An Inferentialist Account of Legal Concepts

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Abstract. Legal concepts are amongst the basic building blocks of legal thought. This paper offers an inferentialist account of these concepts. On the specific version of inferentialism I will argue for, the content of legal concepts is relatively autonomous from the extra-legal domain and is determined by their inferential role within legal argument. Legal concepts, thus, are inferential links that hang together and form an interconnected web of material inferences within the legal domain. This inferentialist account explains common phenomena in legal discourse, including conceptual change and conceptual ethics.

1. INTRODUCTION

Legal concepts are amongst the basic building blocks of legal thought (Lindahl 2004, 182). This paper articulates a theory of legal concepts that builds upon an idea suggested by Hart, but shared by many others before and after him: legal concepts, like CORPORATION, RIGHT, and DUTY, "do not have the straightforward connection with counterparts in the world of fact which most ordinary words have" (Hart 1983, 23). Instead, legal concepts are links in chains of reasoning.[1] They justify certain consequences and presuppose other legal concepts, as well as doctrines, standards, rules, and principles that make use of those concepts. The account I will offer is thus an *inferentialist account* of legal concepts—an account that sees legal concepts in terms of their role within legal inference and argument.[2]

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[1] In noting the potential connection between inferentialism and Hart's view, I follow (Liu 2023, 16).

[2] In this aspect, my account is connected to "legal inferentialism" as a general view of legal reasoning.

The inferentialist account captures the fact that the content of legal concepts depends on legally relevant normative considerations that might warrant incremental changes to that content over time. But it also vindicates the idea that legal concepts have, in any given instance, a relatively stable core that rationally generates certain consequences and excludes others. While mutable, that content has an independent significance and stability (Balganesh and Parchomovsky 2015).

One possible strategy for vindicating an inferentialist account of legal concepts would be to ground it in more general claims about concepts as such. However, I will articulate an account of legal concepts that stands on its own. The account does not rest on any substantive claims about the nature of concepts in

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For recent examples of this view, see (Brandom 2014; Caballero Elbersci 2020, 2023; Canale 2009, 2019; Canale and Tuzet 2007; Esposito and Tuzet 2019; Farnsworth 2018; Liu 2023; Sartor 2009b; Szczaranski 2022; Zipursky 2000). My account differs in important respects from much of this literature, even though it shares with them a basic commitment to the notion that the content of legal concepts depends on their role in legal reasoning. For instance, Zipursky's account of pragmatic conceptualism, while broadly consistent with a lot of what I argue here, is also framed in part as a response (and a critique) of functionalist (and particularly, economic) accounts of private law. I believe everything I say here is perfectly compatible with a functionalist or economic account in at least two ways (in this respect, my view is significantly closer to (Esposito and Tuzet 2019)). First, it could be that the practices of legal reasoners are such that the content of the relevant concepts is *in fact* responsive to, or reflective of, instrumental and economic considerations (for a version of such an argument in private law, see (Kraus 2007)). Second, and more importantly, the inferentialist account I argue for here is entirely compatible with the metatheoretical claim that a functionalist account that doesn't focus on argumentative and inferential practices but instead focuses on the consequences or instrumental efficacy of those practices is in fact more illuminating, helpful, or clarifying than a purely internal reconstruction of the internal conceptual structure of private law (which is something Zipursky explicitly argues against (Zipursky 2000, 474)). And with regards to Brandom himself, as well as many of those who apply this inferentialism to legal reasoning, my view is different because I don't adopt a *general* commitment to the truth of a broader inferentialist account of conceptual content, reasoning, or semantics. My account is domain-specific and self-standing: it does not depend on the truth of Brandom's theory in general but seeks to capture what goes on within the legal domain. Similarly, my account is different from other recent interventions (such as Farnsworth's) that attempt to derive from inferentialism a particular—dynamic—theory of legal interpretation that derives its plausibility from how conceptual content evolves *generally* in linguistic practices, according to inferentialism. Because my inferentialist account is limited to law and puts legal practices in the driving seat, which theory of statutory interpretation will be legally correct in any given system will itself depend—on my view—on the commitments and practices of lawyers and judges. I avoid any commitment to the claim that the dynamics of conceptual change in general might vindicate any particular theory of legal interpretation. Finally, my account is also different (and novel, as far as I am aware) in its integration of an inferentialist perspective on legal concepts with the practice of (and recent theoretical literature on) legal conceptual ethics.

general, and I leave the question about the relationship between the general theory of concepts and the theory of legal concepts open.[3] The theory offered here is meant to capture the legal domain—by which I mean the domain of thought, talk, and action concerned with the interpretation and application of legal norms. Within that domain, as I will argue, inferentialism has important explanatory virtues.

The paper proceeds as follows. Section 2 distinguishes between legal and extra-legal concepts and outlines a typology of the former. Section 3 argues that the content of legal concepts is not determined by their correspondence to extra-legal kinds. Section 4 advances the inferentialist account, explaining how legal concepts derive their meaning from the inferential relations that connect them within the web of legal argument. Section 5 addresses a potential objection that goes against the core of inferentialism—namely, that inferential role is merely evidentiary, rather than constitutive, of conceptual content. Section 6 explains how the thesis articulated regarding the autonomy of legal concepts is a conceptual thesis, which recognizes that the extent to which the law should exploit conceptual autonomy is a moral question. Section 7 explains how the account articulated here is consistent with, and rationally accounts for, conceptual change and conceptual ethics in the legal domain. Section 8 concludes.

2. Legal and Extra-Legal Concepts

2.1. Concepts

In this paper, I understand concepts as units of thought with a specific content (Carey 2011, 5) that play both causal and explanatory roles in human reasoning (Carey 2011, 5; Weiskopf 2009, 146). For an agent to possess a concept is for that agent to have thoughts the content of which turns on possessing the relevant concept.[4] How the causal and explanatory roles of concepts are explained, what their content is, and how roles and content are connected are questions that this understanding leaves open.

This stipulation is quite broad. It is compatible with different views about concepts—as sets of necessary and sufficient conditions, as prototypes, as mind-world relations, etc. (Margolis and Laurence 2003). The stipulation is also

[3] The more detailed argument for this strategy comes below, in Section 2.2. For critical discussion of Brandom's inferentialism in general, see (Boghossian 2014; McDowell 1997).
[4] Similarly, (Greenberg 2005, 300; Burgess and Plunkett 2013, 1095).

compatible with the view that different types of entities can act as concepts in different contexts (Weiskopf 2009). The stipulation, nevertheless, is sufficient to distinguish between concepts that play a role in general human reasoning and those that play it within the legal domain (i.e., the domain of thought, talk, and action concerned with the interpretation and application of legal norms).

As a substantive matter, it would be implausible to suggest that there is no relationship between the theory of legal concepts and the nature of concepts in general. Nevertheless, my aim is to articulate a theory about *legal* concepts that does not rely on the truth of any specific theory about concepts in general. That's why I am not stipulating an inferentialist conception in general to bolster inferentialism as a theory of legal concepts. The point of the stipulation, to the contrary, is to show that inferentialism about legal concepts is a plausible view about them independently of which specific theory about concepts in general is correct.

One might worry that a theory of legal concepts could not stand on its own: if all other concepts have structure A, why should legal concepts alone have structure B? Notice, though, that my stipulation is compatible with several possibilities. First, it could be the case that *all* concepts, and not just legal concepts, are at bottom inferentialist in structure (i.e., inferentialism might be true across the board). Second, the stipulation is compatible with a pluralist view, under which concepts of different kinds and in different domains have different structures dictated by their respective roles. Third, the stipulation is compatible with certain concepts having, and others lacking, an inferentialist structure—with legal concepts being only one example of the former class. Fourth, the stipulation is also compatible with legal concepts being *sui generis* (as the concern we are considering here suggests). But, first, this is only a possibility (as possible in principle as any of the others). Second, and more importantly, the idea that legal reasoning is *sui generis* is not beyond plausibility and has in fact been part of the Western legal tradition at times (Bix 2005; Fried 1981). If legal reasoning is indeed *sui generis*, something that is at least possible, then it is equally possible for legal concepts to be *sui generis* too. Finally, as I will argue below, law is distinctive in featuring institutionalized mechanisms—official practices of stipulation and specialized definition—that authoritatively determine conceptual content.[5]

[5] Of course, if my argument for inferentialism about legal concepts is correct, then it follows that alternative views about conceptual content cannot be correct at least when it comes to such domain.

2.2. Legal Concepts

By "legal concepts," I will understand concepts that are used within the legal domain—i.e., concepts that legal operators rely on for the purposes of interpreting and applying legal norms. Hart famously argued that some legal concepts, like CORPORATION, RIGHT, and DUTY, "do not have the straightforward connection with counterparts in the world of fact which most ordinary words have" (Hart 1983, 23). Hart's observation is particularly concerned with what I will label below as "self-standing" and "technical" legal concepts. As we will see, though, the observation is in fact generalizable to all the concepts that legal practices make use of.[6]

Legal concepts are links in chains of reasoning. They justify certain consequences (for instance, the concept CONSIDERATION warrants conclusions about contractual enforceability), and presuppose other legal concepts, as well as doctrines, standards, rules, and principles that make use of those concepts (for example, the concept UNILATERAL MISTAKE presupposes the concept ASSENT and doctrines about contract formation that rely on the latter). As Zipursky notes, thus, the content of legal concepts is determined by the material inferences they warrant within the practice of legal discourse (Zipursky 2000, 471, 2013).

On this view, because the content of legal concepts is responsive to legal argument, legal considerations might generate an incremental change, over time, in that content. At the same time, there is also a certain stability—a certain resistance to radical reengineering—in legal concepts, given the fact that the practice of legal argument tends to be relatively stable over time (Balganesh and Parchomovsky 2015).

Again, I understand legal concepts as concepts used within the legal domain. Some of these legal concepts might be *self-standing legal concepts* without parallel extra-legal concepts (and corresponding concept-terms that refer to them) in ordinary reasoning, like ASSUMPSIT. Or they might be *technical legal concepts* that build upon ordinary concepts—with which they share the same term—without

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In this sense, my argument is not neutral vis-à-vis such alternative views. But the view is neutral vis-à-vis the correct account of concepts *outside of the legal domain* or across the board.

[6] For the argument making this connection between Hart's view and conceptual inferentialism, see (Liu 2023, 16).

merely replicating their content, such as PERSON.[7] Or they might be *adopted legal concepts*—ordinary concepts that the law adopts as-is (without modification). In contrast, extra-legal concepts are concepts used outside of the legal domain that are legally irrelevant.

The classificatory scheme, thus, has the following structure:

Type	Sub-type	Examples
Legal concepts	Self-standing legal concepts	DESUETUDE PAROL EVIDENCE RES JUDICATA FEE SIMPLE ASSUMPSIT
	Technical legal concepts	OFFER HEARSAY LENITY PERSON CONSENT DUTY CAUSATION WAIVER
	Adopted legal concepts	WEAPON BIRD COCAINE
Extra-legal concepts	Used outside of the legal domain and legally irrelevant	KRAUT ROCK PHOTOSYNTHESIS UNICORN

Of course, one could come up with other ways of classifying the concepts used in legal reasoning.[8] And even within my scheme, the categorization of any given example is not set in stone but is rather contingent and arguable. For instance, in some jurisdictions, WEAPON or BIRD may be technical rather than adopted legal

[7] I am building (with some modifications) on (Schauer 2015, 501–2; Tobia 2020, 3–4). See also (Simpson 1964, 547–48). Self-standing legal concepts might still embody underlying ideas or values found in the extra-legal domain. Consider the case of a parent who tells their child that the latter can't have ice cream and that the parent's decision is final. While not legal, this type of example reflects ideas that a self-standing legal concept, RES JUDICATA, arguably reflects too.

[8] See, e.g., Dybowski's distinction between tool-concepts and object-concepts in (Dybowski 2025).

concepts, because legal operators have modified their content for legal purposes. In general, then, it might be unclear on what side of this divide a particular concept falls. This makes sense, though, because of the contingency and variability of legal practices. To give another example not listed above: PROPERTY and CONTRACT might be understood as self-standing legal concepts—under the view that the laws of property and contract are constitutive rules that make the institutional facts associated to property and contract possible (Anscombe 1958; Searle 1970). But one might also think they are technical legal concepts—in other words, that there are extra-legal concepts of CONTRACT and PROPERTY on which law builds upon to develop its own concepts. The more general observation here is that the categories are somewhat porous, and that which specific concept falls under which category will depend on historical and jurisdictional specificities.[9]

This latter observation leads in a radical direction: because which type of concept we are dealing with ultimately depends on legal practice, *all* concepts that are used in the legal domain are in principle autonomous from the extra-legal domain: once the law uses a concept, that concept becomes subject to the latter's authority. All the concepts that legal argument relies on can be detached from extra-legal representation in this sense.

Of course, law can sometimes make use of an extra-legal concept and avoid introducing any technical change in their content (that is the case with adopted legal concepts). And even when the law introduces some modification to generate a technical legal concept, at least in some contexts the technical legal concept will broadly overlap with, or track, the extra-legal concept. Arguably, at least some statutory provisions—particularly in the criminal law context—rely on these forms of piggybacking. In these cases, law uses ordinary concepts without introducing modifications, or introducing only *minor* modifications. The generally significant point, though, is that once law relies on ordinary concepts and adopts them, it is always possible for law to develop technical variations that engender technical legal concepts. Thus, adopted legal concepts are still subject to the authority of law: it is always *possible* for the legal system to introduce a variation on the content of the concept such that it becomes a technical legal concept. Thus, while the actual

[9] The very fact that the categories are porous and that the correctness of situating any particular concept within any of them might be disputed vindicates the notion that legal concepts are autonomous. Indeed, both observations reflect the fact that contingent and variable legal practices, rather than extra-legal considerations, are what determine the content of the relevant concepts.

content of an adopted legal concept will track the extra-legal concept, this will be in virtue of the relevant legal rules, institutions, and practices, which retain authority to introduce technical modifications in the relevant conceptual content.

3. The Autonomy of Legal Concepts

3.1. Against Representationalism

We sometimes use extra-legal concepts to refer to real kinds, including natural and social kinds. Under a traditional view, the relationship between such concepts and the relevant kinds is one of representation: when we talk and think by using such concepts, we aim at representing the way things in the world truly are.[10] For instance, on this view, the concept WHALE is a representation of whales (Kalish 2015, 521). At least one criterion for evaluating these extra-legal concepts, on this traditional view, is therefore whether they correspond to the nature or the constitutive features of the objects they refer to. When we use these concepts, again according to this view, we want to get things (representationally) right—the concept is supposed to fit the nature of the object it refers to. Legal concepts are not subject to the same constraints. Their content, instead, is determined within the legal domain, and is not answerable to the accurate representation of extra-legal kinds.[11] In simple terms, then, legal concepts are autonomous from the extra-legal domain.

This claim is quite general in its breadth: it applies to all types of extra-legal kinds, and to whatever the correct representation of them would entail. Thus, the autonomy of legal concepts suggests that they do not aim to represent (and therefore to track) extra-legal kinds as understood in ordinary language; as understood in the particular technical domain(s) that might be relevant to the kind at issue; or as they actually are. It also applies to all types of extra-legal kinds, including natural, nominal, social kinds, and non-natural kinds (such as moral properties, under a

[10] I take this characterization from (Brandom 1976, 137; Farnsworth 2018, 1791–92). For discussion of this traditional view from a broadly pragmatist perspective, see (Caballero Elbersci 2023, 81–90).

[11] This is not to say that one cannot understand legal concepts as representational *in some sense*. For example, one could argue that legal concepts represent facts about what the recognitional practices of legal officials in a specific jurisdiction are (as well as about what follows from those practices). But this is just a (representationalist) reframing of the central idea, which is that legal concepts do not represent extra-legal objects.

version of moral realism).

The autonomy of legal concepts does not deny that law interacts with the extra-legal world, nor that extra-legal considerations, including moral ones, can bear on legal reasoning. It instead captures a more specific point: that the content of legal concepts depends primarily on legal practice, rather than on correspondence to objects or kinds outside of it.

Take the ordinary concept PERSON. The ordinary concept PERSON, if the traditional view is right, ought to accurately capture the nature of personhood. It is unclear whether a corporation is or is not a person in this extra-legal sense (List and Pettit 2011; Schane 1987). Thus, it is possible that the representationally appropriate ordinary concept PERSON does not extend to corporations. But, as a legal matter, we treat corporations as persons for (many) legal purposes. The technical legal concept PERSON therefore includes corporations—and it does so independently of the ordinary concept PERSON (Lawson 1957, 915). Because the technical legal concept PERSON is in this regard independent of the otherwise correct ordinary concept, the content of the former can vary based on legally relevant normative concerns—including abhorrent ones, as the history of legalized slavery illustrates.[12] Technical legal concepts can diverge from their parallel extra-legal concepts and from the accurate representation of the kinds the latter refer to.

Note that, even if it were the case that the ordinary and the legal concept PERSON were extensionally equivalent (i.e., if the legal concept PERSON were, in my terms, an adopted legal concept), this would only be the case in virtue of law. Whenever a concept becomes legally relevant, it becomes a legal concept. The content of legal concepts ultimately depends on law (even if, contingently, the law builds part of its conceptual repertoire by adopting extra-legal concepts without modification).

The autonomy of legal concepts is relatively evident in the case of self-standing legal concepts. Self-standing legal concepts are not constrained in their content by the nature of any objects in the world because they do not refer to such objects. DESUETUDE, EQUITABLE ESTOPPEL, or LACHES do not refer to any extra-legal objects. This doesn't mean that these concepts should not be responsive to extra-legal concerns, including moral and prudential ones. The key point is that the

[12] See (Finkelman 2012). For a recent theory of the legal concept PERSON, see (Kurki 2019).

legal domain could ignore, as a matter of fact, these concerns.

This autonomy is also true, as the previous discussion of PERSON illustrates, about adopted and technical legal concepts. And it is true, too, of gray area cases like PROPERTY and CONTRACT. The content of the legal concepts of PROPERTY and CONTRACT in contemporary American law turns on the contingent features of American law. There might be extra-legal analogues to these legal concepts. And we might think that the extra-legal analogues have a bearing on the legal concepts. But the content of the relevant legal concepts is primarily determined by legal rules and practices.[13]

In the case of adopted and technical legal concepts, though, one might be tempted to think that the legal concept should generally track the ordinary concept. Under this view, we should avoid technical legal concepts as much as possible, and when we can't, we should keep the divergence between them and the parallel ordinary concepts at a minimum. To take a classical example, if there is an ordinary concept VEHICLE, the natural thought might be that lawyers' and judges' inferential practices should track the extra-legal concept as much as feasible.

This is a plausible consideration given law's aim to guide behavior (Sandro 2015, 273; Slocum 2015, 3). Because of that aim, all else being equal, there might be salutary effects generated by perfect extensional equivalence (so that the legal concept is merely an *adopted* legal concept) or limited extensional divergence (so that the *technical* legal concept mostly overlaps in its extension with the parallel ordinary concept). But all else is not always equal. Because of this, we should not neglect the existence of situations where legally relevant considerations justify a divergence, so that we have a technical legal concept VEHICLE that is different (and perhaps quite different) from its extra-legal counterpart.

In summary, then, questions about the content of legal concepts—self-standing, adopted, and technical—are legal questions (i.e., questions about the interpretation and application of legal norms).[14] Legal concepts are, to use Lawson's phrase, "parts of a world of their own" (Lawson 1957, 913).[15]

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[13] Of course, as an empirical matter, those rules and practices might overlap significantly across different legal systems. In the case of contract law, see (Jiménez 2019).

[14] On this, see (Balganesh and Parchomovsky 2015, 1253).

[15] For discussion of this point, see (Dybowski 2024, 114).

Importantly, this is also true for legal concepts with parallel moral concepts. Legal theorists commonly observe that law shares some of its deontic language—notions like RIGHT, DUTY, WRONG, OBLIGATION, and AUTHORITY—with morality (Gardner 2012, 144; Goldberg and Zipursky 2006, 1565; Holmes 1997, 993; Shapiro 2011, 111). While this observation is correct, it is sometimes coupled with an additional claim: that the relevant concepts are simply moral concepts at work in law (Goldberg and Zipursky 2010, 952; Shapiro 2011, 114). This second idea—that when law shares its conceptual vocabulary with morality it also incorporates *moral concepts*—is not warranted (Hart 1958). Rather, in these situations legal reasoning relies on a concept that finds a parallel concept in the moral domain. But law can always build a technical legal concept that is distinct from the best (or even the most plausible) parallel moral concept. Law's concept of OBLIGATION might be legal and not moral, just like law's concept of BIRD might be legal and not zoological (Poscher 2009, 111). The legal concept is autonomous, in this way, from the extra-legal moral concept (Priel 2005, 682).[16]

3.2. Dissociation

Still, it might seem that the autonomy of legal concepts generates a risk of excessive dissociation between the content of legal concepts and ordinary natural language. More worryingly, the possibility of dissociation generates serious concerns from the perspective of the rule of law, fair notice, and the guidance of behavior. Thus, perhaps we should think, following (Klatt 2008, 277), that ordinary language has its own normative bearing on what argumentative moves are warranted within legal discourse. On this type of view, whatever the *legal* aspects of a legal controversy might be, there might still be a clear semantic fact of the matter regarding the ordinary meaning of the words and sentences contained in the relevant legal texts that legal operators cannot simply ignore (Klatt 2008, 212–13).

My response here is twofold. First, if one thinks (as I do) that the rule of law is valuable, and that part of its value is connected to the fact that it allows for the guidance of behavior on the basis of predictable rules, then we must recognize that this is a normative demand grounded in considerations of political morality. It

[16] This could be the case because legal and moral obligation are just different types of things, and therefore OBLIGATION is ambiguous and refers to fully different concepts, or simply because they are different and distinct from each other even though they are species of the same *genus* (which is neither legal nor moral, but a generic concept with specific variations in different domains). For discussion of this issue, see (Wodak 2018).

is not a necessary feature of law or a conceptually necessary implication of ordinary language for legal practice.[17] Thus, to the extent that *our* parochial legal practices attempt to rely on ordinary language as a constraint on legal reasoning, this is a contingent (perhaps valuable) aspect of these parochial legal practices rather than a general feature of legal argument and its connection to ordinary language. Second, even when legal cultures and practitioners want to rely on ordinary language as a constraint, this can always fail, such that the legally correct resolution of a case might be at odds with the *actual* ordinary meaning of the relevant language. Within legal discourse, the ordinary meaning of legal texts is not a brute fact about natural language but always a legal construct (Jiménez 2024a). Even textualists recognize that, when in the hands of judges, ordinary meaning is a *legal* question (Grove 2022, 1064–65).

Again, all of this is compatible with the recognition that there are good reasons for avoiding a too radical dissociation between the extension of legal and extra-legal concepts. The point is simply that, whenever the law builds upon or relies on an extra-legal concept, it can modify—sometimes deliberately, and sometimes unintentionally—its content to build a parallel technical legal concept. There is always conceptual space for divergence, and it is always up to law whether and to what extent its conceptual repertoire is consistent with ordinary cognition. This is precisely what we observe as an empirical matter: in many cases, law takes extra-legal concepts and builds on their basis a technical legal concept.[18] Consider the divergences between lay and legal expert understandings of CAUSATION (Macleod 2019), CONSENT (Sommers 2020) or INTENTIONALITY (Tobia 2020). These divergences could be treated as different understandings of the same concepts, but arguably there is something deeper going on: there are just two different concepts at play, operating within different inferential practices. The same happens when the content of technical legal concepts diverges from the most accurate parallel concepts in the relevant domains of technical expertise. As Poscher argues, a whale might technically be a mammal, but the legal concept WHALE might identify it as a fish (Poscher 2009, 104).[19] Technical legal concepts have a certain autonomy vis-à-vis parallel concepts—whether ordinary or scientific—in extra-legal

[17] On the rule of law, see (Jiménez 2026).

[18] Arguably, some concepts we use in ordinary thought and talk might be based on, or derive from, concepts that were legal in origin. RIGHT, WRONG, and PERMISSION, for instance, could be seen as examples of this type of phenomenon (Hart 1958).

[19] For an insightful discussion, see (Martí and Ramírez-Ludeña 2020),

domains.

To some extent, something like the conceptual autonomy I have described is also present in extra-legal, everyday practices. In everyday discourse, we can offer stipulative definitions that will only matter for certain purposes or within certain contexts of activities, act "as if" something is the case, and so on. And in many social and discursive practices, like games, we observe the existence of definitional or constitutive rules that determine what will count—for the purposes of those practices— as an X (Searle 1970, 35). We also see discursive patterns in games and other practices in virtue of which their internal concepts are autonomous from the outside world. But law is distinct, in part, because it is characterized by the concentrated presence of institutionalized mechanisms, processes, and actors that play (and whose role is to play) a disproportionate—and asymmetrical—role in the authoritative determination of the relevant conceptual content (Dzięgielewska 2024, 273, 286). Of course, law is not *entirely* unique or disjointed from the rest of human experience, and many of the phenomena that we see in law have resemblances to phenomena that we see elsewhere. Nevertheless, within law, the practices of stipulation, specialized definition, and so on, take place within an institutional setting that confers powers to specific legal officials, acting within specific procedures, which set out formal conditions under which those officials' behavior produces authoritative determinations of conceptual content (Canale 2025, 197).

3.3. Legal and Communicative Content

One concern one might have here is the following. It is common in legal practices to distinguish between semantic arguments or linguistic considerations and *other* types of legally relevant arguments and considerations. In the civil law context, for instance, (Alexy 2009) distinguishes between semantic arguments and other types of legal arguments (such as historical, genetic, comparative, systematic, and teleological ones). And in the American legal tradition it is usual to distinguish between linguistic and substantive canons of interpretation (Krishnakumar 2017, 833–35). These distinctions track a more basic distinction between legal and communicative content (Solum 2013).

But, if I am right, it is unclear how semantic/linguistic considerations could be distinguished from other legal considerations. Indeed, on my account, the entirety of legal reasoning influences the content of legal concepts. Thus, it seems

that my account simply collapses this familiar distinction between communicative and linguistic content.

There is a sense in which indeed my account collapses this distinction. There is another sense, though, in which it preserves it. To see why, consider the distinction between what is the case at the most fundamental level and what is the case at the level of a particular legal practice. As is familiar from discussions about inclusive legal positivism, it is at least *possible* that, while legal validity is at the most fundamental level determined by social facts alone, at the level of particular legal practices the social facts are such that moral considerations are relevant for questions of legal validity in those particular legal practices.[20] Similarly here, it could be the case that, at the most fundamental level, the content of legal concepts is generally determined by what goes on within the legal domain, while at the level of particular legal practices, there is a plausible distinction made by legal operators between the arguments they make about semantic, linguistic, and communicative considerations and other types of legal arguments about legal norms, effects, and implications. The crucial difference is that such distinction would not be fundamental, but rather a conventional distinction grounded in the practices of legal officials, which is also defensible as a way of carving out different tools that they rely on to ascertain and apply legal norms. There are all sorts of meta-legal truths that are relevant to explain the nature of the legal domain that are not transparent in the everyday practice of legal discourse.[21]

Thus, while the content of legal concepts is ultimately dependent on legal practice, it is perfectly possible that within many familiar legal practices a defensible distinction is made, *within them*, regarding arguments about the meaning of legal texts and arguments about their legal implications.

It is important to emphasize that I am not simply saying that the distinction is possible. It is also defensible, given that it tracks something important in many actually existing legal systems. First, many concepts used by law in such systems are, as I argued above, taken as-is and without modification (i.e., they are adopted legal concepts). For all such concepts, the distinction between considerations about meaning and other legally relevant considerations is *contingently* correct (*contingently* because the law could always transform extra-legal concepts into

[20] On inclusive legal positivism, see, e.g., (Bix 1999; Moreso 2001; Waluchow 1994).
[21] For a more general argument to this effect, (Enoch 2019, 14).

technical legal concepts). Second, even beyond the narrow category of adopted legal concepts, at any given point in time it is perfectly reasonable to distinguish between arguments and considerations pertaining to the meaning of legal texts and those that pertain to their legal effect, even if ultimately—on my view—the former depends on the legal domain itself.

4. The Inferential Structure of Legal Concepts[22]

What is the mechanism by which legal practice determines the content of legal concepts? From a temporal perspective, the content of any legal concept is determined by its application in previous cases, as well as by the consequences that follow from its application in the present case (Brandom 2009b, 120). As Brandom argues, when a judge interprets the legal tradition in terms of its articulation of a legal concept—REASONABLENESS, STRICT LIABILITY, etc.—they are also determining the content of that concept and providing a basis for deciding future cases (Brandom 2014, 32). From this perspective, legal concepts are always works in progress. There is no final word on what PROPERTY, REASONABLENESS, or MENS REA mean (Cohen 1916, 634). Retrospectively, the legal interpreter ought to look at the history of the legal practice to ascertain the relevant conceptual content. At the same time, though, the present application of the concept further determines its content (Brandom 2014, 36). In offering a justification for their decision, the judge presents a rational reconstruction of the tradition that determines the content of the relevant legal concept and reveals it (Brandom 2014, 32–33).[23]

This is something that Dworkin's reconstruction of common law reasoning

[22] There is an important question about the relationship between an inferentialist account of the content of legal concepts like the one developed in this section, which relies heavily on Brandom's inferentialist semantics, and Brandom's own normative pragmatics. These two aspects of Brandom's thought are connected because, on his view, the meaning of concepts is determined by their role in discursive practices that are normative, because they rely on giving and asking for reasons, attributions of commitments, and score-keeping (Turbanti 2017, 39). As (Brandom 2018) himself puts it, semantic inferentialism and normative pragmatics are two pillars of the same body of ideas. But here we need to be careful and distinguish between the idea that conceptual content depends, or is responsive to, discursive practice, and the idea that discursive practice is normative. Here, I am committed to the first claim, not the second. This is not because I think the second idea is wrong, but because the notion that all conceptual practices are normative in the way that Brandom suggests is not necessary to sustain my more limited claim, namely that the content of legal concepts is determined by inferential practices. That claim would be true *even if* Brandom were wrong about the normativity of all discursive practice.

[23] For a very similar account, see (Caballero Elbersci 2021, 140–44).

as the writing of a collective chain novel captures well. Under this reconstruction, the judge is a coauthor who adds a single chapter to a long chain novel that has preceded them, and that they must interpret in order to ascertain how they should write the next chapter (Brandom 2014; Dworkin 1986, 229). The chain novel is a good metaphor for the application of legal concepts: they are links in chains of reasoning. Each chapter—each application of the concept—presupposes a certain conceptual content and can further determine it.

At a single point in time, every legal concept has certain conditions of application, and its application has certain consequences (Ross 1957).[24] From this latter perspective, the concept supports or justifies certain decisions, by providing reasons in favor of those decisions and against others (Brandom 2014, 24). Seen synchronically, then, legal concepts are links in webs of legal inference and argument, and understanding them requires understanding their inferential role (Canale and Tuzet 2007, 36; Dybowski 2024, 108; Zipursky 2000, 470–71).[25] The concepts are materially connected with other concepts, and therefore their content cannot be fully grasped in isolation. The meaning of any legal concept—say, OFFER or ACCEPTANCE—cannot be determined without taking into account its relations to other concepts—in the example, ASSENT or CONSIDERATION (Coleman 2003, 7). For example, in American contract law, the concept MITIGATION is connected to the concept DAMAGES, which is itself connected to the concept BREACH, which presupposes the concept DUTY, etc. (Lawson 1957, 910; Miller 2023, 4). We cannot understand the content of any specific legal concept without understanding the inferential role that it plays within the larger web of legal concepts (Coleman 2003, 7). The meaning of legal concepts, on this view, is not reducible to permanently stable definitions in terms of necessary and sufficient conditions. It is determined by the role they play in the practice of legal reasoning (Canale and Tuzet 2007, 38). The concepts that legal reasoners use are determined by the very activities of those legal reasoners, which have a "content-generating character" (Dzięgielewska 2024, 280–81).

Legal argument is a discursive practice based on reason-giving: to apply legal concepts one must grasp and be able to convey the reasons why the concepts ought to apply (Brandom 2009b, 119; Canale 2019, 84–85). Grasping legal concepts is

[24] For discussion, see (Caballero Elbersci 2017, 91–94; Peregrin 2014, 21–25).

[25] This is basically Brandom's point in (Brandom 2009a, 56). In this respect, he is developing an older idea one can find in (Sellars 1953). On this, see (Klatt 2008, 123–25).

thus a matter of identifying the role they have played in the past as well as the doctrines, rules, and norms in which they presently figure (Sartor 2009b, 35; Zipursky 2000, 471) and the material inferences they presently warrant, require, and exclude (Novelli et al. 2022, 209). In this way, the content of legal concepts cannot be separated from the legal norms that allude to them or in which they are implicit (Sartor 2009b, 42). It also cannot be separated from the entire system of material inferences within which the particular legal concept operates (Sartor 2009b, 43). Grasping one legal concept requires grasping many (as many first-year law students eventually learn) (Brandom 1994, 89). It requires mastery over the practice within which the concept plays a role, and over its development over time (Brandom 2009a, 48). This is why legal expertise is a matter of *know-how* rather than *knowing that*.[26] It is a matter of *doing* (Caballero Elbersci 2020, 30 fn 24).

Legal concepts, then, derive their content from the whole structure of legal inferences within which they are situated (Brandom 2009a, 75). The content of legal concepts depends, in this sense, on *systematic* relationships between them (Ginsburg and Stephanopoulos 2017, 152). We speak of specific areas of law—the law of contracts, criminal law, and so on—precisely because of the local interconnections between concepts in each of those areas (Waldron 2000, 25). Consistently with this, changes in the content of any legal concept will generate changes in the content of legal norms and of other concepts (Waldron 2000, 23).

This picture makes intuitive sense of how we make innovative legal arguments. In both legal scholarship and judicial reasoning, it is common to argue that a certain theory about a specific legal concept, a novel legal concept, or a legal principle is—from some perspective—valuable, attractive, or desirable. But such arguments, when successful, are typically (and crucially) grounded in the claim that the offered concept, conception, or principle is already embedded, implicit, or recognizable in the existing law—in other words, that it is consistent with the existing web of legal concepts and the arguments they generate (Saiman 2007, 506). This argumentative strategy is common because legal concepts are answerable to legal practice, and legal practice is itself explainable in terms of constituent (even if implicit) legal concepts (Zipursky 2000, 471–73). The inferential role played by legal concepts reveals the rational relations in which they stand to one another

[26] On this issue, see (Jiménez 2024b). See also (Brandom 1994, 23). On the distinction between *knowing that* and *knowing how*, see (Ryle 1945).

within the larger web of legal argument (Coleman 2003, 7).[27] Successful innovations in legal argument are successful, in part, to the extent that they can be rendered consistent with that existing web. The underlying premise is that, once we see how a certain concept or principle (in which one or more legal concepts figure) offers a reconstruction of authoritative legal materials, it also offers a rational basis for deciding current cases.

Consider the following examples:

- Cardozo's reconstruction of tort law as grounding an extension of the concept DUTY that defeats privity of contract in *MacPherson*.[28]
- Cardozo's extension of the concept CONSIDERATION to cover some classes of gratuitous promises in *Allegheny College*.[29]
- Brennan's reconstruction of the concept POLITICAL QUESTION and the "political question doctrine" in *Baker v. Carr*.[30]
- Jackson's reconstruction of bankruptcy law in terms of the creditors' bargain (Jackson 1982).

These arguments differ from each other in multiple ways. But, in each of them, legal concepts operate in connection with further legal concepts: presupposing them, lending them support, relying on them, combining with them to constitute a specific legal norm or principle, allowing for certain legal arguments and blocking others, and so on. In this process, applications of concepts or of the norms in which they figure contribute to the determination—and sometimes the rearticulation—of the content of the relevant concepts and therefore the relative plausibility or correctness of specific legal conclusions.

All of this explains the precise way in which legal concepts are autonomous from the extra-legal domain: their content turns on their role within the practice of legal argument. Because of this, legal concepts do not need to parallel "a somehow corresponding reality 'out there'" (Teubner 1989, 730).

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[27] Similarly (from a formalist perspective), (Weinrib 1988, 962).
[28] MacPherson v. Buick Motor Co., 111 N.E. 1050 (N.Y. 1916). For discussion, see (Goldberg and Zipursky 1998).
[29] Allegheny Coll. v. Nat'l Chautauqua Cty. Bank of Jamestown, 159 N.E. 173 (1927).
[30] Baker v. Carr, 369 U.S. 186 (1962).

5. Constitutive or Evidentiary?

One potential objection to the argument so far might be that, while legal concepts operate within networks of argument and inference, this is not sufficient to warrant the conclusion that these inferences are *constitutive* of the content of those concepts, rather than merely *evidence* of said content. In simple terms, it could be the case that we can learn about the content of the concept CONTRACT by looking at its inferential role. But this does not show that said role *constitutes* the content of the relevant concept. In more concrete terms, even if inferential role within legal reasoning is a reliable guide to the content of legal concepts, it doesn't follow that inferential role *makes* that content what it is. The content of legal concepts might instead be determined by something else (legislative intent, social convention, causal-historical chains, moral facts, etc.), in which case the inferential role of those concepts would merely be a reliable indication of the relevant content.

Of course, if I am right about the fact that the inferential role of concepts determines their content, it would be quite natural for the most reliable indicium of conceptual content to be the inferential role the relevant concepts play. But the direction, as the objection suggests, cannot be reversed: it could very well be the case that the best method we have for ascertaining the content of legal concepts relies on their inferential role while that content is in fact determined by something else.

In response, I would suggest that law, as an institutional normative order that contains regulative and constitutive rules, can always change the content of the concepts those rules utilize through its own institutional mechanisms, such as authoritative stipulative definitions (Dzięgielewska 2024; MacCormick 1986, 2008; Searle 1970). This means that the legal system contains its own mechanisms to deliberately constitute the content of legal concepts—those legal concepts become, in other words, a matter of institutional fact. They are all determined by law's rule-governed discursive practices. Consider the concept OFFER in the law of contracts. Under many systems of modern contract law, having made an offer warrants certain conclusions about pre-contractual liability and about the power of the offeree to form a contract through their manifestation of assent. When legal rules, doctrines, and institutions regulate contractual offers in this way, they are not merely pointing towards pre-institutional facts about what an offer is. Instead, they are constituting that fact by articulating the web of inferences and implications connected to OFFER.

A second and more general way of making this point is that the view that inferential role is merely evidentiary requires a suitably independent fact about the content of legal concepts that exists independently of legal discourse, such that the latter *corresponds to* that independent fact. But here we can go back to the points I made in sections 2 and 3 above regarding the different types of legal concepts and their autonomy. Self-standing legal concepts do not refer to extra-legal objects at all, so there is nothing outside legal argumentative practice for their content to track. What characterizes technical legal concepts is precisely that they diverge from their parallel extra-legal counterparts, so their content *in the legal domain* cannot be read off from any extra-legal fact. And adopted legal concepts, as I argued, become subject to the authority of legal practice once they enter the legal domain: their content, too, is settled, at the most fundamental level, by that practice rather than by correspondence to any independent fact or consideration. Once we accept the autonomy of legal concepts, there is nothing except inferential role that could constitute the content of legal concepts. There is, in other words, simply nothing available for the inferential role to be merely evidence of.[31]

But perhaps this is moving too fast. What I have just said simply restates the argument I made about the autonomy of legal concepts that I made in Section 3. That argument is compatible with the claim that something different from inferential role, but within the legal domain, is actually what's determining the content of legal concepts (and therefore what legal argument is merely tracking). There are candidate non-inferential determinants of legal content that remain significant within legal practice—the most general example being the authoritative enactment of legal texts by legal institutions like legislatures—and that inferential practices could be merely tracking or be evidence of.[32] My answer here is that the most obvious candidates for intra-legal, non-inferential determinants of legal content are themselves inferential, or are intermediate determinants that are made relevant because the (more fundamental) inferential practices make them such. In other words, once we accept the claim of autonomy, it is very hard to see what else besides inferential role could be doing the relevant work at the most fundamental

[31] Of course, from the fact that, at the most basic level, inferential role constitutes the content of legal concepts it does not follow that this will be transparent or directly relevant in the practice of legal discourse. On the contrary, legal participants might not refer to this fact explicitly, or might rely on distinctions and arguments that make the inferential role itself less or more relevant in particular instances, regarding specific doctrines, or the interpretation of specific sources of law.

[32] I thank an anonymous reviewer for this objection.

level.

For instance, and to take an obvious candidate, stipulative definitions contained in legislative enactments are obviously relevant for legal content. But, as my first response in this section suggests, I think this is a formal, institutionalized mechanism of legal inference. As such, it is taken up by legal reasoners (most obviously, judges) and incorporated within the web of inferences. But at that level the stipulation is on a par with the rest of legal practice's conceptual activities, and it could very well be partially modified, further determined, and even discarded by the collective practice of legal argument. There is ample evidence of this happening with authoritatively enacted legal transplants that are treated as "legal irritants" by the legal operators of the receiving jurisdiction (Teubner 1998), but it is also the case whenever—through canons of interpretation and construction, like avoidance and lenity—legal interpreters' argumentative activities modulate and alter the effect that the legislative enactment on its own would have.

Moreover, when we ask ourselves what gives something the status of an authoritative enactment or a source of law, a paradigmatic answer takes us back to the argumentative practices of legal officials. Indeed, Hart's rule of recognition can be interpreted, precisely, as the complex argumentative practice of legal officials that determines what counts as a valid source of law in any legal system (Hart 1994; Pino 2021). Thus, as the objection suggests, it is true that lawyers' and judges' inferential practices express or track non-inferential aspects of legal practice—but the very legal relevance and status of such non-inferential facts is explained by inferential practices.[33]

[33] There is an issue here, nevertheless, that is worth exploring. The connection I have made between the rule of recognition (constituted by legal officials' convergent practices) and the patterns of argument and inference of those officials might seem to replicate the question that motivates this section, but at a different level. Perhaps, the inferences and arguments of legal officials merely express, declare, or indicate the actual determinant of the content of legal concepts, which would actually be a mere social or collective psychological fact (i.e., the fact that a group of agents treats certain facts or products as valid sources of law). On this picture, then, again it could seem like arguments and inferences are just evidence of the actual object that determines the content of legal concepts. But here we need to be attentive to what the practice of legal officials that the rule of recognition designates actually looks like. That practice is itself an argumentative practice: it is about what should count as a relevant source of law (or which aspect thereof, such as purpose, intent, ordinary meaning, etc.), about how conflicts between provisions across different authoritative sources should be resolved, etc. So, there isn't really that much daylight, as this objection seems to

6. Moral Evaluation

The inferentialist picture just developed is a *descriptive* or *conceptual* account of how legal concepts acquire their content. Thus, everything I have said regarding the autonomy of law so far is about what is conceptually possible (and actual in at least some familiar legal traditions). I haven't said anything about what is normatively desirable, nor about the particular ways in which those who engage in the conceptual practices that determine conceptual content ought to act in such role. In this respect, how much the content of legal concepts should diverge from their parallel extra-legal concepts and the precise way in which legal operators should construe the relevant conceptual contents are normative questions, the answer to which will vary in different areas of law. The more limited point I have made is that, because the content of legal concepts is determined by their inferential role, a divergence between legal and extra-legal concepts is always possible. Whether divergence in the case of any given legal concept is good or bad is an open normative question that depends on further argument than the mere observation that there is a divergence.

There are plenty of reasons why extra-legal considerations (including moral considerations) should have a bearing on legal concepts—even though the latter are conceptually autonomous and their content is determined by legal discourse itself. Another way of putting the point, then, is the following: legal reasoning can be autonomous at the conceptual level, but it is not autonomous at the moral level—we can always morally evaluate the legal concepts that we have, whether we should make them more consistent with extra-legal cognition for moral reasons, what their appropriate content should be, etc.[34] To what degree law should rely on the autonomy of legal concepts, and how, are moral questions.

From the normative point of view, whether legal reasoning is underpinned in part by distinctive legal values independent from the values that govern other areas of social life, or whether particular forms of legal reasoning are grounded in

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assume, between the complex set of practices that constitute the rule of recognition and the inferences of legal officials. Pointing to the supposedly non-inferential sources of legal content ultimately leads us, at least on a Hartian picture, back to patterns of argument and inference.

[34] One generally important consideration here is that the law can lead us *morally* astray when, by relying on its conceptual autonomy, it distorts our substantive moral evaluation. On this issue, see (Bix 2010).

distinct and specific values, is an important question.[35] But I take it for granted that multiple values beyond distinctively legal values might underlie, as a matter of justification and political morality, legal norms.[36]

Nothing in the inferentialist account I have proposed, or in what I have argued in this section regarding the role for moral evaluation in assessing to what extent and how law should exploit the autonomy of legal concepts, depends on adopting any specific view about the nature or the grounds of law. The argument so far is thus compatible with versions of both positivist and non-positivist theories. For example, a positivist may understand the relevant inferential practices as those actually recognized as legally appropriate by the relevant set of legal officials, according to the criteria of validity condensed in the rule of recognition (Hart 1994). The fact that these practices are subject to moral evaluation is, of course, entirely compatible with a positivist conception. At the same time, the account is compatible with variations of non-positivism. For example, natural lawyers could recognize in this account an explanation for (an aspect of) the *positivity* of law, even though whether we are dealing with law *stricto sensu* or rather with a corruption of law will depend on whether the relevant inferential practices and their conclusions are consistent with (or defensible from the perspective of) practical reason.[37]

Still, not *every* potential jurisprudential view will be compatible with the account offered here. For instance, a view like Greenberg's moral impact theory (Greenberg 2004, 2014) could be read to suggest that which set of inferential relations is legally correct is rationally determined by moral considerations. This is at least in tension with the autonomy of legal concepts. Moreover, if coupled with the additional premise that law's epistemology tracks its metaphysics (Greenberg 2025), then the fact that moral facts rationally determine legal content entails that legal reasoning cannot be autonomous from moral reasoning. Thus, the account presented here cannot be squared with all jurisprudential views.[38]

But the inferentialist framework is still, to some extent, ecumenical: it provides a way of describing how legal concepts function within legal reasoning, while remaining agnostic about the ultimate grounds of legal validity. That

[35] See generally (Dagan 2008).
[36] These values might coexist with some distinctively legal values that are specific to legal institutions (Shiffrin 2007, 733–37).
[37] Here, I have in mind a view like (Finnis 2011).
[38] I thank an anonymous reviewer for pressing me on this point.

description might be at odds with some views, like Greenberg's. But the view is not necessarily positivist. In fact, it is at odds with positivist views like Austin's command theory (unless one assumes, implausibly, a collective "sovereign" whose will is constituted by the inferential practices of multiple participants in legal discourse) (Austin 1995), and could be rendered compatible with other non-positivist views, such as Finnis's.

To the extent that the argument here is persuasive, the autonomy of legal concepts and the fact that inferential role constitutes their content are facts that any plausible theory about law should consider and be compatible with.[39] But the account offered here is sufficiently capacious, in my view, to be compatible with different more specific jurisprudential conceptions, suitably (re)constructed.

7. Conceptual Change and Conceptual Ethics

One key feature of legal concepts is that their content changes over time, as their applications—and the webs of material inference in which they figure—evolve. An inferentialist account of legal concepts captures this fact. If the content of legal concepts is determined by inferential connections, then that content will change depending on the specific inferential environment within which the relevant concepts are situated: the other concepts, norms, and doctrines they are connected to in legal reasoning (Sartor 2009b, 42). As Zipursky puts it, "our concepts… have content only because of the web of commitments in which they are enmeshed, and… those commitments are themselves defined only in relation to a community's set of practices" (Zipursky 2000, 483).

This explains a common practice in legal argument that I already anticipated in the previous section: we frequently engage in debates about the evaluation of legal concepts and their rearrangement in light of normative considerations.[40] These are questions of what Burgess and Plunkett call "conceptual ethics": questions about which concepts we should have and how we should use them (Burgess and Plunkett 2013, 1096). When jurists have these debates and

[39] As elsewhere in philosophy, one person's *modus ponens* is another's *modus tollens*.

[40] Some of these normative considerations are internal to legal practice. But they need not be, and it is perfectly possible (and a familiar phenomenon in legal discourse, particularly in more open and less legalistic legal cultures) for the normative considerations to be, for instance, moral considerations that are not already incorporated into legal practice as legal considerations. Thus, conceptual change need not occur only *internally*.

rearrange concepts in response to them, they act as "conceptual engineers" (Feldman 2012).[41] In other words, inferentialism offers a natural explanation of conceptual engineering and of the prevalence of normative arguments about the rearrangement or modification of existing legal concepts.

There are many examples of these types of arguments. There is a long tradition of arguments within general jurisprudence in favor of the adoption of a positivist concept of law on the basis of moral considerations (MacCormick 1985; Campbell 2016; Celano 2013; Murphy 2001, 2008; Schauer 2021; Waldron 2001). To the extent this is an argument about the concept (or conception) of law that judges or lawyers should adopt, it is an argument about a *legal* or *internal* concept of law.[42] Similarly, in special jurisprudence, theorists sometimes argue for the adoption, modification, elimination, or replacement of legal concepts on the basis of normative considerations. They also argue, at times, about the criteria that should be used for assessing different concepts. Consider the following relatively recent examples or arguments in legal conceptual ethics:

- Smith and Merrill's argument in favor of the *in rem* conception of property rights (Merrill and Smith 2011).

- Nagel and Murphy's arguments against the "everyday libertarian" conception of property rights (Murphy and Nagel 2002).

- Roberts's argument that criminal law's concepts carry important normative implications and should be subject to critical scrutiny (Roberts 2023).

- Clarke's argument in favor of the replacement of the concept BIOLOGICAL SEX with the concept SEX ASSIGNED AT BIRTH (Clarke 2022).

- Ginsburg and Stephanopoulos's application of the normative criteria used in concept formation in social science to constitutional concepts (Ginsburg and Stephanopoulos 2017).

[41] On conceptual engineering, see (Burgess and Plunkett 2020; Cappelen 2020; Haslanger 2020; Thomasson 2021).
[42] This is how I articulate a normative argument for positivism in (Jiménez 2023).

These arguments are not identical to each other. For instance, some of them rely on legal normative considerations while others rely on extra-legal (for instance, moral) normative considerations. But they all share three assumptions: (i) concepts have important inferential roles in legal discourse; (ii) different concepts (or different specifications of their content) will therefore have relevantly different implications; and (iii) because of (i) and (ii), we should think about the proper content of legal concepts and re-engineer them when appropriate. This type of approach will be particularly attractive in cases where conceptual content is not fully fixed by existing practices. In such cases, inquiry about the implications of different determinations of that content will be an attractive—some would even go further and say "necessary"—strategy (Stoljar 2013, 243, 249–50).

Still, the use of this type of argument in legal discourse—particularly when it is explicitly made[43]—might seem to raise a concern. Why should we care about which concepts will make things go better, or would be preferable given certain normative considerations? As a general matter, we should not leap from what's normatively attractive to what's true (Dickson 2001, 89). Replacing questions about the nature of things with questions about what concepts of those things would result in good consequences seems like a form of wishful thinking (Dickson 2001, 89–90; Greenberg 2014, 1339; Langlinais and Leiter 2016, 684).

Note, however, that if what I have said above is on the right track, then the concern about wishful thinking can be overcome.[44] Legal concepts do not aim to represent objects outside of the legal domain but are rather inferential links within legal argument. Normative disagreements about how to understand legal concepts need not rely on the premise that we can choose and discard beliefs about the world on the basis of their consequences (Langlinais and Leiter 2016, 684). Instead, normative arguments in favor of the adoption of particular legal concepts or understandings of their content simply turn on the recognition of two facts that I have already highlighted. First, the content of legal concepts is not constrained by the nature of extra-legal objects. Second, legal concepts play important inferential roles in legal argument, making certain outcomes legally correct while discarding others, and committing those who adopt them to particular patterns of material

[43] Sometimes, we engage in normative debate about concepts without explicitly doing so. Indeed, many seemingly descriptive disputes can be reinterpreted as disagreements about the use of concepts. See (Plunkett and Sundell 2013, 262; Watson 2023).

[44] Here, I am following a general argumentative strategy used by (Jorem and Löhr 2022) in order to vindicate the practice of conceptual engineering by relying on an inferentialist account of concepts.

inference (Jorem and Löhr 2022, 14–16).

Seen in this light, conceptual prescription in the legal domain is not based on the premise that the nature of things will change because of our say so, or that we can deliberately adopt certain beliefs even though we know them to be false. The premise is simply the much more limited idea that we can deliberately adjust the content of legal concepts to allow for a different set of material inferences from the ones that are currently warranted (Sartor 2009a, 226). A change in the meaning of legal concepts is also a change in legal consequences (Sartor 2009a, 225). In this way, the existence of conceptual prescription and conceptual engineering in legal argument supports the inferentialist account of legal concepts, and the latter explains why the former is a plausible strategy in the legal domain.

Again, nothing I have said here is meant to necessarily reject the argument that, when legal concepts have parallel extra-legal concepts, there should be some extensional fit between them. That is a plausible argument to make—although it is far from decisive. But it is, precisely, a conceptual ethics argument about the appropriate content of legal concepts.

8. Conclusion

This paper has articulated an inferentialist account of legal concepts. Its starting point was the distinction between legal and extra-legal concepts, and the observation that the latter's content is not determined by a representational role regarding extra-legal objects. Instead, legal concepts are inferential links operating within legal argument, connected with each other, and embedded within legal norms and doctrines. While the paper has not mounted a definitive argument in favor of this theory and against other possible alternatives, it has aimed to articulate the basic inferentialist account and to show that it captures certain familiar features of legal practice. The inferentialist account of legal concepts is also able to explain phenomena like conceptual change and conceptual ethics in the legal domain. As such, it is a view that, at least, should be taken seriously and is worth exploring in more detail.

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