Visualization of Hans Kelsen’s Pure Theory of Law

Vytautas ĖYRAS
Vilnius University
Vilnius, Lithuania
Vytautas.Cyras@mif.vu.lt

Friedrich LACHMAYER
University of Innsbruck
Innsbruck, Austria
Friedrich.Lachmayer@uibk.ac.at

Guido TSUNO
Chuo University
Tokyo, Japan
Guido.Tsuno@mac.com

FCASL Workshop “The Fundamental Concepts and the Systematization of Law”
http://fundamentalconcepts.wordpress.com/
In conjunction with JURIX 2011, Vienna
14 December 2011
INTRODUCTION

Is (Sein) – Ought (Sollen) (legal meaning, Sinn, rechtliche Bedeutung)
Language of the Pure Theory of Law

Modus

Sein (‘is’)  Sinn (meaning)

Sollen (‘ought’)

Modus (‘mode’) refers to the structure or framework within which the concepts of ‘is’ (Sein) and ‘ought’ (Sollen) operate.

Sein (‘is’) refers to the state of being or existence.

Sollen (‘ought’) refers to the concept of obligation or what should be.

Sinn (‘meaning’) connects the ‘is’ and ‘ought’ to provide the context or interpretation of the mode within which these concepts are applied.
Metalevel

Pure Theory of Law

Is (Sein)

A speech, a paper
Metalevel

Pure Theory of Law

Meaning (Sinn)
A law, a legal decision
Ought (Sollen)
= legal meaning
(rechtliche Bedeutung)

Is (Sein)
A speech, a paper

Rules

Stage
1. INTERPRETATION OF FACTUAL REALITY
Factual situation

Situation, Facts
Interpretation: Legal facts

Situation, Facts

Meaning („Sinn“)

Interpretation
Scheme of legal interpretation

Situation, Facts

Meaning ("Sinn")

Interpretation

Scheme of interpretation
Norm

Situation, Facts

Meaning („Sinn“)

Interpretation

Reaction

Scheme of interpretation

Norm
Norm as a scheme of legal interpretation

Situation, Facts → Meaning ("Sinn") → Interpretation → Reaction → Norm

Scheme of interpretation
2. INTERPRETATION OF LEGAL TEXTS
Legal text
Interpretation of the content

Legal text

Norm

Terms

Interpretation of the content
Modal indifferent substratum

Terms

Norm

Legal text

Terms

Interpretation of the content
System of terms: thesaurus, taxonomies, ontologies

Modal indifferent substratum

Legal text

Interpretation of the content
3. INTERPRETATION OF LEGAL ACTS
Normatywny tekst
Meaning: valid legal act

Interpretation
Meaning: valid legal act

Interpretation

Hypothesis
Concept of basic norm

Meaning: valid legal act

Interpretation

Hypothesis
Hypothesis

Meaning:
valid legal act

Interpretation

Concept of basic norm

Hypothesis
4. DOUBLE-NORM
Hypothetical norm
Categorical norm
Another concept (Luhmann)
5. HIERARCHY OF NORMS
Law of state

- Constitution
- Law
- Statute
- Decision
European Union law

- EU primary law
- EU secondary law

- Constitution
- Law
- Statute
- Decision
International law

Constitution

Law

Statute

Decision

EU primary law

EU secondary law
Private treaty
Basic norm

- Constitution
- Law
- Statute
- Decision

International law
- EU primary law
- EU secondary law

Private treaty
6. NORM-MONISM
Legal order = norms

The legal order consists only of norms
Definition ∈ norm

Legal definitions are only part of norms
∃ other legal elements

Another concept:
there are other legal elements, too.
E.g., indicative legal definitions
Logical Jurisprudence
by Hajime Yoshino

Legal Order
Legal norms

Legal sentences
Legal Lexica

Legal Order

Legal norms

Definitions

Project by Guido Tsuno
7. PURIFICATION

Deconstruction of traditional legal theory
Person

Traditional concepts of Personality = Substance
Person

Traditional concepts of Personality = Substance

PTL: person as a quantity of rights and duties
Person

PTL: person as a quantity of rights and duties
Apotheosis

Pure Theory

\[ PTL \rightarrow \text{deconstruction of traditional legal theories} \]

but on the contrary: “apotheosis” of the own concept
Thank you for attention

Vytautas.Cyra@mif.vu.lt   Friedrich.Lachmayer@uibk.ac.at   Guido.Tsuno@mac.com