LEGAL CONCEPTS, LOGICAL FUNCTIONS AND STATEMENTS OF FACT

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Although the views of certain modern jurists, notably those of Professor H. L. A. Hart,[1] on the appropriate form of definition for fundamental legal concepts may be open to question in some respects,[2] some of the criticism which has been made of those views seems clearly to have been misdirected. The purpose of this article is to examine what is probably the most comprehensive of recent criticisms[3] in order to determine whether the work of Hart and Ross[4] in relation to the definition of legal terms was based upon the false or inaccurate premises therein alleged. Whereas the article by Simpson is not directed solely against Ross and Hart, but also has Hohfeld as one of its targets, the present argument will be directed towards rebutting only those criticisms which Simpson levels at Professors Hart and Ross.

I.

According to Simpson the basic fault in the theories of both Hart and Ross is that their analyses were grounded upon a mistaken attempt to link an explanation of the nature of a legal concept to a theory of the logical function of words or sentences. This Simpson paraphrases as the error of supposing 'that legal terms or sentences in which they occur possess a peculiar logical function,' *i.e.* 'that a technical vocabulary must be linked to a logical function.'[5]

Now as Simpson demonstrates, it would be clearly mistaken for anyone to make such a supposition. Taking what some would describe as the two main functions of language, description and prescription,[6] Simpson shows that the function of a descriptive word remains descriptive even when used in the formulation of a rule or prescription.

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1 'Definition and Theory in Jurisprudence,' (1954) 70 *L.Q.R.* 37.

2 For some criticisms which are not relevant to the present article see Cohen-Hart Symposium, 'Theory and Definition in Jurisprudence.' *P.A.S.* Supp. Vol. XXIX 213; Shuman, 8 *J. of Legal Ed.* 437; Auerbach, 9 *J. of Legal Ed.* 39; Jerome Hall, 77 *Ethics*, at 14.

3 By Mr. A. W. B. Simpson, 'The Analysis of Legal Concepts,' (1964) 80 *L.Q.R.* 535.

4 'Tû-tû,' (1957) 70 *Harv.L.R.* 812.

5 (1964) 80 *L.Q.R.* 535 at 548-549. The alternatives as put by Simpson refer to the particular emphasis in the articles by Ross and Hart respectively.

6 See Ross, (1957) 70 *Harv.L.R.* 812 at 813. 'The tû-tû pronouncements seem able to fulfil the two main functions of all language: to prescribe and to describe or—to be more explicit—to express commands or rules and to make assertions about facts.' Ross' claim that these are the two main functions of language needs elaboration if it is to be accepted, for it leaves much out of account. *Cf.* 'But how many kinds of sentences are there? Say assertion, question and command? There are *countless* kinds: countless different kinds of use of what we call 'symbols,' 'words,' 'sentences,' L. Wittgenstein, *Philosophical Investigations*, I §23.

Thus the word 'dog' in a rule or prescription which states 'The owner of a dog shall not allow it to stray or wander on to any road or footpath' is descriptive in exactly the same sense as when used in a description or statement of fact such as 'There is a dog on the lawn.' Moreover, the meaning of a descriptive term can change, and yet the function of the word remain the same.[7] Thus the word 'cattle' remains descriptive even when used in the *rules* relating to cattle trespass. The meaning of the word has changed, for 'cattle' in the rules relating to cattle trespass includes *e.g.* geese, pullets, turkeys, horses and swine[8] whereas in normal, *i.e.* non-legal, speech, it does not.[9] The logical function of the word is nonetheless the same in both the legal rules[10] and in a non-legal statement of fact[11] such as 'There are cattle on the hillside'. Simpson therefore concludes, and quite rightly, that the difference in logical function between, on the one hand, a prescription or rule and, on the other, a description or statement of fact has nothing to do with the undoubted fact that a descriptive word like 'cattle' possesses both a legal and non-legal meaning. Thus, a technical vocabulary is *not* necessarily linked to a logical function.

All this must be admitted, but before we can conclude that the views about the definition of legal terms which Hart and Ross propounded are basically unsound, as Simpson claims, we must see whether Hart or Ross made the mistake which Simpson so clearly exposes as such.[12] In fact it is extremely doubtful whether either jurist ever did so, although there are phrases, especially in Hart's 'Definition and Theory in Jurisprudence' which, if taken alone, are capable of being misunderstood.[13] Hart's purpose in 'Definition and Theory in Jurisprudence'

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7 Unless the change in meaning were to involve a change in the function of the word, *i.e.* the word were to perform a descriptive function in ordinary language and a connective function in legal language.

8 Glanville Williams, *Liability for Animals*, Ch. IX and *n.b.*: 'In a case before the Supreme Court of W.A. (*Nada Shah* v. *Sheeman* (1917) 19 W.A.L.R. 119 at 120), McMillan C.J. said, *obiter*, that camels came within the action of cattle trespass in that State. The same is true of buffaloes in India, and perhaps of elephants in Burma.'—*op. cit.* at 148.

9 *Cf.* Shorter *O.E.D.* (3rd ed.) at 277.

10 *I.e.* prescriptions.

11 *I.e.* descriptions.

12 There is a simple *a priori* reason which suggests that neither Hart nor Ross made this mistake, for to do so in the way that Simpson's 'refutation' would suggest involves the postulation of prescriptive *words* as well as prescriptive *sentences*; but single words which *appear to* be prescriptive are in fact words operating as sentences *e.g.* the commands 'go,' 'stop,' and 'hurry.'

13 *E.g.*, Hart, *op. cit.* at 37: '. . . it seems to me that the common mode of definition is ill adapted to the law;' at 41: 'Long ago Bentham issued a warning that legal words demanded a special method of elucidation.' But *cf* at 39: 'Innocent requests for definitions of *fundamental* legal notions.'; at 46 'legal words like 'right,' 'duty,' 'State' or 'corporation.' It is to be noted that Bentham's warning related not to all terms used in legal terminology, but only to those with a non-referring function. *E.g.* 'An *estate* is an *interest*, says our Author [Blackstone] somewhere, where he begins defining an estate:—as well might he have said an *interest* was an *estate*. As well, in short, were it to define in this manner, a conjunction or a preposition. As well were it to say of the preposition *through*, or of the conjunction *because;* a *through* is a - - -, or a *because* is a - - -, and so go on defining them.' (Bentham, *Fragment on Government*. *Works* (ed. Bowring 1843), Vol. I at 293, n. 8).

was not to show that *all* legal terms require a special type of analysis, by means of elucidation rather than definition,[14] but only that what he called 'fundamental legal notions,' examples of which are 'corporation,' 'right' and 'duty,' require that special form of treatment. Ross likewise is innocent of the charge levelled at him by Simpson, for his directives concerning the definition of legal terms, which he himself recognised to be similar to the views expressed by Hart,[15] were *purely* concerned with words like 'right' and 'ownership,' words which, in Ross' terminology, are 'without meaning' and 'without semantic reference.'[16] Thus, neither Hart nor Ross was dealing with problems of definition which arise in relation to *all* legal terms; rather, they were engaged in a consideration of a problem which only arises in the case of some *fundamental* terms, or *connective* words, in use in legal terminology.

What then is the distinction which both Ross and Hart would make between these fundamental terms, or connective words, and other legal terms? Hart at least made quite clear what he conceived the distinction to be: 'The first efforts to define words like 'corporation,' 'right' or 'duty' reveal that these do not have the straightforward connection with counterparts in the world of fact which most ordinary words have and to which we appeal in our definition of ordinary words.'[17] Ross, too, though less explicit, relied upon a somewhat similar distinction: the difficulty in analyzing a tû-tû (or connective) word lies in the fact that it lacks semantic reference.[18] What is meant by semantic reference? The semantic reference of a sentence was defined by Ross as 'that state of affairs which is related to the assertion in such a way that if the state of affairs is assumed actually to exist then the sentence is assumed to be true.' Although Ross nowhere defined what is the semantic reference of a *word* rather than a *sentence*, it is clear that, in his view, at least *some* words do have semantic reference,[19] and it would be natural to conclude that the semantic reference of a word is the object of which the word is the 'label.'[20] Although Ross' account of semantic reference is not as simple as that[21] it is clear that the contrast upon which he relies is not that attributed to him by Simpson.

With these distinctions in mind, it is clear why Simpson's main criticism of Hart and Ross is misguided. Neither Hart nor Ross was

14 Although the *naming* of the analysis is not of crucial importance; Hart, *op. cit.* at 47.
15 Ross, (1957) 70 *Harv.L.R.* at 822, n. 6.
16 Ross, (1957) 70 *Harv.L.R.* 813; Ross, *On Law and Justice*, at 172-173.
17 Hart, *op. cit.* at 38. *Cf.* Olivecrona, *Law as Fact*, at 88-89: 'It is impossible to find any facts that correspond to the idea of a right. The right eludes every attempt to pin it down among the facts of social life.' Cited in Hart, *op. cit.* at 41.
18 Ross, (1957) 70 *Harv.L.R.* 813.
19 Ross, *On Law and Justice*, at 172-175; for otherwise all words would be, in Ross' own sense of the term, 'meaningless.'
20 Primarily, although Ross, in seeking the semantic reference of 'tû-tû,' seems to assume that 'being subject to the rule of purification' might qualify—see *infra*.
21 See *infra*.

suggesting that when the same word is used in different contexts, in description on the one hand, and prescription on the other, its logical function *ipso facto* changes. What they were asserting is that *some words* have a different logical function from *some other words;* that the function of some words is to refer to physical objects or states of affairs; that the function of some other words is to act as systematic connectives between numerous fact situations and numerous common consequences; and that, for this reason, a mode of definition[22] which is suitable for the former may well be quite unsuitable for the latter.

The central distinction then, for both Hart and Ross, was between physical object words, or words referring to events or states of affairs,[23] on the one hand, and connective words, or words not referring to physical objects, events or states of affairs, on the other. It is therefore quite beside the point for Simpson to show that words like 'cattle'[24] remain descriptive despite a change in meaning, and despite a change in the function[25] of the sentences in which they appear. That Simpson failed to grasp this point is also indicated by the type of analogy which he uses in criticizing Ross' use of the word 'meaningless.' It will be remembered that Ross said of the non-referring word 'tû-tû':

> 'Tû-tû' is of course nothing at all, a word devoid of any meaning whatever. To be sure, the above situations of infringement of taboo give rise to various natural effects, such as a feeling of dread and terror, but obviously it is not these, any more than any other demonstrable phenomena, which are designated as 'tû-tû.' The talk about tû-tû is pure nonsense.[26]

Simpson's comment upon this passage is that:

> . . . all this has nothing to do with the meaning of the word 'tû-tû,' for we must surely distinguish between the assertion that there is no such thing as tû-tû, and the assertion that the word 'tû-tû' is a word devoid of meaning.[27]

Simpson claims to demonstrate the validity of this criticism by pointing out that great auks once existed but now do not, but that 'great auk' is not on that ground to be regarded as a meaningless word. Indeed the word 'unicorn' is perfectly meaningful even though there never has existed such a beast, in the world of fact at least![28]

Now this *reductio ad absurdum* may be beside the point. True, if one were to take Ross' treatment of semantic reference in relation to

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22 *I.e.* definition *per genus et differentiam.*
23 See Strawson, 'On Referring,' *Mind* (1950) at 320; *Essays in Conceptual Analysis* (ed. Flew) 21. 'Referring' is there used of *singular* terms not *general* terms as is the case here.
24 Simpson's example was the word 'sump' as, in one sense, referring to a part of a car engine and, in another, to a passage filled with water for part of its length. Simpson, *op. cit.* at 549.
25 From descriptive to prescriptive.
26 Ross (1957) 70 *Harv.L.R.* 812.
27 Simpson *op. cit.* at 537.
28 *Ibid.*

tû-tû words quite literally, it would follow that both 'great auk' and 'unicorn' are lacking in semantic reference, *i.e.* they are meaningless. As Simpson points out, Ross' account leaves him open to the interpretation that 'tû-tû' is lacking in semantic reference because, although the Noisulli Islanders think it refers to a dangerous type of *infection*, no such infection exists. However, it is equally clear that such is not the real reason for which we might deny semantic reference to 'tû-tû.' Rather the reason is that we, who do not believe in the existence of the infection but recognize the utility of such expressions as 'X is a great auk' and 'X is a unicorn' (since we want expressions of this type to come out false), nevertheless deny that the expression 'X is a tû-tû' has any meaning at all. Consequently a proper re-interpretation would be that a word is lacking in semantic reference not when it lacks an object or state of affairs to which it refers, but when expressions which incorporate that word and are of the form 'X is a - -' are quite meaningless.[29] To such a re-interpretation, Simpson's use of 'great auk' and 'unicorn' would, of course, be no answer. In fairness to Simpson's criticism, however, it does seem that Ross' own account cannot be interpreted in the unexceptionable way outlined above, for in his (rhetorical) attempts to give 'tû-tû' itself a semantic reference, he seems to have assumed that, for example, 'being subject to the rule of purification' might itself qualify as semantic reference.[30] Admittedly he rejected the possibility, but it is significant that he rejected it *not* because being subject to a rule requiring purification is not a physical object and therefore cannot amount to semantic reference, but simply because so to treat 'tû-tû' has the effect of making tautologous (which it is not) the second premiss in the syllogism; A person who kills a totem animal is tû-tû; A person who is tû-tû is subject to a ceremony of purification; therefore a person who kills a totem animal is subject to a ceremony of purification. Of course, Simpson's suspicions of Ross' use of the notion of 'semantic reference' are not entirely unfounded. Even the definition which Ross gave of the semantic reference of a *sentence*—the state of affairs which, if it exists, makes the sentence a true one—would involve him in great difficulties in certain respects which are not central to the present argument.[31] Moreover, it must be admitted that, even if Ross' view is capable of reformulation in the manner suggested, his use of the word

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29 Or, alternatively, that a word lacks semantic reference when it is *in no sense* 'applicable' to a concrete object.

30 Ross, (1957) 70 *Harv.L.R.* 812.

31 If semantic reference be as it is defined by Ross, and if a sentence has meaning only insofar as it has semantic reference, it may well be that 'There are no unicorns' and 'There are no gryphons,' and indeed all universal negative sentences *all have the same* meaning. Why? Simply because they all have the same semantic reference; the whole state of the universe. The only way of giving a semantic reference to such sentences other than the whole state of the universe would be by talking in terms of *negative* states of affairs, for example 'There not being any unicorns.' Such an approach, involving the postulation of negative states of affairs seems, to say the least, an unilluminating and therefore unsatisfactory one.

'meaningless' is at best a most misleading one.[32] These defects in Ross' formulation of his distinction between physical object-referring words and connective words should not be allowed to prevent us from seeing what that distinction is, nor from recognising that Simpson's demonstration of one of those defects in Ross' formulation leaves quite untouched the substance of the crucial distinction.

II.

Simpson's failure to understand the basic contrast made by Ross and Hart may well be the cause of another criticism which strikes at the elucidation proferred by Hart of such fundamental legal terms as 'right' and 'corporation.' It will be remembered that Hart contrasted, in the context of a game of cricket, the statement 'He is out' with the statement 'The ball has hit the wicket.' 'He is out' was a conclusion-drawing statement whereas 'The ball has hit the wicket' was a statement of fact. Upon this distinction Simpson has the following comment to make:

> But this contrast is not easy to see, for just as 'being out,' cricket-wise, is rule-defined, so are 'ball' and 'wicket' rule-defined by the laws of the game; not any object which could with linguistic propriety be called a ball counts as a cricket ball, but only certain balls made of certain materials of a certain size and weight. And the same is true of the wicket. Now it is curious to find that Hart . . . classifies what surely ought to be a conclusion of law as a statement of fact.[33]

and again:

> Hart contrasts the factual statement that the ball has hit the wicket with the conclusion drawing statement that the batsman is out, and I have suggested that since 'ball' and 'wicket' are both rule defined notions it is difficult to see why the statement that the ball has hit the wicket is itself not classed as a conclusion drawing statement.[34]

Is it the case, as Simpson asserts, that 'The ball has hit the wicket' is a conclusion drawing statement in Hart's own terms, and not a statement of fact as Hart claimed?

In a sense, what Simpson says is quite correct. In the context of a game of cricket the truth of the statement 'The ball has hit the wicket' depends in part upon the rules in which 'ball' and 'wicket' are defined. In that sense the sentence is a conclusion-drawing one. Does Hart's distinction therefore fail? We might wish to argue that whereas certain prescriptions operate directly upon the fact that a batsman is

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32 *Cf.* 'For a *large* class of cases—though not for all—in which we employ the word 'meaning' it can be defined thus: the meaning of a word is its use in the language.' L. Wittgenstein: ***Philosophical Investigations,*** I §43.

33 Simpson, *op. cit.* at 543.

34 *Id.* at 557.

out, no such prescriptions follow directly from the fact that the ball has hit the wicket.[35] However, this is not an acceptable method of supporting Hart's distinction, for it is one of form, not substance. It would be quite possible, in drawing up the rules of cricket, to dispense with the connective word 'out' and link the prescriptions to each of the fact situations the occurrence of any of which is presently sufficient for the truth of the statement 'He is out.' The statement 'The ball has hit the wicket' would, in that case, have a function similar in some respects to the presently used form 'He is out.'

However, despite the fact that one can push Hart's analysis back a further stage so that the sentence 'The ball has hit the wicket' is a conclusion-drawing sentence in Hart's own terms, there is clearly a substantial distinction between those two sentences, even if it is not elegantly expressed in the contrast between a sentence which describes facts and one which draws a conclusion from those facts. First, 'The ball has hit the wicket' although it is a sentence using rule-defined words, is using words which themselves refer to physical objects or events and is describing by means of those words the observable facts; 'He is out,' on the other hand, is not describing the specific observable facts, but is drawing an inference from those facts which themselves remain unstated. Secondly, the methods of verification differ. 'The ball has hit the wicket' is true if and only if the ball has, in fact, hit the wicket *i.e.* a entails T. 'He is out' is true if either the ball hit the wicket *or* the batsman was caught, *or* the batsman was stumped *or* the batsman was run out, *i.e.* a v b v c v d entails T. Again, 'The ball has hit the wicket' is appropriate in only one class (a) of fact situations, situations linked together by their essential similarity.[36] 'He is out,' on the other hand, is appropriate in more than one class of fact situations—a v b v c v d—and while a, b, c and d are each classes which are themselves made up of similar fact situation components, the only real similarity that *need* exist between the classes a, b, c and d is their general unification under the rules, via the connective concept 'out,' for the purposes of the prescriptions and, indeed, permissions, contained in the rules of cricket.[37]

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35 I do not rely upon the fact that it is not always the case that a batsman is out when the ball has hit the wicket. I assume, for the present purposes, that it is possible to make a statement which employed rule-defined, physical object or event words but not connective words like 'out,' and from the truth of which followed the truth of the statement 'He is out.'

36 The differences between these situations might stem from the place of contact, velocity and direction of the ball, damage to the wicket, *etc.*

37 It could *conceivably* be the case that in the rules of a game similar to cricket, a ball would be said to have hit the wicket if, for example, the batsman punched the umpire, dropped his cap or hit the wicketkeeper, as well as when the ball came into contact with the wicket. In such a case 'The ball has hit the wicket' could be either a statement of fact or a conclusion-drawing one, depending on the context.

These contrasts[38] between the two sentences are sufficient to justify drawing a clear distinction between them as Hart did in 'Definition and Theory in Jurisprudence,' even if his phrasing of that distinction is open to criticism. Both sentences are conclusion drawing in that whether what each states is true is dependent upon rules. The crucial distinction between them is, I think, best put on the basis of different meanings of the phrase 'statement of fact.' After all, as Hart points out, the reason why the definitions of words like 'right,' 'duty,' 'corporation,' and, indeed 'out' have normally proved unilluminating is because they lack the straightforward connection with the world of fact which words like 'dog,' 'cattle,' 'ball' and 'wicket' possess. Admittedly, 'He is out' is a statement of fact in at least two senses: first, in that it is, in a very loose sense, *about* observable facts; secondly, in that it is, logically, capable of being true or false. It is not, however, a statement of fact in the totally different sense of being a description of specific observable facts.

III.

It is the failure to distinguish clearly between the various senses of 'statement of fact,'[39] that seems to have led Simpson into a closely related misunderstanding. He claims that Hart's argument would suggest that 'Urk is tû-tû' is a statement of fact, whilst 'John Doe has acquired ownership of Blackacre,' is a conclusion of law. Consequently the function of the word 'tû-tû' is different from the function of the word 'ownership' and Ross' claim that the two concepts are analogous is therefore not sustainable.[40] Now it must be clear that sentences like 'Urk is tû-tû,' and 'One who meets his mother-in-law is tû-tû,' are, as Simpson points out, statements of fact in the sense that they are, logically, capable of being true or false.[41] They are *not* statements of fact in the sense of being *descriptions* of specific fact situations in the sense explained in the previous section. Likewise 'John Doe has acquired ownership of Blackacre' is a statement of fact in the former sense, for it too, is logically capable of being true or false, while it is equally true that it is not a statement of fact in the sense that it is a *mere* description of a specific fact situation. Consequently, Hart would not, in his terminology, class 'Urk is tû-tû' as a statement of fact, for he uses that classification in the sense of 'a mere description of fact situation,' and contrasts that with the class of conclusion-drawing

38 Further contrasts might be made as follows:
(1) by comparing the question 'Why is he out?' with 'Why did the ball hit the wicket?'
(2) by comparing the rules required for the truth of each statement. In one, the rule is one of equivalence, in the other it is not.

39 Simpson is well aware that there may be different senses of 'statement of fact.' See *e.g.* (1964) 80 *L.Q.R.* 535 at 542-543: '. . . sometimes to say that a statement is a statement of fact means only that the statement is in fact true, whilst on other occasions the implication may be that the statement is capable (logically) of truth or falsity.' (At 543). However it is clear that this contrast is not the one which is crucial in the present context.

40 Simpson, *op. cit.* at 542-543.

41 *Id.* at 542.

statements (*supra*). Hence it does not follow from Hart's views, as Simpson claims, that Ross was in any way mistaken in asserting that 'ownership' and 'tû-tû' are analogous concepts.[42]

There is one final criticism of Ross' analogy which bears examination. Early in his article Simpson claims that it is not clear that the function of the word 'tû-tû' in Ross' allegory is the same as the function of the word 'ownership,' *i.e.* that it is not clear that the two are analogous concepts. He further suggested 'I do not think that the question is soluble, *because of* our ignorance of the linguistic habits of the islanders.'[43] This criticism is elaborated later in the article:

> We do not possess enough information about the linguistic habits of the islanders to enable us to tell whether there is a divergence between the meaning of 'tû-tû' in law and its meaning outside the law, we cannot tell whether the pronouncement 'He who kills a totem animal is tû-tû' defines a legal concept or not.[44]

Now Simpson may be asserting either of two things. Firstly, he may be claiming (as is suggested by the first of the above passages) that it is not possible to know the function of a word unless one knows its different meanings. If this is what Simpson means, he has contradicted himself, for one of his main points, as we have already seen, is that the *function* of a term (*e.g.* as a descriptive) does not necessarily vary with changes in the *meaning* of that word.[45] Consequently, one can discover an analogy between 'tû-tû' and 'ownership,' an analogy which consists in the sharing of a characteristic function, without seeing whether either word has in some contexts a totally different meaning.

On the other hand, in asserting that it isn't possible to discover if there is an analogy between 'tû-tû' and 'ownership,' Simpson could be talking of a very different type of analogy, an analogy based upon the fact that each is a *legal,* as distinct from an *ordinary language,* concept. If this is his meaning, then his remark is correct, but beside the point. As we have already noted, neither Hart nor Ross claimed that their analyses are *only* applicable to legal concepts, *i.e.* (in Simpson's terms) concepts which have a peculiarly *legal* meaning from the ordinary language meaning.[46] To make the analogy between 'tû-tû'

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42 Ross treated the statement that a person is married in much the same way as Hart would treat 'Urk is tû-tû.' 'What is implied by stating that a person is "married"? The statement refers to the fact that the person contracted a marriage that has not been dissolved. But "to contract a marriage is not something purely factual" . . . The statement that a person has contracted a marriage includes an assertion concerning valid law . . . The statement that a person is married refers thus to two conditions; on the one hand to the purely factual happening . . . on the other to a legal condition. . . .' Ross, *On Law and Justice,* at 173-174. Of course, Hart would not say that the statement *refers* to the two conditions, but, rather, that it is dependent for its truth upon these conditions.

43 Simpson, *op. cit.* at 541.

44 *Id.* at 548.

45 *Id.* at 549.

46 *Id.* at 547-548.

and 'ownership' which Ross made does not require that both be legal concepts in the given sense, but only that, whether they be legal or non-legal concepts, their respective functions be the same.

IV

If the arguments set out above are correct, then Simpson's criticisms of Hart and Ross, particularly of Hart, are in large part unfounded, for there lies at the bottom of these criticisms a crucial misunderstanding by Simpson of what Hart and Ross were attempting. Simpson consistently assumes what is demonstrably not the case, that both writers were claiming to provide lawyers with a mode of analysis (1) which is applicable to *all* legal concepts and (2) which is applicable *only* to legal concepts. As it is his view that analytical jurisprudence *ought* to concern itself with examining legal concepts in a special way, namely, by examining the differences in meaning of words used in legal and non-legal contexts and to discover the reason or reasons for such differences in meaning, Simpson assumes, incorrectly, that it is the same inquiry which is central to the work of both Hart and Ross. Neither of those writers would deny the value of Simpson's suggestions concerning the analysis of words in legal and non-legal contexts. They would, however, claim that of certain fundamental terms of theoretical constructs it is not possible to obtain a full understanding without looking closely at the peculiar function of these words, whether used in a legal or in a non-legal context.[47]

[47] I am much indebted to Messrs. M. C. Bradley and S. E. Hughes of the Philosophy Department, University of Adelaide, for much helpful criticism in the preparation of this article. Its shortcomings are, of course, not their responsibility.