NATURALISED JURISPRUDENCE

NATURALISM

- a philosophical view according to which philosophy is not a distinct mode of inquiry with its own problems and its own special body of (possible) knowledge
- philosophy is a certain sort of reflective attention to the sciences and it is continuous with them
- philosophy should take over from the sciences either the view about what there is or the views about the ways of approaching its object of inquiry

TYPES OF NATURALISM

1. substantive naturalism (SN)
   - ontological view
   - there are only *natural* things, properties, entities, phenomena...; that what belongs to the world of nature
   - its aim is to explain how different types of things can be the causes of change in our spatio-temporal world
   - when confronted with non-natural things it is either a reductionist or an eliminativist theory
   - there is no distinctively metaphysical area of inquiry

TYPES OF NATURALISM

2. methodological naturalism (MN)
   - philosophy should abandon the classical method of *a priori* theorising
   - it should produce synthetic, *a posteriori* theories, based on empirical evidence
   - philosophy should be continuous with any successful science
   - continuity, not elimination
     - philosophical questions are usually more abstract and general than the scientific ones
     - however, they are always answerable to the tribunal of empirical data

TYPES OF NATURALISM

- results continuity
  - substantive claims of philosophical theories should be supported or justified by the results of the sciences
  - e.g. using the results of psychology and cognitive science in epistemology or the results of evolutionary biology in moral philosophy
- methods continuity
  - philosophical theories should emulate the "methods" of inquiry of successful sciences
  - e.g. experimental method, but also styles of explanation (e.g. causal and nomological explanation)

TYPES OF NATURALISM

- replacement naturalism
  - rejecting a) analytic truths and analytic-synthetic distinction, and b) Cartesian foundationalism (Willard van Orman Quine)
  - doubts about *a priori* conceptual analysis (intuitions and thought experiments)
  - replacement of conceptual and justificatory theories with empirical and descriptive theories and causal explanations
  - if CA is needed at all, it is because it has earned its place among successful *a posteriori* theories of the world

TYPES OF NATURALISM

- normative naturalism
  - the goal is to formulate norms by which to regulate our epistemic practices (traditional epistemology)
  - however, not from the armchair: because it is an *a posteriori*, empirical matter what norms *in fact* serve our epistemic or cognitive goals
  - norms should: 1) in fact lead to the forming of true beliefs (instrumental constraint), and 2) be such that humans are capable of following them (Ought-Implies-Can-Constraint)
  - *a priori* CA is useful as the starting point

NATURALISED JURISPRUDENCE

- naturalising the theory of adjudication (Leiter 1997-2001)
  - philosophical reconstruction of American legal realism as replacement naturalism
  - replacement-naturalistic theories of adjudication: replacing justificatory with descriptive and explanatory theories of adjudication (based on empirical inquiries)
  - normative-naturalistic theories of adjudication: identification of norms for adjudication that will help judges realise adjudicative goals
  - however, relying on some of the existing conceptual theories of law

NATURALISED JURISPRUDENCE

- naturalisation still leaves room for non-naturalised jurisprudence
- however, doubts about CA ⇨ 'law talk' ⇨ referential content of the concept of law
- vulnerability of CA's claims when faced with empirical evidence
- CA's instrumental role: a proposed CA is to be preferred over others if it has earned its place by facilitating successful *a posteriori* theories of law
- legal theory should get up from the armchair and find out what anthropologists, sociologists, psychologists, and others can tell us about the social practices in and around law

NATURALISED JURISPRUDENCE

- legal theory as a part of the social sciences of law (Leiter 2003-2007)
  - CA and appeals to intuitions are ‘epistemologically bankrupt’
  - legal theory aiming to describe the reality of legal phenomena should eschew such methods
  - refuting even modest CA
  - there is no room left for analytic truths
  - ➢ philosophy must proceed in tandem with empirical science *not as the arbiter of its claims* but as a reflective attempt at synoptic clarity about the state of empirical knowledge’
    - ➢ abstract and reflective part of empirical science

NATURALISED JURISPRUDENCE

- legal theory should analyse successful social scientific theories of law
- an analysis of a successful social scientific theory would reveal to us the concept of law that makes this theory true and explanatory
- the explanatory power of such a theory would provide us with a reason for accepting that concept of law
- legal theory as the abstract and reflective part of the empirical social sciences of law
- however, certain reservations regarding the predictive-explanatory power of social sciences
- a small concession to modest conceptual analysis

NATURALISED JURISPRUDENCE

- modest methodological naturalism (Leiter 2009-2011)
  - naturalised approach to the questions about the nature of law
  - *hermeneutic* concept of law: figures in how humans make themselves and their practices intelligible to themselves
    - its extension is fixed by this hermeneutic role
    - empirical investigation of ‘folk’ intuitions (what ‘ordinary man’ *really* thinks)
    - the use of the methods of experimental philosophy

NATURALISED JURISPRUDENCE

- combining the results obtained by experimental philosophy with modest conceptual analysis
- however, law is an artifact and cannot be analysed in terms of its essential or necessary features
- doubts about whether there can be any intuition-derived knowledge about the ‘essence’ of the concept of law
- only ‘fleeting, ethnographic knowledge about how the folk ”around here” think about law’
- ➢ waiting for some powerful social-scientific theory of law to emerge

Thank you for your attention!