



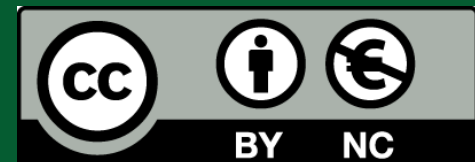
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Legal philosophy and cognitive science: a troublesome naturalization

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what exactly is this about?

1. Introduction: why is cognitive science relevant for legal philosophy?
2. What is naturalization?
3. Case study: legal concepts and cognitive science
4. The tension problem
5. Conclusions

1. Introduction

Cognitive science: an interdisciplinary research program devoted to the study of broadly understood cognition

Painting with a broad bush

Cognitive science – descriptive

Law – normative

How can cognitive science be relevant for law and legal philosophy?

(in particular: conceptual processing, interpretation, decision-making)

Conceptual processing: how does our mind process the concepts? What are concepts? (Barsalou 2008, Bergen 2016)

/legal concepts/

Interpretation: what mechanisms underlie the processes of interpretation of language? (Glenberg, Kaschak 2002, Bergen 2016)

/legal interpretation/

Decision-making: what mechanisms underlie the processes of decision-making? (Kahneman, Tversky 1979, Gigerenzer 2011)

/legal decision-making/

Three philosophical positions concerning the significance of the so-called „cognitive legal studies”

- optimism,
- pessimism,
- moderate pro-naturalism.

2. What is naturalization?

origins: legal realism (e.g. Ross, Hagerstrom, Olivecrona; Petrażycki)

Today legal theorists do not have to create any kind of theory concerning cognition to be able to research the mechanisms of legal cognition. The task *seems* much simpler: they only need to look at the theories developed by the cognitive scientists and make theories about legal cognition coherent with scientific knowledge.

Naturalization:

Reduction?

Coherence?

Coherence between descriptive assumptions (presuppositions) and cognitive science

The coherence between the descriptive assumptions of law („legal knowledge”) and the scientific knowledge (Brožek 2015)

The coherence between the descriptive assumptions of legal philosophy and scientific knowledge

(a part of a more general question: is it possible to naturalize philosophy?)

Which assumptions?

Which part „scientific knowledge”?

3. Case study: legal concepts and cognitive science

„Legal concept“ – a troublesome concept (?)

words or mental representations?

Embodied or disembodied mental representations?

Metaphorical or non-metaphorical mental representations?

The relation between conceptual and linguistic layers of legal cognition can be stated as follows:

(1) objects (physical objects and mental artifacts)

represented by concepts; designated by words (names);

(2) concepts (representations)

representing objects; giving meaning to words; dependent on language;

(3) words (language)

dependent on concepts (the relation of meaning); designating objects; developing concepts.

- Two approaches to mental representations (concepts):
- mental representations are quasi-linguistic, amodal symbols our brain processes when we think. This is consistent with the so-called traditional or classical approach to cognition (see Baralou 2008) → the grounding problem
- according to the opposite view, supported by representatives of embodied cognition, representations are analogical in nature, i.e., they are similar in some way to what they represent

- Embodied concepts: the challenge of abstract concepts (Borghetti et al. 2017)

/abstract concepts as conceptual metaphors?/

- What does it mean that cognition is „embodied“? Strong vs. Weak embodiment

4. The tension problem

Strong tension problem:

(1) legal philosophy should be informed by cognitive science, i.e., it should be naturalized.

(2) legal philosophy should not be informed by cognitive science, due to the inconclusiveness of the theories developed within cognitive science.

These elements can also be formulated in a weaker form (the difference lying in the second proposition):

Weak tension problem:

(1) LP should be informed by CS, i.e., it should be naturalized.

(2) Methodological caution is necessary, due to the inconclusiveness of the theories developed within CS. If possible, general assumptions accepted by the scientific community should be harnessed more than particular competing theories.

- In other words, LP should be coherent with scientific knowledge; however, it is unclear how such coherence might occur, this owing to the inconsistencies in the scientific study of cognition. This may lead to the conclusion that LP should not be coherent with scientific knowledge, because that is impossible (due to incoherence of CS itself).
- It is easy to see that (1) corresponds to “optimism,” while (2) accords with the “pessimistic” stance.
- The second version of the dilemma, which may sound more reasonable in the context of scientific practice (and is less radical) does not, however, make it possible to escape the tension

The weak tension problem is not merely philosophical hair-splitting. It gives rise to a basic methodological difficulty:

which CS theory should we choose from those with credentials of scientific respectability? If legal concepts are considered, should we reformulate legal concepts in terms of mental representations (and cognition in terms of mental simulation)?

For the sake of argument, let us take it that is a generally shared assumption in CS that concepts are mental representations.

We then ask: Which approach to representations is to be adopted?

According to one influential theory, representations are analogical (Barsalou 1999), but adherents of other approaches assume that representations can be also amodal and quasi-linguistic (Machery 2007; Prinz 2004).

There is no consensus on this matter in the scientific community. What is more, if so-called wide cognition is taken into consideration (Miłkowski et al. 2018), the understanding of representations becomes even less clear.

Which results, then, should be used when thinking about legal concepts? The question remains unanswered until we opt for one of many approaches. Then the problem remains when it comes to justification.

- The pessimistic meta-induction (Laudan 1981)

5. Conclusions

- (1) Cognitive science seems to be relevant to legal philosophy in many dimensions (and for law, generally).
- (2) It is not an easy task, however, to naturalize jurisprudence.
- (3) Which scientific theories should we choose, and why?
- (4) The tension problem is relevant not merely to legal philosophy, but also to many other philosophical analyses (ethics etc.)