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# THE (IN)EFFICIENCY AND (UN)CERTAINTY OF NON-PROPOSITIONAL STRUCTURES OF REALITY ... OR, ADVENTURES IN PHILOSOPHY OF UNDERSTANDING

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## Abstract

This article critically discusses understanding, certainty and efficiency in relation to juridical and jurisprudential contexts. Understanding is an undertheorized topic in law and jurisprudence, despite philosophy and epistemology addressing it at some length in recent years. The focus, therefore, is on understanding-in-law (or understanding as a cognitive function of the law) rather than understanding-of-law, which is an exceedingly well-trodden path in doctrinal, critical and philosophical legal work. The article acknowledges that this branch of epistemology is perhaps new ground for legal academics, and thanks to Luca Siliquini-Cinelli's landmark book, *Scientia Iuris*, the article is a response to his thesis that law's regulatory function has grown in recent decades to embrace and embody knowledge while voiding experience. And while this leads Siliquini-Cinelli to the conclusion that law is a matter only of knowledge, not of experience, the article raises questions about what dwells cognitively between poles of knowledge and experience, and how we can take from or define a place for understanding between poles of knowledge and experience. It also explores the role of certainty and efficiency in shaping understanding in law and beyond, with understanding ultimately defined as a grasping of the structures of the objects of law, different from and in contrast to legal knowledge.

**Keywords:** understanding; certainty; knowledge; efficiency; law.

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## [A] INTRODUCTION

“We would surely rather understand than merely know” (Pritchard 2010: 74).

This article critically discusses understanding, certainty and efficiency and shows important links between the three that are relevant to juridical and jurisprudential contexts.<sup>1</sup> However, and notwithstanding my intention to identify links between understanding, certainty and efficiency, the primary focus of the article is *understanding* because it is an undertheorized, even neglected, topic in law and jurisprudence. This, despite philosophy or, specifically, epistemology, addressing understanding at some length in recent years, albeit still far less so than knowledge (Zagzebski 2001; Pritchard 2010; Grimm 2017 and 2019; Kelp 2021).<sup>2</sup> To be clear, my interest here is *understanding-in-law* (or understanding as a cognitive function of the law) not *understanding-of-law*, with the latter being an exceedingly well-trodden path in doctrinal, critical and philosophical legal work. Moreover, the focus here is understanding distinguished from and held in contrast to knowledge. So, rather than considering understanding as always already adhering to knowledge or interchangeable with it—both of which describe the normative status of understanding in law and elsewhere—the following discussion will coax understanding out from knowledge’s shadow so we may see and consider it more clearly and on its own terms and merits.

“Adventures in the philosophy of understanding”, as I refer to them, acknowledges that this branch of epistemology is (largely) new ground for me as a legal academic. I embarked on the adventures in response and thanks to Luca Siliquini-Cinelli’s landmark book, *Scientia Iuris* (2024). Central to Siliquini-Cinelli’s thesis is that law’s regulatory function has grown in recent decades to embrace and embody knowledge whilst voiding experience, which leads to the conclusion that law is a matter only of knowledge, not of experience. This position, which is worthy of merit, entirely coherent, and in numerous respects provocative, will not be challenged here as such. But Siliquini-Cinelli’s thesis raises a series of questions about what (if anything) dwells cognitively between poles of knowledge and experience. These questions provide a backdrop, if

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<sup>1</sup> “Juridical and jurisprudential contexts” should be read (and understood) here as being far from self-contained or internally logical but shaped constantly by externalities, especially, although not exclusively, by technology, eg autonomic computing, politics and, perhaps above all, financial and market economics.

<sup>2</sup> It has been argued that Plato and Aristotle’s notion of *episteme* aligns better with conceptions of understanding than with knowledge (Grimm 2021). Further, Zagzebski offers a strong case for the concept of *techne* being fundamental to ancient formulations of understanding, the residue of which prevails in the ways we decipher different modes of understanding today (2001: 240).

not precisely a framework, for this article. So, for example, if experience amounts to so little in legal education and practice, is knowledge the only game left in town—what about understanding? What can we take from or how might we use Siliquini-Cinelli’s provocation to carve out, better recognize and define a place for understanding between poles of knowledge and experience? Or, and perhaps more importantly, how might we come to understanding as something concrete and self-defining, a vital cognitive force in and for the law? And to reintroduce my other keywords, if we come to understanding as such, what role do certainty and efficiency have in shaping understanding in law and beyond? But let us begin with understanding.

## [B] WHAT ABOUT UNDERSTANDING?

Siliquini-Cinelli contends that, “through the making sense relation, we produce information out of experiential data, and regulate our existence accordingly so that chaos and uncertainty are averted”, adding that, “the primary role exerted by the principle of ‘legal certainty’ in Western legal consciousness is but a consequence of the normative, ordering ethos underpinning the intellect’s making-sense efforts.” (2024: 4) In the above quotes, Siliquini-Cinelli arguably comes closest in *Scientia Iuris* to acknowledging understanding and doing so as a factor in the pursuit of (legal) certainty. But there is an intricate relationship between understanding and certainty that needs a better definition than this, one that begins with a better definition of understanding that can advance the cause of legal certainty just as much as it can certainty writ large. Law is concerned with, even defined by, considerations, articulations and judgements of certainty and the ways and means to substantiate and action it in the world. For jurisprudence (as well as doctrine), therefore, it is necessary to connect, and understand the connection between, understanding and certainty better. Before delving into that connection, however, what about understanding?

We may take understanding to mean a quest for meaning that allows us to transform our experiences into knowledge and acquire a deeper comprehension of the world. Zagzebski proposes two structure-based definitions of understanding that align with this quest for meaning, both of which I consider important, and, above all, salient for an analysis of understanding that usefully fits a juridical or jurisprudential context. First, that “understanding is the state of comprehension of nonpropositional structures of reality” (2001: 242), a nuanced definition of understanding that we shall unpack further later. Second, “that understanding is the grasp of structure”, and Zagzebski continues:

When we grasp an object's structure, we understand the object. The object of understanding can be anything that has structure: a living organism, an event, a narrative, a piece of music, a work of art, a metaphysical system, a philosophical argument, a causal relation, the stock market, human intentional action, a moral theory (2019: 124).

The need for or situatedness of comprehension of a structure in understanding is clear in structuring modalities of the law (rules, principles, doctrines etc). But mere comprehension of a structure also shows us that exactness can and often is played down in favour of a *feeling for* with the hope of a *grasping of* world(s). Comprehension over exactness is not fatal to law's authority nor, as is more relevant here, to legal certainty, if that is something we consider to be predicated on propositions alone. And this is why, as a response to Siliquini-Cinelli, I suggest understanding almost certainly offers another (third) dimension to his thesis. Lying somewhere between knowledge and experience, understanding, in deference to Siliquini-Cinelli's terms, is not voided like experience, but neither is it a mere echo of the function or place Siliquini-Cinelli claims for knowledge. Understanding differs from and performs differently in discourse to knowledge. Understanding is not merely knowledge, but a distinct cognitive state rooted in grasping propositional and non-propositional structures alike (Zagzebski 2019: 128).

Knowledge, so often king, relegates understanding to an adjunct. In legal education, for example, we normatively draft marking rubrics in terms of "knowledge *and* understanding", meaning the measure of a student's overall grasp of a subject, whether demonstrated in an exam or by coursework, is spelt out only in and by a conjunction of the two—"well done, this is a good essay that shows solid knowledge *and* understanding of ...". Perhaps this is because knowledge is a more easily measurable criterion than understanding. The marker of a legal essay, for instance, can point to a student's inclusion of relevant (or, inversely, non-relevant) subject-matter (dates, case names, legislation etc) as an indication of knowledge. In that sense, knowledge is concrete. But for understanding, a student needs to be subtle in their synthesis of subject-matter to achieve a meaningful, final analysis. Put another way, when it comes to showing understanding the student must tarry with the nebulous.

To be cynical for a moment, this is most common with the student who brain dumps subject-matter onto a page with little or no evidence that they understand why they have said what they have said or why they have said it in that order. It should also be noted, given another focus of Siliquini-Cinelli's book, that this is a feature and indicator more recently

of a student's use of large language model artificial intelligence, like Chat GPT. As Zagzebski puts it, "a person can know the individual propositions that make up some body of knowledge without understanding them" (2001: 244), to which we can surely add today: a student can ask Chat GPT to formulate a response to a series of subject-matter prompts without understanding the response.

Understanding is, therefore, naturally or perhaps even too easily overshadowed by knowledge. Not so much forgotten as lightly appraised as the lesser partner. Consequently, understanding and its depths are rarely plumbed. But that could also be because understanding is hard to adumbrate and pin down (Pritchard 2010). As an object of philosophical or jurisprudential enquiry, the aim of understanding "understanding" quickly takes on a veneer of circularity. But understanding obviously has importance to the discourse and practice of everyday life, not least because it enables an individual to discriminate amongst sense-data, facts and information—a form of cognitive discrimination that undoubtedly contributes to the efficiency of personal economy (eg overcoming cognitive limitations). But equally, I argue, financial and market economies because it enables, for better or worse, a more effective species of *homo economicus* operating within, what Enzensberger referred to as, "the mind industry" (1982: 5). Hence, understanding involves the process of simplification, assigning intelligible meaning to the things we encounter in life and organizing them accordingly (Zagzebski 2001: 244). Further, the act of understanding combines elements of rationalism and empiricism, as it not only seeks to grasp how things are but also how they must be or might be (Grimm 2017: 4). This unique blend of rationalist and empiricist traditions sets understanding apart from ordinary instances of knowledge, which primarily focus on perceptual knowledge of an environment (Grimm 2017: 4).

While knowledge is often propositional in nature, understanding goes beyond individual propositions. It deepens our cognitive grasp of known information and allows us to comprehend the relationships and dependencies between various elements of the world. As mentioned above, Zagzebski proposes that understanding is the state of comprehension of non-propositional structures of reality. She distinguishes understanding from knowledge, emphasizing that understanding involves seeing how the parts of knowledge fit together, which is not propositional in form (2001: 244). Understanding is characterized by internally accessible criteria and a conscious transparency that distinguishes it from knowledge, meaning, "It may be possible to know without knowing that one knows, but it is

impossible to understand without understanding that one understands” (Zagzebski 2001: 246).

Understanding is not limited to propositional knowledge, therefore, but extends to non-propositional structures of reality, which add complexity to its nature. Opening understanding on a front of non-propositional structures regarding law is, I suggest, an interesting line of inquiry. One that invites further even fresh analysis of vital and longstanding juridical characteristics (at least within common law traditions) and virtues that are, if not wholly, then in large part non-propositional. Those parts of the law that serve as adhesive, such as the “spirit of the law”, equity, judicial instinct (for example, determinations of reasonableness) and, possibly most importantly, legal certainty. To understand these parts of the law, to echo Zagzebski, involves seeing how the parts of that body of legal knowledge fit together, but where the fitting together is not itself propositional in form (2001: 244).

But, and this is important for a general educational imperative attached to understanding and to the more specific imperative Siliquini-Cinelli attaches to legal education, understanding, like knowledge, can be taught. Understanding arises from unanalysed virtues, which can be taught through education. As Zagzebski claims:

There is a difference between the kind of understanding a person has who acquires it from a teacher and the kind that a person has who has figured it out for herself. Good teachers learn how to give their students understanding of difficult subject matter by the use of diagrams, vivid examples, and explanations of the way the new subject matter connects to things the students already understand. Understanding can be taught, like knowledge; and like knowledge, there is probably a qualitative difference between the state one gets from another and the state one gets on one’s own. (2001: 248-249).

## [C] (IN)EFFICIENCY AND (UN)CERTAINTY

Efficiency, certainty and the inverse or perhaps negation of each (the [in] and [un]) are central to the cognitive function of understanding. We can reflect again on understanding as something achieved partly, as Zagzebski argues, “by simplifying what is understood, highlighting certain features and ignoring others” (2001: 244), a process that foregrounds the probity of human cognitive inflexions. In other words, daily we walk a fine line between efficiency and inefficiency, certainty and uncertainty, switching back and forth in the regulation of personal and social economies. There is much to be said about how we elide these positions daily, both in discourse and practice, but that discussion will have to occur elsewhere.



Certainty relates to the making-sense relation, which enables us to extract information from experiential data and regulate our existence. We do so, as Siliquini-Cinelli proposes, “so that chaos and uncertainty are averted, our existential fears and anxieties managed, and ‘the rot of entropy’ resisted (to the extent that it is possible)” (2024: 4). The doctrine of legal certainty concerns a normative, ordering ethos that underlies the intellect’s efforts to make sense of the world. There is not space here to rehearse the doctrine of legal certainty at length. But as a central pillar of Western (common and civil) law norms, legal certainty is neatly summarized by Lord Mance, when he states that: “The law must be certain at the time when the subject has to act by reference to it” (2011: 2). Law that is intrinsically beyond understanding cannot be certain. As the physicist Herbert Dingle usefully put it, albeit as part of a (misguided?) personal attack on Albert Einstein and the newly emerging scientific field of relativity: “When the witnesses speak in unknown tongues and the judge seems mad, what is the poor jury to do?” (1937: 118).

Legal certainty, as a subset of humanities’ wider desire and need for certainty, may serve as a reassuring and calming force, dispelling existential anxiety caused by uncertainty and risk (Siliquini-Cinelli 2024: 22). But there are inevitably questions about the nature of certainty and the challenges it poses, not least if the calming effects are unobtainable without understanding. Further, there is potential uncertainty that arises when there is a lack of knowledge, for example, about a particular risk. In such cases, prudence becomes a matter of waiting, as Winner suggests, for better research findings rather than taking effective action to address the suspected source of injury (2020: 144), which may be read in contrast to or even as a rebuke of Siliquini-Cinelli’s insistence on meaning-seeking and world ordering as necessary and therefore good scientific and intellectual goals. As an objective of paramount importance linked to the progress of science, the growth of industry, the rise of professionalism, and the conservation of natural resources, efficiency has become instrumental in defining what effective certainty looks like (Winner 2020: 46). In contrast, therefore, inefficiency is (and must be) a clear path to breakdown in certainty. But whilst this equation seems to satisfy an obvious and irredeemable logic, the problem is, I suggest, that it also dehumanizes. Accusations of inefficiency and uncertainty—we should not be naïve in thinking that either can escape “accusation” in

a pejorative sense—leave little room for doubt that there is or can be any resistance or alternative to them.<sup>3</sup>

Perhaps the best indicator of the haunting, imperative presence of scientifically informed yet economically motivated calculation in most if not all modes of modern social discourse (including law), efficiency is a constant backdrop to the interplay of understanding and certainty, and, ultimately, the measure of them. “In every field men seek to find the most efficient method”, Ellul says, and “it is really a question of finding the best means in the absolute sense, on the basis of numerical calculation” (1964: 21). Efficiency thus calls (or demands) understanding and certainty to account. Each must show value as well as responsiveness to risk, primarily, as economic data, and only subsequently as social goods. As Winner maintains, “demonstrating the efficiency of a course of action conveys an aura of scientific truth, social consensus, and compelling moral urgency” (2020: 46-47). Accordingly, in a final analysis, we might say that understanding is deemed good only if it can be shown to or materially improve (economic) efficiency. Undoubtedly, the same equation and analysis applies to knowledge and efficiency, although the relationship between the two must be different, as the characteristics of understanding, knowledge, and certainty differ in conjunction with efficiency. Each is shaped in different ways by efficiency.

## [D] CONCLUSION

The focus of this article has been a critical analysis of understanding distinguished from knowledge. The aim being to raise curiosity about and develop a better sense of understanding, especially for juridical and jurisprudential contexts. I have little hesitation in saying that law (or perhaps I should say the common law, as the type I am most familiar with) has hitherto neglected to take understanding seriously. Understanding that, after Zagzebski, I define as a grasping of the structures of the objects of law. That is, primarily, understanding as something different from and in contrast to (legal) knowledge. Nor has law sought to consider, in any meaningful way, what is at stake from understanding in anything but its most cursory form (understanding-of-law). Whether as a standalone cognitive function or in conjunction with the likes of certainty and efficiency,

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<sup>3</sup> Echoing my comment on “juridical and jurisprudential contexts” (note 1 above), the suggestion here is that efficiency and inefficiency, certainty and uncertainty, notwithstanding the philosophical definition of each, are products of society. The social role and place of understanding (and knowledge) in conjunction with efficiency and inefficiency, certainty and uncertainty, therefore, can be traced to what Hans Magus Enzensberger, following Marx, calls the “industrialization of the mind”, an ongoing (post-enlightenment, post-industrial) process involving material and immaterial expropriation and exploitation of the many by the few (1982: 3-14).



understanding-in-law needs far more attention. Siliquini-Cinelli's book and the thesis it advances on the triumph of knowledge and resultant voiding of experience helped identify a gap in which I see understanding emerge, and it helped prompt the questions that this article has raised and sought to tackle. I do not doubt there is more to be said.

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