ABSTRACTS

1. Tom Sparks
University of Durham

Beatles in Boxes and Rubies called Blue: The Semiotics of the International Legal Concept of “State

A semiotic approach has great potential—as yet not fully explored—to explain many of the vexed questions which beset the international legal system. Today’s international legal system, with its multiplicity of co-equal sovereignties and a disaggregated legislative power, is the product of an undirected and sometimes chaotic process of development over the course of several centuries. Rather than being designed by a controlling will or subject (by and large) to deliberate change, the structural elements of the system have recursively grown out of the actions, reactions and expectations of those interacting with it.

This paper will examine the potential that a focus on this recursive social creation has to advance our understanding of the international legal system. It will take as its example the concept of the State—at one and the same time perhaps the most ubiquitous and the most enigmatic of international law’s structural elements—and will examine the interplay between the social, the legal and the linguistic in defining and constituting States and statehood.

This paper will argue that States, although they have a great variety of manifestations and effects with the power vastly to affect each of our daily lives, are social institutions created and existing only (but not merely) through what Searle terms declarations. Seen in this light “State” is a non-ostensive reference. In fact, as this paper will argue, although States are often treated as unitary, the term “State” acts like Wittgenstein’s beetle in a box: viewed from different perspectives, different meanings of the term emerge. The internal and external viewpoints, in particular, offer two coextensive but non-equivalent views of the idea “State”, which I term the State(Polity) and the State(Person). Disentangling these nested ideas permits a more coherent analysis of State creation as a two-stage process effectuated through declaratory action and exhibiting what Giddens terms recursive social activity, governed by language rules.
The paper will thus explore the scope for a semiotic account of the State and its creation, and will argue that such an approach provides an alternative to the utopian/apologist tension identified in conventional politico-legal accounts.

2. Ben Sachs
University of St Andrews

The Duress Defense is Nonsense

A criminal defendant can have her sentence reduced if she can demonstrate that her crime was the result of duress—a credible threat of death or serious bodily injury. But there is a serious problem with this defense—one we have failed to recognize because we’ve been confused about how mere speech can be harmful and/or wrongful.

My paper is divided into four sections. In the first I explain the problem for the duress defense while in the subsequent three sections I explore and reject three possible ways of restructuring it.

The Basic Problem: Although serious bodily injury is very bad, there are other things that we can be threatened with that are equally bad. For instance, one’s spouse can threaten to file for divorce and take sole custody of one’s children. (Call this the ‘Divorce/Custody Threat’.)

The psychological effect of getting threatened with death or serious bodily harm isn’t special; the victim might experience identical psychological effects from the Divorce/Custody Threat. Admittedly, one might think that this has to be false because we know that it is wrong to threaten someone with serious bodily injury or death and not (always) wrong to issue a Divorce/Custody Threat, and the explanation of this moral difference must be that the former kind of threat has a special kind of psychological effect. However, this inference-to-the-best-explanation relies on an implicit premise—that the wrongfulness of a wrongful threat must be explained by the effect it has on its victim—that Sachs (2013) has disproved.

A First Solution: Expand the duress defense so that it is available any time one is threatened with some serious harm. The problem for this strategy is that it would mean sometimes excusing a crime committed under duress where the source of the duress is a threat of a morally permissible harm, such as a Divorce/Custody Threat.
A Second Solution: Make the duress defense available just when the source of the duress is a morally impermissible threat. But this is crazy. It would amount to saying (implicitly) that whether one is being wronged at a certain moment makes a difference as to whether one can be expected to avoid doing wrong at that moment.

A Third Solution: Make the duress defense available just when the threat meets a seriousness condition and an immorality condition. However, this solution inherits the problem that undermines the second solution.

3. Vitaly Ogleznev  
Tomsk State University Law School  
**The Frege-Geach Problem and Legal Language**

In his article ‘Assertion’ (1965), Geach puts forth a thesis questioning any non-cognitivist theory: a thought may have just the same content whether you assent to its truth or not; a proposition may occur in discourse now asserted, now unasserted, and yet be recognizably the same proposition. This dictum later became the classic formulation of the Frege-Geach problem. In the article ‘Ascriptivism’ (1960) Geach provides a fairly detailed description of Frege’s arguments in relation to prescriptivism (replacing it with the term ‘ascriptivism’), set forth, in his opinion, in an article by H. L. A. Hart, ‘The Ascription of Responsibility and Rights’ (1951).

To solve the Frege-Geach problem using the model of ascriptive legal language we need: (1) to use for the explication of the assertoric nature of legal utterances (like Frege) the argument of ‘assertive force’ and grant that it corresponds to the form ‘X did...;’ (2) assume that ‘X did...’ is ascriptive (non-descriptive, as Hart says) in nature which is due to the performativity of legal language.

Hart’s main point is that responsibility *only supposes* a descriptive use and, therefore, if we grant that an ascription of responsibility is non-descriptive, then the ascription of an action is also non-descriptive. And if we take this argument into account, then a conclusion from ascriptive utterances under *modus ponens* will not contain a logical mistake. We will represent ‘X did...’ as ⊨, a special sign indicating ascriptive assertive sentences (‘X did...’ corresponds to the sign ⊨ in Frege). Then, in accordance with the thesis on the non-descriptiveness of responsibility (and actions) the main use of legal utterances under *modus ponens*
can be formally represented as a conclusion from \( \vdash \text{If } A, \text{then } B; \vdash A, \text{therefore } \vdash B \), and then *petitio principii*, hidden in the form of conditional categorical deductions can be avoided.

Therefore, assertive force in a sentence with the form of ‘X did...’ the consideration of the defeasible nature of ascriptive legal utterances and the general course of reasoning is in accordance with *modus ponens* about which Peter Geach had doubts. And we have a new instrument for the interpretation of non-descriptive utterances and a possible solution to the Frege-Geach problem.

4. Giulia Terlizzi
University of Torino

**From “Good Morals” to “Human Dignity”: a New Language in EU Harmonization Process**

Although the language of law abhors generic concepts, it is apparent, however, that the law alone cannot predict everything. It is thus of extreme importance to look outside and use general principles that refer, for example, to morality or to common sense (e.g. the recourse to the “open clauses” of good morals and *ordre public*). These concepts have always caused some problems of interpretation and enforcement in the domestic jurisdiction of the Member States in the multilingual and multicultural system of the European Union. The paper aims to investigate the terminological and political use of the concepts of good morals, public policy and human dignity in the EU harmonization policy, particularly focusing on the challenges of bioethics in our pluralistic society. The European Union law tends to reach an independent notion of “public morality” that should be autonomous at both conceptual and terminological levels; this attempt drives away from the “general clauses” used in the domestic law of the Member States. This process displays some significant problems on legal translation and its political consequences. The effort of EU policy clashes with the notions of “ordre public” and “good morals” used by the Member States in their domestic relationships. Starting from the analysis of the Directive 98/44 on the legal protection of biotechnologies, the paper will show the interconnection between culture, language and translation. A new approach towards the use of general clauses is emerging in many civil codes, showing how language has a primary task in the normative dimension, particularly when there is a need to regulate a
highly debated legal field in a multicultural scenario. The EU centralizing effort already revealed a language “revolution” inevitably directed on a “neutralization” of the content of these concepts, which had moral and social connotations. The paper will show the undeniable shift from moral values to constitutional and “neutral” values (e.g: “human dignity”, “fundamental principles”) by means of language as a tool of policy for the law. This change of terminology implies pragmatic choices, difficulties of legal translations and consequences at political, symbolic and pragmatic level among Member States’ different legal and cultural backgrounds. The paper will face these critical aspects, being aware of the risk of the transformation of the content and of the function of these general clauses by the Member States. Changing a word is never a neutral choice, both linguists and jurist know it, but citizens?

5. David Duarte
University of Lisbon

Interpretative Norms Between Primary and Secondary Norms

Secondary norms, in the renowned classification by Herbert Hart, are a wild and unknown world. Defined as norms that have primary norms as object, and expression of developed legal orders, they are exemplified by three categories that, under that definition, cannot be exhaustive: adjudication, power-conferring, and recognition norms. In their quality of norms that, roughly speaking, regard the creation, extinction and alteration of primary norms, they conceptually have to encompass other categories, such has, and only in a few examples, norms on the entering and outward into force of norms, norms on the consequences of invalidity, or norms that define how to interpret norms sentences, i.e., norms regarding the operation of decoding the linguistic symbols used by normative authorities to express norms.

Two problems arise here. One, broader, related to the classification in itself. If primary norms are norms of conduct and by opposition secondary norms are not, from this would follow that interpretative norms – surely norms regarding other norms – have to be qualified as norms that do not prescribe how legal operators have to obtain meaning out of norm sentences. This is, first of all, counter-intuitive: these norms explicitly define how addressees have to deal with language and act with it accordingly. But, moreover, this can be the starting point to show that, probably, serious difficulties jeopardize the classification.
Several norms that have others has object are also norms of conduct, given the fact that they prescribe – imposing, prohibiting or permitting – how legal operators have to deal with law and its norms.

The second problem concerns interpretative norms as a category, namely when one takes into account that they are often mixed with or taken by unqualified guidelines or practices about how to interpret norm sentences. This second problem addresses, thus, the proper notion of interpretative norms. Three points seem sustainable here. First. As part of the set of norms one calls a legal order, interpretative norms are all and only those that, adopted by its normative authorities, define processes of obtaining meaning from the language used in norm sentences. Second. For the previous reason and because natural languages are received by legal orders bringing with them their semantic rules, no other prescriptions than semantic rules and interpretative norms enacted by normative authorities can guide those processes. Third. Since interpretative norms have a complementary function regarding semantic rules, and when not in conflict with them, interpretative norms limit their scope to the cases where norm sentences are semantically uncertain.

6. Dominika Kowalska
Jagiellonian University

Is it Mandatory to Use Legal Definitions? The Extent of Judicial Discretion and Argumentation Process in Polish Judicature

As a crucial factor which creates special, professional language of law legal definitions are one of the most important type of 'particles' that build legal system as a whole. They are a filter through which we observe, interpret and understand the law, a direct signal of legislator's will. The aim of their existence is to minimise the extent to which law can be relatively freely interpreted, we consider them to be one of the most important guarantees of legal certainty. This paper is going to be focused on the following issues concerning the use of legal definitions:

1. the scope of application of a legal definition - how the legal definition is applied: to the whole legal system or only to the particular branch to which the act containing the definition belongs;
2. the obligation to use legal definitions - is this obligation definite; do judges have to use legal definition when there is one and skip analysing any other existing factors or maybe is it more similar to applying weighing formula;
3. is the fulfilment of the obligation to use legal definitions a gradual or binary value;
4. analysis of the rules and principles supporting and competing with the obligation to use legal definitions;
5. evaluation of situations in which the conflict between the obligation to use legal definitions and other rules or principles occurs.

7. Krystian Jarosz
Jagiellonian University
Language as a Tool for Description and Analysis of Law, Based on Models and Modeling

Law and its application is a vital part of life, either we are aware of it or not. And language is the greatest descriptive tool humans possess. Therefore, it is of little surprise, that language is used to generally talk about the law, its creating, describing, applying or discussing. Having taken that under consideration, we come to the question of validity of language being used to describe the law.
We cannot deny the fact that there is a constant need for describing. Moreover, language provides us with a extraordinary method which helps both understanding and simplifying law as a concept, process and point of interest. This method is modeling. Creating models, tough, having its genesis in sciences can be applied to phenomenon of law. The works of Sztoff, who as a theoretic of modeling decided to divide models in categories, provide us with a most useful idea of models built simply with words. Such a model can simply give us information we require and provide prognostics for the future. On that basic type of model, a Polish author, Tomasz Langer discusses the usefulness of such a creation. He portrays models as empirically correct way of analyzing not only law as a whole but different elements of what is portrayed. The interactions between those can be then easily spotted and analyzed. Langer argues that models, hailing straight from ancient Greece, still have a certain value both as a method, a tool of reaserch, but also a result of said research.
Apart from the theory of modeling, Polish jurisprudence holds two magnificent examples of models, which are constantly being used, examined, and shown as an example of application of scientific thinking and descriptive role of language.
Model of Jerzy Wróblewski, has molded generations of Polish lawyers, while the model created by Leszek Leszczyński, a fairly new addition to Polish theory of law. Leszczyński incorporates different, non-obvious stages to his model, while the model of Wróblewski tends to be more elaborate, while being focused on linguistics and accuracy of terms used.

Those models, though different, grant us with such an appreciated possibility of conducting research on level of both law and language. This is a most certain proof of the relations between law and language, and our spectra of possibilities that language provides us with on the ground of description and research. Therefore the language and the law are inseparable.

8. Anton B. Didikin  
Novosibirsk National Research State University  
**Law as a Linguistic Phenomenon**

Law as a regulator of behavior of subjects cannot be reduced fully to other ways of regulating behavior in society. Grounds of legally significant actions allows to define the context of the application of legal rules. Every legal term, following the argument of L. Wittgenstein, when it is used depends on the "context of use" and of those conventions of usage that exists at the moment. It follows that the interpretation of the rules cannot be based solely on principles of logic and to be absolutely neutral. On the one hand, "we follow the rule blindly" (L. Wittgenstein), but at the same time, repeatability of the behaviour of others and the opportunity to observe them (by analogy with mathematical rules of addition or multiplication) promotes "learning" and following the rules.

The famous thesis of H. Kelsen about the absence of causality in the legal field contributed to the explanation of the new term, more accurately, in his opinion, reflect the specific character of legal reality. "Action" binds being and of duty, and the legal interpretation of actions is based on the concept of "imputation", that is, a certain set of facts can have a value only if the decision of the representative of the subject. H. Hart, following the argument of H. Kelsen, argues that there is a particular kind of ascriptive linguistic statements whose primary function is not to describe specific situations, but to make the legal requirements and legal qualification of the actions, giving a legal value to the natural and social phenomena.
Ascription of legal language and the principle of "imputation" in condition of the legal interpretation of the facts, allow us to formulate the important notion that outside of language constructs social reality does not exist. Attempts to analyze the non-legal factors such as factors influencing the development of the law commonly referred to arguments not of law but of other phenomena. Legal terms not only describe the empirical facts, but to encourage them to commit actions.

For example when we making a will we can be spectators, as is the text, making physical movement (an empirical fact). If such action were present and observed the witnesses of a legal document form, the relevant empirical facts (drafting) notary as authorized officer "attributes" legal value (the text with the date of notarization becomes a Testament with all its legal consequences). The oral utterance of human words will be ascriptive in nature, because at the same time he will perform acts of legal significance. From the point of view of analytical philosophy in this example, we see only the transformation of reality through linguistic forms, but from the point of view of the legal language legal environment of relationship is not determined by social context, but the linguistic forms that interpretive his physical actions in the procedural legal sense.

9. Holger Grefrath
Humboldt-University of Berlin
Legal Language as Magic Spells?

Questions of meaning, interpretation and the bindingness of legal acts puzzle legal theory as well as judicial practice. Legal and jurisprudential conceptions of language as a binding force have been proven as essentially incommensurable with findings of the philosophy of language. In the light of the general vagueness of language, the perception of language as a binding force, tacitly underlying all legal activity, may be regarded as a kind of magic – as the Swedish philosopher and later historian of Roman law by accident Axel Hägerström did indeed. In short, Hägerström hold that ancient Roman law was deeply entrenched by rituals and other magical practices. Moreover he argued, especially against his contemporary Hans Kelsen, that these influences were and are still alive, making a "Pure Theory of Law" impossible.
I propose to question if law really ‘has never been modern’ and to reassess Hägerström’s arguments in the light of recent research. Stephen Turner’s (Explaining the Normative) claim that all notions of normativity stem from the formal qualities of Roman law offers an new perspective. Also, the recently revived multidisciplinary interest in the Axial Age as the formative period for cultural practices fits into this framework. I will argue, that law is impregnated by pre-scientific ‘pre-ideas’ (Ludwik Fleck) in the longue durée, indeed. These derive from the Axial Age, to be more concrete, from the very early days of Roman law and the dual role of priests and lawyers performed by the pontifices. The latter transferred the idea of formal speech acts as ‘effective forms’ (‘Wirkformen’, Dulckeit) from the sacred sphere to secular law. Thus, they created a kind of ‘secondary ontology’ (Wieacker), a second reality of law. This decisive evolutionary leap forward to modern law can be exemplified by the history of stipulatio: in the pre-pontifical era, the binding force of a contract was enacted by physical rituals of binding, e.g. by chaining up the counterpart. In transferring the rule ‘simulacra pro veris accipiuntur’ from religion to law, these rituals were substituted by language. But contrary to Hägerström I do not want to disenchant the law. I will argue that legal language may be a kind of prehistorical magic but that it is a system of beliefs we are necessarily used to live by and thereby explain the partial incommensurability of jurisprudence with other fields of knowledge.

10. Miklós Szabó
University of Miskolc, School of Law
Linguistic Conditions of Access to Law and Fair Process

The questions to be answered in the contribution were raised by two, partly empirical, research projects run by our research group consisting of lawyers and linguists. The first was finished more than a decade ago and the second, proceeding with the first, is still in progress. The questions to be touched are as follows.

1. Where can be the front line drawn between ordinary language of lay participants of the process and technical legal language of professionals? We suggest it may be best detected at personal encounters such as police or court hearings and best documented in records made about them. As a basis we have a small corpus of sound records taken down at such interrogations.
2. What is the nature of the clash between the two sides of front line? The process can be understood as intra-lingual translation between two registers of language: those of ordinary language and legal language. The goal of the process is to turn the open, loose and fractured lay discourse into professional language with closed lexicon, accurate expressions and highly organized texts.

3. What are the characteristics of legal language used by professionals? Each nation has some description of one side of translation, i.e. her ordinary language; much less regarding the other side, i.e. her legal language. We try and outline a description of ours, covering syntactic, semantic and pragmatic issues. Further topics are the relations between different legal languages; between legal and other technical languages; and the borderline between ordinary and legal languages. To answer these we shall have to use both quantitative and qualitative methods.

4. What is the role of internet the access to law? Beyond general linguistic barriers against access to law the new phenomenon and services of internet bring a radical change in the position of laypersons. Search engines help with finding (comparatively) right answers without proficiency in legal language and with putting (seemingly) proper propositions to courts and other authorities. This development may change the concept of law itself.

5. What could be a test or indicator for evaluating the quality of access to law and fair process? Intuitively, we suppose that, within the huge mass of different types of legal discourse, the ways of informing and warning may be characteristic to the (formal) use of legal language.

11. Karen Petroski
Saint Louis University School of Law

A Metalanguage for Misrepresentation

Much contemporary law sanctions misrepresentation and false statement, but this area of law is neglected both pedagogically and theoretically. This paper argues for greater attention to the topic by demonstrating the pervasiveness of these issues in contemporary law. It also begins to develop a legal metalanguage for misrepresentation informed by the philosophy of language.

Like the rules of legal interpretation, legal principles relating to misrepresentation are widespread and part of lawyers’ basic conceptual vocabulary. Unlike the rules of legal interpretation, however, the law of misrepresentation is seldom considered as a unified body of law by lawyers or at
a theoretical level by philosophers. The law of misrepresentation requires lawyers to consider, for example, matters such as the force of speech acts and the stability of reference, yet lawyers do not refer to a standard legal metalanguage in considering such matters (as they do, for example, in the areas of statutory or contractual interpretation). Some philosophers have studied the law of misrepresentation (e.g., Stuart Green, Seana Shiffrin), but they have focused mostly on the normative implications of false statements rather than their linguistic features. Philosophers of language interested in the mechanics of false statement have, in turn, focused on the practices in the abstract, rather than on how the law deals with them (e.g., Jennifer Mather Saul).

This paper focuses on a collection of opinions issued by the U.S. Supreme Court during its three most recent terms addressing legal rules governing misrepresentation. In these cases, the Court directly confronted the content of legal rules for assessing claims of misrepresentation or false statement. The cases thus involved a metalanguage internal to legal discourse for the analysis of such questions. This paper describes this metalanguage, first by outlining the terms making up the metalanguage in the opinions in question, and then by considering the terms’ consistency with
(a) the metalanguages used in other areas of law (such as statutory interpretation) and (b) the work of philosophers of language. The paper will explain how different justices take identifiably different approaches to misrepresentation across different areas of law; how their approaches suggest particular theoretical presuppositions about linguistic and communicative reference, truth, and meaning; and how these approaches are, in some cases, inconsistent with the theories of language presupposed by the same judges in other legal contexts. It will also explore whether there are any conceivable benefits to legal undertheorization of these issues.

12. Marzena Kordela
Adam Mickiewicz University
**Principles of Law as Commands to Realize Values**

1. In contemporary jurisprudence the principles of law are defined as particularly important norms of a system of law. What distinguishes them from ordinary norms (rules) are the following features:
   1) high hierarchic position in a system of law;
2) a very high degree of generalization of their formulation;
3) potent axiological justification;
4) great relevance of issues being regulated;
5) role of a constitutive element for a given legal institution;
6) functioning as a basis for other norms of a system.

The constitution is a fundamental source of principles. Constitutional principles have a supreme legal force in a system. And it is this very act which legitimates the validity of acts such as e.g. the rule of law principle, principle of sovereignty, principle of justice, principle of equality, principle of certainty of law, or of economic liberty. Similarly, statutes, especially codes, may create principles such as e.g. principle of freedom of contracts in civil code, or the principle *in dubio pro reo* in criminal procedures.

The range of application and regulation of general principles of law is considerably higher than in the case of rules. For example, the principle of equality is aimed at a circle of recipients who cannot be precisely pinpointed, and it is applied in circumstances that make up a substantial catalogue, dictating uniform treatment. It happens extremely rarely that a principle as such may serve as a base for its application.

Principles such as principle of protection of human dignity, principle of respect for the law, principle of respect for human rights and liberty, principle of realization of common good or principle of justice – distinctly refer to the values that they should protect.

The significance of principles stems primarily from their social function. The idea of a contemporary state in our culture is unimaginable without valid principles of protection of human rights, principles of the state of law or principle of democracy that are present in a system of law.

A norm that stipulates freedom of contracts becomes a principle of law as it is an indispensable element of the institution of contracts. Similarly, this also holds true for the principle of contradictoriness in the institution of evidentiary hearing.

A most characteristic example of principles serving as basis from which other principles may be derived is the rule of law principle. In judicial decisions it legitimizes among others the principle of certainty of law, principle of citizen trust to the state and the law it makes, protection of rights acquired, non-retroactivity, or proper legislation.

2. In reference to the deliberations above, a following definition of principles of law may be suggested:
Principles of law are norms that command the realization of a defined value.

In the phrase: „the principle of X”, X has the shape of a name of a value and not a behaviour nor state of affairs that it is ordered to realize (or omit). Such values are, respectively: the rule of law, democracy, human rights, dignity, common good, etc. All the features of the principles mentioned in points 1 – 6 are features of values.

3. Contemporary characteristics correspond to the definition given above. Specific features of principles correlated to rules as pointed out by R. Dworkin – inconclusiveness, weight or importance and gradable character of realization are categorial features of values. Values only indicate the direction of adjudication, and not its definite shape. They make up a set in which certain elements are more important than others. Values may be realized to a lesser or greater extent. Behaviour – which is the substance of regulations – can be realized only along the lines of all-or-nothing. Similarly, a definition of principles as defined by R. Alexy may be interpreted in the category of values: Principles are norms commanding that something be realized to the highest degree that is actually and legally possible. The premise of gradable character makes it possible to insert value in place of “something”. Similarly, cancellation of the collision of principles by means of their balancing appears to have the character of weighting norms and not values.

13. Yi Tong
University of Minnesota
Raz’s Argument from Authority, Quine’s “Two Dogmas,” and the Nature of Conceptual Analysis in Jurisprudence

Analytical jurisprudence has been the dominant approach to discussing the nature of law (at least in the English-speaking world). It is thus commonly held that conceptual analysis is the standard methodology for jurisprudence, and that theories of law are forms or products of conceptual analysis. In the last two decades or so, however, some theorists have begun to question whether traditional jurisprudence is best characterized as conceptual analysis, and whether conceptual analysis is a legitimate and fruitful methodology for jurisprudence. This criticism of conceptual analysis amounts to an overall methodological critique of analytical jurisprudence since its inception in John
Austin. The methodological controversies surrounding the status of conceptual analysis concern several deep philosophical issues and echo larger debates in philosophical methodology and the nature of philosophy. The aim of this paper is to give a preliminary response to these criticisms, by showing how one widely accepted argument against conceptual analysis in jurisprudence, namely the argument employing Quine’s famous attack on the analytic-synthetic distinction, is misguided.

I begin with a critique of conceptual analysis in jurisprudence by Brian Leiter. The resources this critique relies on, however, come from philosophy of language, and has been commonly employed to criticize the method of conceptual analysis in philosophy in general. I then lay out Joseph Raz’s argument for (Hard) Legal Positivism and Quine’s main argument in his 1951 essay “Two Dogmas of Empiricism,” respectively. I respond to Leiter’s methodological critique of Raz’s argument by arguing that, on any showing, Raz’s argument does not consist of analytic statements. Thinking that Quine’s attack on the notion of analyticity can be employed to undermine projects of conceptual analysis is therefore mistaken. It closes the possibility that conceptual analysis (in jurisprudence) has a different character. I conclude the essay by raising a number of important questions for further inquiry. I suggest that the issues that arise from this discussion of philosophical methodology ultimately point to fundamental questions about the nature of a philosophical inquiry.

14. Zuzanna Krzykalska
Jagiellonian University
Reconstructing Legal Institution

The aim of the presentation is to answer the question, whether the taxonomy proposed by John R. Searle could be useful to reconstruct the notion of legal institution, as it is understood by legal doctrine. As institutional approach in legal theory develops, various conceptions of both social and legal institutions are being introduced. It seems however that the notion of institution in legal jargon may be essentially different from how it is commonly understood in folk theory. Therefore, a question arises, whether results obtained in this field by social and legal philosophers are applicable to analyze the notion of institution as it is used by legal doctrine. Since the dogmatic notion of legal institution
lacks clear definition, the search for the solution to this problem is not only especially challenging, but also of high explanatory value.

Firstly, in my presentation I will describe what I mean by legal institution, i.e. how the legal doctrine uses this notion and how is it different from the notion used in social and philosophical theories. Secondly, I will briefly characterize basic notions concerning social ontology introduced by John R. Searle, such as Institution, Institutional Fact, Status Function, Status Function Declaration, and Deontic Power and explain the relations between them. Finally, with respect to the differences between social/theoretical and dogmatic approaches to the issue, I aim to present how Searle's conceptions may be applicable for the conceptualization of legal institution as a figure of legal discourse as it concerns a system of legal regulations apart from social reality.

Methodologically the research is highly interdisciplinary, as it combines instruments of analytical philosophy, social ontology and analytical legal theory. The results of presented research are hoped to play a significant role in the attempt to propose an intuitive and most adequate for dogmatic (non-theoretical) legal discourse definition of legal institution.

15. Izabela Skoczeń
Jagiellonian University

**Scalar Terms in the Law**

In this study, my aim is to verify the hypothesis whether scalar terms within the legal language exhibit a different behavior than those used in every-day conversation settings. Scalar terms are for instance quantifiers such as ‘some’ or ‘all’ as well as numerals, for instance ‘two’. While in standard logic, the term ‘some’ includes ‘all’, this seems not to be the case in the way we use those words in speech. This is because, if you hear the sentence:

(I) Some of the students passed the exam.

You will infer that not all of them passed. This is based on the following reasoning: if all of them had passed, then the speaker would have used the stronger term ‘all’ instead of ‘some’. Since the speaker did not say ‘all’, she must have evidence of students that did not pass the exam. Thus, there seems to
be a scale between ‘some’ and ‘all’ that differentiates them in the level of evidence one needs to dispose of to use them.

The ‘not all’ inference when hearing ‘some’ is so commonplace that it yields the hypothesis that it is a semantic feature. However, a theory of lying could suggest a different claim. Consider the two sentences below:

(II)  
a. Some of the students have passed the exam.

b. In fact all of them have.

If someone utters ‘a’ first and, subsequently, ‘b’ is found correct, then people intuitively view ‘b’ as a form of correcting oneself by the speaker. By contrast, consider the following pair of sentences:

(III)  
a. All of the students passed the exam.

b. In fact, some of them have.

Here the intuition that if one pronounces ‘a’, while ‘b’ is true, then one is lying, is much stronger than in the reverse case. This suggests that the ‘not all’ component of ‘some’ is pragmatic rather than semantic.

The analysis gets even more complex in the legal language. This is because, if you have a legal rule that claims that tax exemption is provided if the agent fulfills some of the listed conditions, then there should be no problem in granting her the exemption if she fulfills all of them. Another interesting problem is the conjunction ‘and’ that is used as an alternative in legal texts.

16. Maciej Kłodawski
University of Zielona Góra

Silent vs. Discontinued Legislation - Neglected Difference?

The goal of the presentation is to identify and to examine rather uncommon distinction between silent legislation and discontinued legislation. Silent legislation may be perceived as situation, when the legislator does not "speak", ie. does not enact at all or amend existing statutes in certain domains (creating an impression of legal emptiness or sometimes even anomie). In the result legislative intent to not lawmaking is implicit and unspoken. On the other side discontinued legislation means the legislator initially reveals his original will to change the law by introducing new provisions or amending the existing ones, but finally (for various reasons) stops the legislative process and discontinues work on the project. In this case legislative intent to not lawmaking is explicit and also reflected in legal language (or at least in legislative history). Analyzing the abovementioned difference I will try to prove (basing on the theories of
Polish philosopher - I. Dąmb ska) that the concept of legislative silence is complex and demands refined typology to become more useful in further theoretical applications (especially in the field of legal theory).

17. John J. Magyar
University of Cambridge
Textualism: The Jurisprudence of the Late Justice Antonin Scalia

The late Justice Antonin Scalia exercised a profound influence on the legal communities in the United States of America. Through his doctrine of statutory and constitutional interpretation called ‘textualism’, he assisted to bring about a shift in the interpretive practices at the Supreme Court of the United States which brought with it a significant reinterpretation of numerous constitutional principles. Perhaps because of the strong emotional reactions that accompanied these changes, there has been a great deal of misunderstanding about the principles and practices that Justice Scalia propounded. While the term “textualism” is often used as a synonym for literalism, Scalia’s doctrine was grounded in four core elements:

1. the belief that judges have no authority to make or alter laws as enacted by the legislature;
2. the belief in the separation of powers between legislating and interpreting as a constitutional necessity;
3. the belief that legislative history should be inadmissible as an aid to statutory interpretation; and,
4. the belief in a rule-bound approach to interpreting legal texts which emphasises the rules of grammar and requires a finding of ambiguity to justify straying from the ‘plain meaning’ and rely instead on a variety of ‘canons’ of statutory interpretation that are centuries old and accepted throughout the entire English-speaking common law realm.

The doctrine incorporates a rich and sophisticated approach to statutory text while according with traditional common-law doctrinal legal reasoning. As a holistic doctrine, textualism is consistent with the approach propounded in the treatises on statutory interpretation published in the late Victorian era. Textualism is also consistent with the orthodox approach to statutory interpretation in England throughout much of the 20th century. As such, it is
more appropriate to regard textualism as a revival of a common law judicial tradition than a modern American innovation.

18. Maciej Próchnicki
Jagiellonian University

The Three Images of the World: Folk, Scientific and Legal

According to linguistic relativity, the language which we use somehow determines our perception of the world. The specificity of legal language, seen as a language register of a natural language, generates a different understanding of many fundamental ontological concepts, such as person.

What image of the world and men arises from legal text? Which assumptions about the functioning and behaviour of individuals and groups are hidden in it? How does it differ from the folk, commonsense understanding of these questions and also the scientific approach to them?

As remarked by Tomasz Gizbert-Studnicki, two main differences between legal and vernacular, everyday language are present in this context: categorization and pragmatical aspects, related to performative functions of legal language. There is also much differentiation between various branches of the law (which may bear similarity to miscellaneous scientific disciplines).

Another question is, are the lawmakers aware of this differences and how they see the place of these varied images in law. They may be somehow embedded in legal concepts, for example the case of standards such as “reasonable person” or in many specific, technical regulations.

According to Wilfrid Sellars, the two images: manifest (which is more or less the commonsense understanding of the world) and scientific complement each other - one shouldn’t be simply reduced to the other. However they ought to create a synoptic vision of the world, which is more complex and informative. Is this also true in case of the legal image, or maybe adding the third element to the structure creates only needless vagueness and disorder?

One specific example, where the three images diverge the most at a first glance, is the view on human mind and behavior. What is more interesting, this is one of the most important areas of life both in everyday life, and foundation of many legal regulations. Should the latter be unified and naturalized? The principle of clarity and preference of vernacular language in legal text, desirable from the layperson’s perspective, may be impaired by scientific terms, which on the other hand, give more precision and accuracy.