A language-based theory of legal interpretation

The objective of the project

The research problem that we shall address in this project is the question what does it mean to understand the law. Namely, whether and how understanding the law is qualitatively different than understanding a different, non-legal text or linguistic utterance, and whether knowledge of a language is sufficient to understand legal content.

First, the study will attempt at answering the question whether the content of the law is communicated content (understood as content, which is determined by someone's intention to transmit it). A positive answer will imply that the concept of understanding the law and understanding other non-legal texts or utterances might bear similarities. By contrast, a negative answer will be a trigger to search for a distinct definition of understanding. Our preliminary hypothesis is that we will adopt a hybrid view on legal content, claiming that it is not entirely constituted by communicated content. Thus, the first goal of the project is to analyse a hybrid conception of legal content.

Second, the project will investigate the consequences of answering the first question for a theory of interpretation of the law. Thus, the second goal of the project will be to analyse a conception of interpretation stemming from the hybrid answer to the question on legal content.

The research to be carried out

In a nutshell, interpretivism claims that legal content is not communicated content. We will look at the arguments of interpretivists and their opponents through the lens of state of the art philosophy of language. In particular, we will investigate whether their arguments describe our language, or rather some theoretically implausible construct. We will also investigate whether contemporary tools of the philosophy of language can accommodate some of the accusations directed by interpretivists at their opponents. Next, we will attempt at finding a conception of hybrid legal content simultaneously based on communicated content and considerations of political morality. Moreover, we will inquire about the difference between understanding the law and understanding other non-legal texts or utterances. Finally, we will investigate the conceptual relations between understanding, interpretation and creation of law.

Reasons for choosing the research topic

The systematic application of tools from the philosophy of language to the debate on interpretivism could be a source of novel arguments in a range of philosophical debates. In other words, apart from providing new answers in the debate on legal content, it can be source of new arguments in the debates on truth, meaning, and normativity. To give an example, investigating the nature of legal content may help us better understand the concept of a communicative intention.

This project could also dispel the misconception that any moral considerations made by judges necessarily breach of separation of powers and are an unwanted judicial activism. Moreover, it could set ground for creating guidelines for judges as to the conceptual borders between understanding, interpretation, and creation of law as well as criteria of their distinction.