

The Architecture of the Legal Mind

- description for the general public -

Legal cognition is quite special. On the one hand, it must be like any other type of thinking, taking advantage of the mental machinery we use in mathematics, music or to solve every-day problems; on the other, there is no denying that legal cognition has its own peculiarities. Not everyone may 'think like a lawyer' - it requires a long training and much experience. Moreover, unlike mathematical considerations, musical composition or every-day decision-making, a large part of legal thinking takes place within the framework of the existing legal regulations, both material and procedural.

For decades, philosophers and psychologists have been trying to identify 'the essence' or 'the fundamental mechanisms' of legal cognition. As a result, we have numerous, often competing or even incompatible theories describing the way lawyers think. Some scholars believe that legal decisions are reached through an intuitive hunch; others claim that they are established by logically valid arguments from abstract rules of conduct contained in legal acts; still, there are those who see legal thinking as an inherently argumentative process or - in yet another tradition - as a circular process, which requires taking into account the facts of a particular case on the one hand, and the entire legal tradition on the other.

This situation calls for an explanation. The existence of such differentiated accounts of legal thinking is troublesome. At the same time, the previous decades have witnessed the flourishing of cognitive sciences, and neuroscience in particular. The extent to which our understanding of mental processes has changed justifies speaking of the cognitive revolution. It seems to be a perfect opportunity to reconsider the basic assumptions behind the traditional theories of legal cognition. Only a comprehensive account of legal thinking, one which takes advantage of both philosophical argumentation and the theories and data supplied by cognitive sciences, may provide a conceptual framework for a responsible and systematic study of the various forms of legal cognition and the interrelations between them.

Thus, the main goal of the present project is to provide such a general conceptual framework, which would not only explain the existence - and persistence - of incompatible accounts of legal cognition, but also open new lines of inquiry in legal epistemology. The fundamental, overarching hypothesis is that legal cognition consists in an interplay between three interrelated mental mechanisms: intuition, imagination, and theorising. Intuition has been the subject of legal philosophers' interest at least since the pioneering works of Leon Petrażycki and Joseph C. Hutcheson. However, the recent advancements in psychology and neuroscience related to unconscious decision-making cast a new light on this problem. In contrast, imagination is rarely mentioned in the treaties pertaining to legal cognition. It is highly surprising, since imagining various factual situations - or mentally simulating them - constitutes the every-day experience of judges, other legal practitioners, and law students. Finally, there is little doubt that a lawyer's world is the world of language: legal acts and decisions are communicated through this medium. Much ink has been spilled over the nature and limits of the legal conceptual scheme, but not often in relation to other forms of cognition, especially intuition and imagination. The essential part of the present project is to consider this threefold relationship. Do lawyers use imagination to evoke - or control - intuitions? Is legal interpretation possible without mental simulations? How can abstract concepts shape lawyers' unconscious decision-making?

It is often stressed that legal thinking should be rational. Ultimately, it is what we expect of judges and other legal professionals - to provide us with justified rulings or rational trial strategies. The question is, however, how to understand law's rationality. Traditionally, it is conceived as a normative standard of belief and action: a judge should think and act in an impartial way, or make decisions which maximise social welfare. However, economists and philosophers like to speak of a different kind of rationality: the ecological. It is a feature of the social institutions, not of an individual's beliefs or actions. Individuals are ecologically rational if and only if their decisions, and in particular the intuitive, unconscious decisions, 'fit well within' the surrounding social structure. Therefore, the final goal of the present project is to analyse the role of ecological rationality in the law, and its relation to more traditional accounts of rational legal thinking. It is possible only against the background provided by the unified view of legal cognition, which takes into consideration the interplay between intuition, imagination, and theorising.