MASARYK UNIVERSITY

FACULTY OF LAW

ARGUMENTATION 2023

BOOK OF ABSTRACTS

20-21/10/2023 BRNO

MAIN THEME: PERFORMATIVITY IN LAW

PROGRAMME

FRIDAY 20 OCTOBER 2023

8:30-9:00 REGISTRATION

9:00-9:15 INTRODUCTIONS AND WELCOME

9:15-10:45 SESSION 1: LAW AND RHETORICS

- Danielle C. Jefferis, Nicole B. Godfrey and Sue Provenzano: "The Worst of the Worst": Civil Rights Cases, Supermax Rhetoric, and Judicial Decision-Making
- John Enman-Beech: Explaining Contract Doctrine with Rhetoric
- Hédi Virág Csordás and István Danka: Truth or theatre? - The pragma-dialectical analysis of Depp-Heard Trial 2022

10:45-11:00 COFFEE BREAK

11:00-12:30 SESSION 2: LAW AND PERFORMANCE

- Jessie Allen: Skeptical Sorcery
- Terezie Smejkalová, Petr Palíšek, Markéta Štěpáníková: Performing the dignity of a judge
- Markéta Štěpáníková: Legal Theatre

12:30-13:30 LUNCH BREAK

13:30-15:00 KEYNOTE (ROOM 034)

- Elisabeth Holzleithner: Performing authority: Law, Gender, and Sexuality

15:00-15:15 COFFEE BREAK

15:15-16:45 SESSION 3: PERFORMATIVITY, INTERPRETATION

- Louisa Ashley: Reimagining International Law's Author
- Kamya Vishwanath: In the Green Room: Studying the Law, Inaction, and Lessons from Literature
- Jana Stehlíková: Judicial Speech in Gown: What should (not) Judges say or write during a Trial?

16:45-17:00 COFFEE BREAK

17:00-18:30 SESSION 4: PERFORMING THE EXCEPTION

- Giacomo Giacomo Fusco: Performing the Exception: Emergencies, Images, Temporality
- Przemyslaw Tacik: Performing the Exception: How Sovereignty Re-enacts Itself Through An Exceptional Act

19:00 CONFERENCE DINNER

- Location: Restaurant „U Tomana" https://utomana.cz/en/ (nám. Svobody 22, map)

SATURDAY 21 OCTOBER 2023

9:00–10:30 SESSION 5: VISUALISATION AND SYMBOLS

- Ivan Daldoss: The visualisation of the main learning strategies in the legal field and their impact for jurists' legal reasoning and argumentation
- Agata Fijalkowski: Law and Visual Culture in Three Vignettes
- Francois Lion-Cachet: Up(rooting) law's visuality: the universality of South Africa's constitutional aesthetic

10:30–10:45 COFFEE BREAK

10:45–12:00 SESSION 6: PERFORMATIVITY AND POLITICS

- Laura Gheorghiu: Legal Performativity as a Political Diagnosis
- Tomáš Havlíček: The Ungraspable Nature of Psychopolitics
- Marco Mazzocca: Defense of Hope

12:00–13:00 LUNCH BREAK

13:00–14:30 SESSION 7: LAW AND LANGUAGE

- Łukasz Piosik: Performativity of a legal text. Attributing modal properties to objects
- Ondřej Glogar: How to Build a Corpus of Legal Language: Ensuring its Representativeness
- Linda Tvrdíková: Interpretation of Law and Language Games

14:30–14:45 COFFEE BREAK

14:45–16:15 SESSION 8: LAW AND LITERATURE

- Viktória Kaslik: Legal Reparation

FRIDAY 20 OCTOBER 2023

1 LAW AND RHETORICS 9:15-10:45

"THE WORST OF THE WORST": CIVIL RIGHTS CASES, SUPERMAX RHETORIC, AND JUDICIAL DECISION-MAKING

Danielle C. Jefferis, Nicole B. Godfrey and Sue Provenzano

Judges are supposed to be neutral, unbiased decisionmakers. Simultaneously, lawyers understand there is power in language. From the closing argument to the appellate brief, the law is a profession of words. Rhetoric matters. But how? Are judges' decisions truly objective, uninfluenced by lawyers' persuasive rhetoric, or do lawyers' rhetorical choices impact judicial outcomes?

This Article will combine law and rhetorical theory to examine judges' behavior in an important set of cases: constitutional rights lawsuits brought by people incarcerated in one of the world's harshest supermax prisons—the federal supermax prison in Colorado (USA) known as "ADX." The American constitution protects all people from cruel and unusual prison conditions, regardless of their crime of conviction. Yet, in lawsuits incarcerated people bring to challenge inhumane conditions in the supermax prison, prison officials often use what we call "supermax rhetoric" to defend the challenged condition. In dispositive motions briefing, in particular, ADX officials and their lawyers characterize incarcerated plaintiffs as "the worst of the worst" and among "the country's most dangerous inmates." This language is evocative and risks diverting judges' attention from the subject of the lawsuit to the seriousness of the person's crime and his supposed irredeemability. This Article will examine whether this rhetoric is, indeed, having this effect.

It is often said that the degree of a society's progress can be judged by entering its prisons. In an era of growing belief in judges as mere political actors and a renewed emphasis on criminal justice reform, analyzing the impact of supermax rhetoric on judicial decisionmaking is important to evaluating the perceived legitimacy of courts and courts' role in overseeing America's prisons.

EXPLAINING CONTRACT DOCTRINE WITH RHETORIC

John Enman-Beech

I seek to explain contract not as the emanation of some core principle(s) like freedom and equality, or the instantiation of some folk morality shared among judges, but instead as efficacious argument forms. My contention is that the rules of contract doctrine can be understood as parsimonious resolutions to disputes that have been framed a certain way and that a similar logic underlies informal dispute resolution. Rather than getting into the details of this broad project, this presentation will defend two underlying methodological points that deserve scrutiny. I will also suggest that this project represents a novel application of rhetoric to law—*viz.*, to explain specific private law rules.

Existing work on law and rhetoric often focusses on the legitimating judicial rhetoric of liberal legality, or on obfuscatory language that distracts from or naturalizes power and coercion, or on invocations of grand, indeterminate values (like 'freedom') to dubious ends. There is also work on law's constitutive rhetorics, and on the advocate as rhetorician. In contrast, I focus on the

rhetorical situation of disputants. I consider both contracting parties in a pre- or alegal context (eg informal dispute resolution) and lawyers legalizing such contexts, primarily because (it has turned out) many of the same considerations apply to both.

The two controversial methodological points here are these. First, it is not obvious that argumentative parsimony will dominate other considerations in the formation of doctrine. Second, it is not obvious how or why legal doctrines would reflect the rhetorical situation of 'pre'-legal disputants, rather than or in addition to those of lawyers and especially judges. It seems that they in fact do so, but whether there is cause behind this correlation and in what direction are unclear.

TRUTH OR THEATRE? - THE PRAGMA-DIALECTICAL ANALYSIS OF DEPP-HEARD TRIAL 2022

Hédi Virág Csordás and István Danka

Judicial trials ideally aim at uncovering the truth in a situation where parties concerned have diverging interests. But recent pragma-dialectical research demonstrates that the main purposes of participants in a debate are rhetorical and dialectical, and truth can come only via these two (van Eemeren 2010). A rhetorical purpose is winning the debate. A dialectical purpose is (in most debates) coming to a consensus, but in the case of judicial trials, it is persuading a neutral third party, the jury. This may make judicial trials 'over-rhetoricised' in contrast with purely truth-seeking debates. This framework also offers a methodological toolset of analysing debates in terms of topical potential, audience demand, and presentational device that debaters apply in order to persuade their target of argumentation - a methodology that we shall apply in our presentation.

As a case study, we shall investigate a particularly interesting case in this respect, namely, the Depp-Heard trial 2022. Rhetorical aspects are especially crucial in this trial because the parties are well-trained rhetoricians: not only the lawyers are at the highest level internationally, but also Depp and Heard are well-recognised actors. A further specifics in their case is that they are media stars, and the publicity of their trial also makes them focusing on the conviction of another third-party (i.e., a fourth, making he debate a so-called 'polylogue'), namely the wide publicity of their potential future employers, film consumers, and the public as general.

Parties used various arguments to win the debate (Topical Potential), optimised to win the sympathy of a double third party (the jury and the media public), fighting for the favour of a composite audience (Audience Demand), and communicate in a form that is the most convincing auditory and multimodal visual argument they can present (Presentation Device). We aim to analyse these types with a special focus on visual argumentation and non-verbal communication.

2 LAW AND PERFORMANCE 11:00-12:30

SKEPTICAL SORCERY

Jessie Allen

This project takes off from the American Legal Realists' complaints that judges rely on "magic solving words" and "talismanic" reasoning. Such comparisons usually present legal magic's practitioners – judges engaged in doctrinal reasoning -- as perpetrators of deliberate fraud or victims of their own misguided fantasies. Legal magic in this traditional view is the dark side of Enlightenment rationality, the "bastard sister" of legal science. I take a different view. I argue that the Realists were right that law

works like magic, but wrong about how magic works. In particular, they (and other critics before and since) miss the fact that magical practices generally coexist with skepticism about the authenticity of those practices.

My project aims to reconceptualize legal magic, suggesting three ways it might contribute to a rule of law that is an embodied cultural practice: (1) as a performance technique practiced by legal decision makers to distance themselves from their ordinary subjective outlooks; (2) as a way of incorporating affective power into official legal rulings; and (3) as a method of symbolically reversing injury.

By reimagining legal magic in this idealistic light, I do not mean to deny its capacity for masking truth. But despite centuries of skepticism, legal magic is resilient. Indeed, critiques of legal magic themselves can be seen as a type of ritual unmasking found in diverse magical practices, what anthropologist Michael Taussig calls the "skilled revelation of skilled concealment." Perhaps the combination of legal magic and skepticism about legal magic is one way law mediates the irresolvable tension between power and reason that the Realists identified in our legal system.

PERFORMING THE DIGNITY OF A JUDGE

Terezie Smejkalová, Petr Palíšek, Markéta Štěpáníková

Goffman (1959) believes that everyone is a performer, maintaining a "front" depending on social situations they enter. Roles with higher level of institutionalization, such as judges, may even have front prepared for them, may it be by law or social expectations. The role of a judge as prepared by the law entails the performance of dignity.
Goffman believes that a person's front is collectively represented, and that this representation becomes a fact of its own right. We use the social representations approach (Moscovici 1961) to explore this "collective representation" of the judge's dignity among practicing lawyers, using hierarchical evocation method (Abric, 2005). This paper explores the performative dimension of a judge, a character in a performance of a trial. We report our findings and discuss the front of a dignified judge that emerged as a persona with specific appearance and manner, and setting used to objectify the judge's dignity.

LEGAL THEATRE

Markéta Štěpáníková

Law, lawyers and legal processes of all kinds have been subjects of theatre since antiquities (e.g. Read, 2015). It seems natural due to the innate theatricality of law (Peters, 2022) which provides theatre about law with a strong conflict, both dramatic and legal at the same time.

The theatre has been used in legal matters in many ways: to give voice to the oppressed (as the theatre of the oppressed, Boal, 2014), to facilitate a public discussion on legal matters (as legislative theatre, Boal, 2005) or as theatre forum (Boal, 2005). It is also used by legal and other academics as a platform to tell stories of victims of injustice, abuse or discrimination. And of course, it can be also used as a method of teaching students of law soft skills and rhetoric.

However, theatre professionals usually do not have in mind these specific uses of theatre for purposes of law while making plays dealing with legal topics because the legal point of view is not their own. Still, the general public gains information about law from this legal theatre. But sometimes, such a portrayal of the law can be even dangerous to legal awareness in society (e.g. Štěpáníková, 2022).

The question is: what do we know about legal theatre made by theatre professionals? Have we (Law and theatre scholars) ever asked them how they work with legal topics while making legal theatre? In this paper, I will introduce a project

researching exactly that. And I would like to discuss the possibilities of the results of qualitative interviews with theatre professionals dealing with legal topics in the Czech Republic.

3 PERFORMATIVITY, INTERPRETATION 15:15-16:45

REIMAGINING INTERNATIONAL LAW'S AUTHOR

Louisa Ashley

Dr Louisa Ashley presents a textual and temporal provocation using the creative methodology of redactive (or erasure / extractive) poetry. Taking human rights recommendations made by one state to another during the United Nations Universal Periodic Review (UPR), Dr Ashley applies the method of redaction (erasure / extraction), exploring the potential of this approach to challenge the authorship, power and voice of international law, and to some extent, as an act of reverse appropriation. The resulting piece of poetry deconstructs formal text to challenge meaning and suggest hidden intent. It exposes fault lines, demystifies exclusionary language, and mimics the process of redaction deployed during legal obligations of disclosure that often render a document meaningless. The performance of the piece by Dr Ashley as part of her paper reveals the habit of law and its scribes to alienate, obfuscate, and disorientate.

This process and performance are in part inspired by Roland Barthes' thesis in 'The Death of the Author', and Jacques Derrida's theory of deconstruction, as well as elements of performativity at the heart of the UPR process. Derrida called for the deconstruction of international law's foundations rooted in Western concepts of philosophy and of the state, 'not in order to destroy them or simply to cancel them, but to be just with justice, to respect this relation to the other as justice'. This paper and performance addresses 'the other' and builds upon aspects of Dr Ashley's current research that explore the emergence of 'rights from below', including human and non-human others, as encapsulated in theories of posthuman legalities such as rights of nature and biocultural rights.

IN THE GREEN ROOM: STUDYING THE LAW, INACTION, AND LESSONS FROM LITERATURE

Kamya Vishwanath

The inherent paradox of performance lies in front of us, yet we are often too blinded by lights, cameras, and action to notice. It is this: performance — with ostentatiousness that lends itself to the nature of specific roles — arises (etymologically speaking) from terms meaning "to furnish/provide/finish completely". Performing is seldom concerned with the actor or the doing of an act; it is linguistically already done, even if substantively incomplete. The performativity in law lies in its very existence, where the text alone (particularly in the context of rights) is automatically ascribed the status of having acted, when much remains to be done. In the language of these rights is an implicit acknowledgement of a lacuna in the present that only an unforeseen future can (supposedly) rectify. In Derridean terms, these texts are in *différance*. While this is the very nature of language, a crisis of inadequacy and inaction emerges. For the following paper, I propose to study twin 'performativities' and their distinct possibilities: that of law and that of literature.

I will first address the existing limitation in how law has "performed" in the International Human Rights Law arena. I build on existing literature from critical legal theorists and Third World Approaches to International Law (TWAIL) to assess how the

language of the Western, liberal conception of the rights regime is premised on an intention to "save" the "Other". Thus, the law is a performer without an audience. In my argument, I highlight non-liberal traditions that dwell on the impossibility of a singular subject, striking at the very heart of legal performativity and the shortcomings of the envisaged role-play. I also borrow from psychoanalysis to suggest how this repetitive cycle of self-sabotage is law's "death drive".

I will then turn to literature — the invisible performer in a crowded room. I contend that the very basis of literature and the Law and Literature movement is, as Peter Goodrich notes, a turn "inwards" that can respect the voice of the Other; where the vocabulary of struggle is not one of hope, but of pain. I argue that these texts widen the legal vocabulary and "do" what the law does not, viz. including mimetic silences and other expressions of truth into its theory and practice.

JUDICIAL SPEECH IN GOWN: WHAT SHOULD (NOT) JUDGES SAY OR WRITE DURING A TRIAL?

Jana Stehlíková

This paper deals with an ethical issue of judicial speech during a trial. What should a judge say or write to be seen as a good judge who respects important principals of judicial trial and seeks for public confidence in judiciary? This question si going to be answered in the paper. From the beginning to the end of the trial judges must be aware of the fact that the language they use, thoughts they express, arguments they stand for, might help them to perform their professional role in accordance with law and judicial ethics, too. On the other hand inappropriate words said during an oral hearing or written in a judgment can cause serious damage to the reputation of the judge and the judiciary as well. In this paper I am going to use *temperance* as a criterion of what is ethically good speech and what is not. *Temperance* is understood as a virtue thanks to which judges should avoid expressions that might cause harmful consequences to public confidence in judiciary. This paper shows several situations in judicial proceedings in which judges must consider what to say or reply to parties and how to do it with respect to all demands imposed on judicial office (especially to be and to appear independent, impartial, maintain judicial dignity and not to lose public confidence). Each solution of all situation presented in the paper is based on arguments arising from normative ethics (deontology, utilitarianism and virtue ethics). The aim of this paper is thus to provide concrete guideline how to deal with ethically difficult situations thanks to well-chosen words and also to show that problems of judicial ethics can be well resolved thanks to normative ethics (this approach is represented by D. Nicolson and J. S. Webb).

4 PERFORMING THE EXCEPTION 17:00-18:30

PERFORMING THE EXCEPTION: EMERGENCIES, IMAGES, TEMPORALITY

Giacomo Giacomo Fusco

From a legal point of view, the state of exception consists of a crisis reaction mechanism that delegates to a single body exceptional powers to restore a condition of normality as quickly as possible. The state of exception is thus intended as a tool to protect a given constituted order in times of crisis. But by providing the authority to declare a 'state' of emergency as being in place, the doctrine of the exception allows a legitimate authority to make 'real' what it is not, or what it is not yet real. From this point of view, the state of exception appears as a legal

performance (carried out according to an established 'accepted conventional procedure' by the right person), but of a special kind. In translating facts into the legal language (an emergency into a legal exception), such a performative decision over what something is produces an image of the real in order to constitute the epistemic atmosphere to make specific legal consequences legitimate.

The administration of emergencies needs visibility: images are the medium through which such visibility is obtained. Contrary to the continuity of power and administration, which runs on the out-of-scene background of offices and discretion, exceptional abnormal circumstances – as a determined disruption of a given order – must gain visibility through the representation of facts: that is through the identification of a threat and the marking point in which the exception begins (temporality). In this paper, I will advance two main arguments: i) The state of exception operationalises images. The operation of images is defined by their supposed or involuntary consequences, which are essentially based on their representational function and position in the public imaginary. In the state of exception, agents performatively parasitise the images and the media through which they appear to reinforce their own quest for legitimacy and visibility; ii) in emergency situations, the procedural-performative establishment of emergency measures produces an alteration of the temporality of the law, according to which norms and regulations are enforced prospectively before their actual sanction.

PERFORMING THE EXCEPTION: HOW SOVEREIGNTY RE-ENACTS ITSELF THROUGH AN EXCEPTIONAL ACT

Przemyslaw Tacik

The aim of my paper is to present how the paradigm of interpreting the link between the exception and the sovereign – anchored in Carl Schmitt's famous opening claim from *Political Theology* – should be reworked in order to encompass the performative dimension. Typically, sovereignty as displayed in the evocation of the exception is theorised as a *permanent possibility*, which – once imposed on a given legal system – has it in its continuous grip. Nonetheless, a deeper reconceptualisation of the exception, in which my research is currently engaged, allows of restructuring this all-too-solid paradigm. In order to build a performative theory of the exception, it needs to be noticed first that not every measure that is marked by exceptionality is declared by the legal system as normatively exceptional. The COVID-19 pandemic demonstrated palpably that acts dubbed as 'normal' or 'standard' can bear the traces of exceptionality. If so, the crucial point is why in a given system a normative declaration of adopting an exceptional measure is taken. This, in turn, means that 'an exceptional act' – officially tagged as such – is a performance in relation to an already existing substratum of exceptionality. In my paper I am going to investigate for which reasons and how the sovereign performs an act as exceptional. In particular, I am going to demonstrate that it is an act within the legal system, but re-enforcing the political component *within* the legal through an external reference from the legal to the sovereign. In this way the sovereign reperforms its position over the legal – not through suspension of normality, as it is apparent, but rather in a return to the pre-assumed exception as arch-normality.

SATURDAY 21 OCTOBER 2023

5 VISUALISATION AND SYMBOLS 9:00-10:30

THE VISUALISATION OF THE MAIN LEARNING STRATEGIES IN THE LEGAL FIELD AND THEIR IMPACT FOR JURISTS' LEGAL REASONING AND ARGUMENTATION

Ivan Daldoss

This work starts from a hypothetical premise: each jurist, when performing legal reasoning or producing legal argumentation, is largely conditioned by the education they have received.
That is to say, the two activities at stake here are a reflection of the learning strategies that the jurist has, in the course of his career, known and experimented the most. Accordingly, for instance, the *common law* jurist, trained through the case method and the problem-based learning, will likely have an inductive, bottom-up approach in legal reasoning and in the way they provide reasons to support a claim or a thesis. Vice versa, the *civil law* jurist, namely, the recipient of a conceptual education centred on abstract notions and categories that should be apply to legal reality, will probably have a top-down, deductive approach, whereby they will try to bring empirical elements back, sometimes forcibly, within pre-formed abstract-conceptual definitions.
Focusing on legal education as a prodromal phase which conditions the professional life of legal operators, this contribution purports to illustrate the main learning strategies in the field of law and thus it offers a representation of them, in order to clarify, also graphically, the teaching methods that ultimately have a great impact on the activity of the future jurist, on their way of reasoning and arguing in legal practice.
Therefore, this labor intends to encourage the visualisation, by means of geometric symbolism, of the learning approaches respectively based on the transmission of *concepts*, the analysis of *problems* and the making of *choices*, thereby offering an overview of the main characteristics associated with each educational model.
Hence, the proposed intervention can be placed in an *interdisciplinary framework* identified by legal education (which assumes learning strategies as the object of analysis), legal design (which employs graphic representations as an illustrative tool) and legal argumentation (the jurist's activity indirectly resulting as an output depending on the educational experience previously made).

LAW AND VISUAL CULTURE IN THREE VIGNETTES

Agata Fijalkowski

This talk will explore the relationship between law and visual culture by looking at photographs of individuals (a dissident, a judge, and a prosecutor) who were involved in high-profile trials during the Stalinist period. It draws on my recent publication Law, Visual Culture, and the Show Trial (Routledge, 2023). An image can hide and expose questions of legitimation and authority pertaining to Stalinist rule and how we view defendants, judges, prosecutors, and justice. The power of the image can be subversive. Visualising law requires extra-legal sources and analysis to reveal the nuances of a question that has been well researched but in which there is still much to discover about key players and events, as well as a better recognition of legal biographies that make for a richer history about law

under Communist rule. The three vignettes come from the archives of Albania, East Germany, and Poland. As viewers we are in between the spectacle and the frame, which our unconscious reaches out to and connects with; we see, we look, we relive and feel the moment, and the experience can be unforgettable.

UP(ROOTING) LAW'S VISUALITY: THE UNIVERSALITY OF SOUTH AFRICA'S CONSTITUTIONAL AESTHETIC

Francois Lion-Cachet

The law relies on the visual, through performance, ritual, symbols, architecture and art, as part of the judicial playbook of persuasion. In South Africa, the aesthetic of constitutional democracy—a post-apartheid creation—has radically remodelled the Western way of how the law is portrayed. With the conscious letting go of imported symbols of colonial and apartheid law, including Lady Justice and the imposing classical courtroom, the symbol of a tree marks the country's constitutional identity on the international stage. The country's apex court includes depictions of trees in its logo, architecture and artworks, as part of its philosophical underpinning of 'justice under a tree'. What does this tree signify in a historical context, but also for the contemporary moment? Although this image invokes traditional African practices of dispensing justice, trees and gathering under them are as universal as it is African, as storytelling across cultures and beliefs affirm. South Africa is at the forefront of a revised yet hybrid conception of the rule of law, drawing from indigenous and international practice, that should inform how we shape, understand and execute constitutionalism globally. Beyond its jurisprudential influence, the Constitutional Court of South Africa's legal symbolism resonates internationally in the time of climate and biodiversity crises. Interpreted as a counter to the ravages of law's anthropocentrism, the tree's visual precedent advocates for the development of a fundamental and shared norm of ecological integrity. Internationally, the South African example plants a constitutional rhetoric of our environmental dependence, thereby signalling a burgeoning legal consciousness of our interconnection with the natural world.

6 PERFORMATIVITY AND POLITICS 10:45-12:00

LEGAL PERFORMATIVITY AS A POLITICAL DIAGNOSIS

Laura Gheorghiu

The opposition and often contradiction between the dead letter of a written text and the dynamics of real life (Igor Grazin, 2005) is not a novelty in the legal realm. Suffice to look over the English Channel into the common law/ continental law debate to find its historic roots way behind our times. However, I argue that in Central and Eastern Europe (perhaps not only here) we have to check on the completeness of transitional process to grasp the extend to which it enabled a (possible) shift in understanding law. Why that? Because in any authoritarian/ totalitarian regime, the need to control outweighs any empathy for the society with its life altogether. Controlling, we know it from Orwell, means limiting the vocabulary, annulling the means of interpretation, invalidating anything that might escape the political command (indeed, law as a command, as Austin said). Law is not an independent variable – as most of the autocrats would love to hold it as a clumsy excuse. On the contrary, it is very much dependent on the society it is expected to

organize for the bare reason that any law without a sound relation to its outer world, from which to gain its sense, does not act as a law (I. Grazin, 2005). But such dependency turns it in the best sign on the inner physiology of the said society: the more rigid the law, the less open society; the more constrains, conditionalities, even the more legal items, the less freedom in societal life. Between "justimonopol" (Guy Peters, 1999) to adaptable rules there is a wide array of alternatives, sticking to the dead letter or, on the contrary, to the values to be protected or promoted. Thus, "reading" some legal texts with semiotic lens shows where their signified external object lays, that is, what legal status it gains according to the ideological perspective of that particular governance. Before all else, legal interpretation is the most complex performance paving the way to deconstruct the lawgivers' intentions and believes. I am afraid it is still much to be done around here.

THE UNGRASPABLE NATURE OF PSYCHOPOLITICS

Tomáš Havlíček

The author's intention is to examine the relationship of subjects to normative systems, in particular to the system of law. Is law a means that is used by the Machine as a power core to subjugate its subjects and exercise power over their bodies? Or is our idea of the power structure of ruling hegemony a thing of the past? The concept of psychopolitics tells us that we internalize the claims we would normally attribute to the ruling center, and the very existence of the center (the Machine) slowly dissolves. The author's intention is to explore the new mindset that is taking hold in contemporary society - metrics, measurement, data. All of these are tools for regulating the social behaviors we accept. And these tools are also reflected in how the relationship between subjects and the law works. The author will discuss the pitfalls of accepting the theses of psychopolitics and the frightening consequences of the possible truth of these theses.

DEFENSE OF HOPE

Marco Mazzocca

For anyone who has studied law, there is nothing simpler than a detective novel. Elements for a compelling crime story are, indeed, few: a crime, some clues, few suspects, and, of course, one or more detectives. Investigations are developed linearly, rigorous reasoning has replaced frantic pursuit, and detectives are often presented as good thinkers. Their method usually consists of an evidence-based analysis of the possibilities of the occurrence of certain events, and their goal is to prove that a person has both a motive and an opportunity to commit a crime. The process of identifying the criminal is, in the beginning, full of pitfalls: one realizes early on that many characters had equally good reasons and excellent opportunities for killing, so one must find another procedure for separating the guilty from the innocent. However, with time, if the detective is not sure they have found the offender, they generally test the suspects, thus revealing their authentic characters. In short, in detective novels, crime always (or almost always) appears as if it can be solved rationally. One might ask, then, why not apply such rationality to real-world crimes as well? In other words, one might ask, why not use the detective novel's logic for legal reasoning?

To answer these questions, in this work, I analyze the reasoning of one of literature's most famous detectives: Sherlock Holmes. Specifically, after demonstrating how, despite what he himself claims, his reasoning is not deductive but abductive (and, therefore, fallacious), I focus on the analysis of the arguments that led the Baker Street detective to accuse Mr. Jefferson Hope of murder in the famous novel *A Study in Red*. Indeed, this paper shows how even the

seemingly most coherent reasoning can be refuted when examined under the adversarial scrutiny typical of the rule of law.

7 LAW AND LANGUAGE 13:00-14:30

PERFORMATIVITY OF A LEGAL TEXT. ATTRIBUTING MODAL PROPERTIES TO OBJECTS

Łukasz Piosik

Main objectives: In the presentation I intend to 1) describe the performativity of lexal texts by referring to the concept of legal modality, 2) present a method of analysing the semantics of a legal text based on the proposed perspective on performativity.

Problem description: Presented idea of performativity is based on the concept of legal modality. Central thesis of this idea is that a legal text attributes modal properties (e.g. duties, competences) to objects, or, to put it another way, that an object acquires certain extrinsic properties in virtue of a legal text. Idea of performativity based on the concept of legal modality serves as a starting point for a method of analysing the semantics of legal texts. In the light of this method modal properties become semantic components of legal language terms.

Importance of research: On the basis of the considerations it is possible to develop a theoretical framework concerning relationship between legal language and the reality to which that language refers. Moreover, proposed approach to the problem of performativity complement the perspective on legal norms adopted within the Poznan-Szczecin School of Legal Theory. Presented method of analysing the semantics of a legal text allows to solve some of the theoretical problems generated by analyses conducted in the spirit of componential semantics.

Methodology: In considering performativity of legal text I apply the achievements of the Poznan-Szczecin School of Legal Theory, as well as philosophical reflection on metaphysical grounding and the distinction between intrinsic and extrinsic properties. Constructing the method of semantic analysis of legal language, I refer to componential analysis of semantics.

HOW TO BUILD A CORPUS OF LEGAL LANGUAGE: ENSURING ITS REPRESENTATIVENESS

Ondřej Glogar

Although the premise of the importance of language for law has resonated in legal theory for some time, existing research on legal language either lacks findings supported by sufficient data or does not cover all aspects of legal language. In particular, it may seem problematic that legal theorists, with few exceptions, describe legal language based solely on their own linguistic experience and a random selection of examples (as noted, for instance, by Mouritsen, 2017). One way of avoiding this problem of intuition and lack of empirical data is to use a language corpus that reflects the actual use of the language in everyday practice. A standard corpus thus collects a range of texts that are accessible by software, so that (mainly linguistic) hypotheses can be easily tested. And although there are already some corpora focused on legal language, they usually capture only a narrow segment or only a specific genre (e.g. a corpus covering only case law or statutes). Therefore, it is advisable to conceive of a comprehensive and balanced corpus including representatives from each genre of legal language.

However, we may encounter many intersections when creating such a corpus and we need a suitable methodology first. In

my paper, I thus discuss the various risks and procedures to be considered when building such a corpus. Through an analysis of the applied linguistics literature (e.g. Meyer, 2002), I evaluate the individual criteria for sample collection and segmentation and adapt them to the specifics of legal language. Perhaps the most important of these seems to be the question of the representativeness of such a corpus, which is the focus of the paper. The criteria for the selection of texts and utterances must necessarily differ from those of general language, as the different legal branches, legal language speakers, as well as genres of legal language need to be taken into account (cf. Tiersma, 2000, Cao, 2007). The main aim of this paper is to present reflections on the design and methodology for the creation of such a corpus of legal language, with a particular focus on its representativeness.

INTERPRETATION OF LAW AND LANGUAGE GAMES

Linda Tvrdíková

In this paper we will focus on a very popular topic among legal theorists, which is the interpretation of normative legal texts. The perspective we will choose for its analysis will be based on the philosophy of language, specifically the philosophy of Wittgenstein, Sellars and Brandom. We will thus view the interpretation of law as a language game. In this way, we will be able to explain how it is that the meaning of particular provisions shifts and changes depending on the practice of those who play the game. In the case of legal interpretation, then, the most important actors are those who authoritatively interpret and apply the law. This fact has been pointed out by H. L. A. Hart.

Thus, we will see that meaning is not a static entity that is bound by some referent (indeed, as we know, many legal concepts have no referent in the physical world), but is a dynamic entity that is constituted precisely through this linguistic practice of ours, which is of course bound to the physical world, but not only to it. Especially when discussing law, then its ambition is not usually to describe the physical world, but to "build" the social world in its own specific way, to create order in it and to set explicit rules for its functioning.

In this paper we will focus in particular on the discussion of how it is possible to play this game, where implicit rules play a significant role. We will argue that this is due to the fact that man is a normative creature, i.e. that he sees rules all around him. We will also use Wilfrid Sellars' philosophy to defend this position, backed up by the findings of cognitive science. This will be an interdisciplinary exploration of the issue.

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LEGAL REPARATION

Viktória Kaslik

Viktória is a jurist, and transdisciplinary researcher with a background in law, artistic and design research. In her practice, she discovers the powers of conceptual design and the performative arts to research, think, and speculate on alternative socio-legal bodies.

For the Performativity and Law Conference, she proposes a part of her research ‘Legal Reparation’.

The legal system is a humanly made infrastructure that also designs and acts upon us: legal codes become absorbed by the collective body. Viktória’s research departed from her background as a jurist, examining the consolidation of power structures in the Hungarian constitutional reforms while speculating alternative socio-legal models. A

part of her research culminated in the documentation of a collaborative performance looking at the contortions material bodies undergo through such abstract legal apparatuses. The proposition is that when the collective body fails to be represented in its wholeness, it remains ill.

Trained to become a jurist, she unconsciously was adhering to the traditionally expected forms of behavior in order to succeed in legal environments, meanwhile also experiencing the constitutional and social shifts in Hungary since 2010. It was during her art and design studies that she started to discover that the law is actually incorporated and performed. Working with performance artists since then, she researches methodologies in which embodied knowledge and legal thought can meet to think together.

In the conference, she wishes to give a lecture to guide the audience through her research and give the context to her video to be screened.