Law and Legal Cultures in the 21st Century:
Diversity and Unity

WORKING GROUPS
ABSTRACTS

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Hare (1952) used this semantic peculiarity as an argument against the descriptive view of moral terms such as “good”. Gallie (1956) argued for the possibility and usefulness of this kind of concepts and claimed that some of them are “essentially contested”. Hart (1961), Rawls (1971) and Dworkin (1972, 1977, 1986) made famous the distinction between concepts and conceptions, and Dworkin called these terms that admit several conceptions “interpretive concepts”. The Scandinavian legal philosophy discussion on “intermediate concepts” such as “property”, notoriously debated by Ross (1957), concerned a basically identical problem. Horgan and Timmons’ (1992) Moral Twin Earth argument against moral naturalism relied on the same semantic feature, concluding that “there just do not exist enough semantic constraints on moral terms and concepts for these constraints, together with objective nonmoral facts, to determinately fix the extensions (at a possible world) of moral terms and concepts”. Indeed, rule- or value-dependent terms and concepts – in short, “normative concepts” – such as most legal, political, moral, aesthetic, semantic or lusory concepts do not determinately fix their extensions; they are “extensionally loose”. I will argue that while this is a semantic peculiarity, it is also apparent, precisely in that most competent speakers would accept that the application of such concepts “depends on” “rules”, “norms”, “values”, “criteria”, “ideals”, “standards” or something like that. Being apparent, it is unlikely that extensional looseness can be properly characterized as a deficiency of a term. I shall argue that extensional looseness (a) is no argument for the non-descriptiveness of a term, that (b) it does not imply that only very abstract definitions of such terms are possible and that (c) it also does not imply that the practices of using these concepts include the consciousness that those practices have a “purpose” or a “point”. Focusing on law, I will finally argue that extensional looseness implies that no fundamental legal concept, such as “legally obligatory”, can be defined on the basis of the “operative facts” for its application, but only on its so called “legal consequences”.

ON FORMAL NOTATION OF THE TEOLOGICAL STRUCTURE OF LAW

Čyras Vytautas Vilnius University Lachmayer Friedrich University of Innsbruck, Austria
Vytautas.Cyiras@mf.vu.lt

There are different methodical paradigms of law and AI (T. Bench-Capon, W. Bibel, J. Breuker, C. Hafner & H. Berman, G. Sartor etc.). One direction is via natural language, another via formal notation. This contribution focuses the approach of a special notation. Legal order as a societal instrument is characterized by many implicit and rare explicit teleological structures. Teleology concerns not only in the single norm but also in the whole legal architecture. An early attempt to analyze legal teleological structures was done by the “Interessensjurisprudenz” (R. von Jhering), but nowadays the recent challenge of eGovernment (R. Traunmueller, M. Wimmer) needs a new concept of legal teleology. The teleological structure we propose contains three elements: first, the basic element A, second, the target-element B, and, third, the teleological relation te→. The proposed notation is A te→ B. Within a legal taxonomy there are different semantic kinds of legal teleology, depending on the different teleological order like the time horizon, e.g. A te_short_term→ B, A te_medium_term→ B or A te_long_term→ B. From a pragmatical point of view the teleological structure is embedded within a speech act. It is necessary to represent the speech act by a separate notation, too, e.g. TE-Statement (...). Also the speech acts can be qualified in different ways: TE-Statement_legal (A te→ B), TE-Statement_political (A te→ B) or TE-Statement_scientific (A te→ B). Thus the notation can lead to a “theory of relations” in law. To illustrate the notation, consider the three statements: (1) A goal G is achieved by a legal act A1, (2) A goal G is achieved by a legal act A2, and (3) A legal act A1 implies less quantitative restrictions (QR) than A2. Then the meaning of these statements can be represented: A1 te→ G, A2 te→ G, A1 QR< A2. Teleological statements are especially found in the legislative workflow (from governmental drafting via parliamentarian decisions towards publication of the valid laws). The formal notation can contribute to textual analysis (both human and electronic) as well in legal drafting processes and in the interpretation of valid laws.

CONDITIONAL IMPERATIVES AND DYADIC DEONTIC LOGIC: SOME PROBLEMS AND SOLUTIONS

Hansen Joerg Universität Leipzig, Institut für Philosophie, Beethovenstr. 15, D-04107 Leipzig
jhansen@uni-leipzig.de

Conditional imperatives, such as “if it is cloudy, take an umbrella with you”, tie a descriptive antecedent to a consequent in the imperative mood. When such conditional imperative sentences are used to establish a norm governing a subject’s behavior, a description of the obligations that arise for the subject from such norms depends on the circumstances that act as triggers of the actual obligations: e.g. given the above imperative it is true that the subject ought to take an umbrella if it is cloudy. The