# Graz Jurisprudence Talks

Die *Graz Jurisprudence Talks* findet in lockerer Folge mehrmals im Semester statt. Wir haben etablierte Forscherinnen und Forscher zu Gast, die aus ihrer aktuellen Arbeit berichten oder kürzlich publizierte Texte vorstellen.

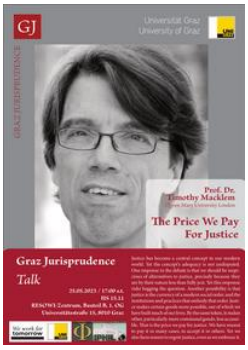
**15 June 2023**


Prof. Dr. Timothy Endicott

**The Meaning of Words and the Content of Law**

Interpretation ascribes meaning to an object. A theory of legal interpretation should account for both the objects and the meaning. I will refute the view that the meaning of a word is its content; that that content is the contribution of a word to the meaning of the sentence. Instead, I will argue that the meaning of a word is not in any sense a content. The meaning of an assertoric utterance is its content, and the meaning of a law-making act is the content of the law. That content is not determined by the dispositions of speakers. Words and sentences and their meanings are linguistic entities; the content of an utterance is the proposition that it expresses. The truth of an utterance is a material question and not a linguistic question. I consider implications of this view for general jurisprudence.

**25 May 2023**




Professor Timothy Macklem

**The Price We Pay for Justice**

Justice has become a central concept in our modern world. Yet the concept's adequacy is not undisputed. One response to the debate is that we should be suspicious of alternatives to justice, precisely because they are by their nature less than fully just. Yet this response risks begging the question. Another possibility is that justice is the currency of a modern social order, and the institutions and practices that embody that order. Justice makes certain goods more possible, out of which we have built much of our lives. By the same token, it makes other, particularly communal goods, less accessible. That is the price we pay for justice. We have reasons to pay it in many cases, to accept it in others. Yet we also have reason to regret justice, even as we embrace it.

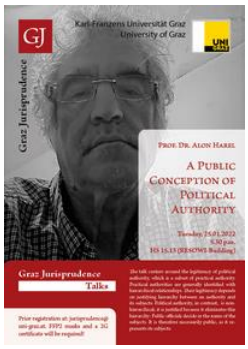
**9 February 2023**


Prof. Dr. Stéphane Beaulac

**Metaprinciples, Interlegality and Recent Case Law (from CAN, GBR, DEU)**

Interlegality, or the domestic use of international law, concerns some of the most important metaprinciples of our legal orders, namely democracy and the rule of law. Mainly from an Anglo-Saxon common law perspective, the basic framework of analysis -- going beyond the simple (if not simplistic) theories of monism and dualism -- will be examined, with a view to highlighting the complexities for national judges to resort to international treaties or customary law. Recent case law from Canada, Great Britain and Germany will be used to illustrate the different points, in the end showing how these issues are intertwined with and informed by the democratic principle and the (international) rule of law.

**25 January 2022**




Prof. Dr. Alon Harel

**A Public Conception of Political Authority**

Political authority is a subset of practical authority. Practical authorities are generally identified with hierarchical relationships. The authority decides *for* its subjects what to do or refrain from doing and they, in turn, are required to conform with that decision. The legitimacy of practical authority depends on *justifying hierarchy* between an authority and its subjects—for instance, that submission to authority guides the subject to act in accordance with reason or that it serves the subject's own interests or that in fact the subject consented to the authority or some other valuable ends.

By contrast, we argue that political authority is non-hierarchical; it is justified because it *eliminates rather than justifies the hierarchy* between the authority and its subjects. Public officials in a position of authority do not decide for those subject to their rule but rather do the deciding *in the name of the subjects*. The answer to the legitimacy question addressed to Moses, "who made thee a prince and a judge over us," is not that the thee is in some sense more qualified or better positioned to make decisions for us; it is not consensual submission to the rule of thee, and it is not a byproduct of a fair, democratic or egalitarian, procedure. Rather, it is that the 'thee' is in reality 'us.' This explains why political authority is necessarily *public*; it represents those who are subject to it and, consequently, those who are subject to it are, in principle, accountable for the authority' decisions. It further explains the fact that political authority is the only type of authority that is often regarded in the liberal tradition as freedom-facilitating rather than -limiting.

**2 December 2021**


**Prof. Dr. Vitaly Ogleznev**

**Axioms, Norms and the Constitution**

The Constitution can be considered as an informal axiomatic system. This point of view rests on the follow-ing propositions: (1) axioms are considered as contextual definitions of those concepts by means of which they are formulated; and (2) the main requirement for this type of system is internal consistency. The first proposition is necessary for considering the Constitution as an informal axiomatic system, while the second is sufficient. In this case, the Constitution can be compared to axiomatic constructions in the sense that is given in the research on the logic and methodology of deductive sciences. This analogy is appropriate to the extent to which constitutional provisions are interpreted as the basic elements of the legal system, just as in the formal sciences axioms are regarded as basic principles that define the main features of the formal sys-tem. This means that the Constitution itself can be seen as coherent, consistent discourse that contextually defines the meaning of the basic concepts of the legal system.

**4 April 2019**


**Dr. Kenneth Einar Himma**

**There but for the grace of God go I: What people deserve and what people should get**

Luck plays a bigger role in how well our lives go than one might initially think: luck determines, to some extent, how smart we are; how pretty we are; what kind of personality traits we have; whether or not we have competent parents; whether we are born in affluent countries or whether we are born in absolutely poor countries; whether our bodies are prone to certain physical illnesses or not; whether we are religious; and so much more. We have so little control over so much that affects our lives that it raises a legitimate question as to whether anyone can claim to deserve any of the good or bad things that happen in our lives.

**16 October 2018**


**Prof. Dr. David Duarte**| Universität Lissabon

**Deontic Modalities and Legal Positions**

Under a Hohfeldian scheme of correlativity and accepting the premise by which only norms confer legal positions or, in other words, that legal positions are just the outcome of norms, from that follows that a full frame of legal positions depends solely on the distinct combinations of the variables connected to norm's deontic modalities and, simultaneously, that the structure of norms has to somehow entail room for those positions. Analyzing this in the field of primary norms and considering atomistic legal positions in a norm individuation basis, the talk addresses these specific topics and, particularly, some problems regarding legal positions related to permissive norms such as if there is normative stand for half liberties or if a possible duty of non-interference might be qualified as an autonomous legal Position.

**24 May 2018**


**Dr. Jorge Portocarrero** | Ruprecht-Karls Universität Heidelberg

**The elements of an argumentative theory of constitutional Interpretation**

This paper puts forward a case for an argumentative approach of constitutional interpretation, which regards the interpretation of constitutional norms as a special case of general theory of legal reasoning. Its nature is argumentative since the correctness of its outcomes is the product of a structured exchange of reasons set out to reach reasonable agreements. This theory is based on three basic elements: a conventionalist account on the meaning of words, a methodological approach on interpreting constitutional norms, and an anti-positivistic account on the nature of law.

**15 March 2018**


**Prof. Dr. iur. Dr. h. c. Werner Gephart** | Rheinische Friedrich-Wilhelms-Universität Bonn

**Das „Recht als Kultur"-Paradigma. Einige Regeln und Anwendungen zur Rechtsanalyse als Kulturforschung**

In dem Vortrag wird zunächst das „Recht als Kultur"-Paradigma vorgestellt, wie es sich im gleichnamigen Käte Hamburger Kolleg an der Universität Bonn entwickelt hat: als ein mehrdimensionaler Rechtsbegriff, als eine Daueraufmerksamkeit für Bezüge zur religiösen Sphäre und als Einbettung in partikulare und universalistische, globale

Geltungszusammenhänge, die den Blick auf Rechtskulturkonflikte eröffnet. Das Spannungsverhältnis von Recht zu den Künsten wird hierbei, über die „Law and Literature"-Debatte hinaus, als konstitutiv für ein Recht der Moderne verstanden, das „Kultur" zunehmend als eine, nicht unproblematische, normative Geltungsquelle betrachtet.

Die Brauchbarkeit dieses Ansatzes soll an einigen Beispielen diskutiert werden, wie sie bislang in 21 Bänden der Reihe „Recht als Kultur" im Klostermann Verlag entwickelt wurden. Der Vortrag wird durch Visualisierungen von Recht begleitet, die sich in „Some colours of the Law" (Werner Gephart, Frankfurt am Main, Recht als Kultur, Bd. 21) wiederfinden.

**12 December 2017**


**Dr. Chiara Valentini** | Pompeu Fabra University

**"Constitutional Adjudication, Judicial Dialogue and Overlapping Doctrines"**

The paper addresses the use of foreign law in constitutional adjudication. The first part illustrates the spread and relevance of the judicial practice of making reference to foreign law, along with the main questions that come with it. On the one hand questions concerning its justification and on the other hand questions concerning its scope and method. The second part of the paper attempts to provide a key to these questions. It presents a model of judicial dialogue that points toward a partial convergence among constitutional doctrines. This model builds on a defense of the judicial use of foreign law that draws on the Rawlsian ideas of reflective equilibrium and public reason (Moreso and Valentini 2017).

**23 November 2017**


**Dr. Andrej Kristan** | University of Girona

**"A Paradox of Hart's Fallible Finality"**

The goal of this talk is to offer a redefinition of the concept of the fallibility of final judicial decisions. Its standard understanding, based on Hart's work, is far more problematic than is usually assumed. The author intends to show that the usual understanding gives rise to a contradiction. Namely, that it is (sometimes) legally correct to do that which is not legally correct. He will then briefly test three methods of solving the problem and conclude that none of them speaks in favour of distinguishing between the finality and infallibility of judicial decisions. Accordingly, he will re-examine Hart's motivations for embracing that distinction and identify a misstep in his reasoning.

**19 January 2017**


**Univ.-Prof. Dr. Stephan Kirste** | Universität Salzburg

**"Das Menschenrecht auf Demokratie"**

Ein Menschenrecht auf Demokratie lässt sich weder durch die Bedeutung der Demokratie für die Menschenrechte, noch durch die Bedeutung der Menschenrechte für die Demokratie, noch durch die Gleichursprünglichkeit von Menschenrechten und Demokratie begründen. Menschenrechte und Demokratie haben einen gemeinsamen Ursprung in der positiven Freiheit als Autonomie. Als Menschenrecht auf Demokratie soll ein subjektives Recht auf gleiche Partizipation an der Beratung, Interpretation und Durchsetzung von allgemeinen Rechten und Pflichten verstanden werden.

**15 November 2016**


**Dr. Luka Burazin** | University of Zagreb

**"Legal Systems as Abstract Institutional Artifacts"**

The talk defended the view that a legal system is an abstract institutional artifact. Its existence is grounded in social practices. It differs from 'ordinary' artifacts in that it is rule-based and requires general recognition. Making it the case that a legal system exists is realized through the general recognition of the constitutive rule laying out a set of conditions for there to be a legal system.