

CONCEPTUAL ANALYSIS

SUBJECT MATTER OF LEGAL THEORY

- material subject matter (extension)
 - also an object of other disciplines (e.g. sociology, psychology, anthropology)
 - law
- formal subject matter (intension)
 - special perspective of legal theory on its material subject matter
 - the nature of law (or ‘the concept of law’?)

SUBJECT MATTER OF LEGAL THEORY

- ‘Analytical jurisprudence is concerned with explaining the nature of law by attempting to isolate and explain those features which make law into what it is.’ (Dickson, 2001)
- ‘I am using ‘the nature of law’ to refer to those essential properties which a given set of phenomena must exhibit in order to be law.’ (Dickson, 2001)

STAGES IN CONSTRUCTING ANALYTICAL LEGAL THEORY

- 1) determination (identification) of the object of inquiry (i.e. the nature of law)
 - *Determination Stage*
- 2) giving of an adequate account (explanation) of the object of inquiry (i.e. the nature of law)
 - *Explanation Stage*

STAGES IN CONSTRUCTING ANALYTICAL LEGAL THEORY

- Determination Stage:
 - a) identification of samples of law
 - list of the possible situations that could rightly be described as 'law' (in the legal sense)
 - e.g. state law, customary law, religious law, international law, transnational law, indigenous law, natural law
 - b) determination of necessary (or important) features of law
 - what features x must have in order to be 'law'
 - e.g. law's claim to be a legitimate authority, normativity, coerciveness, conventionality, law's ⁵ claim to correctness

CONCEPTUAL ANALYSIS

- conceptual analysis (CA) = analysing concepts by identifying their contents and the way in which they relate to other concepts
- concept (classical sense):
 - 1) an idea (i.e., the content of our thinking) that applies to a
 - 2) set of individual things or situations,
 - 3) is expressed by words,
 - 4) mediates between the mind and physical reality,
 - 5) and is of vital importance in our understanding➔ represents a *category* of phenomena

CONCEPTUAL ANALYSIS

- CA attempts to discover ‘what elements a concept is composed of and how these elements are related’ (Bunnin & Yu)
- 1) traditional view of CA
 - looking for definitions of the concepts
 - definitions are given by stating the necessary and sufficient conditions for the concept to apply
 - singling out a set of *a priori* analytic truths about a concept in order to reveal the n. and s. conditions of its proper application
 - a necessary condition is something that *has to be* in place for the concept to apply
 - a sufficient condition is one that is *enough* for the concept to apply

CONCEPTUAL ANALYSIS

2) pragmatist view of CA

- reservations about analyticity and *a priori* truths
- uncovering the most salient and important features of a concept
- ‘those that figure most prominently in an explanation of the kind of thing it is the concept of’ (Coleman)
- ‘that are central to our understanding and appreciation of it’ (Coleman)

AIMS OF CONCEPTUAL ANALYSIS

- a) to provide a theory which yields a better understanding of the concept
- b) to 'maintain a structure within which meaningful discussion can occur' (Bix)
 - Are two people who appear to be discussing the same subject in fact doing so?
- c) to set the boundaries of the analysed concept, thus making an investigation into its relations with other (neighbouring) concepts possible
- d) to 'learn something interesting, important, or essential about the *nature of the thing* the concept denotes' (Coleman)

HOW CONCEPTUAL ANALYSIS IS DONE

- 1) philosophers' intuitions about clear cases of the analysed concept
- 2) identification of the clear cases
- 3) further intuitions (triggered by clear cases) as evidence about the concept's necessary or salient features
- 4) identification of the necessary or salient features

INTUITIONS

- philosophers' intuitions can either be representative of:
 - a) the intuitions of the class of professional philosophers (intuition elitism)
 - b) a broader class that includes non-philosophers ('the folk') (intuition populism)
- insofar as the philosopher's intuitions correspond to the ordinary common understanding of the concept-term, they reveal the 'folk theory' about things that fall under the concept

OBJECT OF CONCEPTUAL ANALYSIS

- Is our ultimate object of inquiry to elucidate *concepts (ideas)*, or to determine the *nature* of the objects they refer to (*reality*)?
 - 1) modest conceptual analysis
 - draws conclusions about the content of the analysed concept and about how the concept relates to the folk conception of it
 - 2) immodest conceptual analysis
 - draws conclusions about what the *world* which the concept strives to describe (the concept's referent) is like

Thank you for
your
attention!