

Miodrag Jovanović
Faculty of Law, University of Belgrade

Beyond Conceptual Analysis? Towards the Prototype Theory of Law

The dominant methodological approach of the contemporary jurisprudence, especially of the Anglo-American breed, is metaphysically driven conceptual analysis of Franck Jackson's style. If the goal of conceptual analysis of, say, K-hood can be qualified "as the business of saying when something counts as a K" (Jackson), then this method of disciplinary approach clearly sets the criteria of its own success. The project of conceptual analysis is, thus, "the project of getting the classification right." (Gardner) It is about "identification and boundary lines". That is, by endorsing this method, "we determine what is inside this category ('law') and what is outside." (Bix) When put in more detail, under this methodological approach, concepts are required to: 1) have clearly defined boundaries; 2) have common attributes which are the necessary and sufficient conditions for membership in the category; and 3) all members of a category must be equally good with regard to membership. (Rosch)

However, metaphysically driven conceptual analysts, first, admit of the existence of the so-called "borderline cases" (some, for example, classify international law in such a way), which is incompatible with the aforementioned premises of this methodological approach. Secondly, insofar as this methodological approach has to rely on intuitive categorization judgments as its initial empirical data (so-called "modest conceptual analysis", it is limited by our ordinary representation of concepts. The problem with the metaphysically driven conceptual analysis is that it seems to be premised on psychological assumptions which are contrary to recent experimental findings in the field of cognitive psychology. These findings have demonstrated that we take category (concept) to be "a representation of an array of features clustered around some sort of prototype" According to Ramsey: "[t]he prototype is an abstracted set of features, and categorization judgments are a function of the number and significance of the features shared between the prototype and the instance in question. If some thing or event and the prototype representation share a sufficient number of salient features, then this gives rise to the intuitive judgment that the thing or event is an instance of the target concept. If the two don't share a sufficient number of features, then the instance is not so judged ... prototypical features are assigned different weights or degrees of salience." The upshot of the prototype representation of concepts is that the boundaries between concepts are blurry, as commonly acknowledged by conceptual analysts. The purpose of this paper will be to show why the prototype theory is preferable in our attempts to provide explanatory accounts of law as a complex social practice.