

Cognitive Legal Humanities: An Introduction

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Abstract

Whereas cognitive legal studies has attracted a considerable amount of attention from law professors over the past few decades, cognitive legal humanities (CLH) is only starting to gain traction. CLH brings together work in the cognitive sciences, the humanities, and law, focusing not so much on the prescriptive concerns that often animate research in cognitive legal studies, but on ways of enriching that vein of work—and legal scholarship more generally—by bringing the methods and materials of the humanities to bear on questions involving intention, consciousness, perception, memory, reasoning, attention, and emotion in relation to legal issues. In this introduction, we make three points about the importance of bringing the humanities into this discussion. First, the humanities can provide a vital means of historicizing cognition and its relations to law, while also prompting us to reflect on the differences among various ways of historicizing these matters. Second, the humanities offer resources for engaging with the politics of cognition and its relations to law—resources that are only rarely on display in fields such as neuroscience and cognitive psychology, and the legal scholarship that builds on them. Third, the humanities highlight the constitutive links among cognition, law, and culture, again in ways that these other fields rarely explore. After addressing these points and showing how the articles in this issue engage with them, we offer a brief summary of each article.

I.

Cognitive legal humanities (CLH) is an emerging domain of interdisciplinary legal scholarship that triangulates three bodies of discourse and research: the cognitive sciences (and, by extension, philosophy of mind), the humanities, and law. It is thus related to, but distinct from, cognitive legal studies (e.g., see the new *Law and Cognitive Sciences* series published by Cambridge University Press), which does not tend to engage with the humanities. Cognitive legal studies is of course a most valuable domain of scholarship and nothing we say here is intended as a criticism of it. Our case is instead a positive one: a case for what the humanities can bring to the table, enriching the scholarship further. A key question we might then ask is: what do the humanities add to cognitive legal studies? Why and how might triangulating the three be so valuable?

Prompted in part by the wonderful essays in this issue, we offer three broad and overlapping answers to that question: first, the humanities remind us how crucial it is to historicize cognition and its relations to law, while also inviting reflection on what is at stake in adopting a certain way of historicizing; second, the humanities offer us many resources for engaging with the politics of cognition and its relations to law; and third, the humanities

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remind us of the constitutive links between cognition, law, and culture, offering us at the same time complex ways of theorizing and historicizing culture. Undoubtedly, there are many other ways of arguing for the importance of the humanities to the study of legal cognition, but these three are surely crucial, and they are also very strongly present in the six essays of this issue.

Why is it important to historicize cognition and its relations to law? As a starting point, it is vital to recognize that cognition has a history. This goes for the very term “cognition”—like any other terms with which we theorize, this one is not neutral, and already frames and primes the inquiry in particular ways. The last few decades alone have witnessed a considerable degree of contestation over the term. During that time the cognitive sciences have moved from “first-generation cognitive science,” with its focus on the individual mind or brain, often conceived of as a computer (and thus dominated by computational models of cognition), to “second-generation cognitive science,” with its emphasis on emotion, the environment, and the body.¹ Cognitive science has changed radically only in the space of a few decades and continues to change rapidly. There are now very lively and sophisticated debates over just how the mind is enactive, just how the environment is experienced as a set of affordances, how minds think in tandem and over long periods in particular social structures, and all this in a wide range of contexts, stretching from technology to law, and from law to art, and beyond.

Even thus, in the very short recent history of cognitive science, we can see remarkable shifts of emphasis and terminology, indicating just how contested the term “cognition” is. When, however, we consider these shifts in a broader historical frame, we can also see how the theoretical language we are using limits our perspective, and what awareness of other theoretical languages and frameworks can open up. As Jesús Velasco discusses in his paper, there was no “medieval cognitive science,” but there was what we may call a “medieval science of the soul.” The term “soul” has a very different set of connotations to “cognition,” and equally different to, say, “mind,” “intellect,” “sensation,” “intelligence,” “reason,” or any other terms we may wish to use. For example, a reference to “soul” suggests attention to the animating spirit (“anima,” is one word for soul, and “spirit” is yet another related term, connected to the French term for mind, “esprit”) of a person, incorporating rather than separating out a person’s physical, emotion, sensory, and rational capacities (this relatedness, for instance, of “sense” as meaning and “sense” as something experienced or felt, is also important in Benedict Robinson’s investigation of the history of the term “sentence”). Of course, as Velasco also mentions, the medieval science of soul—developed to such refined subtlety amongst the very neglected scholars of the Islamic tradition—is itself a reworking and re-imagining of an Ancient Greek tradition, and in particular of the work of Aristotle (across his corpus, but including his very important work, *De Anima*).

¹ See, e.g., *The Oxford Handbook of 4E Cognition* (Albert Newen et al. eds., 2018), which is now already five years old.

Just like our own time, none of these periods have uncontested doctrines of mental phenomena: there is, in each of them—Ancient Greek, Ancient Roman, medieval, early modern, etc.—enormous variety and richness in discussions of cognition. Further, contemporary scholarship continues to revise our understandings of how past theorists understood and debated cognition—e.g., for Ancient Greece alone, there has been important recent work on how the Greeks understood “imagination,”² and there have been equally important and revisionary recent works on aspects of mental life in medieval and early modern Europe.³ Discoveries are also showing surprising connections across these various times and spaces—e.g., Benedict Robinson, another author in this issue, has recently explored the remarkable echoes between second-generation cognitive science in the twentieth century and early modern theories of the rhetorical mind.⁴ In his paper for this collection, Robinson alludes to how Erasmus, in his work on *De Copia*, draws on a model of what we might call “circumstantial cognition” (a very rhetorical picture of the mind) that he finds in Homer, with Ulysses understood as someone capable of adapting to shifting circumstances, changing shape and color (like an octopus) accordingly, and thereby exercising a form of intelligence that the Ancient Greeks called “metis.”⁵ We might make other links here with Erasmus’s circumstantial reasoning or situational flexibility: for instance, with equitable judgment (as both Robinson and Ellen Spolsky discuss in their papers), and thus also with the kind of reasoning one does with maxims. This, in turn, might well be connected to the ideals of Renaissance manhood, as expressed for instance by Baldassare Castiglione, in his sixteenth-century *The Book of the Courtier*, with a gentleman aspiring to exhibit sprezzatura, a kind of graceful wit, a liveliness and lightness of mind and body, which is perhaps akin to the Ancient Greek “metis.”⁶

These are complex histories, of course, and require much more patient unpacking than we can do here, but the point is that for all the divergences across historical periods, there are also remarkable continuities and echoes. However one looks at it, historicizing cognition is vital, not to explain away or diminish contemporary debates, but to enrich them enormously. Further, by delving historically, by stretching out our examination of cognition over time and reflecting on the theoretical languages we use to do so, we can come to

² See, e.g., *The Imagination of the Mind in Classical Athens: Forms of Thought* (Emily Clifford & Xavier Buxton eds., 2023).

³ See, e.g., *Movement in Renaissance Literature: Exploring Kinesic Intelligence* (Kathryn Banks & Timothy Chalmers eds., 2018); the *Edinburgh History of Distribution Cognition* series, edited by Miranda Anderson and Douglas Cairns (2018–2020); Helen Hackett, *The Renaissance Mind: Searching for the Self in an Age of Uncertainty* (2022).

⁴ Benedict S. Robinson, *Passion’s Fictions from Shakespeare to Richardson: Literature and the Sciences of Soul and Mind* (2021).

⁵ See, e.g., Marcel Detienne & Jean-Pierre Vernant, *Cunning Intelligence in Greek Culture and Society* (1978).

⁶ On sprezzatura, see also Paolo D’Angelo, *Sprezzatura: Concealing the Effort of Art from Aristotle to Duchamp* (2018).

understand what is at stake in different ways of historicizing. It makes a difference, for example, whether we foreground a history of emotion, or a history of the body, or, say, a history of imagination, in our cognitive theories. Each of these will open different lines of inquiry, which can radically change the way we think of “cognition.” Even within each of these, there is considerable variety among modes of historical framing—e.g., within a history of the body, ought one to prioritize movement, posture, or gesture, and ought one to focus on the body of an individual or examine instead the dynamics of embodied interaction? As Guillemette Bolens shows in her paper, the language with which the body is discussed, and the ways these languages are translated and specified further, can have enormous implications for our understanding of the body and its ethical, political, and indeed legal implications. Historicizing cognition, and reflecting on the different ways of doing so, can thus open up numerous conceptual possibilities, showing us the potential consequences of adopting one or another framing or language.

This leads directly into the second answer we offer here for why it is important to bring the humanities into relation with a study of cognition and law—namely that it helps us to reflect on the politics of cognition and its relations to law. All six papers in this collection demonstrate sophisticated political sensitivity to the study of legal cognition. Velasco, for instance, shows how terms like “soul” are juridified, spoken and represented in legal language, with important effects, even if they are often difficult to see, almost invisible. As Velasco shows, the language of the soul comes to play a key role in the regulation of the public in the thirteenth-century code, the *Siete Partidas*. This regulatory function, in turn, connects to the history of the emergence and domination of the inquisitorial mode of legal procedure, with its penchant for spying by the people (as found, for example, in rumors) on the people, creating a system of mutual surveillance (“See it, say it, sort it” in the contemporary UK version)—a form of state violence that may appear innocuous but that radically changes relations between persons in a community (a change we can also see happening in our social-media saturated society today).

Similar kinds of issues are at play in aspects of the papers of Spolsky, Lisa Zunshine, and Hannah Walser, who explore how the minds of others are represented and modelled, with fascinating and important connections to the dangers of law in facilitating violence and irresponsibility. As Walser shows, for example, in her study of the Black Codes and vagrancy laws, law plays a key role in distributing cognitive burdens, with enormous implications for inequality—most pointedly racial inequality—radically structuring relations between the police (which may include members of the population in the majority) and those being policed (precisely racialized minorities). This dynamic not only has historical significance, but it also speaks to current and urgent matters, thus helping to illuminate pressing contemporary political issues, as Walser indeed does, such as those surrounding stop-and-frisk policing practices.

That the manner in which cognition is talked about has implications for responsibility is also explored, in different ways, in the papers of Bolens and Zunshine. Bolens, for instance, shows how what she calls “kinesic specification” (different ways of unpacking and

amplifying the movements, postures, and gestures of actions in certain narratives) can have implications for how readers, simulating those kinesic specifications, will judge the relevant actions. These judgments, in turn, can have enormous political significance—e.g., for gender politics. Thus, the different ways in which Eve's actions (in the culture-making narrative of *The Book of Genesis*) have been kinesically specified can either encourage readers to see Eve as the knowingly guilty source and origin of all evil, or can instead suggest that she is a victim of forces outside her power, and even a source of all life. The language used by poetry here (from the sixteenth century) becomes crucial in shaping the attitudes of persons, with long-lasting implications for the lives of generations of people. Zunshine, too, drawing on a different set of materials (twentieth-century film and drama), shows how particular kinds of representations, in certain institutional contexts, can influence how we judge others, even to the extent of finding them guilty when we know they are innocent. The generation of belief, in this case about the responsibility of others, is affected by representations of the minds of others; however, we cannot understand what is at stake politically in different approaches to the representation of other minds except by triangulating research on cognition, law, and the humanities (here, especially, the understanding of mind-reading developed in literary theory).

All six of these papers thus highlight the politics of how cognition is conceptualized, framed, and talked about, and how those processes and their effects, in turn, are connected to the languages and institutions of law. Research in cognitive humanities is vital for understanding the operation of responsibility-attribution, the processing of transgression, the generation of beliefs about praise or blame, the expression and performance of character, the dynamics of unequal power relations, and the suffering and vulnerability of persons—all matters that are of crucial importance to legal scholarship, past and present.⁷

The third and final answer we sketch here, as to why the humanities matter to relating cognition and law, is that the humanities illuminate the importance and complexity of culture. Studies of cognition have often risked focusing too much on individual minds. As noted above, second-generation cognitive science has done much to change that, but the tendency remains, perhaps especially in accounts of legal cognition. This is, in many ways, surprising, for legal cognition (unlike, in this respect, perhaps, moral cognition) calls for an approach to cognition that is institutional, collective, interactive, and spread out over time. Much of the theorizing of legal reasoning, however, has focused on the cognition of the individual judge. Even when legal theorists have turned their attention to communities of reasoners, such as Ronald Dworkin's famous chain novel metaphor, the tendency has been to examine and evaluate the reasoning and decision-making of a particular judge (Hercules, no less) in individual cases.

⁷ Joshua Knobe's work on the attribution of praise and blame points to further opportunities for examining these questions from a humanistic perspective. See, e.g., Joshua Knobe, *Intentional Action and Side Effects in Ordinary Language*, 63 *Analysis* 190 (2003); Joshua Knobe, *Intention, Intentional Action and Moral Consideration*, 64 *Analysis* 181 (2004).

The papers in this collection, inspired as they are by methods in the humanities, show that another way is possible. Robinson's paper, for example, takes as its object the cognition that surrounds one particular kind of cultural artefact, i.e., the sentence. What kind of cognition does this specific form of language enable, not only for any one individual who uses a sentence on a particular occasion, but also for those who receive it? A sentence offers an opportunity for a particular kind of cognitive exchange, and thereby contributes to the making of culture, which after all is composed, in part, of certain sorts of interactions. Furthermore, sentences also feature as cultural artefacts of a specific kind—they travel more easily across minds, and are thus more readily shareable than other kinds of artefacts (such as complex narratives embedded in other literary forms, such as epic poems). Sentences (in this respect like other short forms, such as anecdotes, proverbs, and jokes)⁸ play a specific role in culture, binding persons together, precisely by being easily detachable from certain circumstances and being so readily re-usable. Sentences, in this sense, as Robinson observes, are related to commonplaces—occasions for cognition in common, for sharing an experience, and possibly for effective and persuasive communication of an emotion, at least if their use is situationally appropriate.

Part of the point here is that attention to culture helps us see the variety of common structures or devices for cognition, and the sense in which they are differently common, enabling and encouraging certain kinds of interactions between persons. Genres are a key concept of the humanities in this respect, and several papers in this collection turn to genre as a way of understanding the relations between law and cognition. Spolsky, perhaps most prominently, examines two genres—tragedy and pastoral comedy—showing that both share, in different ways, a concern with the limitations of law, whether that be its abstractions or its jurisdictional reach. These genres, it might be said, are cultural responses to certain anxieties about what law can and cannot do, and about how much we might be able to expect from law, i.e., about how far it can deliver the kind of justice we might find ourselves hungry for. Spolsky's paper illustrates, among other things, how the pleasure we take in certain genres is related to our hopes and anxieties for law and justice. Under Spolsky's guidance we may well realize that there is more in common to literary and legal satisfaction than meets the eye.

Zunshine's paper, too, takes culture seriously, showing how there can be different cultures of mind-reading: some which treat the minds of others as transparent, and others which treat them as opaque. Zunshine shows how certain genres—certain forms of representation, certain kinds of invitations for readers or listeners to imagine—grow up and constellate around such cultures of mind-reading, generating beliefs about the minds of others in distinct ways. Importantly, too, Zunshine shows us connections among different kinds of media—among short stories, theatrical dramas, and film and television. Zunshine thus also reminds us—as indeed does Spolsky—of the importance of distinguishing not

⁸ See also André Jolles, *Simple Forms* (2017).

only among genres and the specific cognitive work they do in cultures, but also among media, while still relating different forms of media to similar kinds of cognitive effects.

Mind-reading cultures take on yet another dimension in Walser's paper on "vague conduct prohibitions" in the United States, which, as Walser argues, imposes unequal cognitive burdens on racialized minorities, in particular Black Americans, threatening them with criminal consequences if they fail to anticipate how white enforcement officers or strangers might construe their intentions—i.e., how those intentions are likely to appear to those observing the action. The kind of violence Walser uncovers here—a kind of cognitive injustice, enabled by state regulation—may well remind us of Velasco's discussion of surveillance and control of the population via regulation of their soul in the *Siete Partidas*. The general point is that only by studying such laws through both a cognitive and a cultural lens can we discern their harm and injustice: the cognitive humanities make visible a form of suffering, enabled by law. This depends on keeping one's theoretical eye on both cognition and culture, thereby analyzing and evaluating the effects of certain laws on the production and reproduction of particular kinds of interactions, which create, we might say, cognitive inequalities with deep cultural consequences.

In all three of these ways—historicizing cognition, politicizing it, and recognizing the intimate links between cognition and culture—the humanities add vital perspectives to studies relating cognition and law. We hope that these six papers show just how generative a domain of interdisciplinary scholarship CLH can be, and we hope for more scholarship and more conversation at the meeting place of cognition, law, and humanities in the future.

II.

Opening our collection is an article by Jesús R. Velasco on relations, particularly in Jewish, Islamic and Christian thinkers of the late antique and medieval Mediterranean, between the science of the soul and legal thought. Velasco is especially interested in how those relations illuminate the making of a collective person, e.g., of a people or a public. It turns out that there is a deep affinity between soul and law, with the former especially being appropriated by the latter—i.e., the soul being juridified by legal discourse—to such an extent that it enables the regulation, surveillance, and disciplining of a population. In other words, one way to make a group of individuals into a people is via a juridified language of the soul. Velasco examines this affinity between soul and law in a variety of thinkers, including Philo of Alexandria and Al-Ghazālī, culminating with an insightful reading of the thirteenth-century code of Alfonso X of Castile and Leon, the *Siete Partidas* (the Seven Parts).⁹ Velasco shows how the juridical architecture of the soul enables regulation of the most invasive kind, including of memory, fantasy, imagination, thought, and common sense. Most suggestively, he draws links between this legal appropriation of the soul and the emergence of inquisitorial legal procedure.

We move from the late antique and medieval Mediterranean in Velasco's paper to late medieval and early modern practice of French poetry in Guillemette Bolens's paper.

⁹ See also Jesús R. Velasco, *Dead Voice: Law, Philosophy, and Fiction in the Iberian Middle Ages* (2020).

Bolens's interest is in kinesic language and kinesic simulation, or more broadly, "kinesic intelligence." This is a field of scholarship that Bolens championed now for some time,¹⁰ but it has had only marginal take-up in legal scholarship. Our cognitive processing of sensorimotor concepts—in particular, different kinds of movements, postures, or gestures of bodies—is crucial, as Bolens demonstrates, to our experience of certain narratives. As is well established, narratives are crucial for basic cognitive operations, such as judgment and the attribution of praise or blame. Kinesic intelligence thus turns out to be crucial to practices of evaluating the behavior of others. Bolens demonstrates how this is so by contrasting two poems that narrate the events of that most evocative and consequential of scenes from the Book of Genesis, of Eve and the apple. The poems differ in their "kinesic specification," i.e., in their detailed accounts of the actors' movements, gestures, and postures. Under one account, we the readers are likely to find Eve guilty, and in the other, not guilty. Thus, kinesic language and kinesic simulation can have a vital effect on practices of responsibility-attribution.

Our third paper, by Benedict S. Robinson, continues the attention given in this collection to the early modern period, while also pointing to a much broader temporal canvas for studying the precise object of the paper, namely, sentences. Legal scholars hearing the term "sentence" are perhaps most likely to think of the sentence handed down by a judge in a criminal case. But sentences, as Robinson shows, have a wide-ranging network of meanings, including of course the grammatical form of the sentence. Robinson's specific interest is in the sense of sentence as *sententiae*, i.e., as a brief maxim often stating a moral principle. Robinson casts the spotlight on the kind of cognition sentences enable, paying attention, importantly, to both how they can be used and how any particular uses may be received. Robinson is interested in the work of sentences in practices of argument, but also in presentations of ethos or character. Ranging across discussions of the cognitive and cultural work of sentences in, for instance, Erasmus and Bacon, Robinson also shows us the relevance of literary and dramatic explorations of sentential cognition, especially in Shakespeare. And, most suggestively, he relates the early modern exploration of sentences to the emergence of and debates over equity, and equitable judgement, in England in the sixteenth century.

Next, Ellen Spolsky turns to questions of desire, literary form, and legal evaluation. Spolsky juxtaposes pastoral and revenge tragedy to show how these seemingly disparate genres explore versions of the same legal problem: how to align law's abstractions—both its generalized rules and its express provisions—with the individual case and the bodily desires, specific motivations, and intense passions that go with it. The inevitably evaluative nature of legal standards means that doctrines and statutes are never self-explanatory but instead pose "hungry problems": problems that demand explication, representation, and further specification, always leaving the potential for bias, which in turn means that the

¹⁰ See Guillemette Bolens, *The Style of Gestures: Embodiment and Cognition in Literary Narrative* (2020); Guillemette Bolens, *Kinesic Humor: Literature, Embodied Cognition, and the Dynamics of Gesture* (2021). As Bolens observes in her paper, important work here has also been done by Terence Cave and another one of our authors, Ellen Spolsky.

problem can be solved only if there is trust in the adjudicator. When trust is shattered, as in Thomas Kyd's *The Spanish Tragedy*, people turn to individual justice, meted out by the body as they take the law into their own hands. Pastoral comedy, too, offers an apparent escape from law—but as examples from Tasso's *Aminta* to Marvell's "The Garden," show, the results are not always pleasurable, reminding us both of the impulse to turn towards abstractions and ideals as a solution to these dilemmas, and of the ultimate failure of that solution. Spolsky's last example, Jennifer Haley's 2013 play *Nether*, explicitly displays the conflict between pleasure and law, exploring the space between the sensory and rational and showing that we cannot choose between them.

Lisa Zunshine takes up Billy Wilder's film *Witness for the Prosecution* (1957), based on a short story (and later a play) by Agatha Christie, to show how imaginative works can exploit the difference between intuitive and reflective beliefs to make an audience accept a "not guilty" verdict that contradicts their knowledge about the facts of the case. Zunshine reviews a series of factors that typically mediate our reflective beliefs about truth-seeking procedures—such as the expectation that self-interested statements are untrustworthy, and that when a trustworthy person thinks someone is innocent, that should encourage us to share that view. Zunshine then demonstrates how the film uses these factors to manipulate the audience, and make us accept the view that Leonard Vole is not guilty of murder. For example, incriminating witnesses (who in fact are truthful) are exposed as self-interested via cross-examination, and various cues encourage us to think that Vole's lawyer, a renowned attorney, has taken the case only because he believes in Vole's innocence. After exploring the effects of these techniques in the 1957 film, Zunshine turns to other versions of the tale, including Christie's short story and play, and the 2016 BBC mini-series, to show how each one emphasizes different features to achieve these ends. Finally, Zunshine asks what we can learn by studying such examples. On the one hand, they can help us understand the complex and tentative methods we use, in public settings like trials, to tell ourselves that we know how to interpret and identify others' intentions; on the other hand, when imaginative examples present us with such a rich interplay of reflective and intuitive beliefs, this may also lead us to reflect on our own past beliefs and on how we came to hold them, providing precisely the opportunity for self-reflection and speculation that we associate with fiction.

Finally, Hannah Walser's essay takes up questions of mindreading in relation to the law of search and seizure. She shows how vague conduct prohibitions, forbidding vagrancy and loitering without a purpose, for instance, have operated historically and into the present to require Black Americans to anticipate how their conduct and intentions will read to police officers. The effect is to place a cognitive burden on Black Americans to read the minds of officers who might arrest them, and to take active steps to present themselves in ways that signal that have lawful purposes or intentions. Walser examines American policing under the Black Codes of the nineteenth century and the twentieth-century Jim Crow era, and then turns to recent cases such as *City of Chicago v. Morales* (1999) and *Floyd v. City of New York* (2013) to show how modern laws relating to loitering and stop-and-frisk policies continue to impose the same burdens. Walser combines cognitive historicism with analysis of

contemporary doctrine to identify a legal analogue of what W.E.B. Du Bois called “double consciousness.”

Collectively, these papers explore a wide array of literary materials, historical periods, and legal contexts, while also demonstrating the range of methods that cognitive legal humanities may draw on, from scholarship in literature, psychology and cognitive science. We hope that by using these methods to study such a rich and important set of questions, the essays in this issue will inspire further work that extends these lines of thought and takes CLH in new directions.