

The legal image of a man

→ In the eyes of a philosopher, law is something more than provisions listed in codes. It also includes a series of hidden assumptions concerning human behavior, which may be described by the term “the legal image of a man.” Such assumptions constitute the basis of operation for numerous legal institutions.

The most credible findings concerning human behavior are proposed by experimental sciences such as psychology. The key aspects of the research carried out at the Faculty of Law and Administration at the Jagiellonian University (within the grant “Naturalization of Law”) were precisely the determination of such findings in experimental sciences that are important to law, and, last but not least, finding a way to apply them in legal sciences.

The goal of the naturalization of law is to consolidate the legal image of a man with its scientific counterpart. For example, in the fields of psychology and cognitive neuroscience, the thesis about the illusion of free choice is becoming increasingly popular. This illusion means that even in the situations when we are convinced that only we make our own choices, it is only an illusion generated by our minds. In fact, the decision had been made unconsciously, before we even started considering it. At the same time, the ability to make free choices is a prerequisite for holding someone criminally liable for an action. If, however, free choice is merely an illusion, can anybody be deemed responsible for his/her actions?

How to link the law with the empirical sciences?

The project is carried out by twenty scientists representing not only the legal sciences, but also philosophy, psychology, and neuroscience. The research is divided

into two stages: the first stage consists of the analysis of existing models of the “naturalization” of law.

Lawyers recognized the importance of behavioral sciences as early as the 19th century, i.e., when psychology and sociology became independent sciences. These attempts at the “scientification” of law

proved to be misguided for two reasons. Firstly, the sciences that were referred to were very immature in those days – psychology of that period was still a highly philosophical discipline, based on unverified assumptions that were even empirically unverifiable. Secondly, the existing models of “naturalization” of the law, even modern ones, are based on numerous simplifications resulting from the lack of actual cooperation among representatives of various fields of science. Some of these models are biased, as they are based on the findings from only one field of science, which is often evolutionary psychology. On the other hand, other models are often too radical because they reject the traditional philosophical method of conceptual analysis (this is proposed by Brian Leiter, a popular modern philosopher of law).

An important step at this stage of the research is the presentation of a **new, interdisciplinary model of the “naturalization” of law**. “Naturalization” of law consists mainly of the development of methods of application the findings of empirical sciences in the science of law. The model of such naturalization should take into account particularly the difference between normative systems (of which law is a specific instance) and the descriptive field, analyzing the sciences that deal with human behavior.

Law is a system of norms telling us how we should act, while experimental sciences describe and interpret actual behavior. Thus, a **naturalistic fallacy** sneaks in between the



legal and experimental sciences: the fact that we behave in a given way cannot constitute the basis for the claim that we should behave in such way. For example, if scientists prove that people, in general, act egoistically, it does not mean that they should behave in this way and that the law should permit or even promote such behavior. However, the law should not be completely indifferent to the determination of the ways in which we do actually behave, due to the obvious principle stating that if an individual is unable to behave in a certain way, then the law should not require such behavior. Let us imagine a situation when someone is watching a drowning person from the shore of a lake. The law should not require such an observer to dive into the water and save the drowning man if the observer cannot swim.

Apart from this aspect of the “naturalization” of law, it is also crucial to provide an answer to the question concerning the method of conducting this type of research: should the method of conceptual analysis traditionally used in the philosophy of law be replaced, at least to some extent, with the experimental method, which obviously provides more reliable knowledge?

Eliminating discrepancies

What seems particularly interesting is that the scientists also intend to indicate **those findings of experimental sciences that are significant for legal sciences** due to their inconsistencies with some of the assumptions that constitute the foundations of the legal system. An example might be the thesis about the illusion of free choice discussed above. Another example refers to the decision-making model adopted in the law. The law assumes such a model for example with regard to consumers’ decisions to buy a certain product. In some legal systems, this model assumes strong rationality in the decision-making process on the

part of consumers. As a result, consumer protection under such systems is limited. However, if it is proven that consumers buy without much thought, driven by emotions, should they be better protected because of that?

The analyses will focus particularly on the findings of psychology and neuroscience. In the last few decades, these disciplines have significantly contributed to the change in the scientific image of a man, especially in connection to his decision-making process, the nature of reasoning, or cognitive control.

A key element of this stage of the research will be to reconstruct “the legal image of a man.” The analysis will examine specific legal notions: a statement of will, person, or responsibility. Assumptions connected with these notions will be revealed, followed by the analysis of the compliance of these assumptions with the current state of knowledge concerning, among others, decision-making, reasoning and cognitive control. In this context, the solutions will also be shown, which will make the “the legal image of a man” more consistent with its scientific counterpart.

The results of the research will consist of, first of all, a proposal of solutions to a series of problems connected with the application of experimental sciences in the field of law. These issues are particularly connected to the method of application of these sciences in the reflection on the law. However, the results will also include several modifications of certain solutions proposed by the legal sciences in accordance with the current state of knowledge about humans, i.e., **the “humanization” of law**. It is likely that the results will allow for a proposal of specific legal solutions that could be included in the existing legal system. Such solutions may concern not only the scope of legal protection of consumers discussed earlier, or the grounds for criminal liability, but also such areas of civil law as contract law or compensation liability. ■

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