¿Qué significa "filosofía" y "filosofía jurídica"? ¿Son importantes en la práctica del derecho?

What is the meaning of "philosophy" and "legal philosophy"? Are they important in law practice?

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Resumen

Este artículo exploró los significados de 'filosofía' y 'filosofía legal', y su relevancia en el contexto de la práctica legal. El trabajo evitó posibles ambigüedades mediante el uso de herramientas formales como lógica de primer órden y ***n-tuplas***. Al emplear un marco filosófico materialista sistémico e ideas de la concepción del derecho de Bunge, el ensayo ofreció una comprensión más rigurosa de los significados mencionados. Esbozó dos enfoques distintos para definir la filosofía y discutió múltiples conceptos de filosofía legal. Posteriormente, el ensayo resaltó la importancia de la filosofía en la práctica legal, centrándose en la ontología y la lógica. Destacó el papel de las ontologías filosóficas y aplicadas para la práctica jurídica y examinó la importancia de la lógica en el razonamiento legal, incluso asumiendo la existencia del dilema de Jørgensen.

Palabras clave

Filosofía del derecho, ontologías jurídicas, lógica deóntica, concepto de derecho, ontología.

Abstract

This paper explored the meanings of 'philosophy' and 'legal philosophy' and their relevance in the context of law practice. It avoided potential ambiguities through the usage of formal tools such as first-order logic and n-tuples. By employing a materialist systemic philosophical framework and insights from Bunge's law conception, the essay offered a more rigorous understanding of the referred meanings. It outlined two distinct approaches to defining philosophy and discussed multiple concepts of legal philosophy. Subsequently, the essay underscored the importance of philosophy in law practice, focusing on ontology and logic. It highlighted the role of philosophical and applied ontologies for legal practice and examined the significance of logic in legal reasoning, even assuming the existence of Jørgensen's dilemma.

Key words

Legal philosophy, legal ontology, deontic logic, concept of law, ontology.

Different authors and traditions have treated the relationship between philosophy and law practice. However, few works explicitly assume scientifically grounded philosophical coordinates. Therefore, there is a high risk of vagueness in treating the problem. It is necessary to be precise when defining concepts to achieve clarity. One way of reaching this goal is to use a formal language when developing ideas. Though, if we correctly apply the tools, it provides us with, we can guarantee the validity of the reasoning process. In other words, a coherent elaboration does not imply that the product of it is a solid argument: the best available scientific, philosophical and technical knowledge must be used. This is precisely what a ***scientifically informed philosophy aspires to reach***.

By using a systemic materialist philosophical framework and Bunge's[1] law conception, this work intends to develop a more rigorous approach to these issues. Yet, due to its limited scope, it should be considered a foundational work that requires further research. First, it presents a definition of philosophy and an idea of law as a technique. Subsequently, a general concept of legal philosophy is theorized. Finally, it establishes its importance for law practice regarding two main fields: ontology and logic.

1. For further information, see Bunge's 1977 book, Treatise on Basic Philosophy: Ontology I: The Furniture of the World (1.° ed.).

Philosophy?

Naturally, there is no consensus on the definition of the term ***philosophy.*** However, some fundamental distinctions should be made in order to manage clear conceptions of it. Romero[2] & Bunge[3] distinguish between real and conceptual (material and immaterial) entities. Simplifying their assumptions, if we affirm that a thing x is material, it means that if another thing y is taken as a reference frame, the state space of x concerning y will contain more than one element (Romero, 2022). In summary, if x is material, then it can change (Bunge, 1997). However, there are types of entities (concepts) that do not change, because they exist as fictional products of our psychological material processes: they are imagined or thought by material systems (Romero, 2022).

With this in mind, it is possible to define ***philosophy*** as a material process or as fiction (idealized by some real individuals). Although this is a crucial step, the main problem remains unsolved: what kind of material process or fictional entity is philosophy? How does it differ from others? Answering these questions with some type of essentialism would be wrong. In fact, a concept is a tool designed to serve different purposes. As a result, one can formulate diverse notions, each focused on various goals.

In this article, two specific approaches for understanding the term philosophy will be outlined in response to the following criteria:

1. Definitions should point out the difference between material and immaterial systems.
2. The notions must adjust to the ordinary usage of the term in academic contexts.
3. Concepts should identify science and technology as distinct processes or notions.

The first mentioned objective focuses on constructing a concept of philosophy that refers to material processes and another centered on fictional entities. The second one aims to avoid arbitrary constructions that lack utility within the current pragmatic context. Finally, the third offers a more refined interpretation of the preceding criteria, emphasizing that these fields of knowledge are neither disconnected nor isolated, despite their distinctiveness. Additional goals will be set during the development of each idea.

Bunge (2003) & Romero (2018) have successfully established formalized notions of science and technology, since, through the use of ***n-tuples***[4], they describe these fields as material processes linked to specific constructs. Given this, it is possible to offer a new conception of philosophy based on previous work and compatible with the three criteria. A refined version of Ordóñez's[5] approach will be produced here.

Two concepts of philosophy

Now, philosophy can be defined as a term that refers to real mechanisms using a ***4-tuple***: $F_i=(S_i,P_i,T_i,I_i)$.

The tuple is formed in the following way:

- F_i stands for a member of the set of philosophical processes' arrangements ($F_1,F_2,F_3,..,F_n$).
- S_i denotes a member of the set of biopsychosocial human systems' arrangements ($S_1,S_2,S_3,...S_n$) that are involved in some material processes denoted by some P_i.
- P_i represents an element of the set of all material processes ($P_1,P_2,P_3,...P_n$) that take place in some time range, denoted by some T_i , which is a member of the set of time ranges ($T_1,T_2,T_3,...T_n$).
- I_i designates an element of the set of philosophical ideas[6] ($I_1,I_2,I_3,...I_n$) that are conceived by a certain human system S_i through a material process P_i.

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2. In allusion to Romero's 2018 source (see References).
3. See Treatise on Basic Philosophy: Ontology I: The Furniture of the World (1997), by Mario Bunge.
4. A tuple is a sequence of ordered elements. Unlike a set, order and repetition matter.
5. In allusion to Ordóñez González's 2023 source (see References).
6. Except for itself to avoid self-reference paradoxes.

As a result, a concrete state of philosophical processes —e.g., F_1— may be determined by the configuration of the other values. The idea of biopsychosocial dispositions of human systems is used to denote certain structures of interaction between individuals from one or more groups. It is evident that there are no human beings isolated from social interactions, and their thoughts will only be understood in that context. Some authors, such as Tuomela (2016), have referred to the importance of understanding group goals as aspects associated with emergent processesarise as a result of the interactions of individuals in social environments. Further, Bunge (1999) has developed the idea of social systems "[...] as sui generis concrete systems embedded in nature but different from it for being impersonal" (p. 10). All of this makes philosophy a social[7] activity.

Given this, it is straightforward to refer, as an example, to the material processes that occurred during the well-known debate on the existence of God between Bertrand Russell and Frederick Copleston. We can name this concrete member of (F_1,F_2,F_3,..,F_n) as F_{159}. Likewise, S_{159} can name the social system arrangement of which Russell was a subsystem[8] ; P_{159} refers to his past behaviors, while I_{159} designates the set of ideas conceived through the activity of S_{159} activity. Finally, T_{159} refers to the concrete periods in which P_{159} took place. Therefore, F_{159}=(S_{159},P_{159},T_{159},I_{159}) effectively designates an abstraction of the material processes that took place in that debate concerning some particular ideas. It is possible to refine this result by naming more precise systems or by adding elements to the n-tuple.

Table 1

Representing Russell's tuple[a]

Term	Represents
F_{159}	The material processes that occurred during the debate between Russell and Frederick Copleston.
S_{159}	The social system that was formed by Russell, Copleston and their moderator.
P_{159}	Russell's actions related to the idealization of philosophical concepts.
T_{159}	Some range of time back in 1948.
I_{159}	Ideas conceived through S_{159} activity[a]

Note. Adapted from Russell-Copleston Debate on God's Existence (1948) [video], by Philosophy Overdose, 2021, YouTube (https://ytube.io/3myE).

[a] We can consider Russell's behavior, in the context of his social interactions, as a subsystem of a social system. There are other possible valid alternatives of representation

Nevertheless, our task is incomplete. At this point, there is no way to classify philosophical and non-philosophical concepts or arguments. By using a first-order logic such as the one formulated by Barker-Plummer et al. (2011), it is possible to describe a group of attributes that could help to decide whether an idea is philosophical or not.

7. This supposes that biological and psychological levels play a role in social interactions.

8. Here it is assumed that every system has an environment.

Based on Ordóñez González's (2023) thought, it can be established that:

1. Every philosophical argument must be structured by sentences[9] that describe material or immaterial objects, based on taxonomies elaborated on their most general properties and relations. Those categories and sentences should be established by applying methods that guarantee their coordination and coherence with the best scientific, technical and philosophical knowledge available.

2. This general description can be translated as:

$$(\forall x \in \alpha)(\exists y \in \beta)(\exists z \in \gamma)(\exists w \in \delta)(\exists v \in \theta)(P(x) \rightarrow (S(x,y) \wedge D(y,z) \wedge B(y,w) \wedge E(w,z) \wedge C(w,v) \wedge C(y,v))$$

Here, α designates the set of all concepts and arguments (except for itself); β stands for the set of all sentences; γ represents the set of all material and immaterial objects (except for itself); δ symbolizes for the set of all taxonomies; θ designates the set of all methods that guarantee coordination and coherency, with the best available scientific, technical and philosophical knowledge. Likewise, P is the property of being philosophical; S indicates the relation of being structured by something; D designates the relation of describing something, B represents the relation of being based on something; E represents the relation of being elaborated on the most general properties or relations of something; finally, C stands for the relation of being established by something. Note that the logical form of the formula expresses that each criterion is a necessary condition, but not a sufficient, condition for determining that an argument or concept is philosophical.

Although this is an important step in deciding if a certain idea belongs to the set ($I_1, I_2, I_3, \ldots I_n$), further work is needed to achieve a more precise but useful notion. Additionally, it should be mentioned that the qualification of an argument as philosophical is variable over time. Thus, it is possible to imagine a concrete collection of arguments that were philosophical at a certain state of our general knowledge, but are no longer qualified. In summary, the development of sciences, techniques and philosophies implies fresh information and, therefore, new requirements for coherence and coordination.

Legal philosophy

Through the previous analysis it can be stated that legal philosophy refers to a member of the set ($F_1, F_2, F_3, .., F_n$).With that interpretation, the word ***legal*** can be used to denote a limited scope of philosophical processes. Another possibility is that ***legal philosophy*** designates the ideas that some members of ($S_1, S_2, S_3, \ldots S_n$) think. In that sense, the latter alternative would be closer to the normal meaning of the syntagm, yet it can be concluded that both must be closely related to each other. In both cases a key question arises: what is being represented by the term ***legal***? Multiple alternatives are examined here.

One the one hand, Bunge (2005) implicitly states that ***legal*** refers to all the activities developed by legal operators, whose activities match the actions of lawyers, judges, public servants and legislators in creating and implementing rules. These activities can be named as ***legal engineering mechanisms or technical legal processes***, because through the latter legal operators currently create tools to transform reality at various levels, as Bunge (2012) has implied.

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9. In fact, only well-formed linguistic structures that make claims about the world are considered. Yet, the way in which a sentence is expressed is not restricted.

10. It can be alleged that this leads to a circular argument, however, if it is not assumed that philosophical concepts should consider others (of the same category) for their conception, a problem of isolation arises; for example, it will not be possible to generate deductions or definitions. Furthermore, it can be considered that this problem is related to a well-known topic, which is the analyzable nature of concepts. Some solutions could emerge by assuming a type of circularism. To explore this matter, one can examine the master's thesis There Are No Unanalyzable Concepts: A Critique of Primitivism (2020), by Gregory Frisby (https://bityl.co/M2Ci).

Based on the previous ideas, it is then possible to structure some particular meanings of legal philosophy; these are:

1.It refers to all the philosophical material processes originated by some human systems, which normally intervene in legal engineering mechanisms. That is, they are part of philosophical and legal processes regularly. For example, a congressman writes a book on a particular subject of philosophy.
2.It alludes to all philosophical ideas imagined by human systems that are normally involved in legal engineering mechanisms. For example, the philosophical ideas of a lawyer who writes a book to objectify them.

These definitions are not widely useful. With some effort, one can think about applying them in concrete sociological research about philosophical thinking and legal operations[11] . In addition, there is a problem when classifying some rules or practices as legal. Therefore, a broader functional meaning is needed.

It is clear that a more natural use of ***legal philosophy*** can be imagined. In general, by these terms people refer to constructs such as law theory, legal ontology, deontic logic, or practical reasoning. Commonly, these ideas are cataloged according to their connection to law study.

In particular, this perspective is related to the conception of philosophical ideas as arguments describing general properties or relations of a particular domain. In this case, that range of objects will comprehend the material and immaterial systems that are named by words like ***legal*** or ***law*** (if an alternative syntagm such as 'philosophy of law' is used). Thus, this provides a more or less rigorous idea of philosophy, leaving only a concrete notion of law to be determined.

Ordóñez González & Teixidó Durán (2023) have defined two concepts of law linked to a particular ontological view of the State. However, firstly, they refer to law as an extra-normative reality; and on the other hand, this term stands for a specific kind of moral and ultra-moral norms. Within this framework, the authors argue that[12] :

1. Extra-normative law designates the set of normative packages that the subsystems of a State have elaborated and published in a certain time. A regulation package is every real artifact used by the State's components to objectify linguistic expressions, in order to derive prescriptive statements (or even prescriptive ones); which intervene in the norms' application processes.
2. Normative law refers to the set of sets of prescriptive statements that individuals have conceived by interpreting linguistic expressions from regulation packages, to some degree and at a certain time. If a norm is used to motivate some human behaviors, it belongs to the set of moral prescriptions; however, if it is applied to motivate non-human behaviors (even though this goal could be futile), it is an ultra-moral rule[13] .

As a result, the syntagm legal philosophy refers to any philosophical argument that theorizes about extra-normative or normative law. Although these latter concepts can be related with Bunge's ideas, they are quite different, for an individual may perform some actions that are part of law engineering, but such behaviors are not an element of any government processes.

For example, a lawyer can apply an element of normative law in a private agreement without any interaction with a public servant. Her or his behavior is a cooperation act with a state subsystem, yet that does not mean that this lawyer becomes part of the state[14]. Finally, based on the above arguments, it can be determined that ***legal philosophy*** designates any philosophical argument or concept that theorizes about technical legal processes.

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11. For example, examining the relationship between someone's legal work and his or her philosophical ideas when this person was practicing law.
12. However, definitions that are more refined could be used in the future.
13. For a more detailed approach, the reader can explore Ordóñez González and Teixidó Durán article (see References).
14. Although, one can think about describing a social system formed exclusively by these interactions.

The importance of philosophy in legal practice: ontology and logic for law operators

Until now, many concepts have been defined and analyzed. There are two main ideas of philosophy and various possible conceptions of its legal approximation. However, exploring all of their possible applications in legal practice is beyond the scope of this work. Even though, it is now possible to elaborate general ideas about the role of philosophy in law practice.

According to Bunge's (2012) ideas, if law engineering processes are a type of technical activity involving knowledge, it is then possible to assume its basis; which, in case it is strong, will be determined by the best available scientific and philosophical knowledge. As Bunge (2012) argues, this is the difference between a technique and technology[15]. Based on this, the importance of a limited portion of the domain of all the conceptions explored so far can be evaluated.

In this paper, the set of arguments will be reduced to two main fields:

1.Ontological theories of normative law, extra-normative law, and legal engineering mechanisms.

2. Theories about the logical relationship between norms and legal reasoning.

The arguments that structure these theories are part of the set (I_1,I_2,I_3,...I_n), therefore, all of them should meet the requirements of a scientifically informed philosophy.

Ontology

Arp et al. (2015) define this term in two senses: 1) From a philosophical viewpoint ontologies study the most basic characteristics of reality, such as common features to all domains; including —but not restricted to— those covered by science; and 2) Applied ontologies (also named as technological ontologies) only deal with a specific domain of entities.

Both of these types of ontologies are representational artifacts that can be used in law practice. In the first case, a legal operator has a powerful tool to classify entities, according to their properties and relations. On the other hand, an applied ontology will assure clear semantic references, making the information exchange process among legal operators more rigorous. With this in mind, concrete examples of its uses are discussed below.

Suppose a judge examines evidence and arguments in a concrete case about damages, and in the process is confronted with a question: what is moral damage? This concern should be solved by assuming a specific ontology. For example, if he or she agrees with the fact that only material systems can be damaged, any fictional interpretation of the term moral will have to be rejected.

Therefore, what kind of system has been affected? The judge will have a variety of examinations available to explore the objective deficits of the aggrieved individual. Different levels of analysis will describe distinct deficits, and all of them must be properly classified. If the judge does not assume a scientifically informed ontology, he or she may categorize psychological requirements as spiritual deficits; this will clearly demonstrate that the judge is wrong and will be unable to understand how action is connected to a concrete group of deficits. Therefore, as evidenced, a powerful philosophical ontology must be used.

Besides this fictional example, many applied ontology projects have been developed around the world, and they all start from a philosophical basis. Casellas (2011) mentions more than 30 models of applied legal ontologies used in different areas of law practice. The author indicates thar these artifacts aim to use formalized meanings of legal categories to improve multiple areas such as general academic research, judicial activity, electronic government, consumer protection or tax administration. All of this demonstrates the importance that ontologies have as philosophically conceived tools, in general, or in specific domains.

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15. For example, there is a significant gap between the knowledge that ancient Roman engineers had and what a contemporary technologist might know about forces, materials and structures.

Logic

In trials, lawyers must present compelling arguments to establish the guilt or innocence of an individual. Multiple law faculties around the world have curricula with courses in logic and legal reasoning. Prominent authors like Alchourrón & Bulygin[16] have worked on developing logical theories about normative systems. Does this demonstrate that philosophical ideas about logic have any importance in law practice? Perhaps it is enough for most operators. After all, legal practice does not work based on illogical reasoning, would you agree?

Actually, for more than one, the situation appears to be more complex than it seems. There are many problems with legal logic, however, the most prominent arose because of Jørgen Jørgensen's dilemma. This ***paradox*** emerges because prescriptive statements do not make claims about the world; rather, they motivate toward certain behaviors, but they do not describe reality (Sievers, 2022). Therefore, those conducts are excluded from the analysis centered on their truth values. Hernández Marín (2003) has deeply explored the logical conception of legal systems, whose conclusions ensure that the role of classical logic is quite limited.

Nevertheless, we should be careful with these issues. Firstly, it is necessary to distinguish between the set of philosophical ideas about logic and the domain of logic itself as a kind of science or technique (depending on what it is labeled as logic). Thus, even with Jørgen Jørgensen's dilemma the importance of logic (philosophy of logic) will be enormous. In fact, the description of the dilemma itself is a philosophical argument, and any serious analysis of it is important for legal practice. If one assumes that classical logic should be preserved in the domain of legal reasoning, one must argue for it by a philosophical approach. If one disagrees with its importance, reasons should be provided.

It is now possible to analyze philosophically (and briefly) whether logic is not so relevant in legal practice. Ordóñez González (2023) has suggested that descriptions of prescriptive statements can be elaborated, which implies the possibility of performing logical operations over them. Although its scope of practice could be considered limited, it is a significant part of legal reasoning.

Statements like "this norm means x" or "this norm is applicable if x..." are, in effect, descriptions of facts (in a broad sense). Nonetheless, the most important role of logic will undoubtedly be the examination of arguments provided by experts in some fields. As long as their statements are descriptive, it is possible to analyze whether they are a logical consequence of some other relevant statement, or if they contradict a particular claim.

Naturally, all of these arguments appeal to demonstrate the importance of logic in legal practice, even if direct logical operations with prescriptions are not allowed. However, in all the described situations, philosophical thinking —regarding logic— plays a crucial role and must have a direct impact on legal practice (if the latter aspires to be a technological activity rather than a purely technical one). In the end, if further research and explanations are needed to develop an alternative understanding (beyond the classical logic scope) of legal reasoning, it must be guided by a scientifically informed philosophical approach[17].

Conclusion

The examination of the meanings of ***philosophy*** and ***legal philosophy*** is key if someone aspires to avoid vagueness when analyzing their profound importance in legal practice. The intricate interplay between philosophy and the legal domain has been viewed through various lenses, with different possible applications to research. Within the framework of a materialist-systemic-philosophical perspective, this study strives to establish a more robust approach to the problem.

The discussion has unveiled that philosophy's importance in legal practice is tangible across diverse domains. Ontologies are useful for representing the more general characteristics of entities in order to enhance information exchange among legal operators. Additionally, philosophy of logic (and logic) plays an important role in everyday legal practice, even if they are not directly applied in deductive arguments. The role of philosophy, both in terms of logic and ontology, thus emerges as a fundamental pillar for effective legal practice. However, further research is needed to explore the importance of philosophy in other fields. Perhaps, such efforts will now be supported by a better conception of law and philosophy.

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16. More information can be found in the authors' book, Normative Systems (1971, vol. 5).

17. For example, Bunge develops a group of axiological rules of inference to enrich moral reasoning in his book Treatise on Basic Philosophy. Ethics: The Good and the Right (1989).

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