Wednesday, June 25th, 11:00-11:30, room 101

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***OUGHT IS IS* metaphor as a source of naturalistic fallacy in the legal domain**

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The assumptions being the basis of this presentation are that the very important tool of cognition and experiencing of law is metaphor and that the language of the law is by its nature metaphorical. Metaphor is herein understood in the light of achievements of cognitive linguistics, theory of metaphor in the Lakoff and Johnson variant (with some improvements by their commentators and critics) in particular. The metaphorical nature of the language of law is a result of an explicit claim to universality raised by this language and also a result of the legislative technique forced by this claim. The main thesis of the presentation is that the metaphor fundamental for law is the OUGHT IS IS metaphor. This metaphor is a tool for cognition of normativity. According to this idea a special form of legal articles – in Polish legal system it is especially the common use of the present tense (sometimes future) and of the indicative mood though the imperative mood would seem more natural for the purpose of law – is a product of conceptual metaphor, which is the main, though not the only foundation of the concept of law in general. Particular legal articles by their form (and not by their content) are language realizations of this metaphor. This metaphor is WHAT OUGHT TO BE IS WHAT IS (OR WILL BE), in brief, OUGHT IS IS. In this metaphor the source domain is "what is" and the target domain is "what ought to be". Like other conceptual metaphors this metaphor lets us obtain partial access to an abstract and difficult to construe domain (of "ought") through the more concrete, more familiar, sometimes even touchable or physically experienced domain (of "is"). Improperly understood, OUGHT IS IS metaphor may be a source of naturalistic fallacy. In a certain way this "naturalistic fallacy" is entirely natural because it consists in missing the metaphorical character of the relation between "ought" and "is". This relation is just falsely taken as a relation of identity or equivalence. When one does not notice metaphorical character of mapping between "is" and "ought" one cannot discard a scheme of cognition and reasoning that is submitted by this mapping. That is why the most tenacious adversaries in the field of legal philosophy – proponents of less philosophically sophisticated natural law theories and followers of legal positivism – have both committed naturalistic fallacy.