alternatives since they fulfil every criterion of a flawed legal distinction. 4) Contextual interpretation (internal system) reconciles the objective and pragmatic meaning of a text. And 5) Damaska's concepts seem the most suitable for: a) the description of the ICC process; and b) to lay the foundation for a broad contextual interpretation. At the outset, I will provide two recent examples where Chambers at the ICC employed the common law-civil law dichotomy for interpretive purposes. After that, I will describe the procedural models commonly employed for the international criminal justice (common law vs civil law; adversarial vs inquisitorial). The terms are defined pragmatically and juxtaposed to concepts. This definition is followed by a larger empirical account of the misuse of procedural taxonomy in criminal adjudication at the domestic and international levels. After pointing out the impact of that misuse on legal interpretation, I will demonstrate, both normatively and prescriptively, what procedural model is methodologically suitable to frame the internal system of the ICC's procedural regime. This system, in turn, is the basis for a contextual interpretation of procedural rules. 'Common law' and 'civil law' or 'inquisitorial' and 'adversarial' are terms employed for pseudo-justifications (*Scheinbegründungen*) in what turns out to be a fragmented and unsystematised legal methodology at the ICC. Other categories are a better fit for interpreting procedural rules at the ICC through a contextual method of interpretation.

References

Heinze (2020). I The ambivalent 'civil law' vs 'common law' dichotomy within international criminal adjudication. In Bergamo et al. (Eds.), *Power in international criminal justice*. *TOAEP*, 155-255.

Keywords: international criminal procedure; procedural models; interpretation; justification

Biodata

Alexander Heinze is *Akademischer Rat* (arguably equivalent to Assistant Professor) at the University of Göttingen. He is currently working on his Habilitation project that deals with the separation between concepts and words in German criminal law and their perception by perpetrators in cases of errors of law and fact. He holds a PhD in International Criminal Law (with honours), received his Master's in International and Comparative Law from Trinity College Dublin, Ireland, with distinction and published various papers on topics such as international criminal law and procedure, media law, comparative criminal law, human rights law and jurisprudence. His book, *International criminal procedure and disclosure* (Duncker & Humblot, 2014) won three awards. He is a member of the ILA's Committee on Complementarity in International Criminal Law, co-editor of the *German Law Journal*, book review editor of the *Criminal Law Forum*, has been working for the Appeals Chamber of the ICC as a Visiting Professional, has appeared as an expert before the Committee for Legal Affairs and Consumer Protection of the German Parliament and as amicus curiae before the ICC.

What does the institution of legal responsibility consist of?

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Abstract

The institution of legal responsibility is very important in any legal system. However, it is rarely analysed in depth. The main aim of the paper is to take a closer look at its nature. I will claim three types of norms that constitute legal responsibility: deontic, typological and sanctionative. Deontic norms impose certain legal obligations and prohibitions on individuals (i.e., prohibit us from doing X and oblige us to do Y). However, breaking one's legal obligation does not mean that one is responsible for doing so. To be liable, the conditions for liability set by typological norms, which determine responsibility issues rather than obligation, must be satisfied first. These conditions can be negative—e.g., a lack of proper justification of excuses—or positive—e.g., the occurrence of an injury. For example, if someone accidentally bumped into their neighbour's car, this action fails to meet the obligation to respect people's property established by a deontic norm. However, if the reason this occurred was a heart attack, the person is not liable for it because it was an accident that took place in a condition that precludes conscious and free decision-making. Typological

norms define liability as meeting certain conditions, and no further judgment or effect is required—neither from the judges nor the victims. Nobody even needs to know that one is liable. For example, if John scratches Peter's car, he is liable for not obeying the legal obligation to respect others' property rights, even if neither Peter nor anyone else ever notice the scratch. This aspect is because John satisfied all the requirements of tort liability prescribed by typological norms. Sanctionative norms set the conditions under which one can be the subject of responsibility-related reactions, such as punishment or damages. In other words, sanctionative norms determine what happens when one is already liable in a typological sense. Deontic and typological norms usually justify the application of sanctionative norms and the imposition of responsibility-related reactions. That is why it is widely believed to be unjust to inflict punishment (according to sanctionative norms) upon someone who does not deserve it—i.e., it is not responsible in a typological sense, especially criminal punishment. If John never stole a car, he never committed a crime and should not be punished for it. On the other hand, not everyone liable in a typological sense is also liable in a sanctionative sense. If John steals his uncle's car but immediately returns it and the uncle does not file any legal complaint, then John will be liable in a typological sense for stealing the car but will not be liable in a sanctionative sense because he will not bear any (legal) consequences. In this paper, I will try to determine whether there are good reasons for preferring the above idea over David Shoemaker's threefold theory of attributability, answerability, and accountability.

Keywords: legal responsibility; legal liability; attributability; answerability; accountability

Biodata

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Naturalising legal interpretation

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Abstract

The theory of legal interpretation desperately needs objectivity, yet notoriously lacks a naturalistic methodology, which is justifiably perceived as more objective than the humanistic methodology usually employed in the *Geisteswissenchaften*. This paper outlines a theory of legal interpretation based on naturalistic assumptions, particularly on the current cognitive theories of text comprehension. The theoretical underpinnings of this theory include Kamp's theory of discourse representation, Gavins' text world theory, and Peirce's methodology of final causation. According to these assumptions, legal text understood as the aggregate of the texts of all the legal regulations in force at a particular time and place is perceived by the interpreters as a complex description of a single rational and coherent possible world, accessible from the actual world: causalities existing in the actual world make it possible to achieve that possible world. For the possible world to be accessible from the actual world, it must be ontologically similar to the actual world. The accessibility requirement imposes obligations on the interpreters to secure the rationality of the possible world decoded from the text, amongst others to secure that the description of this world is not contradictory and—as a consequence—the law of excluded middle is obeyed in the possible world described by the legal text. The interpreters decode this description of the possible world into a mental representation that serves as a holistic model to which the actual world is made to conform. While the actual world has infinite properties, the legal text describes a finite number of properties in the possible world, as it contains a finite number of sentences. Therefore, in the process of legal interpretation, the description of the possible world must be saturated with additional elements not described in the legal text to make the structure of the possible world sufficiently rich to be a model to which the actual world is made to conform. This issue involves the inclusion of some additional, non-predetermined features that integrate with the properties of the world predefined by the legal text. This process of saturation consists of filling in 'places of indeterminacy' with content implicated by other features of the possible world. I also argue that the discretion resulting from the necessity of filling in the places of indeterminacy is justified by fulfilling the lawmaker's intention to make the possible world described by the legal text real. I proceed from the above premises to identify several deep structural assumptions that lawyers make when interpreting legal texts. I also show how the naturalistic methodology of legal interpretation can help explain the issue of discretion in legal interpretation, why the law is perceived as a system, and how some most popular tools of legal argumentation—e.g., argumentum ad absurdum—are based on ontological assumptions regarding the nature of the actual world.

Keywords: legal interpretation; text-world theory; objectivity; naturalism

Biodata

Marcin Matczak is an Associate Professor at the Institute of Theory of State and Law at Warsaw University's Law and Administration Faculty and a partner in Domanski Zakrzewski Palinka, one of the largest Polish law firms. His academic interests cover legal theory and legal philosophy, particularly applying the philosophy of language in these areas. His publications include articles and books on theories of legal interpretation, judicial reasoning and judicial formalism, with a special focus on the application of the philosophy of language in legal philosophy. He has been involved in the recent Polish constitutional crisis, first as an attorney representing NGOs before the Constitutional Tribunal, and later as a commentator publishing, among others on *Verfassungsblog* (verfassungsblog.de). He has published in *Law and Philosophy*,

Canadian Journal of Law and Jurisprudence, *Hague Journal on the Rule of Law*, and in *Jurisprudence*. His SSRN profile can be found at: https://hq.ssrn.com/submissions/MyPapers.cfm?partid=2002095

Grundnorm and grounding

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Abstract

This paper aims to examine whether confronting Kelsen's neo-Kantian theory of the basic norm with current theories of grounding yields any positive results. The theory of the basic norm is at the core of Kelsen's pure theory of law, the basic norm being a general non-factive presupposition of any cognition of a legal norm. Kelsen's terminology suggests that there might be connections to grounding theory. The German term for 'basic norm' is 'Grundnorm', and Kelsen maintains that, in the legal hierarchy, any higher norm 'grounds' the lower norm by answering the question of the 'why' of its validity. Grounding theory is a young branch of philosophy. It is expressive of a post-analytical move 'back to metaphysics'. The following features of grounding are largely uncontested: 1) Grounding captures the meaning of 'because' or 'by virtue of'. 2) It is an asymmetric, irreflexive, transitive relation. 3) It is closely connected to the notion of 'explaining'. 4) The grounding element is somehow responsible or constitutive for the grounded element. Reconstructing the theory of the basic norm in terms of grounding theory seems rewarding because Kelsen's conception of 'Grund' is vague and metaphorical. Joining these theories might both increase the rationality of Kelsen's theory and prove the usefulness of the grounding theory. As a recent trend, grounding theory is developing quickly, while many 'open ends' still exist. The theory of the basic norm, on the other hand, is discussed for a century without there being a consensus about the nature of the basic norm, its purpose or usefulness. To my knowledge, there has not been any substantial attempt yet to juxtapose grounding theory and the theory of the basic norm. The theory of the basic norm was developed in the 1920s as part of a specific neo-Kantian conception of law as a system of 'cognitive ought-judgments', constituted in institutionalised legal dogmatics. The alleged chimeric character of the basic norm is due to its being an implicit presupposition of legal cognition—as embedded in a factual practice—and an explicit part of the legal hierarchy at the same time. While grounding theory can explain the basic norm as part of the legal hierarchy, it fails when confronted with its specific neo-Kantian presuppositional character. As for the methods and tools employed in the analysis, theory analysis, conceptual analysis, and history of ideas will be used. Grounding theory is useful in explaining the basic norm as part of the legal hierarchy, but it cannot account for its presuppositional status. The (characteristically neo-Kantian) reciprocal 'balanced' relation between the 'given' legal system and the basic norm is too complex to be captured by it. The text contributes to the theory of legal science.

References

Kelsen, H. (1922). Rechtswissenschaft und Recht. *ZöR*, *3*.
Kelsen, H. (1923). *Hauptprobleme der Staatsrechtslehre* (2nd ed). Tübingen: Mohr.
Kelsen, H. (1934). *Reine Rechtslehre*. Leipzig & Vienna: Deuticke
Correia, F., & Schnieder, B. (2012). *Metaphysical grounding*. Cambridge: CUP.

Keywords: Kelsen; basic norm; grounding; presupposition; neo-Kantianism

Biodata

Dr Monika Zalewska is a postdoc at the Faculty of Law and Administration, University of Lodz, Poland, specialising in Hans Kelsen's pure theory. Her four-month scholarship at the Hans Kelsen Institute in Vienna and later cooperation resulted in her being appointed as Polish International Correspondent of the Institute. Dr Monika Zalewska is the author of two books and many articles regarding Hans Kelsen's Pure Theory. She specialises in two fields related to Kelsen. She attempts to shed new light on his thought by filtering it through current theories from other domains, such as conceptual metaphors or the theory of metaphysical relations like supervenience or grounding. The second field is connected with Kelsen's theory of democracy. Dr Monika Zalewska aims to reconstruct the link between Hans Kelsen's pure theory of law, the theory of democracy, and the common and fundamental values for both theories.

Carsten Heidemann studied law at the Christian-Albrecht-University in Kiel. He wrote his thesis on Hans Kelsen's concept of norm under the supervision of Robert Alexy. Since it was published under the title 'Die Norm also Tatsache' in 1997, he has written diverse papers on topics from the pure theory of law, focusing on Kelsen's conceptions of competence and validity and the status of the pure theory as a theory of legal dogmatics. Furthermore, he published papers on themes from Alexy's theory, like law's claim to correctness and the discourse theory of law, and John Searle's conception of social reality. Just now, he aims to rationally reconstruct the neo-Kantian philosophy contained in Kelsen's writings from the 1920s employing analytic philosophy in order to arrive at a philosophically feasible conception of normativism. He is an International Correspondent of the Hans Kelsen Institut. For more than twenty years, he has been working as a practising lawyer, specialising in immigration and asylum law.

Delimiting legal interpretation: the problem of moral bias and political distortion—the case of criminal intention

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Abstract

We aim to substantiate some criticisms of legal interpretivism, using one concrete example: the interpretation of criminal law rules pertaining to intentionality ascriptions. What is the content of law? If it is communicated content, then it is easy to argue that it

is indeed the parliament that communicates laws to society. However, this claim has been put under massive criticism because moral considerations play an important role in delimiting the content of the law. According to a widespread view, the law is a communicative phenomenon. However, this standard picture has recently been under attack by followers of Dworkin's views on interpretation. According to this view labelled interpretivism, the content of the law is a set of rights and obligations that depends on moral principles. Therefore, legal interpretation does not amount to seek the linguistic content of a statutory text. However, it aims to identify the set of moral rights and obligations obtained in virtue of the enactment, even though the enactments having that impact was not considered and endorsed, in some specific sense, by the enacting institution (Stavropoulos, 2014). In order to do so, the interpreters cannot always escape moral considerations. We will analyse how interpretative practice pertaining to criminal intention is carried on by Italian and Polish judges and which problems it raises in those legal systems. We will investigate whether both Italian and Polish judicial interpretations of criminal intention can be explained according to interpretivism as practices that depart from the legislative communicated content to implement a moral principle. We will distinguish between a Kantian and a consequentialist approach, and we will claim that judges set aside the Kantian criteria communicated by the legislator to implement a consequentialist approach. This way, judges open the door to folk biases, political pressures, and stereotypes that produce distorted and unfair results. We employ the methods of analytic philosophy, mainly conceptual analysis. There is a dependence between the content of a statutory text and the type of moral considerations allowed by this text. In criminal intention, interpretivism would have to claim that the judicial practice is erroneous and provide a theory of objective moral truth that it fails to do. Thus, following the linguistic content of the law wherever it is clear enough needs to be considered a value in itself. Moreover, a descriptive theory of truth of moral statements which could adequately describe the practice is vital. Hybrid expressivism is precisely such a theory.

References

Stavropoulos N. (2014). *Legal Interpretivism*.

Keywords: interpretivism, the law as communication; cognitive bias; criminal intention; consequentialism.

Biodata

Izabela Skoczen is an adjunct professor at the Law Faculty of the Jagiellonian University. She has published a book, *Implicatures within legal language* in Springer Law and Philosophy Library (2019), and several articles on the pragmatics of legal language, for example, in the *International Journal for the Semiotics of Law*. She is a member of the Guilty Minds Lab at the University of Zurich. She teaches logic for lawyers and introduction to jurisprudence. Her recent research activity involves an experimental investigation into the workings of legal language. She is a member of the Harmonia grant team, a group of researchers from the University of Milan and the University of Krakow, focusing on legal interpretivism. The project aims to investigate the question of the content of law: is it merely linguistic content? Or, rather, is it an amalgam of linguistic as well as moral considerations?

Francesca Poggi is an Associate Professor at the Department Cesare Beccaria, University of Milan, where she teaches general jurisprudence, law and bioethics, and gender legal Studies. She is a member of the Ethical Committee of the University of Milan. She has published a book on permissive norms—*Norme Permissive* (Giappichelli, 2004)—and a collection of lectures on general legal concepts—*Concetti teorici fondamentali*, ETS, 2013 well as some essays in Italian, English and Spanish. Among them: Significado literal: una noción problemática [Literal Meaning: a Troublesome Concept], *Doxa, 30*, 2008; A Commitment to naturalism. Bentham and the legal realists, with F. Ferraro, in G. Trousseau (Ed.), *The legal philosophy and influence of Jeremy Bentham* (Routledge, 2014). She edited a collection of essays on law and bioethics—*Diritto e bioetica* (Carocci, 2013). She is a member of the Harmonia grant team, a group of researchers from Milan and Krakow, focusing on legal interpretivism.

Natural semantic (legal?) Metalanguage. What can legal theory learn from Anna Wierzbicka?

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Abstract

The research aims to introduce the Natural Semantic Metalanguage theory (from now on: NSM) into legal theory. The NSM is a semantic theory originated by Anna Wierzbicka (Wierzbicka, 1996). It stems from the idea that there is some basic, universal vocabulary of semantic primes, i.e., word meanings that supposedly form an irreducible semantic core of all human languages. Semantic primes are used to formulate language and culture-neutral explications (paraphrases) of the meaning of complex expressions. Such explications can be used for various scientific and practical purposes. Law is a linguistic phenomenon. Accordingly, legal theory has always been indebted to semantic theories. However, the NSM has not been discussed in legal theory, except for a few short remarks (Bajci'c, 2017, p. 115). The general hypothesis of the paper is that the NSM offers useful tools for studying meaning in law and that it can be applied to various legal problems (Goddard, 1996; Wierzbicka, 2003), including the following: 1) Legal interpretation—the NSM provides a reductive paraphrase to explicate subtleties of linguistic meaning without the need to internalise technical, linguistic vocabulary. 2) Definitions in law—the NSM offers an original approach to definitions that emphasise definitions' precision, clarity, and intelligibility. 3) Comprehensibility of legal texts-the NSM aims at avoiding technical and specialised terms, and its metalanguage is claimed to be understood by everyone, irrelevant of their knowledge of the field, level of education, cultural basis, among others. 4) Precision of legal texts—the NSM promises an extreme precision concerning meaning explications, as well as tools for identifying and avoiding polysemy. 5) The theory of legal (statutory and judicial) language—the NSM has the potential to help detect the specificity of legal meaning, as it explicitly underlines the cultural significance of language. 6) Comparative law and legal translation—the NSM offers a language—and culture-neutral metalanguage that can be used as a basic comparison between languages and legal cultures. As this paper aims to introduce the NSM into legal theory, the basic method to be used is conceptual analysis. Additionally, the NSM methodology

(semantic explication) elements will be employed to test its suitability in the legal context. The research will familiarise legal theorists with new tools for studying meaning in law that can be further developed and utilised in the sub-fields mentioned above.

References

Bajci'c, M. (2017). *New insights into the semantics of legal concepts and the legal dictionary*. John Benjamins Publishing Company.

Goddard, C. (1996). Can linguists help judges know what they mean? Linguistic semantics in the courtroom. *International Journal of Speech-Language and the Law*, *3*(2).

Wierzbicka, A. (1996). *Semantics: Primes and universals*. Oxford University Press.

Wierzbicka, A. (2003). 'Reasonable man' and 'reasonable doubt': The English language, Anglo culture and Anglo-American law. *International Journal of Speech-Language and the Law*, *10*(1).

Keywords: legal semantics; Natural Semantic Metalanguage, definitions, legislative drafting, legal interpretation

Biodata

I am a young legal theorist interested in the linguistic aspects of the law. My academic work focuses on applying linguistic theories to various legal theoretical, and practical problems, such as statutory interpretation and legislative drafting. My doctoral thesis was devoted to the role of grammar in statutory interpretation (*Gramatyka jako przeslanka decyzji interpretacyjnej*, Katowice, 2019). My current scientific ambition is to introduce or popularise theories from the cognitive linguistics paradigm, such as the prototype theory and cognitive grammar, into the field of legal theory. I have recently published the paper Rethinking Hart. From open texture to prototype theory—analytic philosophy meets cognitive linguistics in *International Journal for the Semiotics of Law* (2020). I work as an Assistant Professor at the University of Silesia in Katowice (Poland), Faculty of Law and Administration.