

H.L.A. Hart on defining a law as a subtype of an unclear type

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Abstract. H.L.A. Hart's objection to defining a law as a subtype of an unclear type, or one of his objections, suffers from two oversights, which I identify.

Draft version: Version 2 (September 2nd 2022, "at present").

In his book *The Concept of Law*, H.L.A. Hart makes a case against seeking a definition of a law along the lines of the following definitions:

(Triangle) A three-sided rectilinear figure.

(Elephant) A quadruped distinguished from others by its possession of a thick skin, tusks, and a trunk.

Definitions along these lines define a type as a subtype of a broader type: a triangle is a type of figure that belongs to the broader type rectilinear figure; each elephant belongs to the type elephant and that type is part of the broader type quadruped. Perhaps the terms for these broader types are unfamiliar to some readers. "I know what triangles are, but rectilinear figures, what are they?" And "I know what an elephant is and I know what thick skin, tusks, and a trunk are, but what is a quadruped?" That ignorance is actually of use below.

Hart opposes attempts to define a law in this way. Let us call the attempted definition "a subtype definition." This is one of his objections:

...there should be a wider family of things or genus, about the character of which we are clear, and within which the definition locates what it defines; for plainly a definition which tells us that something is a member of a family cannot help us if we have only vague or

confused ideas of the character of that family. It is this requirement that in the case of law renders this form of definition useless, for here there is no familiar well-understood general category of which law is a member. (2012: 15)

The first sentence quoted, or sentence fragment, specifies a requirement that must be met in order for a subtype definition to be of value. The second sentence asserts that this requirement is not met in the case of law. We can thus present Hart's objection as inferred from these two premises:

- (1) If we are trying to define a type of thing and there is no clear broader type to which this type belongs, then subtype definition is not of value for defining this type.
- (2) We are trying to define the type of thing a law but there is no clear broader type to which this type belongs.

A clear broader type here is a type whose features we can at present specify and understand. Given these premises, we arrive at Hart's conclusion: subtype definition is not of value for defining the type of thing a law. However, in this paper I wish to dispute (1), though probably Hart is "onto" some problem; he has an awareness of challenging cases for defining what a law is.

Identification value. Sometimes a subtype definition can still be of value because other components of the definition are clear, even if the broader type is unclear. For example, a definition of an elephant as a type of quadruped with thick skin, tusks, and a trunk may be useful to a person who does not know what a quadruped is, because they can still use the definition to reliably identify elephants. In this case, I assume the broader type is actually clear to some people, but not others, unacquainted with this term. Nevertheless, those others may still find this

identification value in the definition and that point transfers to when everyone is unclear about a certain broader type, or everyone apart from an omniscient being. For another example, if you are presented with a statement of the form “Nose sticks are a type of ceremonial object with features F1, F2, and F3” and there is a lot of unclarity over what exactly a ceremonial object is, you might still be able to identify nose sticks on the basis of the three features specified. (I am using examples from the legendary anthropologist Malinowski and his disputes with museums over what a ceremonial object is, which are probably best avoided. See 1922: 89-90, 151.)

Paradigm case value. A definition which identifies something as a subtype of a broader type may also say something more about its relationship to that broader type. What I have in mind is a definition which represents a subtype (or all instances of that subtype) as a paradigm case, for example it represents a type of axe with a fine carved handle as a paradigm case of a ceremonial object. What that means here is that it is an ideal example. If you now try to define a ceremonial object and your definition is unsuited to including these axes, that is a major problem, whereas if it excludes certain other things, such as nose sticks, that may be a minor problem or no problem at all. Even though our understanding of a ceremonial object suffers from unclarity, a definition of that axe type which provides us with the information that it has this paradigmatic status is of value when we try to reduce the unclarity.

References

- Hart, H.L.A. 2012 (third edition). *The Concept of Law*. Oxford: Oxford University Press.
- Malinowski, B. 1922 (with a preface by J. Frazer; seventh impression, 1966). *Argonauts of the Western Pacific*. London: Routledge and Kegan Paul.