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

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In this article, we propose a novel account of general jurisprudence by situating it within the broader project of metanormative inquiry. We begin by showing how general jurisprudence is parallel to another well-known part of that project, namely, metaethics. We then argue that these projects all center on the same task: explaining how a certain part of thought, talk, and reality fits into reality overall. Metalegal inquiry aims to explain how legal thought, talk, and reality fit into reality. General jurisprudence is the part of metalegal inquiry that focuses on universal legal thought, talk, and reality.

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.

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First, questions about the nature of some thing are paradigmatically *metaphysical* questions. But when one looks at the leading works in general jurisprudence, one finds a broad range of claims, not only metaphysical ones but also including *conceptual* (e.g., about the concept LAW), *semantic* (e.g., about the meaning of legal statements), and *epistemological* ones (e.g., about our knowledge of the law). Moreover, these nonmetaphysical claims are not always advanced in the service of metaphysical ones. Indeed, many philosophers in this area harbor deep suspicion about metaphysics and don't spend much (if any) time working on it.

Second, even when philosophers in general jurisprudence are explicitly interested in metaphysics, they are not always interested 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 (i.e., facts about the content and existence of legal systems) are necessarily grounded in social facts alone, or in moral facts as well.[1] Such facts about grounding might, as some recent work in metaphysics suggests, be determined (at least partly) by the nature of things.[2] 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. Moreover, metaphysics is not exclusively about the nature of things. It covers a wide range of topics, including 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 perhaps not surprising, then, 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 a merely verbal dispute in which participants are talking past each other. A more accurate characterization of the field might help address such skepticism.

1. For this basic kind of characterization of the debate over legal positivism, see Mark Greenberg, "How Facts Make Law," *Legal Theory* 10 (2004): 157–98; Gideon Rosen, "Metaphysical Dependence: Grounding and Reduction," in *Modality: Metaphysics, Logic, and Epistemology*, ed. Bob Hale and Aviv Hoffmann (Oxford: Oxford University Press, 2010), 109–35; Scott Shapiro, *Legality* (Cambridge, MA: Harvard University Press, 2011); David Plunkett, "A Positivist Route for Explaining How Facts Make Law," *Legal Theory* 18 (2012): 139–207.

2. For discussion of this idea, see Rosen, "Metaphysical Dependence"; Kit Fine, "Guide to Ground," in *Metaphysical Grounding: Understanding the Structure of Reality*, ed. Fabrice Correia and Benjamin Schnieder (Cambridge: Cambridge University Press, 2012), 37–80; Shamik Dasgupta, "The Possibility of Physicalism," *Journal of Philosophy* 111 (2014): 557–92.

Legal philosophers working in general jurisprudence, therefore, face a twofold 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 article advances a framework for thinking about general jurisprudence. The core of this framework is the idea of *metalegal inquiry*, which we characterize in terms of an explanatory goal. That goal is to explain how legal thought and talk—and what (if anything) such thought and talk are distinctively about—fit into reality overall. General jurisprudence, we claim, is the part of metalegal inquiry that focuses on the part of legal thought and talk—and what (if anything) that thought and talk are distinctively about—that is universal across all social/historical contexts where there is such thought and talk. We call this *universal* legal thought and talk. We argue that the explanatory project of metalegal inquiry 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 metanormative project.

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'.[3]

Our account, we argue, earns its keep in two ways. First, it illuminates existing positions and debates within legal philosophy. Second, it enables us to identify a range of possible positions within the project of general jurisprudence and locate 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.

I. METAETHICS

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

3. We pursue a similar strategy in developing our accounts of metaethics and metanormative inquiry.

Metaethics is an area of inquiry that, like general jurisprudence, covers a broad range of issues: metaphysical, linguistic, epistemological, conceptual, psychological, sociological, and so on. How do such diverse concerns fit together?

We think that all can be seen as aspects of a single explanatory project. Metaethics, we claim, aims to explain how ethical thought and talk—and what (if anything) that thought and talk are distinctively about—fit into reality overall.[4]

Before we unpack some of the key elements of this characterization of metaethics, we should underscore its schematic nature. Our aim here is not to adjudicate between various positions within metaethics, but rather to illuminate the metaethical project as such. We therefore 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), will understand aspects of this project (e.g., "fitting into," "reality") in different ways.

Start with the idea of *ethical* thought and talk. Roughly, we take such thought and talk to concern questions of how to live and act. Such thought and talk seem to encompass more than moral thought and talk. Compare the question of which shoes to wear today with the question whether to be a vegetarian. The former isn't a moral question in any obvious sense. But it is a practical question about what to do and thus, on our view, part of the purview of ethical thought and talk.[5] Many people take moral considerations to be particularly weighty in settling all-things-considered ethical questions. We here remain neutral on this topic, however, as well as on other important topics about the relation between ethics and morality (e.g., whether or not moral obligations entail ethical obligations).

Now consider 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 at the North Pole" is about Santa Claus, that is, someone who might not exist. This notion of 'about-

4. The account of metaethics that we develop here is the same basic one developed in Tristram McPherson and David Plunkett, "The Nature and Explanatory Ambitions of Metaethics," in *The Routledge Handbook of Metaethics*, ed. Tristram McPherson and David Plunkett (New York: Routledge, forthcoming). Our discussion of how to best understand this account of metaethics draws heavily on the discussion there.

5. If one instead wanted to focus on moral thought and talk in particular, we think that this would yield a different explanatory project—which might be called the "metamoral project," rather than metaethics. Much work that is labeled as "metaethics" is in fact more concerned with metamoral inquiry, rather than metaethics (in the broader sense of the term we are using here). For connected discussion, see ibid.; see also Stephen Darwall, "Ethics and Morality," in McPherson and Plunkett, *Routledge Handbook of Metaethics* (forthcoming).

ness' is consistent with deflationary, minimalist, and quasi-realist readings of the representation involved here. At least at first blush, ethical thought and talk seem to be about things, at least in this intensional sense. Moreover, they seem to be about certain distinctively ethical things (e.g., ethical facts, properties, relations). For example, the thought that Bob has an ethical obligation to donate more of his money to charity is about (*a*) things that many nonethical thoughts are also about (e.g., Bob, his money, charity, donation) and (*b*) things that are distinctively ethical, namely, ethical obligation.[6]

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*.[7] 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 that ethical thought and talk are distinctively about. Building on this, we will gloss our view of metaethics as follows: metaethics aims to explain how ethical thought, talk, and reality fit into reality.[8]

As we understand it, the explanatory project of metaethics isn't aimed primarily 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

6. We don't want to build it into our account that ethical thought and talk are in fact about anything distinctive at all, in even this razor-thin sense of 'about'. We remain agnostic here because certain views in metaethics deny this claim. Some metaethical expressivists maintain that ethical words or concepts are not the kinds of things that generate intensions, while other metaethical error theorists might think that they are simply too defective to produce intensions. 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 are about certain distinctive things (in the razor-thin sense of 'about' described in the text).

7. For an influential discussion that contrasts "what is" with "what is actual," see W. V. O. Quine, "On What There Is," *Review of Metaphysics* 2 (1948): 21–38; for a discussion that takes "reality" to be about what is fundamental, see Kit Fine, "The Question of Realism," *Philosophers' Imprint* 1 (2001): 1–30.

8. 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 are distinctively about.

instance, expressivism is a thesis about ethical thought and talk. For our purposes, we can understand expressivism as a conjunction of three claims: (1) ethical judgments are, at the most basic explanatory level, a kind of *noncognitive* attitude (e.g., desires or intentions); (2) ethical statements consist in expressions of the relevant noncognitive attitude; and (3) the meaning of ethical statements is to be explained in terms of such expressions.[9]

Thus rendered, expressivism is a thesis in the philosophies of mind and language. By itself, the thesis 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 in this domain). But that is not a failing of metaethical expressivism. Expressivism about ethical thought and talk can be an important component of an attempt to carry out the overall explanatory project of metaethics, even if this thesis isn't sufficient by itself for carrying out that explanatory project.

Take another example: the debate between naturalists and nonnaturalists about the metaphysics of ethics.[10] The participants in this debate usually agree that there is ethical reality. The core issue is whether ethical reality is "naturalistic." Roughly, the question is whether or not ethical reality is continuous with the part of reality studied by the natural and social sciences.[11] This debate is centered on a metaphysical issue. Re-

9. For important statements of the kind of metaethical expressivism we have in mind here, see Simon Blackburn, *Ruling Passions* (Oxford: Clarendon, 1998); Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Cambridge, MA: Harvard University Press, 1990), and *Thinking How to Live* (Cambridge, MA: Harvard University Press, 2003); Mark Schroeder, *Being For: Evaluating the Semantic Program of Expressivism* (Oxford: Oxford University Press, 2008). For a helpful critical overview, see Elisabeth Camp, "Metaethical Expressivism," in McPherson and Plunkett, *Routledge Handbook of Metaethics*.

10. For some helpful contemporary statements of non-naturalism about the metaphysics of ethics, see Jonathan Dancy, "Nonnaturalism," in *The Oxford Handbook of Ethical Theory*, ed. David Copp (Oxford: Oxford University Press, 2006), 122–45; David Enoch, *Taking Morality Seriously: A Defense of Robust Realism* (Oxford: Oxford University Press, 2011); Derek Parfit, *On What Matters* (Oxford: Oxford University Press, 2011). For some helpful contemporary statements of naturalism about the metaphysics of ethics, see Peter Railton, *Facts, Values, and Norms: Essays toward a Morality of Consequence* (New York: Cambridge University Press, 2003); Frank Jackson, *From Metaphysics to Ethics: A Defence of Conceptual Analysis* (Oxford: Clarendon, 1998); Richard Boyd, "How to Be a Moral Realist," in *Moral Discourse and Practice*, ed. Stephen Darwall, Allan Gibbard, and Peter Railton (New York: Oxford University Press, 1997), 105–36.

11. For a more detailed characterization of what this metaphysical debate is about that is in the same spirit as the gloss given here, see Tristram McPherson, "What Is at Stake in Debates between Normative Realists?," *Noûs* 49 (2015): 123–46. See also Gideon Rosen, "Metaphysical Relations in Metaethics," in McPherson and Plunkett, *Routledge Handbook of Metaethics*; Stephanie Leary, "Non-naturalism and Normative Necessities," in *Oxford Studies in Metaethics*, vol. 12, ed. Russ Shafer-Landau (Oxford: Oxford University Press, forthcoming).

gardless of which way one comes out on this issue, we still would not know how ethical thought and talk function. Naturalism and non-naturalism are not comprehensive metaethical views that complete the overall explanatory project that defines metaethics, though they are (much like expressivism) frequently at the center of research programs that attempt to do so.

In order to provide an overall explanation of how ethical thought, talk, and reality fit 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 its distinctive explanatory project. And because this 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), as well as one's commitments in other areas of inquiry (e.g., psychology, linguistics, sociology). It will also depend on which part of this explanatory project one is working on at a given time, as well as how one is approaching that part of the project. If one is defending a form of expressivism in metaethics, one should have something to say about the Frege–Geach problem.[12] But that is not a central problem if, for example, one is doing research in the epistemology of ethics within a descriptivist framework.

To return to our main 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 often deeply connected to each other, even though they can be pursued, often quite successfully, in relative isolation.

Let's return to the debates over expressivism and naturalism. Expressivism by itself does not entail the truth of naturalism about the metaphysics of ethics. However, opting for a form of expressivism changes the resources one has for thinking about the relevant metaphysical issues and will make certain views more or less attractive. For example, expressivism (at least prima facie) allows the naturalist to assert many of the claims that non-naturalists have wanted to assert about the gulf between ethical and non-normative reality, but via a different route, one

12. 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 Jack Woods, "The Frege–Geach Problem," in McPherson and Plunkett, *Routledge Handbook of Metaethics*.

that is at the level of our thought and talk, rather than at the level of the metaphysics of what that thought and talk are about.[13] It thus seems to fit securely with a purely naturalistic metaphysics—which, indeed, is one of the main reasons many have been drawn to expressivism in metaethics (or in other domains).[14] As with expressivism, accepting non-naturalism about the metaphysics of ethics changes the attraction of other, related views. The philosopher who posits irreducibly normative, non-naturalistic properties needs to explain how our ethical thought and talk latch on to these properties and how the meaning of ethical terms is related to them. In providing such explanations, she will find herself taking on commitments in the philosophy of mind, philosophy of language, and epistemology.

These examples highlight the holistic nature of metaethics: different theses fit more or less well in overall package deals in metaethics, ones that serve as candidate explanations of how ethical thought, talk, and reality fit into reality. The plausibility of a given thesis—whether it is in epistemology, metaphysics, philosophy of language, and so on—can be evaluated in part based on whether it can be integrated into a plausible package deal in metaethics.

II. GENERAL JURISPRUDENCE

In the previous section, we presented a characterization of metaethics. We will now use it to offer an account of general jurisprudence. We begin by swapping 'ethical' out of the definition of metaethics and replacing it with 'legal'. This yields a characterization of what we can call the *metalegal* project. The metalegal project aims to explain how legal thought and talk—and what (if anything) such thought and talk are distinctively about—fit into reality overall. In parallel with the way we abbreviated our gloss of metaethics, we will say that metalegal inquiry aims to explain how legal thought, talk, and reality fit into reality.

We think that there is a crucial philosophical parallel between the metaethical and the metalegal.[15] But 'general jurisprudence' is not just another name for metalegal inquiry. Rather, it refers only to a certain subset of it. As we glossed at the beginning of the article, general jurispru-

13. On this theme, see the opening parts of Gibbard, *Thinking How to Live*.

14. For discussion, see Mark Schroeder, *Noncognitivism in Ethics* (New York: Routledge, 2010).

15. For a similar line of thought, see Kevin Toh, "Jurisprudential Theories and First-Order Legal Judgments," *Philosophy Compass* 8 (2013): 457–71. Like us, Toh thinks there is a crucial parallel between metaethics and metalegal inquiry that has been underappreciated within legal philosophy. His basic views about the nature of metalegal inquiry (as well as general jurisprudence) are thus very close to our own. In this article, we give a more detailed characterization of metaethics and metalegal inquiry than Toh offers (though it might be that he would ultimately grant our more detailed characterization).

dence is standardly taken to be about law in general, and not about law that is parochial to a specific social/historical context. Given this, we think that the term 'general jurisprudence' should refer to the subset of metalegal inquiry that concerns universal legal thought, talk, and reality, that is, the part of legal thought and talk—and what (if anything) they are distinctively about—that is universal across all social/historical contexts where there is such thought and talk.[16]

As with our characterization of the term 'metaethics', we do not aim to capture the full range of ways that the term 'general jurisprudence' is used. Rather, we seek to pick out a theoretically interesting and unified philosophical project, which, at the same time, draws on key strands of existing usage of the term 'general jurisprudence'. This specification is important, given the range of ways this term is used in contemporary legal philosophy. For example, some use the term 'general jurisprudence' to include 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 normative project within political philosophy and ethics, where these are projects with their own constitutive standards of success, and not part of the metalegal project, which has different constitutive standards of success. Thus, on our view, this 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 glossed as "analytical jurisprudence") from questions in normative jurisprudence.[17]

Of course, the following methodological thesis might be true: the best way to pursue general jurisprudence (or metalegal inquiry more broadly) is to do extensive normative work in political philosophy and ethics. This position is analogous to the idea that the best way to pursue metaethics involves doing extensive normative work in ethics.[18] Our account of general jurisprudence is neutral on this methodological ques-

16. Note that we can make a parallel distinction within metaethics as well. In other words, we can separate out the part of metaethics that deals with universal ethical thought and talk, as opposed to ethical thought and talk that are socially/historically specific. For example, perhaps specifically moral thought and talk are best understood as a subset of ethical thought and talk, but not one that is universal across all social/historical contexts. For some helpful discussion of that idea, see G. E. M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1–19; Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985). If so, then metamoral inquiry can be seen as a subset of metaethics.

17. See, e.g., H. L. A. Hart, *The Concept of Law*, 3rd ed. (1961; repr., Oxford: Oxford University Press, 2012); Shapiro, *Legality*; Brian Leiter, *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* (Oxford: Oxford University Press, 2007); John Gardner, *Law as a Leap of Faith* (Oxford: Oxford University Press, 2012).

18. For discussion of this basic idea, see Stephen L. Darwall, *Philosophical Ethics* (Boulder, CO: Westview, 1998).

tion 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 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 analytically separate even if they are methodologically connected.

In putting forward our view, we also do not mean to cast the term 'general jurisprudence' as an honorific, according to which questions of general jurisprudence are more important, 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 the term 'general jurisprudence' does rest on the idea that general jurisprudence is a theoretically interesting philosophical kind. But it is neutral on the comparative judgment that we glossed above.[19] Indeed, our characterization is compatible with the idea that general jurisprudence is not as valuable as other projects within legal philosophy or other projects outside of legal philosophy.[20]

Let us now turn to some important theses that do follow from our account of metalegal inquiry and general jurisprudence. First, just as with philosophers working in metaethics, philosophers working on metalegal inquiry can focus on different aspects of the relevant overall explanatory project. For example, they can focus on issues of language, metaphysics, or epistemology, while forgoing those outside that focus. Second, just as in the case of metaethics, these philosophers can bring different tools and theses to bear on those parts of the explanatory project in which they are interested. Different philosophers have different background commitments in auxiliary parts of philosophy. Third, just as with the case of metaethics, different theses in metalegal inquiry will hang together more or less well as part of overall package deals. Such package deals will be ones that aim to provide comprehensive explanatory accounts of how legal thought, talk, and reality fit into reality.

As this brings out, there are a wide range of approaches that one can take to the explanatory project that defines metalegal inquiry—and a number of different entry points to that explanatory project. It would be a

19. 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, "Nature and Explanatory Ambitions of Metaethics."

20. 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 David Enoch, "Is General Jurisprudence Interesting?," in *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence*, ed. David Plunkett, Scott Shapiro, and Kevin Toh (Oxford: Oxford University Press, forthcoming).

mistake, therefore, to think that one of them (e.g., working on the metaphysics of legal content) is the privileged starting point, either to metalegal inquiry as a whole or to general jurisprudence in particular. 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.

III. GENERAL JURISPRUDENCE AS A BRANCH OF METANORMATIVE INQUIRY

Thus far, we have advanced the following two claims: (1) the structure of metalegal inquiry closely parallels that of metaethics, and (2) general jurisprudence is the branch of metalegal inquiry that concerns universal legal thought, talk, and reality. We now turn to developing the final claim of our framework: metaethics and metalegal inquiry are parallel branches of an overarching explanatory project, which we characterize as *metanormative* inquiry.

Normative judgments about how things should be—and, relatedly, evaluative judgments about what is better or worse, good or bad, and so on—are pervasive. We make judgments about which activities we should engage in, which government policies are right to adopt, which standards should guide scientific inquiry, and which movies are good. The basic aim of metanormative inquiry is to explain the full range of normative and evaluative thought, the language we use to communicate these thoughts, and what (if anything) such thought and talk are distinctively about (e.g., normative and evaluative facts, properties, relations). More specifically, metanormative inquiry aims to explain how normative and evaluative thought and talk—and what (if anything) such thought and talk are distinctively about—fit into reality overall. Again, we can shorten this characterization to how normative and evaluative thought, talk, and reality fit into reality. And if we follow one common 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 fit into reality.

To be sure, philosophers don't agree on how to demarcate exactly which kinds of thought and talk fall under the purview of metanormative inquiry. Nevertheless, it is fairly uncontroversial that ethical thought and talk fall within its purview. Moreover, it is fairly uncontroversial that these include both true (or correct) ethical judgments and false (or incorrect) ones. Thus, we might gain purchase on the nature of metanormative inquiry 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 inquiry. Given our aims in this article, however, 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—a distinction that, even if it cannot sustain critical reflection, is deeply embedded in much of our existing thought and talk.

On the one hand, consider the rules of chess or standards of fashion. We might say that both are "norms" in the following sense: they are standards that can be used to assess whether something (e.g., an action, a style of dress) 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 thin sense of normativity with a thicker one, which many take to be at the heart of ethics, as well as epistemology. When an agent does something she ethically ought not to do, all things considered, it seems that she has done something more criticizable and mistaken than when she fails to conform to merely formal norms. We invoke this thicker notion of normativity when we ask not just how an agent's actions stand in relation to a given set of norms she just happens to care about, but rather what she should really do, all things considered. Call this more authoritative or full-blooded notion *robust normativity*.[21]

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 the main reason why many philosophers are interested in metaethics in the first place. The question of what robust normativity is lies at the heart of debates within metaethics. Some believe that robust normativity is best captured by appeal to the idea of genuine reasons for action, while others advert to the idea of nonarbitrary or nonoptional standards.[22] For our purposes, what matters is that the reader has a rough sense of the contrast between robust and formal

21. Our distinction between robust and formal normativity draws on Tristram McPherson, "Against Quietist Normative Realism," *Philosophical Studies* 154 (2011): 223–40, and "Authoritatively Normative Concepts," in *Oxford Studies in Metaethics*, vol. 13, ed. R. Shafer-Landau (Oxford: Oxford University Press, forthcoming), as well as the thin definition of "norm" given in Shapiro, *Legality* (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 David Copp, "Moral Naturalism and Three Grades of Normativity," in *Normativity and Naturalism*, ed. Peter Schaber (Frankfurt: Ontos-Verlag, 2005), 7–46, who contrasts "generic" normativity with a more full-blooded notion; and Parfit, *On What Matters*, who contrasts normativity in the "rule-implying" sense with a more full-blooded notion, which he calls normativity in the "reason-implying" sense.

22. For an example of the first sort of approach, see Parfit, *On What Matters*. For an example of the second sort of approach, see McPherson, "Authoritatively Normative Concepts." For another approach, which, roughly, understands formal normativity as a fiction about the robustly normative, see Daniel Wodak, "Mere Formalities" (unpublished manuscript).

normativity, as well as why one might think that there is such a contrast in the first place.[23]

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 inquiry, namely, as the project of explaining (1) how thought, talk, and reality that involve formal normativity fit into reality and (2) how thought, talk, and reality that involve robust normativity fit into reality. We can call the first possibility the *wide* understanding of the metanormative project and the second possibility the *narrow* understanding.[24]

Before moving on, it is important to underscore that both the wide and narrow understandings of metanormative inquiry have the resources to count false normative judgments as "normative." What makes a judgment normative, one might claim, is that it is about normative facts, properties, or relations. A judgment can be about such things but still be false. Indeed, given our capacious sense of 'about' that we introduced earlier, it could even be about such things even if such facts, properties, or relations are never instantiated. We think that this is a welcome result, given that error theories are serious possibilities in many branches of metanormative inquiry. It is a mark in favor of our view that it has the resources to include such views as live theoretical options.[25]

Let us now turn to metalegal inquiry. There are different cases to be made for why metalegal inquiry is a branch of metanormative inquiry. Which case one should make depends on whether one is working with the wide or narrow understanding of the metanormative project, as well as one's substantive views about legal thought, talk, and reality.

23. One possibility, which we put aside here, is that there is not one distinction here, but rather multiple, cross-cutting ones. For discussion, see McPherson and Plunkett, "Nature and Explanatory Ambitions of Metaethics." For connected discussion, see Stephen Finlay, "Defining Normativity," in Plunkett, Shapiro, and Toh, *Dimensions of Normativity*.

24. Our discussion here parallels the discussion in McPherson and Plunkett, "Nature and Explanatory Ambitions of Metaethics."

25. 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 are 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 are 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 they are normative. For example, one might appeal (as many noncognitivists do) to the (purportedly) distinctive mental states involved in such thought and 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.

Consider the wide notion of the metanormative project. The law clearly involves norms in the weaker, formal sense of 'norm' identified above—namely, standards that can be used to measure conformity to themselves.[26] Thus, when one uses a wide notion of formal normativity, metalegal inquiry is trivially classified as a branch of metanormative inquiry.

When we move to the narrow understanding of the metanormative project, however, matters are more controversial. For our purposes here, it will suffice to outline one possible argument for why metalegal inquiry is a branch of narrow metanormative inquiry.

The argument starts from the (alleged) fact that the law makes demands on its subjects that at least purport to be authoritative with respect to all-things-considered facts about what to do.[27] The law, in other words, claims or invokes the same kind of fully loaded normativity that is a core focus of metaethical concern. When the law obligates adults to pay taxes, it claims that, all things considered, adults should pay 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 inquiry in the narrow sense. For it will then follow that legal thought and talk invoke robust normativity. And this way of invoking robust normativity, one might argue, is the relevant way for making such thought and talk fall within the purview of the narrow metanormative project.

In order for this kind of strategy to work, more would need to be said. One would have to specify the relevant notion of "claiming" appealed to here, as well as what it means for the law to claim it (e.g., as opposed to a person claiming it).[28] One would need to support the thesis that law in fact makes claims about what agents should do, all things considered, thereby invoking robust normativity. One must also guard against overgeneralization. If all it takes for a part of thought and talk to fall within the purview of narrow metanormative inquiry is a weak sort of "claiming" of robust normativity, then perhaps too many parts of thought and talk would fall under its purview. Consider judgments made by a religious skeptic about what is true within a religious code, one that she thinks should not have authority over her life or the lives of others. Most philos-

26. One way to support this idea would be to hold the following: laws are norms in (at least) this formal sense of 'norm'.

27. For discussion of this theme, see Joseph Raz, *The Authority of Law: Essays on Law and Morality* (1979; repr., Oxford: Oxford University Press, 2002); Andrei Marmor, *Philosophy of Law* (Princeton, NJ: Princeton University Press, 2011); Shapiro, *Legality*.

28. There is a significant literature on these topics in the philosophy of law. For some of the recent discussion, see Raz, *Authority of Law*; Shapiro, *Legality*. For proposals on how to make sense of the idea of law "claiming" (robust) normative authority, see John Gardner, "How Law Claims, What Law Claims," in *Institutionalized Reason: The Jurisprudence of Robert Alexy*, ed. Matthias Klatt (Oxford: Oxford University Press, 2012), 29–44; for criticism, see Ronald Dworkin, *Justice in Robes* (Cambridge, MA: Harvard University Press, 2006).

ophers would not count these judgments as "robustly normative," regardless of what that religious code "claims." Indeed, they seem very far from paradigm cases of robustly normative judgments. Similar worries might equally apply to someone who made judgments about what the law is but denied that the law mattered much for what she or others should do, all things considered.

If a philosopher were to reject the idea that the law possesses, or even claims, robust normativity, it would not follow that general jurisprudence was not a branch of metanormative inquiry. For she could still accept that general jurisprudence is part of the wide metanormative project. Skepticism about the law's relation to robust normativity is fully compatible with the acceptance of its relationship to the thin sense of formal normativity introduced earlier.

IV. DISANALOGIES BETWEEN METAETHICS AND METALEGAL INQUIRY

We have put forward an analogy between metaethics and metalegal inquiry. The core of this analogy concerns a structural point: both metaethics and metalegal inquiry aim 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 the substance of the relevant parts of thought, talk, and reality: both are "normative," in either the wide or the narrow sense of "normative" we introduced above. This is why metaethics and metalegal inquiry are both branches of metanormative inquiry. 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 inquiry. For example, consider the thesis that legal obligations, rights, and so on, depend on the existence of certain kinds of institutions (e.g., courts, legislatures) in a way that all-things-considered ethical obligations, rights, and so on, do not. We think that this disanalogy is correct. There is law only in certain social-historical contexts, in which there are the relevant kinds of institutions, but the fundamental ethical norms apply to all agents in all social-historical contexts.

Or consider another crucial difference. We think that ethical thought and talk are directly tied to robust normativity in a way that legal thought and talk are not. For example, even if law "claims" robust normativity, legal judgments are very different in kind from all-things-considered normative judgments in ethics. In short, all-things-considered normative judgments in ethics are directly about something robustly normative, in a way that (at least many) legal judgments are not. Thus, a speaker's judgment that you should not walk over someone else's property, all things considered, is very different from her judgment that doing so would be prohibited in this legal jurisdiction. She might well make the legal judgment and think

it largely irrelevant to determining what you should do, all things considered. Furthermore, all-things-considered ethical facts about what one should do are robustly normative for us, as opposed to facts about what the law prohibits, permits, empowers, and so on, one to do, which are not.[29]

It is important that our framework allows us to identify these disanalogies between the respective subject matters of metaethics and metalegal inquiry. However, it is also equally important that nothing in our framework settles whether these disanalogies obtain. A natural lawyer can adopt our construal of general jurisprudence even though she believes that facts about what the law prohibits, permits, and so on, are in fact robustly normative.[30] Similarly, someone who denies that there is such a thing as robust normativity can also accept our construal of general jurisprudence.[31] How legal thought, talk, and reality relate 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. One might grant that metalegal inquiry (or metaethics) is part of metanormative inquiry but deny that this classification is the most important feature of metalegal inquiry (or metaethics). Consider, for example, the thesis that what is really crucial about legal thought, talk, and reality is their connection to state-enforced coercion. Such a claim is consistent with our account, for there are many distinctions to be drawn within the parts of thought, talk, and reality covered by metanormative inquiry. And while we think that the fact that metalegal inquiry is a branch of metanormative inquiry is illuminating and helps us to do important philosophical work, we can be neutral about comparative claims of significance.

V. 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

29. For connected discussion, see David Enoch, "Reason-Giving and the Law," in *Oxford Studies in Philosophy of Law*, ed. Leslie Green and Brian Leiter (Oxford: Oxford University Press, 2011), 1:1–38.

30. For some important recent statements of this kind of view, see Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011); Mark Greenberg, "The Moral Impact Theory of Law," *Yale Law Journal* 123 (2014): 1288–1342; Scott Hershovitz, "The End of Jurisprudence," *Yale Law Journal* 124 (2015): 1160–1204.

31. See Evan Tiffany, "Deflationary Normative Pluralism," *Canadian Journal of Philosophy* 37 (2007): 231–62 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. See also Derek Baker, "Skepticism about Ought Simpliciter" (unpublished manuscript); David Copp, "The Ring of Gyges: Overridingness and the Unity of Reason," *Social Philosophy and Policy* 14 (1997): 86–106.

account differs, we can clarify some key features and advantages of our account.[32]

First, as we stated at the beginning of this article, 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, the view that one of us has expressed at the start of *Legality*: analytical jurisprudence (which covers what we are here calling "general jurisprudence") deals with the "*metaphysical* foundations" of law.[33] On this account, general jurisprudence "analyzes the nature of law and legal entities," and those engaged in it "want to determine the fundamental nature of these particular objects of study."[34] As we argued at the beginning of the article, 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 are about). In contrast, our account smoothly incorporates the idea that general jurisprudence involves issues about thought and talk, and not just about metaphysics.

Second, many legal philosophers characterize general jurisprudence in terms of understanding or analyzing concepts—in particular, the concept 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."[35] Legal philosophers (including Hart) often appeal to the idea of conceptual analysis as a way to distinguish 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 metaethics from normative ethics. Thus, Joseph Raz introduces the

32. Parallel points we make below also apply to our accounts of metaethics and metanormative inquiry, in contrast to other dominant views of those fields. Our points below draw heavily on parallel discussion in McPherson and Plunkett, "Nature and Explanatory Ambitions of Metaethics," which focuses on metaethics.

33. Shapiro, *Legality*, 12.

34. Ibid., 13.

35. Hart, *Concept of Law*, 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 ibid.

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."[36] According to Raz, practical philosophy "includes both a substantive or 'evaluative' part and a formal part concerned with conceptual analysis."[37] He claims that his book (which is standardly taken to be a major contribution to general jurisprudence) is "primarily an essay in conceptual analysis."[38] This focus on analyzing concepts—rather than on understanding the things themselves that the concepts pick out—might be used to suggest that general jurisprudence focuses on representational-level issues. Such a view faces the converse problem 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, in addition to those about legal thought and talk.[39] Furthermore, a focus on conceptual analysis might well suggest that general jurisprudence is tied to a particular methodology for making progress both in 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 those 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 issues that animate much of the discussion in general jurisprudence. In short, we can show how these issues bear an important relation (or perhaps multiple important relations) to a specific explanatory project, namely, the project of explaining how universal legal thought, talk, and reality fit into reality. For example, we can highlight the relation that a group of issues has to contemporary "live options" for carrying out that project. Or we can highlight how a group of issues mattered for various

36. Joseph Raz, *Practical Reason and Norms* (1975; repr., Oxford: Oxford University Press, 2002), 11.

37. Ibid., 10.

38. Ibid.

39. Note that if one wants 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 insist 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, *Legality*.

historically important attempts to carry out that explanatory project. At the same time, our account helps explain why the list of issues isn't static, but 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 inquiry more broadly) as involving "second-order" questions about legal thought and talk, as opposed to first-order questions about the law.[40] 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 noncognitive attitudes?" vs. "How many people have written papers about legal obligation in the past five years?"). Moreover, key claims that are crucial to many projects within general jurisprudence, such as those about the necessary grounds of legal facts, are not obviously "second-order" questions. They are claims about what explains what. 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 that there is any meaningful distinction between doing general jurisprudence and engaging in other projects, for example, engaging in substantive legal argument, or substantive ethical/political inquiry. For example, Ronald Dworkin has famously advocated a version of this view, a position similar to one he defends about metaethics.[41] Our account stands in contrast to this kind of Dworkinian view by claiming that metalegal inquiry is an explanatory project distinct from either standard first-order legal argument or moral/political inquiry. As we emphasized earlier in Section II, drawing a distinction between metalegal inquiry 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, developing a view in metalegal inquiry might also be crucial to certain substantive legal, ethical, or political arguments, or a single claim might be crucial to both a general jurisprudential theory and a substantive normative one. But such unsurprising results in no way threaten our thesis that there is a distinctive explanatory project that characterizes general jurisprudence as such.

40. See, e.g., Toh, "Jurisprudential Theories and First-Order Legal Judgments." Toh is here drawing on an influential way of distinguishing metaethics from normative ethics, which stems from J. L. Mackie, *Ethics: Inventing Right and Wrong* (New York: Penguin, 1977). It should be noted, however, that Toh only uses this idea of "second-order" questions as a preliminary guide to what he has in mind by metaethics and metalegal inquiry. He does not aim to give a detailed account of either metaethics or metalegal inquiry in that paper.

41. See Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap, 1986), and *Justice for Hedgehogs*.

VI. POSITIVISM AND THE RELATIONS BETWEEN LAW AND MORALITY

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

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.[42] To claim that moral facts are among the "ultimate" grounds of legal facts is to claim that they are necessary grounds, rather than being contingent grounds in virtue of social facts. Antipositivists hold the former view, whereas "inclusive" legal positivists accept the possibility of the latter. (This means that the talk of "ultimate" grounds is thus compatible with either social facts or moral facts being grounded in further facts.) We are now in a better position to appreciate how this debate, characterized in this way, connects to the explanatory task of general jurisprudence.

Let us begin with the outlines of a case for why the positivism/antipositivism debate is something that a comprehensive general jurisprudential theory should take a stand on. It is a notable feature of legal facts that they vary from jurisdiction to jurisdiction and over time. The law in one state might set a different speed limit than that in another state, and the speed limit in one state might be different now than it was in 1950. A complete metalegal theory should explain how legal facts (insofar as there are any) fit into reality. Such an account should spell out the nature and grounds of legal facts—otherwise, we won't have a satisfactory account of how legal reality fits into reality overall.

When we seek to work out this part of the explanatory project, we must take into account numerous considerations. On the one hand, legal thought and talk involve terminology that is normally associated with moral thought and talk—for example, "rights," "duties," and "obligations." One straightforward explanation of this connection is that legal facts—which legal thought and talk are about—are ultimately grounded, at least in part, in moral facts. Perhaps more importantly, this explanation would also account for why many people (including, crucially, lawyers and judges) seem to cite moral considerations freely to support claims about what the law in a given jurisdiction is, and not just about what it should be. If antipositivism is correct, this practice can be explained (and vindicated)

42. 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 John Gardner, "Legal Positivism: 5 1/2 Myths," *American Journal of Jurisprudence* 46 (2001): 199–228. For a discussion of how this way of framing the debate relates to the one we are working with here, see David Plunkett, "Legal Positivism and the Moral Aim Thesis," *Oxford Journal of Legal Studies* 33 (2013): 563–605.

by holding that legal epistemology closely tracks the underlying metaphysics. In short, antipositivists can claim that legal actors cite moral facts to defend views about the content of the law because legal facts are ultimately grounded in moral facts.[43]

At the same time, it is uncontroversial that facts about the content of the law are at least partly determined by social facts, for example, facts about legislative voting, judicial decision-making, and administrative regulation. Here are three thoughts that, at least prima facie, seem to support the positivist's idea that such social facts fully settle the legal facts, at least in some ultimate sense.[44] First, what the content of the law is—as well as whether there is law at all—seems to be ultimately up to us in a way that is fundamentally different from the parallel issues about morality. Second, consider that morality appears to be robustly normative, whereas the law is not. Finally, it appears that there can be morally bad laws—and, indeed, morally bad legal systems.

This very brief discussion is meant to illustrate the relevance of the positivism/antipositivism debate in general jurisprudence: given certain compelling assumptions within metalegal inquiry and about legal practice—for example, that legal terminology is associated with moral terminology, that legal facts depend on social facts—the issue of whether legal facts are ultimately grounded solely in social facts or in moral facts as well becomes another important question within metalegal inquiry. Our framework helps bring out why this is so—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 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.[45] For example, some skeptics argue that we

43. For discussion of these broad kinds of motivations for antipositivism, see Dworkin, *Law's Empire*; Greenberg, "Moral Impact Theory of Law."

44. For discussion of these kinds of motivations for positivism, see Shapiro, *Legality*; Gardner, "Legal Positivism."

45. For some sympathetic discussion of grounding, see Rosen, "Metaphysical Dependence"; Fine, "Guide to Ground"; Jonathan Schaffer, "On What Grounds What," in *Metametaphysics: New Essays on the Foundations of Ontology*, ed. David J. Chalmers, David Manley, and Ryan Wasserman (Oxford: Oxford University Press, 2009), 347–83; Dasgupta, "Possibility of Physicalism." For skepticism, see Jessica M. Wilson, "No Work for a Theory of Grounding," *Inquiry* 57 (2014): 535–79; Thomas Hofweber, "Ambitious, yet Modest, Metaphysics," in Chalmers, Manley, and Wasserman, *Metametaphysics*; Kathrin Koslicki, "The Coarse-Grainedness of Grounding," in *Oxford Studies in Metaphysics*, ed. Karen Bennett and Dean W. Zimmerman (Oxford: Oxford University Press, 2015), 9:306–44; Chris Daly, "Skepticism about Grounding," in Correia and Schnieder, *Metaphysical Grounding*, 81–100.

should avoid "grounding" talk altogether and focus instead on supervenience, or on other metaphysical relations (e.g., composition, the determinable/determinate relation, identity). More radically, some even believe that we should do away with constitutive explanations within metaphysics completely. Though we think that this radical skepticism is mistaken, our point is that the positivism/antipositivism debate depends on philosophically substantive commitments about the nature of metaphysics and explanation. If one is skeptical about constitutive explanations, then one should be skeptical about the value of this particular debate.

The list of such philosophical commitments is long. For example, the positivism/antipositivism debate assumes that morality is an important normative category. Again, this is a substantive position: we might object that this concept of "morality" is a messy folk concept that isn't helpful for doing philosophical inquiry.[46] The debate also assumes that social and moral facts are distinct categories. But we can question this distinction as well. Finally, one might (as many philosophers do) reject the idea that morality is robustly normative.[47] If so, the potential relations between law and morality will be less gripping. The more pressing issues, including the sorts of grounding issues that lay at the heart of the debate over positivism, might focus on the relations between law and robust normativity.[48]

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 participate in this debate. Rather, the debate is one that looms large given certain philosophical views. While we believe that these views are plausible, philosophers who deny some of them will regard the positivism/antipositivism debate as misguided. Importantly, they still can engage directly with the project of general jurisprudence as such, as we will now see.

VII. MAKING USE OF DIFFERENT ASPECTS OF A PACKAGE DEAL

According to our view, general jurisprudence aims to explain how legal thought, talk, and reality fit into reality overall. As with the parallel project in metaethics, there are certain broad kinds of issues that will be crucial to resolve when pursuing a comprehensive account of this explanandum,

46. For discussion of this idea, see Tristram McPherson and David Plunkett, "What Are/Should We Be Doing in Normative Inquiry?," in *Conceptual Ethics and Conceptual Engineering*, ed. Alexis Burgess, Herman Cappelen, and David Plunkett (Oxford: Oxford University Press, forthcoming).

47. See, e.g., Williams, *Ethics and the Limits of Philosophy*; Philippa Foot, "Morality as a System of Hypothetical Imperatives," *Philosophical Review* 81 (1972): 305–16; Friedrich Wilhelm Nietzsche, *On the Genealogy of Morality* (1887; repr., New York: Cambridge University Press, 1994).

48. For further discussion, see David Plunkett, "Robust Normativity, Morality, and Legal Positivism," in Plunkett, Shapiro, and Toh, *Dimensions of Normativity*.

namely, those in metaphysics, philosophy of mind, philosophy of language, and epistemology. Once in view, we can see that there are different aspects of one's general jurisprudential theory that might be developed in order to explain a certain (purported) aspect of legal thought, talk, or 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 practitioners 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. For example, the relevant necessary connection between law and morality might consist in the fact that legal judgments are a species of moral judgment. Such a connection between legal and moral judgments might obtain, for instance, if the legal concepts involved in legal judgments are a species of moral concept, or analyzed partly in terms of such concepts.

Those who accept such a view might also seem committed to taking legal facts to be moral facts. But perhaps not. Whether legal facts must have a parallel relation to moral facts as legal judgments do to moral judgments will depend, among other things, on how one thinks about concepts and facts—for example, whether one accepts a minimalism about facts or, instead, a more metaphysically weighty conception of them.[49]

With this in mind, consider the following combination of theses: (*a*) positivism about the metaphysics of legal facts and (*b*) the view that legal judgments are moral judgments. When seen from a certain level of abstraction, this combination of views is one way of interpreting core parts of Raz's work, which has been some of the most influential and important work done in general jurisprudence. Raz aims to combine a thoroughgoing commitment to legal positivism with a semantics of legal terms that fits smoothly within 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: "In the most general terms, the positivist social thesis is that what is law and what is not is a matter of social fact."[50] Yet, Raz also claims that normative terms have the same sense in legal and moral contexts: "Normative terms like 'a right,' 'a duty,' 'ought' are used in the same sense in legal, moral and other normative state-

49. It will also depend on how one thinks about the individuation of facts—e.g., whether or not they are individuated partly in terms of the specific concepts we use to grasp them.

50. Raz, *Authority of Law*, 37.

ments."[51] 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.[52] However, Raz is best read as thinking that the 'ought' invoked in the context of making legal judgments is a specifically moral 'ought'.[53] 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', '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 typically "detached" and are true by virtue of social facts alone. Moral statements are typically "committed" and are true by virtue of moral facts.[54]

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 that this combination of views might seem hard to parse when one approaches general jurisprudence through an exclusively metaphysical lens. However, when our explanatory focus widens, a positivistic metaphysics with a semantics that (at least prima facie) fits most naturally with an antipositivist view starts to make sense and is well worth exploring further.

VIII. SITUATING EXPRESSIVISM AS A VIEW WITHIN GENERAL JURISPRUDENCE

To further develop this theme, we next turn to a particular kind of view within general jurisprudence—namely, one centered on expressivism about legal thought and talk.[55]

51. Ibid., 158–59. However, Raz is best read as thinking that the 'ought' invoked in the context of making legal judgments is a specifically moral 'ought'. See Joseph Raz, "Incorporation by Law," *Legal Theory* 10 (2004): 1–17, 1–7.

52. For this kind of view, see Angelika Kratzer, *Modals and Conditionals: New and Revised Perspectives* (Oxford: Oxford University Press, 2012); Stephen Finlay, *Confusion of Tongues: A Theory of Normative Language* (Oxford: Oxford University Press, 2014). For discussion of this kind of view applied to issues in legal philosophy in particular, see Alex Silk, "Normativity in Language and Law," in Plunkett, Shapiro, and Toh, *Dimensions of Normativity*.

53. See Raz, "Incorporation by Law," 1–7.

54. For Raz's discussion of the distinction between committed and detached statements, see Raz, *Practical Reason and Norms*, 171–77, *Authority of Law*, 153–57, and *The Concept of a Legal System: An Introduction to the Theory of Legal System*, 2nd ed. (Oxford: Oxford University Press, 1980), 234–38.

55. 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 Kevin Toh, "Legal Judgments as Plural Acceptances of Norms," in *Oxford Studies in Philosophy of Law*, ed. Leslie Green and Brian Leiter (Oxford: Oxford University Press, 2011), 1:107–37, for Toh's statement of his own preferred form of

As we explained earlier in this article, expressivism is a thesis about an area of thought and talk, characterized by the following theses: (*a*) ethical judgments are, at the most basic explanatory level, a kind of noncognitive attitude; (*b*) ethical statements consist in expression of the relevant noncognitive attitude; and (*c*) the meaning of ethical statements is to be explained in terms of such expressions.[56] Suppose that expressivism about an area of thought and talk is true. Historically, many expressivists and nonexpressivists alike have maintained that thought and talk in that area aren't, strictly speaking, truth apt or even correctness apt. After all, the thinking has gone, noncognitive mental states such as desires or intentions aren't the kinds of things that can be true or false, or even correct or incorrect.[57] But this idea has been challenged, especially in recent years. For example, "quasi-realist" expressivists 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 at least correct.[58] In turn, many expressivists themselves endorse certain substantive positions within that area of thought and talk—positions that they claim are true (or correct). For example, an expressivist might adopt a form of consequentialism as the true general theory in ethics, as well as 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").[59]

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expressivism about legal thought and talk. See Kevin Toh, "Hart's Expressivism and His Benthamite Project," *Legal Theory* 11 (2005): 75–123 for his reading of Hart's (purported) expressivism. For an alternative nonexpressivist reading of Hart, see Stephen Finlay and David Plunkett, "Quasi-expressivism about Statements of Law: A Hartian Theory," in *Oxford Studies in Philosophy of Law*, vol. 3, ed. John Gardner, Leslie Green, and Brian Leiter (forthcoming). For a recent exploration of the prospects of metalegal expressivism and discussion of ways of developing it that depart from Toh, see Matthew Etchemendy, "New Directions in Legal Expressivism," *Legal Theory* 22 (2016): 1–21.

56. 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 Alex Silk, "How to Be an Ethical Expressivist," *Philosophy and Phenomenological Research* 90 [2015]: 47–81). 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.

57. For a representative statement of this kind of view of expressivism, see A. J. Ayer, *Language, Truth, and Logic* (1936; repr., New York: Dover, 1952).

58. See, e.g., Simon Blackburn, *Essays in Quasi-Realism* (Oxford: Oxford University Press, 1993); Gibbard, *Thinking How to Live*.

59. For example, consider here Allan Gibbard, who is one of the most prominent contemporary expressivists. Gibbard argues on behalf of both expressivism and consequentialism in *Reconciling Our Aims: In Search of Bases for Ethics* (Oxford: Oxford University Press, 2008).

Suppose, as quasi-realists maintain, that 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 so, expressivism doesn't tell us anything about what makes certain thoughts and statements in that domain true or correct, in the sense of explaining 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. Expressivism does not give truth conditions or correctness conditions for ethical claims. For all that metaethical expressivism as such says, it might be 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. Metaethical expressivism doesn't by itself settle any extensional or explanatory questions within ethics, treating them as issues to be settled by substantive normative inquiry.[60]

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 divide on the question whether moral facts are part of those ultimate grounds. But not all theories in general jurisprudence need to stake a position on what explains the content of the law. 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, as we sketched above, the question whether consequentialism is the true explanatory theory in ethics is not settled by metaethical expressivism as such.) Thus, if metalegal expressivism is true, we should not expect the true general jurisprudential theory to settle the positivism/antipositivism debate.[61]

What constitutively explains the content of the law, therefore, is not a position on which the expressivist needs to take a stand insofar as she is focused on the explanatory project of general jurisprudence. The expressivist can fully grant that there are legal facts and that they are

60. 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 Tristam McPherson, "Unifying Moral Methodology," *Pacific Philosophical Quarterly* 93 (2012): 523–49. 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, *Reconciling Our Aims*.

61. For connected discussion, see Toh, "Jurisprudential Theories and First-Order Legal Judgments"; Finlay and Plunkett, "Quasi-expressivism about Statements of Law." It should be noted that things become more complicated the more a metalegal expressivist (e.g., of a so-called quasi-realist bent) also takes on board certain kinds of minimalist or

grounded in certain facts as opposed to others (given an appropriate quasi-realist gloss on "ground"). She may even grant that there are moral facts. 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. Perhaps most importantly, it will be pressing for her to resolve the relations between legal and moral thought and talk (or forms of thought and talk that invoke more robust forms of normativity). This includes, for example, the question whether or not legal thought is a subset of moral thought. Understood from a certain abstract vantage point, that might be the central question driving the positivist/antipositivist debate all along. If the expressivist claims that legal thought is a subset of moral thought, there is then pressure to accept a parallel thesis at the level of epistemology, namely, that legal inquiry is a subset of moral inquiry. After all, according to this thesis, they are both instances of the same kind of thought. Thus, this style of metalegal expressivist might end up with the same epistemological position as the traditional legal antipositivist, only via a different route.[62]

Some metalegal expressivists will welcome this result. After all, metalegal expressivism might be motivated by some of the same considerations that motivate antipositivism. But there are other reasons one might have for endorsing metalegal expressivism. As we have emphasized earlier, one key motivation for expressivism in any domain is its fit with a naturalistic metaphysics. Many think it also offers a compelling way of explaining how and why a given class of judgments (e.g., legal judgments, or a central class of them) commonly functions in distinctively practical ways, to guide or assess conduct.[63] It has also been motivated by its (purported) ability to explain why certain kinds of foundational disagreements in the relevant domain persist despite mutual agreement on all

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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 James Dreier, "Meta-ethics and the Problem of Creeping Minimalism," *Philosophical Perspectives* 18 [2004]: 23–44; Fine, "Question of Realism"). 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 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 article.

62. Whether or not that particular conclusion turns out to be so depends on further, philosophically delicate issues that are beyond the scope of this article. (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.) For a version of metalegal expressivism that aims to avoid this conclusion, see Etchemendy, "New Directions in Legal Expressivism."

63. For discussion of this kind of motivation, see Toh, "Hart's Expressivism and His Benthamite Project"; Finlay and Plunkett, "Quasi-expressivism about Statements of Law"; Shapiro, *Legality*, chap. 4.

the relevant descriptive facts. Consider in this respect Dworkin's observation that deep disagreement about the content of the law appears to persist even in the face of agreement on the relevant social facts.[64] Kevin Toh has argued that metalegal expressivism might be well equipped to explain the possibility of such disagreement.[65]

It is possible, therefore, that the most plausible version of metalegal expressivism is consistent with legal positivism, as Toh claims. But if this form of expressivism endorses an epistemological view that is antipositivist in spirit, those drawn to legal positivism might want to reject it nonetheless.

IX. GENERAL METHODOLOGICAL IDEAS FOR MOVING FORWARD

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

A. Fit with a Broader Metanormative Theory

If general jurisprudence is a branch of metanormative inquiry, then we can inquire into how any given general jurisprudential theory fits with our best overall metanormative theories. Suppose that one advances a claim about the meaning of statements of the form "you legally ought to ϕ." One can 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 how they work throughout other areas as well, for example, in epistemic and political discourse. This concern should also focus on 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 that one advances a claim about the metaphysics of laws. One might then ask how this thesis lines up with our best theories of norms in general, as well as those of other specific kinds of norms to which laws might be related (plans, rules, etc.).

Another natural idea for making progress within general jurisprudence is to look to metaethics, currently the most developed branch of metanormative inquiry. Consider how ethical judgment is connected to motivation. Within metaethics, this issue often centers on whether some form of "judgment internalism" is true, according to which there is a necessary connection between ethical judgment and motivation.[66] We can

64. See Dworkin, *Law's Empire*, and *Justice for Hedgehogs*.

65. See Toh, "Hart's Expressivism and His Benthamite Project."

66. For helpful overview of judgment internalism, as well as a variety of other claims one might make about the relation between ethical judgment and motivation, see David Faraci and Tristram McPherson, "Ethical Judgment and Motivation," in McPherson and Plunkett, *Routledge Handbook of Metaethics*.

ask parallel questions about legal judgment, namely, about the connections between legal judgment and motivation. In so doing, we should look to resources and distinctions developed in metaethics to help us with these questions. (The converse is true for those working in metaethics, given that there is a rich collection of research in legal philosophy around similar kinds of questions.)

Finally, consider that many researchers in general jurisprudence have been focused on the possible relations between law and morality. Moral thought, talk, and reality might well be one important part of normative thought, talk, and reality, but there are others as well, for example, epistemic and aesthetic thought, talk, and reality. A natural idea for those working in general jurisprudence is thus to look to other branches of metanormative inquiry beyond metaethics. This includes what we might call the "meta*epistemic*" and "meta*aesthetic*" projects, as well as those parts of metanormative inquiry concerned with more formal norms, such as the norms of games and sports. There is likely to be rich and underexplored terrain here.[67]

B. Keeping in Mind the Explanatory Ambitions of General Jurisprudence

We have claimed that general jurisprudence aims to explain how universal legal thought, talk, and reality fit into reality overall. If this is right, one way we can evaluate individual theses endorsed by general jurisprudential theories—whether they be claims in metaphysics, epistemology, the philosophy of mind, the philosophy of language, and so on—is in terms of their ability to contribute to a part of the overall explanation of this explanandum.

This point might seem obvious, but it is worth emphasizing. For it is easy in general jurisprudence (as elsewhere) to get fixated on one debate and lose track of why that debate matters, or even whether 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, a comprehensive general jurisprudential theory may not even take a stand on this debate. The same basic point applies to more specific debates between legal philosophers. This includes, for example, the so-called "Hart–Dworkin debate," which was central to the development (and self-conception) of general jurisprudence for much of the past fifty years.[68] Keeping track of why a debate matters can help us evaluate not

67. For a similar line of thought, see Mitchell Berman, "'Let 'Em Play': A Study in the Jurisprudence of Sport," *Georgetown Law Journal* 99 (2011): 1325–69.

68. For a helpful overview of the Hart–Dworkin debate, see Scott Shapiro, "The Hart–Dworkin Debate: A Short Guide for the Perplexed," in *Ronald Dworkin*, ed. Arthur Ripstein (Cambridge: Cambridge University Press, 2007), 22–55.

only that debate but also how well its resolution furthers the explanatory project of general jurisprudence.

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.[69] Many such takes revolve around 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 about how to carry out the general jurisprudential project, as we have defined that explanatory project here.

We can draw the following conclusion: rejecting (or "moving beyond," "overcoming," etc.) a broad explanatory project is much harder than rejecting 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 inquiry are similar to many explanatory projects in other areas of philosophy (e.g., philosophy of math, philosophy of mind) that also seek to explain how an area of thought and talk—and what (if anything) that thought and talk are distinctively about (e.g., numbers, consciousness)—fits into reality overall. Those projects can (and we think should) continue even if particular dominant ways in which those projects have been pursued rest on problematic or mistaken philosophical theses.

X. CONCLUSION: DOES GENERAL JURISPRUDENCE REST ON A MERELY VERBAL DISPUTE?

In this article we have provided an account of general jurisprudence. We situated metalegal inquiry within the larger philosophical project of metanormative inquiry and claimed that metalegal inquiry parallels the part of that larger philosophical project known as "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 are distinctively about—fits into reality overall. We claimed that metalegal inquiry is the version of this explanatory project that concerns legal thought and talk and what (if anything) such thought and talk are distinctively about. In turn, we claimed that general jurisprudence is the part of metalegal inquiry that concerns universal legal thought and talk. We then illustrated some of the main philosophical pay-

69. For a recent example of this kind of position, see Hershovitz, "End of Jurisprudence."

outs of this characterization, 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 by both its practitioners and observers.

In conclusion, we want to return to a concern that we briefly introduced at the start of this article, namely, that general jurisprudence is not philosophically substantive. Some philosophers have worried that general jurisprudence consists of nothing more than verbal disputes, such as whether debates about the nature of law are really about what 'law' means (or should mean), without any further, deeper philosophical issues at stake.[70] They wonder what, if anything, separates positivists from anti-positivists once we strip away talk of 'law' (and related terms like 'legal') and instead focus on what all sides agree are substantive philosophical issues (e.g., the issue of how judges should decide cases).

We take seriously the possibility that certain disputes within general jurisprudence are merely verbal, just as we take this possibility seriously for many disputes in philosophy. And our framework does not settle whether or not this is true of general jurisprudence. Nonetheless, we think that our framework helps us assess the magnitude of this risk.

According to our view, general jurisprudence attempts to explain how a specific part of thought, talk, and reality fits into reality overall. This is a substantive explanatory project, and different philosophers can carry it out in different ways. Although our framework leaves open the possibility that much of general jurisprudence as it is currently practiced rests on merely verbal disputes, it 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 prevent their disputes from becoming merely verbal ones and stay focused on the explanatory issues that matter.

By keeping in mind what that project is, philosophers working in general jurisprudence can also avoid another pitfall as well. The work of a handful of philosophers—notably Kelsen, Hart, Dworkin, Raz, and Finnis—has dominated much of the recent discussion in general jurisprudence. Their rich work has made important contributions to the collective effort of philosophers to make progress on the explanatory project of general jurisprudence, and no doubt merits further study and critical

70. For helpful discussion of verbal disputes, see David J. Chalmers, "Verbal Disputes," *Philosophical Review* 120 (2011): 515–66; C. S. Jenkins, "Merely Verbal Disputes," *Erkenntnis* 79 (2014): 11–30.

engagement. But if general jurisprudence is to thrive as a subfield of philosophy, it needs to be more than just a series of critical engagements with the work of such philosophers, which is sometimes how many students (and their teachers) view the field. These major figures hold controversial views about a range of topics within philosophy (e.g., philosophy of language, metaphysics, metaethics), as well as in other fields (e.g., sociology and law), that structures their approach to general jurisprudence. Such assumptions are not built into the explanatory project of general jurisprudence as such and should by no means be granted as fixed starting points to this project. By keeping the overall explanatory project of general jurisprudence in mind and understanding the many degrees of freedom available in this project, we hope that philosophers in the future will be better able to move the field forward in novel and interesting ways, rather than just replicating or tweaking existing positions. Of course, one of the existing positions might well be essentially correct. But in order to assess whether this is so, we need a better grip on a wider range of views in general jurisprudence than we currently have. We hope that our framework will aid those who will go on to produce and investigate such views.