Law, Morality, and Everything Else:  
General Jurisprudence as a Branch of Metanormative Theory

by David Plunkett (Dartmouth)  
and Scott Shapiro (Yale)

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Abstract

In this paper, we propose a novel account of general jurisprudence. We situate general jurisprudence within a more general philosophical project (namely, the project of metanormative theory) and claim that general jurisprudence parallels another well-known sub-part of that general philosophical project (namely, a certain core part of metaethics). All of these projects, we claim, are centered on a kind of explanatory project: namely, trying to explain how a certain part of thought, talk, and reality fits into reality overall. We claim that metalegal theory is the project of trying to explain how legal thought, talk, and reality fits into reality. In turn, we claim that general jurisprudence is the part of metalegal theory that concerns universal legal thought and talk, i.e. legal thought and talk that occurs across all social/historical contexts. Following our argument in favor of this way of thinking about general jurisprudence, we then illustrate some of its main philosophical payouts, explain how it helps make sense of both actual and possible positions within the field (including metalegal expressivism), and explore some basic methodological suggestions based on it.

Introduction.

The part of legal philosophy that is standardly known as general jurisprudence is often glossed as the study of “the nature of law”. General jurisprudence isn’t about the nature of the law of the United States, the United Kingdom, or the Roman Empire: it is about the nature of law in general. In many contexts, this description helpfully conveys the gist of general jurisprudence. Taken literally, however, it is deeply misleading.

First, questions about the nature of something are paradigmatically metaphysical questions. But when one looks at the leading historical and contemporary work in general jurisprudence one finds a broad range of claims. These claims are not only

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1 Thanks to [Removed for blind review].
metaphysical, but also conceptual (such as claims about the concept LAW), semantic (such as claims about what it means to say that “X is legally obligated to φ”), and epistemological (such as claims about how we learn about the content of the law). Moreover, these non-metaphysical claims are not always advanced in the service of metaphysical claims. Indeed, many legal philosophers harbor deep suspicion about metaphysics, and don’t spend much (if any) time working directly on it.

Second, even when philosophers in general jurisprudence are explicitly interested in metaphysics, they are not always interest in the nature of law. The debate over legal positivism, which many take to be one of the most important debates in the field, is a case in point. If general jurisprudence were about the “the nature of law”, one would expect the positivism/antipositivism debate to be squarely about this topic. But that is not so. The positivism/antipositivism debate (or at least a core part of it) is about what grounds what: roughly, whether legal facts—facts about the content and existence of legal systems—are ultimately grounded in social facts alone, or in moral facts as well. The answers to such grounding questions might, as some recent work in meta-metaphysics suggests, be determined by the nature of things. However, even if they are, it does not follow that debates about grounding are really just about the nature of things, but somehow in disguise. After all, metaphysics is not exclusively about the nature of things. It asks a wide range of questions, including those about grounding, real definition, essence, reduction, constitution, composition, and supervenience. The metaphysics of law is no different, in this respect, from the metaphysics of mind, or the metaphysics of math.

As these concerns show, describing the subject matter of general jurisprudence as “the nature of law” is far from a philosophically precise way of characterizing the field. It is not surprising, therefore, that many philosophers are puzzled by general jurisprudence, and unsure whether its central questions are even substantive. Some suspect, for example, that the positivism/antipositivism debate is merely a verbal

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2 For this basic kind of characterization of the debate over legal positivism, see (Greenberg 2004), (Rosen 2010), (Shapiro 2011), and (Plunkett 2012).

3 For discussion of this idea, see (Rosen 2010), (Fine 2012), and (Dasgupta 2014).
dispute in which participants are “talking past” each other about distinct topics. A more accurate characterization of the field might help address such skepticism.

Legal philosophers working in general jurisprudence, therefore, face a two-fold challenge. Their task is to clarify what general jurisprudence is in a way that (1) explains the philosophical unity of the field given the diversity of its questions and (2) does not confound those who work in cognate areas of philosophy.

To that end, this paper advances a basic framework for thinking about general jurisprudence. Our account begins with the project of *metalegal* theory, which we characterize as the explanation of how legal thought and talk – and what (if anything) such thought and talk is distinctively about – fits into reality overall. General jurisprudence, we claim, is the part of metalegal theory that focuses on *universal* legal thought and talk, i.e., the part of legal thought and talk that is universal across all social/historical contexts, and what (if anything) it is distinctively about. We argue that the explanatory project of metalegal theory is parallel to the explanatory project of metaethics. And we argue that general jurisprudence can be seen (along with metaethics) as a subset of the larger explanatory project that is metanormative theory.

In making these claims, our primary goal is to set out a unified explanatory project that we think is at the core of the part of legal philosophy standardly labeled as “general jurisprudence.” Our account, however, is not meant to capture perfectly existing usage of the term ‘general jurisprudence’. To the extent that our account diverges from professional practice, we offer it as a reform to the current meaning of ‘general jurisprudence’.4

Our account, we argue, earns its keep in two ways. First, it illuminates existing positions and debates within legal philosophy. Second, it shows how a range of possible positions fit into the project of general jurisprudence and identifies new tools and basic argument-types for making progress within the field. Thus, in addition to helping philosophers better understand what general jurisprudence is, we argue that our framework puts them in an improved position to do general jurisprudence as well.

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4 We pursue a similar strategy in developing our accounts of metaethics and metanormative theory.
§1. Metaethics.

We construct our central framework in four stages. First, we make a claim about what metaethics is. Second, we show that metalegal theory is a parallel inquiry, one in which the objects of study are legal, instead of ethical. Third, we show that general jurisprudence is a subset of metalegal theory. Fourth, we show that metaethics and metalegal theory are branches of metanormative theory.

Metaethics is an area of inquiry in philosophy that, like general jurisprudence, covers a broad range of issues: metaphysical, semantic, epistemological, conceptual, etc. How do such diverse concerns fit together?

We think that all be seen as aspects of a single explanatory project, which can be characterized as follows. Ethical thought and talk, at least at first blush, seems to be partly about distinctively ethical things (e.g., ethical facts, properties, relations, etc.). We can ask how this ethical thought and talk – and which things (if any) that thought and talk is distinctively about – fit into reality overall. Answering this question, we claim, is the basic explanatory project of metaethics.  

Before we unpack some of the key elements of this characterization of metaethics, we should underscore its schematic nature. Since our aim here is not to adjudicate between various positions within metaethics, but rather illuminate the metaethical project as such, we pursue an ecumenical gloss on the central components of our account – and illustrate by discussing some representative ways of filling them out. Different philosophers working in metaethics, with different auxiliary commitments in other areas of philosophy (e.g., metaphysics, philosophy of mind, etc.), will understand aspects of this project (e.g., “fitting into”, “reality”, etc.) in different ways. (Parallel remarks apply to our accounts of the metalegal and metanormative projects).

Start with the idea of ethical thought and talk being about certain things. The sense of ‘aboutness’ we have in mind here is an intensional one: in the way that “Santa Claus lives in the north pole” is about Santa Claus, that is, someone who might not exist. This notion of ‘aboutness’ is consistent with deflationary, minimalist, and quasi-realist readings of the representation involved here. Ethical thought and talk, at least prima

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5 The account of metaethics that we develop here is the same basic one developed in (McPherson and Plunkett Forthcoming). Our discussion of how to best understand this account of metaethics draws heavily on the discussion in (McPherson and Plunkett Forthcoming).
facie, seems to be about things in at least this intensional sense. And, moreover, it seems to be about certain distinctively ethical things. For example: the thought that *Bob has an ethical obligation to donate more of his money to charity* is about a) things that lots of non-ethical thoughts are also about (e.g., Bob, his money, charity, donation, etc.), as well as b) something here that is distinctively ethical, namely, *ethical obligation*.

However, we don’t want to build it into our account of metaethics that ethical thought and talk is in fact about anything at all. We remain agnostic here because on certain views in metaethics – e.g., certain kinds of non-cognitivism, as well as certain error theoretic accounts – ethical thought and talk fails to be about anything even in this razor-thin sense of ‘about’.

In our account, then, it is the task of metaethics to explain how ethical things fit into reality only *insofar as* ethical thought and talk carries with it ontological commitment. Claiming that ethical thought and talk successfully refers to certain things in the actual world is one kind of explanation. That ethical thought and talk is (intensionally) about certain things, but fails to refer in the actual world, is another kind of explanation.

Next, consider the idea of reality. Philosophers understand reality in different ways: for example, in terms of *what is* or *what is actual*, and in terms of *what is fundamental*. Different views on what “reality” amounts to will lead to different explanatory ambitions. Our characterization of metaethics is compatible with a wide range of views on this topic. For our purposes here, it will often be useful to think of reality as the totality of what there is and what is the case—which, importantly, includes other kinds of thought and talk.

In what follows, we will use the term *ethical reality* to refer to that part of reality which ethical thought and talk is distinctively about. Building on this, we will often gloss our view of metaethics as follows: metaethics aims to explain how ethical thought, talk, and reality fits into reality overall. This way of talking, however, is shorthand. It should also be kept in mind that a) ethical thought and talk might not be “about” anything at all and b) *ethical reality* might be considerably narrower than what ethical thought and talk is distinctively about.

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6 See (Quine 1948) for an influential discussion that contrasts “what is” with “what is actual” and (Fine 2001) for a discussion which takes “reality” to be about what is fundamental.
As we understand it, the explanatory project of metaethics isn’t primarily aimed at answering ethical questions (e.g., “under what conditions is abortion ethically permissible?”), or at explaining why certain acts have the ethical status that they do (e.g., “you are ethically required to donate more money to Oxfam because doing so best promotes overall well-being”). These different projects might intersect in any number of important ways with the explanatory project of metaethics. But they have distinct constitutive aims, and hence distinct success-conditions.

Different theses in metaethics target different topics within the overall explanatory project we have identified. Consider expressivism. In the first instance, expressivism is a thesis about ethical thought and talk. For our purposes, we can understand expressivism as a conjunction of three claims: a) ethical judgments consist, at the most basic explanatory level, in some kind of non-cognitive attitude (e.g., desires or plans); b) ethical statements – statements in language which communicate ethical judgments – consist of expression of the relevant non-cognitive attitude; and c) the meaning of ethical statements is to be explained in terms of such expressions.\footnote{For important statements of the kind of metaethical expressivism we have in mind here, see (Blackburn 1998), (Gibbard 1990), (Gibbard 2003), and (Schroeder 2008).}

Thus rendered, expressivism is a thesis in the philosophy of mind and the philosophy of language. The thesis by itself does not answer many of the crucial questions that will often arise in carrying out the overall explanatory project of metaethics: for example, about the metaphysics of ethics (e.g., the nature of ethical facts, insofar as there are any) or the epistemology of ethics (e.g., how we learn about what is correct in ethics, insofar as there are correct views to have in this domain). But that is not a failing of metaethical expressivism. Expressivism about ethical thought and talk is a metaethical thesis, but it is not a fully comprehensive metaethical view that by itself completes the overall explanatory project that defines metaethics.

Take another example: the debate between non-naturalists and naturalists about the metaphysics of ethics.\footnote{For some helpful contemporary statements of non-naturalism about the metaphysics of ethics, see (Dancy 2006), (Enoch 2011b), and (Parfit 2011). For some helpful contemporary statements of naturalism about the metaphysics of ethics, see (Railton 2003), (Jackson 1998), and (Boyd 1997).} The participants in this debate usually agree that there is some kind of ethical reality. The core issue is whether ethical reality is “non-naturalistic” –
c.g., because this ethical reality may not be continuous with the part of reality that is studied by the natural and social sciences. This debate is one that is centered on a metaphysical issue. Thus, even if we knew that the metaphysics of ethics was naturalistic, we still would not know how ethical thought and talk function. Naturalism is not a fully comprehensive metaethical view that completes the overall explanatory project that defines metaethics, though it aims to be a crucial component of such a view.

In order to provide a satisfactory overall explanation of how ethical thought, talk, and reality fits into reality, there are certain kinds of questions that will often be crucial to address, including ones in metaphysics, philosophy of mind, philosophy of language, and epistemology. Crucially, however, the list of important topics in metaethics is not static. For what unifies metaethics is not a list of specific topics but rather an explanatory project. And because the explanatory project is central to metaethics, one’s approach to metaethics will depend on one’s commitments in other parts of philosophy (e.g., about the nature of reality or explanation). It will also depend on which part of this explanatory project one is working on at a given time. If one is defending a form of expressivism in metaethics, one should have something to say about the Frege-Geach problem. But that is not a central problem if, for example, one is doing research in the epistemology of ethics.

To return to our overall thesis about what metaethics is, the list of topics that have been the central concern of metaethicists is no accident. They are questions that make sense to ask as part of at least one reasonable way (given a certain social/historical context) of pursuing the overall explanatory project that is metaethics. Moreover, these seemingly disparate topics are deeply connected to each other, even though they can be pursued, often quite successfully, in relative isolation.

Return to the debates over expressivism and non-naturalism. Expressivism by itself doesn’t entail whether naturalism about the metaphysics of ethics is true. However, opting for a form of expressivism changes the resources one has for thinking

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9 For a more detailed characterization of what this metaphysical debate is about that is in the same spirit as the gloss given here, see (McPherson 2015).
10 Roughly, the problem is that it looks hard for expressivists to explain the meaning of ethical claims that are used in embedded contexts, or that are used in ways other than asserting an ethical claim. For a good overview of the Frege-Geach problem, see (Woods Forthcoming).
about those metaphysical issues, and will make certain views more or less attractive. For example, expressivism (at least prima facie) allows one to say many of the things metaphysical non-naturalists have wanted to say about the gulf between ethical reality and non-normative reality, but via a different route; one that is at the level of our thought and talk, rather than at the level of the metaphysics of what that thought and talk is about.\footnote{On this theme, see the opening parts of\cite{Gibbard2003}.} By contrast, a non-naturalist who posits irreducibly normative properties will want to explain how our ethical talk (and other normative talk) latches on to these non-naturalistic properties, and how the meaning of ethical terms is related to them.\footnote{For example, someone who posits the kind of properties posited by David Enoch in\cite{Enoch2011b}.}

These examples highlight the holistic nature of metaethics: different metaethical theses fit more or less well in overall package deals in metaethics, ones that try to provide a comprehensive explanation of how ethical thought, talk, and reality fits into the rest of reality. The plausibility of a given metaethical thesis – whether it is in epistemology, metaphysics, language, etc. – will depend on whether it can be integrated into an overall package deal that is itself plausible.

§2. General Jurisprudence.

In the last section, we presented a characterization of metaethics. We will now use it to offer a characterization of general jurisprudence. We begin by swapping ‘ethical’ out in definition of metaethics and replacing it with ‘legal’. This yields a characterization of what we can call metalegal theory. Metalegal theory aims to explain how legal thought and talk – and what (if anything) such thought and talk is distinctively about – fits into reality overall. In parallel with the way we abbreviated our gloss of metaethics, we can say that metalegal theory aims to explain how legal thought, talk, and reality fits into reality overall.

We think that there is a crucial philosophical parallel between the metaethical and the metalegal.\footnote{For a similar line of thought, see\cite{Toh2013}.} But ‘general jurisprudence’ is not just another name for metalegal inquiry. Rather, it refers only to a certain subset. As we glossed in the introduction, general jurisprudence is standardly taken to be about law in general, and not about a part
of legal thought, talk, and reality that is parochial to a specific social/historical context. Given this, we think the term ‘general jurisprudence’ should refer to the subset of metalegal inquiry that concerns universal legal thought, talk, and reality: that is, legal thought and talk wherever it occurs, in whatever social/historical context, and the reality that such thought and talk is about.\textsuperscript{14}

As with the term ‘metaethics’, there are a variety of ways that philosophers use the term ‘general jurisprudence’. And, as with the term ‘metaethics’, we do not aim to capture the full range of ways the way in which the term ‘general jurisprudence’ is used. Rather, we aim to pick out a theoretically interesting and unified philosophical project within legal philosophy, which, at the same time, draws on key strands of existing usage of the term ‘general jurisprudence’. This is important to emphasize, given the wide range of ways the term ‘general jurisprudence’ is used in contemporary legal philosophy. For example, on one way of using the term ‘general jurisprudence’, it is a field of inquiry that includes not only the kind of descriptive explanatory project we have put forward here, but also a normative one about what law in general should be. We take the latter to be an important project within normative political philosophy and normative ethics, where these are projects with their own constitutive standards of success, and not part of metalegal theory, which has different standards of success. Thus, on our view, this kind of normative project is not part of general jurisprudence. In making this claim, we align ourselves with the widespread practice within contemporary legal philosophy of distinguishing questions in general jurisprudence (sometimes also glossed as “analytical jurisprudence”) from questions in normative jurisprudence.\textsuperscript{15}

Of course, the following methodological thesis might be true: the best way to pursue general jurisprudence (or metalegal theory more broadly) is to do extensive work in normative political philosophy and ethics. This position is analogous to the idea that

\textsuperscript{14} Note that we can make a parallel distinction within metaethics as well. That is: we can separate out the part of metaethics that deals with universal ethical thought and talk, as opposed to ethical thought and talk that is socially/historically specific. For example: perhaps specifically moral thought and talk is best understood as a subset of ethical thought and talk, but not one which is universal across all social/historical contexts. For some helpful discussion of that idea, see (Anscombe 1958) and (Williams 1985).

\textsuperscript{15} See, for example, (Hart 1961/2012), (Shapiro 2011), (Leiter 2007), and (Gardner 2012b).
the best way to pursue metaethics involves doing extensive work in normative ethics.\textsuperscript{16} Our account of general jurisprudence is \textit{neutral} on this kind of methodological question within legal philosophy, just as our account of metaethics is neutral on similar methodological questions in metaethics. In short, this methodological idea (namely, that doing normative political philosophy or ethics is crucial for doing general jurisprudence) is distinct from thinking that there is an important theoretical cut between different projects within legal philosophy with different success-conditions. It can be useful to keep those projects \textit{analytically} separate even if they are methodologically connected.

In putting forward our view of general jurisprudence, we do not mean to use the term ‘general jurisprudence’ as an \textit{honorable}, according to which questions of general jurisprudence are more important, or “philosophically deeper”, than normative questions about what law should be (or than any other questions within legal philosophy). Our methodology for regimenting the use of term ‘general jurisprudence’ does rest on the idea that general jurisprudence is a theoretically interesting philosophical kind. But it is neutral on the kind of comparative judgment that we just glossed above.\textsuperscript{17} Indeed, our characterization of general jurisprudence is compatible with the idea that general jurisprudence is not as valuable as other projects within legal philosophy.\textsuperscript{18}

Let us now turn to some important things that do follow from our account of metalegal theory and general jurisprudence. First, just as with philosophers working in metaethics, philosophers working in metalegal theory can focus on different aspects of the overall explanatory project. For example, they can focus on issues of language, metaphysics, or epistemology, while not engaging with issues that are outside of that focus. (The question of when it is a good idea to do so, is, of course, a live methodological question). Second, just as in the case of metaethics, these philosophers can bring different tools and theses to whatever part of the explanatory project in which they are interested. Different philosophers have different background commitments in

\textsuperscript{16}See (Darwall 1998) and (McPherson 2012) for discussion of this basic idea.

\textsuperscript{17}Parallel remarks to the ones we have made above apply to our use of the terms ‘metaethics’ and ‘metanormative’. In making these points, we draw on (McPherson and Plunkett Forthcoming).

\textsuperscript{18}For a discussion of general jurisprudence that grants our basic characterization of the field, but then goes on to make the claim that the explanatory project that we have identified isn’t that important or interesting (relative to other philosophical projects we might spend our time on), see (Enoch Forthcoming).
auxiliary parts of philosophy. Third, just as with the case of metaethics, different theses in metalegal theory will hang together more or less well as part of overall comprehensive “package deals”. Such package deals will be ones that aim to provide a comprehensive explanatory account of how legal thought, talk, and reality fit into reality overall.

As this brings out, there are a wide range of approaches that one can take to the explanatory project that defines metalegal theory – and a number of different entry points to that explanatory project. It would be a mistake, therefore, to think that one of them (e.g., working on the metaphysics of legal norms) is the privileged starting point. What we need to appreciate is how a range of different theses, approaches, and questions are unified by being part of the overall explanatory project of general jurisprudence that we have identified above.

§3. General Jurisprudence as a Branch of Metanormative Theory.

Thus far, we have argued for the following two claims: the structure of metalegal theory closely parallels that of metaethics, and, second, that general jurisprudence is the branch of metalegal theory that concerns universal legal thought, talk, and reality. We now turn to developing the final claim of our framework: metaethics and metalegal theory are parallel branches of an overarching explanatory project, namely, the project of metanormative theory.

Normative judgments about how things should be – and, relatedly, evaluative judgments about what is better or worse, good or bad, etc. – are a pervasive feature of our lives. We make judgments about what activities we should engage in, what government policies are right to adopt, what standards should guide scientific inquiry, and which movies are good. The basic aim of metanormative theory is to explain the full range of normative and evaluative thought, the language we use to communicate these thoughts, and what (if anything) this thought and talk is distinctively about (e.g., normative and evaluative facts, properties, relations, etc.). More specifically, the aim of metanormative theory is to explain how normative and evaluative thought and talk – and what (if anything) such thought and talk is distinctively about – fits into reality. Again, we can shorten this characterization to how normative and evaluative thought, talk, and reality fits into reality. And if we follow the convention within contemporary philosophy and use the term “normative” to group together the normative (narrowly
construed) and the evaluative, we can condense the gloss even further, namely, as how normative thought, talk, and reality fits into reality.

To be sure, philosophers don’t agree on how to demarcate exactly what kinds of thought and talk falls under the purview of metanormative theory. Nevertheless, it is fairly uncontroversial that ethical thought and talk falls within its remit. Moreover, it is fairly uncontroversial that these include both true (or correct) ethical judgments, as well as false (or incorrect) ones. Thus, we might gain purchase on what metanormative theory is by briefly examining why this is so.

The question of what makes ethical thought, talk, and reality normative is perhaps one of the central questions within metaethics and metanormative theory. Thus, given our aims in this paper, it would be a mistake for us to attempt to construct a full theory here. For the purposes of developing our framework, what is crucial is a distinction between two different kinds of normativity.

On the one hand, consider the rules of chess, or the fashion norms that are prevalent in a social group. We might say that both are “norms” in the following sense: they are standards that can be used to measure whether or not something (e.g., an action, a style of dress, etc.) accords with it. This thin sense of a norm, which we will call a formal norm, yields a correspondingly thin notion of normativity, which we will call formal normativity.

Formal normativity comes exceedingly cheap. Many things possess it. Contrast this with a thicker sense of “normativity”, which many take to be at the heart of ethics and epistemology. When an agent does something she ought not to do all-things-considered it seems that she has done something more criticizable and mistaken then when she fails to conform to the norms of fashion. This suggests the idea of a more authoritative or full-blooded notion of normativity, which we will call robust normativity.19

19 Our distinction between robust and formal normativity draws on (McPherson 2011), as well as the thin definition of “norm” given in Shapiro in (Shapiro 2011) (which corresponds here to our understanding of a formal norm). For connected discussion of the kind of distinction we are drawing here between different kinds of normativity, see (Copp 2005), who contrasts “generic” normativity with a more full-blooded notion, and (Parfit 2011), who contrasts normativity in the “rule-implying” sense with a more full-blooded notion, which he calls normativity in the “reason-implying” sense.
The idea that there is something worth calling “robust normativity” that is different from formal normativity animates much of the debates within metaethics. Indeed, it is arguably a central part of why many philosophers are interested in metaethics in the first place. The question of what exactly robust normativity is lies at the heart of debates within metaethics. For example, some believe that robust normativity is best captured by appeal to the idea of a normative system providing genuine reasons for action, while others posit some kind of appeal to categorical vs. hypothetical norms. For our purposes, what matters is that the reader has a rough sense of the contrast between robust and formal normativity, and why one might think there is such a contrast in the first place.

Now notice that we face a choice: are ethical claims “normative” because of their ties to formal or robust normativity? This question gives rise to two different ways of understanding metanormative theory, namely, as the project of explaining (1) how thought, talk, and reality that involves formal normativity fits into reality overall and (2) how thought, talk, and reality that involves robust normativity fits into reality overall. We can call the first possibility the wide understanding of metanormative theory, and the second possibility the narrow understanding.

Before moving on, it is important to underscore that both the narrow and wide understandings of metanormative theory have the resources to count false normative judgments as genuinely “normative” ones. For example, one might proceed as follows. What makes a claim a “normative” one, one might claim, is that it is about normative facts, properties, or relations. A claim might be about such things but be false. Indeed, given our capacious sense of ‘about’ that we introduced earlier, it could even be about such things even if there are no such facts, properties, or relations are instantiated at all. We think this is a welcome result, given that error theories are serious possibilities in

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20 For an example of the first sort of approach, see (Parfit 2011). For some important reasons to be concerned with the second approach, at least if one thinks morality is robustly normative in a way that etiquette is not, see (Foot 1972).

21 Our discussion here parallels the discussion in (McPherson and Plunkett Forthcoming).
many branches of metanormative theory. It is a mark in favor of our view that has the resources to include such views as live theoretical options.\textsuperscript{22}

Let us now turn to metalegal theory. There are different cases to be made for why metalegal theory is a branch of metanormative theory. Which kind of case one should make depends on whether one is working with the wide or narrow understanding of metanormative theory.

Consider the wide notion of metanormative theory. The law clearly involves norms in the weaker formal sense of norm identified above – namely, standards that can be used to measure whether things conform to those standards or not.\textsuperscript{23} Legal thought, talk, and reality is bound up with discussion of a kind of normativity that is at least formally normative. Thus, when one uses a wide notion of formal normativity, then metalegal work is trivially classified as a branch of metanormative theory.

Now consider the narrow notion of metanormative theory. Things here get trickier and more controversial much more quickly. For our purposes here, it will suffice to outline an argument one could make for why metalegal theory is a branch of narrow metanormative theory.

The argument starts from the (purported) fact that the law makes demands on its subjects that at least purport to be fully authoritative with respect to all-things-considered issues of what to do.\textsuperscript{24} In other words, the law itself claims or invokes the same kind of loaded sense of normativity that is a core focus of metaethical concern. When the law obligates adults to pay taxes, for example, it is claiming that adults have an all-

\textsuperscript{22} It should be noted that the pattern of explanation we put forward earlier in this paragraph for why ethical judgments are “normative” is a broadly object-level approach. It is ultimately based on (purported) features of what ethical thought and talk is distinctively about (e.g., features of ethical facts, properties, or relations), rather than just features of the thought and talk as such. In using this as an example, we are not claiming that this is the right pattern of explanation to account for why ethical judgments are genuinely “normative”, in either the robust or formal sense. As we stressed earlier, some metaethical theories deny that ethical thought and talk is distinctively “about” anything, in even our minimal sense of “about”. Such philosophers might then appeal to other (purported) features of ethical thought and talk to explain why it is normative. For example, one might appeal (as many non-cognitivists do) to the (purportedly) distinctive mental states involved in such talk, or, relatedly, to the (purportedly) distinctive kinds of speaker endorsement involved in such thought and talk. Doing so would not preclude the idea that false normative judgments still counted as genuinely “normative” ones.

\textsuperscript{23} One way to support this idea would be to hold the following: laws are norms in (at least) this formal sense of norm.

\textsuperscript{24} For discussion of this theme, see (Raz 1979/2002), (Marmor 2011), and (Shapiro 2011).
things-considered reason for paying their taxes. Tax evaders are punished precisely because they fail to respect the normative claims of the law. If one accepts the idea that the law claims robust normativity, then metalegal inquiry will be a branch of metanormative theory in the narrow sense. For it will then follow that at least a crucial subset of legal thought and talk invokes robust normativity. And this way of invoking robust normativity, one might argue, is the relevant kind of way for making such thought and talk fall within the purview of narrow metanormative theory.

In order for this kind of strategy to work, much more would need to be said. First, one would have to say more about the relevant notion of ‘claiming’ invoked here, and what it means for the law to claim it (e.g., as opposed to a person claiming it).\(^\text{25}\) Second, one would need to guard against overgeneralization concerns. If all it takes for a part of thought and talk to fall within the purview of narrow metanormative theory is a weak sort of “claiming” of robust normativity, then perhaps many parts of thought and talk would fall under its purview, including, for example, large parts of religious thought and talk. This might be an interesting result, or it might mean the category of “narrow” metanormative theory has become too capacious to get at the relevant distinction we were interested in initially. Third, even if this strategy could be made to work, it might only vindicate the claim that a subset of legal thought and talk is part of metanormative theory, rather than all of it. Not all thought and talk that is about something that claims robust normativity will itself claim robust normativity. Consider the following: judgments made by religious skeptics about what is true within a religious code are hardly things that most philosophers working in metaethics would count as paradigmatic cases of “robustly normative judgments”, regardless of anything about what that religious code “claims” or not. Indeed, they are very far from paradigm cases. The same seems like it would be true for someone who made judgments about what the law is, but who denied that the law mattered much for what she should do, all-things-considered.

\(^{25}\) There is a significant literature on this in the philosophy of law on these topics. (For some of the recent discussion, see (Raz 1979/2002), (Shapiro 2011), and (Gardner 2012a) for proposals on how to make sense of the idea of law ‘claiming’ (robust) normative authority, and (Dworkin 2006) and (D’Almeida and Edwards 2014) for criticism).
§4. Disanalogies Between Metaethics and Metalegal Theory.

We have put forward an analogy between metaethics and metalegal theory. The core of this analogy concerns a *structural* point: both metaethics and metalegal theory concern how to explain how a given part of thought, talk, and reality fits into reality overall. The analogy we have drawn also concerns a point about *substance* of the relevant parts of thought, talk, and reality: both are “normative”, in at least the wide sense of “normative” we introduced above. This is why metaethics and metalegal theory are both branches of metanormative theory (at least in the wide sense). In much of what follows, it will be the structural point that matters most.

Our claims here are consistent with the idea that there are important *disanalogies* in terms of the respective subject matters of metaethics and metalegal theory. For example, consider the thesis that legal obligations, rights, etc. depend on the existence of specific kinds of socially-historically specific kinds of institutions (e.g., courts, legislatures, etc.) in a way that all-things-considered ethical obligations, rights, etc. do not. We think this disanalogy is correct. There is law only in certain social-historical contexts, but the fundamental ethical norms apply to all agents in all social-historical contexts.

Or consider a more fundamental difference. We think that ethical thought and talk is directly tied to robust normativity in a way that legal thought and talk is not. For example, even if law itself “claims” robust normativity in some broad sense, legal judgments are very different in kind than all-things-considered normative judgments in ethics. In short, all-things-considered normative judgments are *directly* about robust normativity, in a way that (at least many) legal judgments are not. Thus, if I judge that you should not walk over a given piece of land all-things considered, this is very different from my judgment that doing so would be prohibited in this legal jurisdiction. I might well make the legal judgment and think it largely irrelevant to determining what I should do all things considered. Furthermore, all-things-considered ethical *facts* about what one should do are robustly normative for us, whereas that is not the case with facts about what the law prohibits, permits, empowers, etc. one to do.26

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26 For connected discussion, see (Enoch 2011a).
It is important that our framework allows us to identify these disanalogies between the respective subject matters of metaethics and metalegal theory. However, it is also equally important that nothing in our framework settles whether these disanalogies obtain or not. A natural lawyer can adopt our construal of general jurisprudence even though they believe that facts about what the law prohibits, permits, etc. do not just claim robust normativity, but are in fact robustly normative.\textsuperscript{27} Similarly, so can someone who believes that there is no such thing as robust normativity.\textsuperscript{28} How legal thought, talk, and reality relates to ethical thought, talk, and reality can only be settled by actually doing metalegal and metaethical work.

Our framework leaves open another important kind of thesis as well. It is possible that metalegal theory (or metaethics) belonging to \textit{metanormative theory} is not its most important feature. Consider, for example, the thesis that what is really crucial about legal thought, talk, and reality is their connection to state-enforced \textit{coercion}. Such a claim is entirely consistent with our account. There are many distinctions to be drawn within the parts of thought, talk, and reality covered by metanormative theory. And while we ourselves think that the fact that metalegal theory is a branch of metanormative theory (in at least the wide sense) \textit{is} illuminating, and helps us to do important philosophical work, we can be neutral about many comparative claims of significance.

\textsection{5. Situating Our Account.}

Before moving on, it is worth pausing briefly to situate our account of general jurisprudence within the broader literature. Our account is by no means uncontroversial, and, indeed, departs in significant ways from some other characterizations of the field. By briefly explaining how our account differs, we can clarify some key features and advantages of our account.\textsuperscript{29}

\textsuperscript{27} For some important recent statements of this kind of view, see (Dworkin 2011), (Greenberg 2014), and (Hershovitz 2015).

\textsuperscript{28} See (Tiffany 2007) for a defense of the idea that he calls “deflationary normative pluralism”, which, roughly, amounts to the idea that there is no such thing as robust normativity.

\textsuperscript{29} Parallel points we make below also apply to our accounts of metaethics and metanormative theory, in contrast to other dominant views of those fields. Our points below draw heavily on parallel discussion in (McPherson and Plunkett Forthcoming), which focuses on metaethics.
First, as we stated at the beginning of this paper, many characterizations of general jurisprudence are *metaphysics*-centric, even if only tacitly so. They claim that general jurisprudence is about the “nature” of law, and do not explicitly bring in legal thought and talk. Consider, for example, Scott Shapiro’s view at the start of *Legality*. He writes that “analytical jurisprudence” (which covers what we are here calling “general jurisprudence”) deals with the “*metaphysical foundations*” of law. As he characterizes it, this means the following: analytical jurisprudence “analyzes the nature of law and legal entities … Analytical jurisprudences want to determine the fundamental nature of these particular objects of study.”

As we argued in the introduction, a metaphysics-centric view of general jurisprudence fits poorly with the fact that much of what is commonly seen as “general jurisprudence” (or “analytical jurisprudence”) involves *representational-level* issues about thought and talk, and not just in the service of *object-level* metaphysical inquiry (e.g., inquiry into the reality that such thought and talk is about). In contrast, our account smoothly incorporates the idea that general jurisprudence involves issues about thought and talk, and not just issues in metaphysics.

Second, many legal philosophers characterize general jurisprudence in terms of understanding or analyzing *concepts* – in particular, the concept of *law* as such, as well as concepts that we employ in legal thought and talk (e.g., *obligation*, *right*, *duty*, or *reason*). Consider here H.L.A. Hart’s way of framing his project in *The Concept of Law*. Many of Hart’s methodological remarks – as well as the title of the book itself – place the analysis of concepts at the heart of his project. For example, Hart writes in the final chapter: “this book is offered as an elucidation of the concept of law.”

Legal philosophers (including Hart) often appeal to the idea of conceptual analysis as a way to juxtapose one part of legal philosophy (roughly, analytical work in general jurisprudence) from substantive *normative or evaluative* work in legal philosophy; much in the same way that some appeal to the idea of conceptual analysis to distinguish

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30 (Shapiro 2011, 12).
31 (Shapiro 2011, 13).
32 (Hart 1961/2012, 213). It should be emphasized that Hart frames his project in different ways in that book, not all of which are obviously compatible with each other, or with the work he actually does in the book. For more discussion on this point, see Les Green’s introduction in (Hart 1961/2012).
metaethics from normative ethics. Thus, Joseph Raz introduces the subject matter of legal philosophy at the start of *Practical Reason and Norms* as follows: “moral philosophy, political philosophy and legal philosophy are branches of practical philosophy each dealing with a different aspect of human life” and that practical philosophy “includes both a substantive or ‘evaluative’ part and a formal part concerned with conceptual analysis.” He also claims that his book (which is standardly taken to be a key recent contribution to general jurisprudence) is “primarily an essay in conceptual analysis.” This focus on understanding *concepts* – rather than on the things themselves that the concepts pick out – suggests a representational-level focus for general jurisprudence. If so, it faces the converse issue of the metaphysics-centric approach we just glossed above: namely, it fails to illuminate why the project of general jurisprudence concerns issues about legal reality itself, in addition to issues about our thought and talk about it. Furthermore, a focus on *conceptual analysis* might well suggest that general jurisprudence is tied to a particular methodology for making progress in both the study of concepts and in philosophy in general. By contrast, our account helps explain how philosophers hostile to the idea of conceptual analysis (or to the idea of concepts in general) can still engage in the exact same explanatory project as those who are attracted to it.

Third, some philosophers characterize general jurisprudence in terms of a specific list of questions about law, or about legal thought and talk, such as issues about the metaphysics, semantics, and epistemology of law, or with reference to historically important issues such as the positivism/antipositivism debate. Such views face the challenge of explaining *why* these issues and not others are on the list. Our account is an attempt to take on that challenge: it brings out a theoretical unity to the kinds of questions that have historically animated much of the discussion in general jurisprudence. At the same time, our account helps explain why the list isn’t *static*, but

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34 (Raz 1975/2002, 10).
36 Note that if one want to deny that it suggests a representational-level focus, then it is hard to see what explanatory work the talk of *concepts* and *conceptual analysis* is doing in really elucidating the explanatory project at hand. This is worth noting given that some legal philosophers want to insists *both* on a metaphysics-centric understanding of general jurisprudence and on a conceptual-analysis-centric understanding of it. For example, see the introductory chapter of (Shapiro 2011).
rather changes in light of the resources and ideas that philosophers bring to bear on the project of general jurisprudence.

Fourth, some philosophers characterize general jurisprudence (or metalegal theory more broadly) as involving “second-order” questions about legal thought and talk, as opposed to first-order questions. This characterization leaves unexplained why certain second-order questions are pursued within the project of general jurisprudence and not others (e.g., “do legal judgments express cognitive or non-cognitive attitudes?” vs. “how many people have written papers about legal obligation in the last five years?”). Moreover, key claims that are crucial to many projects within general jurisprudence, such as claims about the ultimate grounds of legal facts, do not seem to be “second-order” questions at all. Our account, on the other hand, has no trouble explaining why such questions are at the heart of much theorizing in general jurisprudence.

Fifth, some legal philosophers doubt there is any meaningful distinction between doing general jurisprudence and engaging in other projects: e.g., engaging in substantive legal argument, or substantive ethical/political inquiry. For example, Ronald Dworkin has famously advocated for a version of this view, a position similar to one he defends about metaethics. Our account stands in contrast to this kind of Dworkinian position by claiming that metalegal theory is an explanatory project distinct from either standard first-order legal argument or moral/political inquiry. As we emphasized earlier in §2, drawing a distinction between metalegal theory and other projects (e.g., normative ethics or substantive legal theory) is compatible with the idea that these projects intersect in important ways. For example: claims that are crucial to developing a view in metalegal theory might also be claims that are crucial to certain substantive legal, ethical, or political arguments. But this is an unsurprising result that in no way threatens the idea that there is a distinctive explanatory project that characterizes general jurisprudence as such.

37 See, for example, (Toh 2013).
38 See (Dworkin 1986) and (Dworkin 2011).
§6. Positivism and the Relations Between Law and Morality.

At the start of this paper, we claimed that our account of general jurisprudence has significant payout for how we understand the current field, and our ability to make progress within it. We now turn to these issues.

§6.1 Situating the Positivism/Antipositivism Debate.

Consider again the positivism/antipositivism debate. This debate concerns whether the ultimate grounds of legal facts are social facts alone, or moral facts as well. We are now in a better position to appreciate how this debate, characterized in this way, connects to the explanatory task of general jurisprudence.

Given our framework, it is not hard to see why many legal philosophers take the positivism/antipositivism debate to be a core issue for general jurisprudence. We can motivate that idea as follows. Key parts of legal reality are facts about what the law (in a given jurisdiction, at a given time) actually is. These legal facts vary from one jurisdiction to another. The law in one state might set a different speed limit than another state. A complete metalegal theory should have an account of how legal facts are best integrated into our overall account of reality. Such an account should spell out their nature and grounds. For if it did not, we wouldn’t really have a satisfactory account of how legal facts are integrated into reality overall.

When we seek to work out this part of the explanatory project, we must take into account numerous, often conflicting, considerations. On the one hand, legal thought and talk involves terminology that is normally associated with moral thought and talk—e.g., “rights”, “duties”, and “obligations.” One straightforward explanation of this connection is that legal facts—what legal thought and talk is about—are partly grounded in moral facts. Yet, it is also natural to think that legal facts must be grounded in social facts, e.g., facts about what people have said, intended, and done. For it seems that such facts (e.g., legislative voting, judicial decision-making, administrative regulating) are crucial for helping settle the legal facts. And, indeed, many have been

39 As with most important debates in a given subfield, there are a range of alternative ways of characterizing this debate. One important alternative is outlined in (Gardner 2001). For a discussion of how this way of framing the debate relates to the one we are working with here, see (Plunkett 2013).
attracted to the idea that what the content of the law is – as well as whether there is law at all – is something that is ultimately up to us in a way that is fundamentally different than with moral facts. That can lead to the thought that social facts fully settle the legal facts, and least in some ultimate sense.

This very brief discussion is meant to illustrate the following: given certain compelling assumptions about and within metalegal theory—e.g., that legal terminology is associated with moral terminology, that legal facts depend on social facts—the issue of whether positivism or antipositivism is correct becomes an important question within metalegal theory. Our framework helps bring out why this is so. We think this is an important mark in its favor.

But also notice that we made a number of philosophically substantive assumptions to motivate the idea that the positivism/antipositivism debate is an important part of general jurisprudence. For example, we have formulated the positivism/antipositivism debate in terms of what grounds the legal facts. But the language of grounding is controversial within contemporary philosophy: some philosophers are attracted to this way of speaking, while others believe that it rests on deep conceptual and/or metaphysical confusions. For example, some grounding skeptics argue that we should avoid “grounding” talk altogether and focus instead on the supervenience and identity relations. More radically, some even believe that we should do away with the idea of any kind of constitutive explanation within metaphysics completely. We think that this radical skepticism is mistaken. Regardless, our point is simply that the positivism/anti-positivism debate depends on philosophically substantive commitments about the nature of metaphysics and explanation. If one is skeptical about constitutive explanations, then one will be skeptical about the value of this particular debate.

The list of such philosophically substantive commitments is long. For example, the positivism/anti-positivism debate assumes that morality is an important normative category. Again, this is a substantive position: we might object that the concept of “morality” used here is a messy folk concept that doesn’t cut useful theoretical joints for doing serious philosophical inquiry. The debate also assumes that social facts and moral facts are distinct categories of facts. But we can question this distinction as well.
If our way of motivating the positivism/antipositivism debate is on the right track, it shows that those who are engaged in general jurisprudence are not invariably compelled to engage in this debate. Rather, the debate is one that looms large given certain philosophical views and assumptions. We ourselves think that these views and assumptions are on the right track. But for philosophers who deny some of these theses, it's likely that the positivism/antipositivism debate will appear misguided. Importantly, they still can engage directly with the project of general jurisprudence as such, as we will now see.

§7. Making Use of Different Aspects of a Package Deal.

According to our view, general jurisprudence aims to explain how legal thought, talk, and reality fits into reality overall. As with the parallel project in metaethics (about ethical thought, talk, and reality), there are certain broad kinds of issues that will often be crucial to think about in pursuing a comprehensive explanation of this explanandum. These include, among other things, issues in metaphysics, philosophy of mind, philosophy of language, and epistemology. Once these different kinds of issues are squarely in view, it underscores that there are different aspects of one’s general jurisprudential theory that one might develop in order to explain a certain (purported) aspect of legal thought and talk, or of legal reality. There are more resources here, and more degrees of freedom, than are apparent on a metaphysics-centric understanding of the field, and more than many in the field of general jurisprudence appreciate.

To illustrate, consider again the debate over positivism. Part of what drives the antipositivist position is the thought that there is a close connection – and, indeed, a necessary connection – between law and morality. Antipositivists seek to account for this purported connection via a metaphysical route, in terms of what grounds what. But we should also ask: need one put this connection in terms of metaphysical or object-level issues about law itself? Another option is to account for the purported connection at the level of thought and talk, but deny that this carries over to the metaphysics of law itself. For example, perhaps the relevant necessary connection between law and morality here is that legal judgments (or a certain subset of them) are a species of moral judgment. This might be so, for instance, if the relevant legal concepts involved in such judgments are themselves are a species of moral concept, or analyzed partly in terms of such concepts.
Such a view might seem to straightforwardly necessitate also thinking that the legal facts that (the relevant class of) legal judgments are about are also moral facts. But perhaps not. It will depend on, among other things, how one thinks about what concepts and facts are—e.g., whether one accepts some sort of minimalism about facts, or one instead has a more metaphysically weighty conception of them.\(^{40}\)

With this in mind, consider the following combination of views: a) positivism about the metaphysics of legal facts and b) the view that legal judgments (or at least a certain subset of them) are bona fide moral judgments (e.g., perhaps this is true of judgments about legal obligations). When viewed at a certain level of abstraction, this combination of views is one way of interpreting core parts of the work of Raz, who has for many decades now been one of the most influential and important figures in general jurisprudence. Raz aims to combine a commitment to a thoroughgoing form of legal positivism with claims about the semantics of legal terms that look, at least initially, to fit most smoothly with an antipositivist view. For example, Raz claims that legal facts are exclusively determined by social facts. This amounts to a form of positivism by his own lights. As he puts it: “In the most general terms, the positivist social thesis is that what is law and what is not is a matter of social fact.”\(^{41}\) Yet, Raz also claims that normative terms have the same sense in both legal and moral contexts. “[N]ormative terms like ‘a right,’ ‘a duty,’ ‘ought,’” he writes, “are used in the same sense in legal, moral and other normative statements.”\(^{42}\) By itself, that claim is compatible with a view on which ‘ought’ is univocal between moral and legal contexts—as well as a range of other contexts—but where the ‘ought’ involved across these contexts isn’t identified as a specifically moral one.\(^{43}\) However, Raz is best read as thinking that the ‘ought’ invoked in the context of making legal judgments is a specifically moral ‘ought’.\(^{44}\) Raz attempts to render this claim compatible with his positivism through an innovative semantic theory according to which legal statements that employ these normative terms (e.g., ‘right’,

\(^{40}\) It will also depend on how one thinks about the \textit{individuation} of facts—e.g., whether or not they are individuated partly in terms of the specific concepts we use to grasp them.

\(^{41}\) (Raz 1979/2002, 37).

\(^{42}\) (Raz 1979/2002, 158-159).

\(^{43}\) For this kind of view, see (Kratzer 2012) and (Finlay 2014). For discussion of this kind of view applied to issues in legal philosophy in particular, see (Silk Forthcoming).

\(^{44}\) See (Raz 2004, 1-7).
‘duty’, ‘ought’) typically have different truth conditions (in a given context) from moral statements that employ those same terms, even though these terms have the same meaning in both kinds of statement. Using Raz’s terminology, statements of the law are ordinarily “detached” and are true by virtue of social facts alone. Moral statements are typically “committed” and are true by virtue of moral facts.45

Raz’s position is a subtle one, and our goal is neither to delve into the details of the position nor to defend it. Rather, our point is simply that they are certain kinds of combinations of views that might initially seem hard to parse, as well as hard to locate on the jurisprudential map, when one approaches general jurisprudence with an exclusive focus on the metaphysics of law. However, many such views—ones that, for example, combine a positivistic metaphysics but a seemingly “antipositivist” semantics—will start to make more sense as possible positions within general jurisprudence, and ones very much worth exploring.

§8. Situating Expressivism as a View Within General Jurisprudence.

To further develop this basic theme, we next turn to a particular kind of view within general jurisprudence – namely, one centered on expressivism about legal thought and talk. Such a view might also be used to support the claim that legal judgments (or a subset of them) are a species of moral judgment (or, relatedly, a species of robustly normative judgment, whether moral or not). Yet a proponent of such a view might also end up not endorsing the antipositivist view that legal facts are grounded in moral facts – or, in a connected vein, that they are grounded in any kind of robustly normative facts. Our framework helps make sense of what this kind of view might amount to, as well as situate it within the overall project of general jurisprudence.46

As we explained earlier in this paper, expressivism is a thesis about an area of thought and talk. In rough terms, we can understand expressivism as the following

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45 For Raz’s discussion of the distinction between committed and detached statements, see (Raz 1975/2002, 171-177), (Raz 1979/2002, 153-157), and (Raz 1980, 234-238).

46 The idea of developing a form of metalegal expressivism has been most fully explored to date by Kevin Toh (who argues that H.L.A. Hart also endorsed a closely connected version of metalegal expressivism). See (Toh 2011) for Toh’s statement of his own preferred form of expressivism about legal thought and talk. See (Toh 2005) for his reading of Hart’s (purported) expressivism.
conjunction of three theses: a) ethical judgments consist, at the most basic explanatory level, in some kind of noncognitive attitude (e.g., desires or plans); b) ethical statements – statements in language which communicate ethical judgments – consist of expression of the relevant non-cognitive attitude; and c) the meaning of ethical statements is to be explained in terms of such expressions.47 Suppose expressivism about an area of thought and talk is true. Historically, many expressivists and non-expressivists alike have maintained that thought and talk in that area isn’t, strictly speaking, truth-apt or even correctness-apt. After all, the thinking has gone, non-cognitive mental states such as desires or intentions aren’t the kinds of things that can be true or false, or even correct or incorrect.48 But, in recent years, this idea has been challenged by “quasi-realist” expressivists, who appeal to minimalist or deflationary notions of truth or correctness to defend the idea that thought and talk in a given area really can be true or false, or at least correct of incorrect.49 In turn, many expressivists themselves then go onto endorse certain substantive positions (within that area of thought and talk, about the relevant subject matter). For example, one might be an expressivist in metaethics and then go on to think that a form of consequentialism is the true general theory in ethics, as well as to endorse many further specific ethical claims as true (e.g., claims of the kind “Susie shouldn’t kick dogs for fun” and “kicking dogs for fun would still be wrong even if I approved of it”).50

Suppose, as quasi-realists maintain, expressivism about an area of thought and talk is compatible with the idea that certain thoughts and statements in that area are true or correct. Even if so, expressivism doesn’t itself tell you anything about what makes certain thoughts and statements in that domain true or correct, in the sense of explaining

47 One might hold that, in addition to these claims, expressivists are committed to a further claim about the semantics of the part of discourse in question (e.g., that the semantic properties of the sentences are to be explained, at the most basic explanatory level, in terms of properties of the attitudes expressed by those sentences, rather than in terms of properties of the contents of those sentences (see (Silk 2014)). It is fine for our purposes here if something along these lines is taken to be a part of expressivism. It will not matter for our main line of argument below.
48 For a representative statement of this kind of view of expressivism, see (Ayer 1936/1952).
49 See, for example, (Blackburn 1993) and (Gibbard 2003).
50 For example, consider here Allan Gibbard, who is one of the most prominent contemporary expressivists. Gibbard argues on behalf of both expressivism and consequentialism, as in (Gibbard 2008).
why they are true or correct. Thus, it should be no surprise that most contemporary expressivists in metaethics argue that questions about what makes ethical claims true or correct are *substantive ethical* questions, rather than metaethical ones. Expressivism does not itself give truth-conditions or correctness-conditions for ethical claims. For all that metaethical expressivism as such says, it might be that it is true (or correct) that you should try to maximize happiness, or that you should act to fulfill your desires, or that you should act in accordance with the dictates of some religious text. Similarly, for all that metaethical expressivism as such says, it might be that what explains (or “grounds”) the fact that such-and-such actions are right – and hence why certain claims are true or correct – is facts about the promotion of value (as explanatory versions of consequentialism maintain). Metaethical expressivism doesn’t by itself settle any extensional or explanatory questions within ethics, which it treats as issues to be settled by substantive normative inquiry.\(^{51}\)

Now consider the parallel in legal philosophy. Many think that one of the central tasks of general jurisprudence is to identify which facts ultimately ground the content of the law. Positivists and antipositivists then divide on the question of whether or not moral facts are part of those ultimate grounds or not. But not all theories in general jurisprudence need offer an answer to the question of what explains the content of the law, including, importantly, those views that aim to be relatively comprehensive jurisprudential views. Metalegal expressivism makes this clear. If expressivism about legal thought and talk is true, then we should not expect the correct general jurisprudential theory to answer the question of what explains (or grounds) the content of the law. That will be a *substantive legal question*, insofar as it is a meaningful question at all. (This is parallel to how, on the kind of quasi-realist metaethical expressivist view we sketched above, the question of whether consequentialism is true or not will be a substantive ethical question, not settled by the expressivist metaethical theory as such.) Thus, if metalegal expressivism is true, we should not expect for the true general

\(^{51}\) This is not to say that if expressivism is true it should have no impact on how we assess different substantive normative theories in ethics, either extensional or explanatory. For discussion of the way in which metaethics bears on substantive normative theories in ethics, see (McPherson 2012). For discussion of how the (purported) truth of expressivism might bear on substantive normative questions, even if it doesn’t itself settle the truth-conditions for ethical statements, see (Gibbard 2008).
jurisprudential theory to settle the positivism/antipositivism debate as we are understanding it in this paper – namely, as a debate about what kinds of facts explain (or ground) the content of the law.\footnote{For connected discussion, see (Toh 2013) and (Finlay and Plunkett Manuscript). It should be noted that things become more complicated here the more a metalegal expressivist (e.g., of a so-called “quasi-realist” bent) also takes on board certain kinds of minimalist or deflationary readings of key terms here, including, crucially, the notion of “fact”. This makes it harder to distinguish expressivism as a distinct position (for the kinds of reasons discussed by (Dreier 2004) and (Fine 2001)). Depending on which further minimalist or deflationary theses the expressivist signs up for (e.g., about how to understand “fact” talk), it might also impact the question of whether the metalegal expressivist ends up committed to a view on the positivism/antipositivism debate. However, we leave aside these complications for now for the purposes of this paper.}

Issues about what constitutively explains the content of the law, therefore, are \textit{not} issues that the expressivist need take a stand on insofar as she is focused on the explanatory project of general jurisprudence as such. The expressivist can fully grant that there are legal facts and that they are grounded in (or “constitutively explained by”) certain facts as opposed to others (given appropriate quasi-realist glosses on “ground” and “explain”). She can even grant that there are moral facts (something not all expressivists will want to do). But the question about what grounds the legal facts is not one she needs to answer for the purposes of doing general jurisprudence.

To be sure, the metalegal expressivist faces other questions about the relations between law and morality, or, relatedly, about the relations between law and robust normativity. It will be pressing for her to resolve the relations between a) legal thought and talk and b) moral thought and talk (or forms of thought and talk that invoke more robust forms of normativity, which moral thought and talk might or might not). This includes, for example, the question of whether or not legal thought and talk is a subset of moral thought and talk. Understood from a certain abstract vantage point, that might very well be \textit{the} central question driving the positivist / antipositivist debate all along (or at least one of the central questions). If the expressivist claims that legal thought and talk \textit{is} a subset of moral thought and talk, then, given certain auxiliary assumptions, this will likely lead her to conclude that legal inquiry is a subset of moral inquiry. She might
then end up with the same epistemological position as the traditional legal antipositivist, only via a different route.  


Our account of general jurisprudence underwrites some natural methodological ideas for moving the field forward. We here briefly explain some of these below, and offer brief illustrations of their application.

§9.1. Fit With Broader Metanormative Theory.

If general jurisprudence is a branch of metanormative theory, then we should inquire into how any given general jurisprudential theory fits with our best overall metanormative theories. Suppose one advances a claim about the meaning of statements of the form “you legally ought to φ”. One should ask how this thesis lines up with our best theories of how “ought” claims work outside of legal discourse—not only how “ought” claims work in moral discourse, but throughout other areas of discourse as well. (This will also concern thinking about how different kinds of ought statements fit together, as in claims of the form “I know I legally ought to φ, but I know that I morally ought not to φ”). Similarly, suppose one advances a claim about the metaphysics of laws. One might then ask how this thesis lines up our best theories of norms in general, as well as of other specific kinds of norms to which laws might be related (e.g., plans, rules, etc.).

Another natural idea for making progress within general jurisprudence is to look to metaethics, currently the most developed branch of metanormative theory. Consider the issue of how ethical judgment is (or is not) connected to motivation. Within metaethics, this issue often centers on the question of whether some form of “judgment internalism” is true, on which there is a kind of necessary connection between ethical judgment and motivation. We can (and should) ask parallel questions about legal

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53 Whether or not that particular conclusion turns out to be so depends on further, philosophically delicate issues that are beyond the scope of this paper. (This includes, for example, not only questions about how to best develop a form of metalegal expressivism, but also the question of what to make of the Raz-like position we sketched at the end of the previous section).
judgment: questions, in short, about what kind of motivation is (or is not) tied up with making sincere legal judgments. In so doing, it will be important to ask: which resources and distinctions developed in metaethics can help us better tackle this question in legal philosophy? (The reverse point is true for those working in metaethics, given that there is already a rich collection of work in legal philosophy about this kind of question).


We have claimed that general jurisprudence aims to explain how universal legal thought, talk, and reality fits into reality overall. If this is right, then, at the end of the day, we should evaluate individual theses in general jurisprudence – whether they be claims in metaphysics, epistemology, the philosophy of mind, the philosophy of language, or any other area of philosophy – in terms of their ability to contribute to a part of overall explanation of this explanandum.

This point might seem obvious, but it is worth emphasizing. For it is easy in philosophy of law (as elsewhere) to get fixated on one debate and lose track of why that debate matters, if indeed it does. Consider one last time the debate over positivism. It is easy to be consumed by it and treat it as the organizing debate in the field. But, as we argued, general jurisprudence is a much bigger project than figuring out which facts ground legal facts. Indeed, as our discussion of metalegal expressivism illustrates, it is not even the case that this debate is one on which a comprehensive general jurisprudential theory need take a stand. The same basic point applies to more specific debates between legal philosophers – e.g., the so-called “Hart-Dworkin” debate – which was central to the development (and self-conception) of general jurisprudence for much of the last fifty years. Keeping track of why a debate matters can help us evaluate it, namely, by its ability to explain how universal legal thought, talk, and reality fits into the rest of reality.

In a similar vein, our framework can help us keep track of various skeptical and quietist positions in general jurisprudence that purport to show that we can (and should) move ‘beyond’ general jurisprudence, ‘overcome’ it, or recognize that the field rests on a series of pseudo-problems that we need not address. Many such takes revolve around

54 For a helpful overview of the Hart-Dworkin debate, see (Shapiro 2007).
criticizing certain substantive assumptions within general jurisprudence, rather than assumptions that necessarily underlie the explanatory project of general jurisprudence as such. Moreover, to make these criticisms, philosophers often rely on positions that are views within general jurisprudence, as we have defined the field here.

We can draw the following conclusion: overcoming, or moving beyond, a broad explanatory project is much harder than overcoming, or moving beyond, a specific debate within that project, carried out by specific philosophers with substantive commitments about how to tackle that explanatory project. General jurisprudence, metaethics, and metanormative theory are similar to many explanatory projects in other areas of philosophy (e.g., in philosophy of math, philosophy of mind etc.) that also seek to explain how an area of thought and talk – and whatever (if anything) that thought and talk is distinctively about (e.g., consciousness, numbers, etc.) – fits into reality overall. Those projects can (and we think should) persist even if particular dominant ways in which those projects have been pursued turn out to rest on problematic or mistaken philosophical theses.

§10. Conclusion: Does General Jurisprudence Rest on a Merely Verbal Dispute?

In this paper, we provided an account of general jurisprudence. We situated general jurisprudence within a more general philosophical project (namely, the project of metanormative theory) and claimed that general jurisprudence parallels another well-known sub-part of that general philosophical project (namely, a certain core part of metaethics). All of these projects, we claimed, are centered on the explanatory project of showing how a certain part of thought and talk – and what (if anything) such thought and talk is distinctively about – fits into reality. We claimed that metalegal theory is the version of this explanatory project that concerns legal thought and talk, and what (if anything) such thought and talk is distinctively about. In turn, we claimed that general jurisprudence is the part of metalegal theory that concerns universal legal thought and talk, i.e. legal thought and talk that occurs across all social/historical contexts. Following our argument in favor of this way of thinking about general jurisprudence, we then illustrated some of its main philosophical payouts, explained how it helps make sense of both actual and possible positions within the field, and explored some basic methodological suggestions based on it. The result, we hope, is an understanding of
general jurisprudence that can be welcomed both by both practitioners and observers of general jurisprudence.

In conclusion, we want to return to the concern that we briefly introduced at the start of this paper, namely, that general jurisprudence is not philosophically substantive. How does our understanding of general jurisprudence bear on this concern? To help frame our answer, consider the following. Some philosophers worry that general jurisprudence ultimately boils down to a series of merely verbal disputes – e.g., a dispute that (contrary to the self-understanding of the participants in it) turns out to be one solely about what ‘law’ means (or should mean), without any further, deeper philosophical issues at stake. We might wonder the following: what, if anything, separates positivists from antipositivists once we strip away talk of ‘law’ (and related terms like ‘legal’) and just focus on what all sides can agree are substantive philosophical issues (e.g., the issue of how judges should decide cases)? We take seriously the possibility that a number of important disputes within general jurisprudence might be merely verbal disputes, just as we take seriously this possibility for many disputes in philosophy, across a wide range of subfields. And our framework does not settle whether or not this is true of general jurisprudence. Nonetheless, we think our framework does have something important to contribute to our assessment of this concern.

According to our view, general jurisprudence involves explaining how a specific part of thought, talk, and reality fits into reality overall. This is a substantive explanatory project, and different philosophers can put forward different views about how to best carry it out.

Our framework does not establish, however, that there are no threats of verbal disputes still lurking. There certainly are. For some explanatory proposals might simply be terminological variants with no substantial disagreements between them. But the threats here are no different from parallel explanatory projects about other areas of thought, talk, and reality. Many seemingly rival theories in the philosophy of

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55 For a helpful discussion of verbal disputes, see (Chalmers 2011).
mathematics or metaethics might well turn out to be terminological variants of each other, where nothing of philosophical substance hangs on the terminology itself.\footnote{It is worth noting here that, in some contexts, terminological choices themselves can matter a great deal. So not all disputes that center on issues about terminology will turn out to be ‘merely verbal disputes’, in the sense that we are discussing here. For discussion of this idea, see (Chalmers 2011) and (Plunkett and Sundell 2013). See also connected themes in (Haslanger 2012).}

In short, although our framework leaves open the possibility that much of general jurisprudence \textit{as it is currently practiced} rests on merely verbal disputes, our framework helps bolster the idea that the field as such is not condemned to such a fate. There is a substantive explanatory project on the table. Philosophers can advance different views about how to carry out that overall explanatory project, as well as how to best tackle particular philosophical issues that arise within it. By keeping in mind what that project is, philosophers working in general jurisprudence can help avoid their disputes becoming merely verbal ones, and stay focused on the explanatory issues that matter.

\textbf{WORKS CITED}


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