
Legal Decision Beyond Rationalism: new connections and fresh perspectives

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Abstract

It is frequent for legal theorists to take rationality almost a guiding principle to be observed if one intends to make valid and even just legal decisions. From modernity onwards, the rationalization of Law also marks its continuous specialization, a body of convoluted knowledge accessible only to a few that had been to law schools. A sort of technical rationality, so it seems, could help us to identify legal decisions as valid or invalid, or even as just or unjust, improving the operational dynamics of legal system at the same time that also protects our democratic forms of life. However, many events from the past century, ranging from two world wars through the proliferation of weapons of mass-destruction, extraordinary exploration of natural resources and many others, pointed out the serious problems and limitations of this overreliance on the powers of reason. Rationality is quite important for a critical self-reflection on the problems of our society and its citizens: this critical function is also crucial for developing a pluralistic social order based on dialogue and difference. However, if it represents only a model of thought, which treats the environment and ourselves as only means to an end, it can lead us straight to barbarie, as Martin Heidegger and Theodor W. Adorno sought to remember us. In Legal Theory, notably analytical jurisprudence, the usual approach to Law is deeply influenced by philosophy of language and epistemology, so the fact that most discussions are concerned directly or indirectly with logic and language is to be expected. We do think that philosophy of language has much to offer for questions regarding interpretation of statutes, legal argumentation and even to sharpen our legal thinking, turning us into better lawyers and judges. Nevertheless, those legal theorists often leaves out of discussion Law's interaction with others cultural domains, such as arts and politics. These multiple interactions are as constitutive and important to Law as logical and conceptual analysis, but also can reveal new approaches that are not restricted to a rational representation of legal practices. The Law and Literature and the Critical Legal Studies movements are two examples of such approaches. Philosophical pragmatism is a suitable to address rationality, avoiding to restrict it to its pure instrumental manifestation: it preserves not only rationality's instrumental, practical and critical function, but also juxtaposes it with other modes of being-in-the-world, such as emotions, desire, affects, and imagination. Dewey's conception of democracy as a way of life, for example, stresses out a peculiar manner of social interaction that conceives disagreement through affective dispositions of empathy and tolerance. Peirce's scientific community of inquiry, regardless of its reliance on rationality, is also deeply marked by imagination and for a desire to arrive at solutions that will put to rest our disconcerting doubts. The common point that binds together the multiple and different presentations of the members of this panel is an approach that strives to observe how

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legal decision, but also the diverse operations of the legal system, is also shaped by desire, affects, and imagination, irrational forces that are as fundamental to the legal imaginary as its rational counterpart. Classical tragedies, such as William Shakespeare's *Merchant of Venice* or Sophocle's *Antigone*, exposes elements of a legal imaginary in which values, such as impartiality, loyalty and proportion, are entangled with different reflections on justice and human frailty. Imagination also has its place for a just and tolerant society is, before everything else, an image that connects reason and desire, conceptual reflections upon the design of the institutions necessary for establish this kind of order. We take affection as a necessary part on social change, specially regarding on the ways that citizens, affected by deeply unjust circumstances, bring to light their concerns and deeply dissatisfaction towards the dominant political and legal order. This makes some of the main ideas of our discussion group akin to Luc Boltanski's pragmatic sociology of critique.

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