

Metaphilosophy of legal interpretation

(abstract for the general public)

The goal of this project to provide metaphilosophical analysis, critique, and comparison of domestic and foreign theories of legal interpretation. The achieved results will be submitted to the experimental folk-oriented testing (Chalmers-style survey, vignette studies), which will i.a. reveal to what extent theories of interpretation depend on folk (expert or lay) views about law an interpretation.

This endeavour is motivated by observation of widespread metaphilosophical disagreement between theorists of legal interpretation. Such disagreement has been perpetuated between those who claim that legal theory should be as aphilosophical as possible (philosophical minimalism) and representatives of a „bolder approaches”, like the members of the critical school who understand any theoretical activity as engagement in discursive moral-political evaluation (philosophical maximalism). The proposed metaphilosophical study is the way to establish i.a. whether apparent disputes between theorists of legal interpretation are genuine („bedrock”) or merely verbal.

Depending on the assumption that any theory of legal interpretation should be to a certain extent grounded in folk theory of law and interpretation, the team will perform the following tasks:

- (1) identifying central metaphilosophical problems of legal interpretation;
- (2) developing a „metaphilosophical taxonomy” of theories of legal interpretation (serving as a platform for further comparing various, domestic and foreign, theories of legal interpretation); the taxonomy will draw on basic philosophical dichotomies (eg. cognitivism-noncognitivism; realism-antirealism; founationalism-anti-foundationalism; analytic-empirical; objective-subjective) or legal-theoretical ones (parochial-universal; general-particular; interpretivist-non-interpretivist etc.); it will also identify the conditions under which analyses regarding legal interpretation are modest or immodest; or ways in which theories of legal interpretation are descriptive or normative (given eg. the structure of an argument and the role of value-judgments).
- (3) analysing (tacit or explicit) philosophical presuppositions of popular domestic and foreign theories of legal interpretation (in light of the developed taxonomy);
- (4) identifying the scope of genuine theoretical and practical (“in application”) disagreements between analysed theories (a metaphilosophical comparison of theories);
- (5) testing whether and to what extent they correspond with general folk beliefs about law.

It has been a fundamental claim of the PI in recent years that any admissible theory of law and legal interpretation should highly correspond to primary intuitions of both laymen and professionals. This claim will be carefully checked in the project.

This project fits an important gap in domestic legal theory and create the international metaphilosophical platform for a genuine comparative analysis of theories from various legal regimes and cultures. The final hypothesis of the project is that by means of presented metaphilosophical endeavour it would be possible to define the main features of the „universal theory of legal interpretation”.