Special Workshop 42: Folk-Psychology, Law and Reductionism

9 July 2019, 8:30 – 13:00

Programme:

Time	
08.30 – 08.35	Introduction
08.35 – 08.50	Wojciech Załuski, **Why Moral Norms Cannot be Reduced to Facts: a Trilemma in Derivations of 'Moral Ought' from 'Is'**
08.50 – 09.20	Discussion
09.20 – 09.35	Jaap Hage, **How to naturalize deontic facts?**
09.35 – 09.55	Discussion
09.55 – 10.10	Dietmar von der Pfordten, **How reductionistic/naturalistic should legal philosophy be?**
10.10 – 10.40	Discussion
10.40 – 11.00	Coffee Break
11.00 – 11.15	Lukas Kurek, **On the empirical commitments of folk psychology**
11.15 – 11.45	Discussion
11.45 – 12.00	Antonia Waltermann, **Reducing agency?**
12.00 – 12.30	Discussion
12.30	End of Workshop

Wojciech Załuski, **Why Moral Norms Cannot be Reduced to Facts: a Trilemma in Derivations of 'Moral Ought' from 'Is'**

The goal of the presentation is to argue that the very idea of justifying moral norms by deriving them from (or, equivalently, by reducing them to) factual statements is ill-conceived because it faces a certain trilemma. This trilemma (to be developed in detail in the presentation) can be succinctly presented as follows: any attempt to derive a 'moral-ought-statement' from an 'is-statement' *with a justificatory goal* (i.e., with the goal of justifying the 'moral-ought-statement'), *even if it were successful in its 'derivation' part (i.e., were logically correct), would be unsuccessful in its 'justificatory' part* for one of the following three reasons: (1) it would lead to considering *each* human action as morally obligatory or prohibited, and would thereby leave no room for morally indifferent actions; or (2) it would presuppose a moral norm non-derivable from facts; or (3) it would not explain why the non-morally made distinction between those factual statements about human actions from which moral norms can be derived and those from which they cannot be derived should count as morally relevant (i.e., should count as 'selecting' moral norms). The existence of this trilemma seems to have important implications regarding the possibility of 'naturalistic ethics': if we (plausibly) assume that the type of ethical justification that starts from 'is-statements' is essential for (or at least characteristic for) naturalistic ethics (but not for non-naturalistic ethics), the trilemma can be interpreted as providing a direct argument against naturalistic ethics and an indirect argument for non-naturalistic ethics.

Jaap Hage, **How to naturalize deontic facts?**

It is sometimes assumed that there is a fundamental distinction between facts and norms, fact and value, or IS and OUGHT. Elsewhere I have argued that there are at least three distinctions here, and there is no need to repeat these arguments here. My present topic is the possibility to naturalize deontic moral judgements (or facts), such as 'Morally speaking, I should donate money to Oxfam'.

By 'naturalize' I will mean here 'describe in non-deontic terms'. In this connection I will understand by 'deontic' what is obligatory, or expressly non-obligatory (e.g. 'I am not obligated to donate money to Oxfam') . So I will only talk about moral duties or obligations or the express absence thereof.

I will argue that it is possible to naturalize deontic moral facts, and the argument has two main parts. First I emphasize the difference between what a moral duty or obligation is, and for what reason such a duty or obligation exists. A naturalisation project must deal with the former question, but my impression is that some people believe that naturalization is impossible because they have focused on the second question.

Second I argue that the existence of a moral duty or obligation is a fact in social reality, but not an ordinary social fact, but a 'constructivist' fact. Such a constructivist fact exists if its existence is actually accepted and it is not the case that its existence should not be accepted. This latter condition 'it is not the case that its existence should not be accepted' is satisfied if it turns out to be impossible to prove that the fact should not be accepted. This is crucially the case if an attempt to prove this ends in an infinite regress. Very briefly: if the existence of a moral duty is accepted and if an attempt to prove that it should not be accepted ends in an infinite regress, the moral duty exists. As the condition that an attempted prove does not end in an infinite regress is not deontic (it is proof-theoretical), this is a non-deontic or naturalistic description of the existence of a moral duty.

As the notions of a moral duty and a moral obligation are folk-psychological , this proof that it is possible to naturalize moral duties is at the same time proof that at least some folk-psychological concepts can be naturalized

in the sense of being made non-deontic. However, the definition still uses the notion of acceptance, and the question may be raised whether this notion is not folk-psychological itself, and if so whether and in what sense it can be naturalized.

Dietmar von der Pfordten, **How reductionistic/naturalistic should legal philosophy be?**

Initially I will discuss the thesis that law is based on folk-psychology. In my view this is doubtful. According to my opinion in the long run law is always based on a comprehensive view of the world and the things, properties and relations, which includes not only folk psychology, but also the best science available at that time, e. g. like stoicism for Roman Law, Aristotelism for medieval and early modern law etc. For a longer sequence of time there cannot be upheld contradictions between the best science available at one period and folk psychology. Additionally law tries to be as neutral as possible concerning contempted scientific and folk-psychological assumptions. I will then discuss reductionism/naturalism as a guideline for science, philosophy and legal philosophy. In order to do this I will distinguish four ontological alternatives: materialism/reductionism, idealism, dualism and a unified view/continuity view. Some criticism of naturalism by Thomas Nagel, Tom Sorell and Julian Nida-Ruemelin will be considered and discussed. In the end I will opt for the unified view as a rough guideline and then try to draw some conclusion what this means for such a basic legal and extra-legal concept like human agency with reference to new literature in general philosophy.

Lukas Kurek, **On the empirical commitments of folk psychology**

One of the issues discussed in connection with the relationship between folk psychology and cognitive sciences are the empirical commitments of the former. The reason why this particular issue is inquired into is clear: if folk psychology makes any claims about how the mind actually works, or what it is, and those claims turn out to be false, this could be used as an argument against the scientific validity of folk psychology – or even against the validity of folk psychology as such. Some claim, therefore, that folk psychology should be viewed as a theory of mind and its empirical commitments can and should be investigated. But according to a different, functional understanding of what folk psychology is, it does not have much, or even anything, to say about how the mind actually works or what it is. It is just at the right level of analysis to give us insight into the meaning of our own behaviour and the behaviour of others. In my talk, I will attempt to briefly assess the dispute on the empirical commitments of folk psychology using as an example one such purported commitment – the claim that the access to one's own mental states is transparent, i.e. non-interpretive. If this claim is true, the access to our own mental states is privileged in comparison to the access to the mental states of others because the latter is always interpretive. However, the claim that we have non-interpretive access to our own mental states seems to be at odds with the insights from cognitive sciences according to which access to our own mental states is interpretive, just as it is the case with access to the mental states of others.

Antonia Waltermann, **Reducing agency?**

Agency is a folk psychological notion, a legal concept and the subject of neuro- and cognitive scientific research. The main purpose of this presentation is to investigate whether the legal concept of agency can and should be reduced to the folk psychological or 'scientific' notion of agency. To answer this requires thinking about the relationship between law, folk psychology and "the natural sciences" broadly put.

I start from one presumption about this relationship and precede in four steps.

The starting point of this presentation is that there are legal concepts – call them legal-technical (Brozek) or internal legal (Hage) – that are defined by legal rules. As such, these legal concepts can *in principle* have any content they are given, including content that is entirely unrelated to for example ordinary language use or folk psychology.

Starting from this presumption, I first consider whether the legal concept of agency can be reduced to the folk psychological or the 'scientific' one. If this is possible – and I will argue that it is, provided such notions exist – the more interesting question is whether this should be done.