

Experimental Legal Philosophy

Reading Zoom Seminar 060116

Winter Term 2020/2021

Experimental philosophy is a recent interdisciplinary movement that uses experimental research methods and findings to address philosophical questions. Experimental philosophers have been particularly involved in conducting empirical research on key philosophical concepts (such as knowledge, moral responsibility or happiness), and the intuitions and cognitive mechanisms that govern their applications by ordinary people and expert philosophers. However, applying this innovative methodology and its specific research goals to legal philosophy and legal theory is relatively new.

Only recently legal scholars, philosophers, and psychologists have started to join forces and conduct empirical research on common and legal-expert intuitions and psychological mechanisms underpinning the application of legal and legally-relevant concepts, such as intentionality (*mens rea*), causation, reasonableness, consent, ownership, contracts (e.g., Kneer & Bourgeois-Gironde, 2017; Vilares et al. 2017; Knobe & Shapiro, in press; Tobia, 2018; Sommers, 2020; Nancekivell, Millar, Summers & Friedman, 2016; Wilkinson-Ryan, 2012). Many researchers in this field have also been interested in whether folk and legal experts' intuitions on various legally relevant topics are congruent with the technical concepts and arrangements of the law.

This seminar aims to acquaint students with the current state of the art of experimental philosophy of law, including its most recent research developments and their potential implications for the legal system. The course will also provide opportunities to strengthen participants' critical thinking, writing, and argumentative skills. Accordingly, the students will read, comment on, and discuss papers on a wide range of topics currently examined in this field. This includes experimental research papers on traditional questions in legal philosophy (Fuller's inner morality of law, Hart-Fuller debate about the nature of rules, and the problem of legal interpretation), and cutting-edge research on the psychological underpinning of key legal concepts (intentionality, causation, reasonableness, consent, contracts, and ownership). Broadly, during the seminar, we will address the following questions: Can we identify the psychological foundations of the basic legal concepts, and what are they? What are the common points and discrepancies between the ordinary concepts and their counterparts in the law? Are legal expert judgments more reliable than ordinary people intuitions?

The seminar particularly welcomes students of law, cognitive science, and philosophy interested in empirical research and findings on philosophical and legal questions.

Basic Information about the seminar

Instructor

Dr. Karolina Prochownik
Office hours (GD 2/419 or via Skype/Zoom): on appointment
Email address: karolina.prochownik@rub.de

Language

English

Available Certificates and Credit Points

Law students:

Grundlagenschein gem. § 39 Abs. 3 Nr. 2 SPO
Promotionsschein gem. § 3 Abs. 2 PromO
Fremdsprachenschein gem. § 7 Abs. 1 Nr. 3 JAG

Students of philosophy, cognitive science and other disciplines:

Master Students: 6 ECTS
Bachelor Students: 4 ECTS

Assignment

Written commentaries (ca. three pages each) on the text(s) we are currently discussing submitted before the class. In total, **five** commentaries are expected during the term (formal requirements—font: Times New Roman, 11; line spacing: 1.5; standard margins). Students will be able to choose which texts they want to comment on. The commentaries should be submitted to the email address karolina.prochownik@rub.de a day before the seminar (i.e., by midnight).

Commentaries should: a) provide a summary of the main thesis of the text and the main argument(s) in favor of the thesis presented by the author(s) and b) critically discuss this thesis or the argument(s) or examine potential implications for the law. In short, a commentary should provide a concise answer to two questions: what the author thinks, and what you think about it.

Additionally, students are expected to actively participate in the seminar (i.e., participate in group work including group discussions and presentations).

Attendance

The requirements regarding online attendance differ depending on the type of certificate students would like to get at the end of the seminar. Those students who would like to obtain Fremdsprachenschein should attend 10 full online sessions out of 12 (in addition to handing in their commentaries on time). Students who want to receive Grundlagenschein or Promotionsschein should attend at least 8 online sessions (and hand in their commentaries on time). Please note that the first introductory session will be short and is not considered an attended session. It is possible for a student to receive two certificates (e.g., Fremdsprachenschein and Grundlagenschein), if all the requirements are met.

Materials

All materials and links for Zoom meetings will be available via Moodle. Password to the seminar's page on Moodle will be provided during the first introductory session on the 27th of October. Participants can also contact the instructor directly by email and ask for the password to the course website on Moodle.

DR. KAROLINA PROCHOWNIK

LEHRSTUHL FÜR ÖFFENTLICHES RECHT,
RECHTSPHILOSOPHIE UND RECHTSÖKONOMIK
PROF. DR. STEFAN MAGEN

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Registration

To sign up for the course, please register via eCampus. Should you experience any problems with registration, please contact the instructor.

Number of Participants

30 (available on a first-come, first-served basis)

Seminar Schedule

Session	Topic
Intro session 27.10.2020, Tuesday, 14:00-15:00	General introduction to the topic and practical information about the seminar
Session 1 3.11.2020, Tuesday, 14:00-16:00	What is experimental philosophy and what does it have to do with the law? Knobe, Joshua and Nichols, Shaun, "Experimental Philosophy" (2017). <i>The Stanford Encyclopedia of Philosophy</i> (Winter Edition). In Edward N. Zalta (ed.), URL = < https://plato.stanford.edu/archives/win2017/entries/experimental-philosophy/ >. Available at: https://plato.stanford.edu/entries/experimental-philosophy/
Session 2 10.11.2020, Tuesday, 14:00-16:00	Experimental approach to questions in legal philosophy 1 Donelson, R., & Hannikainen, I. (2020). Fuller and the folk: the inner morality of law revisited. In Lombrozo, T., Knobe, J., & Nichols, S. <i>Oxford Studies in Experimental Philosophy Volume 3</i> . Oxford: Oxford University Press, 6–28.
Session 3 17.11.2020, Tuesday, 14:00-16:00	Experimental approach to questions in legal philosophy 2 Struchiner, N., Hannikainen, I., & Almeida, G. (2020). An experimental guide to vehicles in the park. <i>Judgment and Decision Making</i> , 15(3).
Session 4 24.11.2020, Tuesday, 14:00-16:00	Ordinary meaning and legal interpretation Klapper, S., Schmidt, S., Tarantola, T. (2020, February 3). <i>Ordinary meaning from ordinary people</i> . Manuscript in preparation (fragments)* Available at SSRN: https://ssrn.com/abstract=3593917 OR Tobia, K.P. (2020). Testing ordinary meaning. <i>Harvard Law Review</i> , 134 (fragments)* Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3266082
Session 5 1.12.2020, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Intentionality 1 Knobe, J. (2003). Intentional action and side effects in ordinary language. <i>Analysis</i> , 63(3), 190-194. AND Kneer, M., & Bourgeois-Gironde, S. (2017). Mens rea ascription, expertise and outcome effects: Professional judges surveyed. <i>Cognition</i> , 169, 139-146.
Session 6	Experimental approach to legal concepts: Intentionality 2

8.12.2020, Tuesday, 14:00-16:00	Vilares, I., Wesley, M. J., Ahn, W. Y., Bonnie, R. J., Hoffman, M., Jones, O. D., ... & Montague, P. R. (2017). Predicting the knowledge–recklessness distinction in the human brain. <i>Proceedings of the National Academy of Sciences</i> , 114(12), 3222-3227.
Session 7 15.12.2020, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Causation Knobe, J., & Shapiro, S. J. (forthcoming). Proximate cause explained: An essay in experimental jurisprudence. <i>University of Chicago Law Review</i> (fragments)* Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544982
Session 8 22.12.2020, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Reasonableness Tobia, K. P. (2018). How people judge what is reasonable. <i>Alabama Law Review</i> , 70, 293 (fragments)* Available at Semantics Scholar: https://pdfs.semanticscholar.org/013c/20fb227a31a50e9eb367dad9c6c1fe6916ea.pdf
Session 9 12.01.2021, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Consent Sommers, R. (2020). Commonsense consent. <i>Yale Law Journal</i> , 129 (fragments)* Available at <i>Yale Law Journal</i> : https://www.yalelawjournal.org/pdf/SommersArticle_8cs366qd.pdf
Session 10 19.01.2021, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Ownership Nancekivell, S., Millar, J., Summers, P., & Friedman, O. (2016). Ownership rights. In J. Sytsma & W. Buckwalter (Eds.), <i>A companion to experimental philosophy</i> (pp. 247- 256). Oxford: Wiley-Blackwell.
Session 11 26.01.2021, Tuesday, 14:00-16:00	Experimental approach to legal concepts: Contracts Wilkinson-Ryan, T. (2012). Legal promise and psychological contract. <i>Wake Forest Law Review</i> , 47, 843. Available at <i>Wake Forest Law Review</i> : http://wakeforestlawreview.com/wp-content/uploads/2014/10/Wilkinson-Ryan_LawReview_1.13.pdf
Session 12 2.02.2021, Tuesday, 14:00-16:00	Legal experts and their concepts Tobia, K. P. (2020, April 6). <i>Legal concepts and legal expertise</i> . Manuscript in preparation (fragments)* Available at SSRN: https://ssrn.com/abstract=3536564

*Please note that these papers are relatively long, but you will be required to read only their fragments (i.e., no more than 20-30 pages per class). Exact fragments of these texts to read will be provided later via Moodle.