APPLYING CONFIRMATION THEORY TO THE CASE AGAINST NEUROLAW

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Neurolaw is the emerging research field and practice of applying neuroscientific knowledge to legal standards and proceedings. This new intersection of neuroscience and law has put up some serious claims, the most significant of which is the overall transformation of the legal system as we know it. The claim has met with strong opposition from scholars of law, such as Michael Pardo and Dennis Patterson, who argue that neurolaw (and neuroscience more generally) is conceptually wrong and thus perceive most of it as “nonsense”. In response, Sarah Robins and Carl Craver have shown why we may dismiss Pardo and Patterson’s arguments as irrelevant to the actual practice of neurolaw, and Neil Levy has claimed that neurolaw is in fact not conceptually confused. I propose a different approach to the problem, exposing a flaw in Pardo and Patterson’s arguments by means of confirmation theory. A similar approach has been used by Christopher Clarke in vindication of neuroeconomy. My main point is that Pardo and Patterson use implicit hypothetico-deductivism in their attack on neurolaw, and that we have good reasons to doubt the employment of such a model. Hypothetico-deductivism faces great, even insurmountable problems of a theoretical nature. I then demonstrate how the alleged problems associated with neurolaw disappear if we use a less problematic Bayesian model of confirmation. I also explain why the proposed probabilistic model provides a better account for the way the legal system actually works. In conclusion I argue that if Pardo and Patterson were right, the law would require a greater amount of transformation in the future than it requires on account of present day neuroscience.

SCIENTIFIC CRITERIA OF HUMANITARIAN KNOWLEDGE AND STRUCTURE OF THEORY OF LAW

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For the first time distinction between natural sciences and human sciences was fixed by Neo-Kantians (W. Windelband, H. Rickert, and W. Dilthey). Contemporary development of humanities is connected with creation of multitude of competing theories. However we don't have yet clear beliefs about models of creation of humanitarian theories, and about a structure and functions of humanitarian theoretical knowledge. Display of specific character of humanitarian theoretical knowledge is still the actual problem. In the process of solution of this task I use the assumption that a structure, functions and scientific criteria of knowledge are connected with each other. Such scientific criteria as subjectness,
objectivity, truthness, groundness, verifiability and falsifiability work effectively in natural sciences. However, these criteria do not work concerning theories of human life, in particular, law theories. For search of new interpretations of traditional scientific standards I consider the theory of law by Hans Kelsen as an example for creation of theoretical knowledge in the area of law. I come to a conclusion that objectivity and truthness of humanitarian knowledge consist in compliance of knowledge to valid values which are conditions of reproduction of a person living according rules. That is humanitarian knowledge is not an image of “objective reality”, but a way of institutionalization of a subject, who knows what has to be, what is forbidden, and what is permissible. New meanings of scientific standards in the field of humanitarian knowledge are connected with necessity to review beliefs about a structure of this kind of knowledge. Structures of mathematical and natural science knowledge are studied rather well. The classical model of knowledge as a system (Aristotle) is not suitable in the field of humanitarian knowledge. I try to define both basic structural elements of a theory of law and normative theoretical knowledge on the whole. For this purpose I discuss the idea of syntagma proposed by German philosopher Rudolf Eucken. The concept of syntagma allows to include in a structure of legal theory subject’s values. In this context I analyze a concept of presumption which have fundamental meaning for creation of any theory of law. In the conclusion I analyze methodological principles of communicative concept of law (M. van Hoecke, W. Krawietz, A. Polyakov) and prove that this concept corresponds to scientific criteria more than classical normative theories of law.

Economy and the Comparative Method: Justifying Phylogenetic Inferences in Historical Linguistics

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In historical linguistics, the Comparative Method (CM) is an important tool for establishing hypotheses about the genetic relationships between languages. Specifically, the CM is used to reconstruct unattested characters of ancestral languages (e.g. phonemes, morphemes, or syntactic structures) from character data supplied by extant languages that are assumed to be descendants of the ancestral language. One “rule of thumb” linguists use to reconstruct ancestral characters is called economy, which adjudicates between the various possible reconstructions of the ancestral state by saying that the reconstructed form requiring the fewest independent changes is most likely to be correct (Campbell 2013). Though linguists acknowledge that making inferences that appeal to "economy" requires some basic methodological assumptions, I argue that additional assumptions must be made explicit in order to ensure that linguists' phylogenetic reconstructions are sound. Linguists’ use of economy in the CM is very similar to the way the principle of cladistic parsimony is used in evolutionary biology. As Sober (forthcoming) argues, whenever evolutionary biologists make inferential appeals to parsimony to justify conclusions that one reconstruction is more reasonable than another, they are using parsimony (which itself is not justified as a basis for inference) as a proxy for something
else which is justified. The purpose of this paper is to use the similarity between economy and cladistic parsimony to investigate what further assumptions are necessary in order to justify historical linguists’ inferential appeals to parsimony. I conclude that while maximum likelihood models are the most promising of the possible solutions, they still cannot always justify linguists’ use of economy as a rule of thumb.