

BETWEEN THE COGNITIVE AND PRACTICAL APPEARANCES OF LEGAL STATEMENTS (BeCAP)

What do participants in legal discourse do when they talk about the law? For example, what do participants in U.S. legal discourse do when they debate the compatibility of capital punishment with the Eighth Amendment to the U.S. Constitution? This project seeks to answer such questions by explaining how legal thoughts and discourse relate to the world. To this end, BeCaP aims to offer the most comprehensive and accurate account of legal statements across the full spectrum of their appearances.

To begin with, it is essential to recognize that legal statements – understood as specific utterances attributing legal status to certain norms of conduct – can exhibit a variety of characteristics. Consider the legal statement that the law requires citizens to pay taxes. Such a statement can be evaluated as true or false, justified or unjustified based on supporting reasons, and subject to logical analysis, much like any ordinary declarative sentence. These features suggest that legal statements are products of the cognitive capacities of participants in legal discourse – that is, they result from mental processes involved in acquiring knowledge, processing information, and reasoning. However, participants in legal discourse often use the same statements to structure deliberations about what to do, to evaluate their own behavior, or to guide or assess the behavior of others. For instance, the belief that the law requires citizens to pay taxes may motivate someone to comply, serve as a critique of those who do not, or function as an exhortation to others. In this light, legal statements appear to be shaped not only by cognition but also by conation – the capacities related to action and motivation.

This tension between the cognitive and conative dimensions of legal statements evokes Pieter Bruegel's *The Fight Between Carnival and Lent*, where the disciplined realm of religious observance clashes with the exuberant, desire-driven world of carnival. On one hand, participants in legal discourse resemble medieval ascetics – devoted seekers of truth who analyze texts, precedents, and principles with monastic rigor to uncover objective legal realities. Their classification of norms as legal emerges from cognitive processes aimed at discovering truth, akin to scientists observing natural phenomena. On the other hand, these same participants also act as practical agents – more like Bruegel's carnival revelers – whose statements are driven by passionate efforts to achieve specific outcomes.

BeCaP addresses a major shortcoming in existing research: the lack of a systematic study that accounts for the full range of appearances of legal statements. Current scholarship does not offer a genuine, in-depth inquiry into both the cognitive dimension of legal statements – particularly their referents, truth conditions, and context-sensitivity – and their practical dimension, especially the emergence and status (primary vs. secondary) of their practical features. To address this gap, BeCaP distinguishes three explanatory frameworks – representationalism, ideationalism, and inferentialism – each offering a distinct set of conceptual tools for explaining the nature and function of legal statements. Independently, it considers three strategies – cognitivism, expressivism, and a hybrid approaches – which can be pursued within any of the three frameworks, generating a range of theoretical models. BeCaP aims to systematically examine these models to assess how effectively they account for the diverse and multifaceted appearances of legal statements and to identify which theoretical model offers the most plausible overall explanation of their appearances.

Building on this foundation, BeCaP may generate new insights and foster novel lines of inquiry within legal science. First, it will elucidate the actual roles that legal artifacts play in the explanation of the truth of legal statements, thus providing significant insights into the relationship between legal statements and the legal knowledge acquired through education and practice. Furthermore, by examining the nature of disagreement between *prima facie* conflicting legal statements, BeCaP may, in future research, contribute to developing more effective methods for the resolution of such disagreements. One of BeCaP's potential social impacts relates to the current rise of populism. According to one of approaches to populism, populism is an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, “the pure people” versus “the corrupt elite”. This is revealed in populists' critique of legal elite as arbitrary expressing their preferences in the name of the law. BeCaP, by addressing the question of what participants in legal discourse actually do while formulating legal statements will thus provide a more nuanced philosophical understanding of the nature of legal statements, which can, in turn, offer a more precise conceptual toolkit for political philosophers for analyzing the populist critique of legal elites.