Legal Theory, **9** (2003), 1–41. Printed in the United States of America
Published by Cambridge University Press 0361-6843/03 $12.00 + 00

"LAW"

Jules L. Coleman* and Ori Simchen†
*Yale Law School and Department of Philosophy, Yale University
†Department of Philosophy, University of British Columbia

I. THE PROBLEM

Prior to the publication of Hart's *The Concept of Law*, it was not uncommon for legal philosophers to identify jurisprudence with the quest for a definition of "law."[1,2] Hart explicitly resisted this characterization of the ambition of jurisprudence; the subject matter of jurisprudence is law, not "law." Notwithstanding Hart's assertions to the contrary, in *Law's Empire* Ronald Dworkin argues that Hart's own legal positivism as well as other familiar jurisprudential theories (like natural law) are semantic theories: that is, accounts of the meaning of "law." Dworkin further identifies semantic theories with criterialism, according to which the meaning of a term is given by shared criteria for applying it. The meaning of the expression "law" on this view is given by a rule or set of criteria specifying the conditions that must be satisfied in order properly to employ that expression, and the project of a semantic jurisprudence is to identify that rule.

Hart's resistance to definitional projects in jurisprudence and in legal philosophy more generally is both so familiar and so persuasive that Dworkin's attribution of a semantic project to positivism has largely fallen on deaf ears. Indeed, few, even among those who are otherwise sympathetic to Dworkin's interpretivism or to his more narrowly drawn criticisms of positivism, have been persuaded by his portrayal of positivism as a semantic theory. In fact, however, Dworkin nowhere claims that positivism seeks to provide a *definition* of "law." His claim is that positivism is most accurately (if not, in the end, most charitably) construed as a theory of the meaning of "law." The meaning

1. The subject of this paper is "law" as it pertains to systems of governance of human conduct. Therefore we are not offering an analysis of "law" as it pertains to regularities in nature and thus we do not explore the semantic or metasemantic relations between the two.

2. *See, for example*, Herman Kantorowicz, THE DEFINITION OF LAW (Cambridge University Press, 1958). In a similar vein, *see* Lewis Zerby's suggestion that "the most famous definition of law [*sic*]. . . is that made by Justice Holmes when he said: 'The prophecies of what courts will do in fact, and nothing more pretentious, are what I mean by *law*.'" *Some Remarks on the Philosophy of Law*, 46 J. PHIL. 773–779 (1949).

of a term is not normally given by a definition of it, and thus one might argue that those who read Dworkin as saddling positivism with definitional aspirations have simply misread him.

Were the root of the problem a simple confusion between what it is to offer a definition of term and what it is to specify its meaning (or semantic content), it would not be obvious who is to blame for the misunderstanding. Certainly Dworkin's attribution of a criterial semantics to positivism invites a good deal of confusion—for two different reasons. First, in the philosophy of language, criterialism is thought to be true only with respect to a highly restricted class of expressions with extension-fixing dictionary definitions. These are the so-called "one-criterion" terms that are the exceptions in any natural language; in English "vixen" is among them, and "law" is not. Thus, in attributing criterialism to positivism, Dworkin might be inviting the misguided thought that positivists conceive of "law" as a one-criterion term like "vixen" or "sow."[3] Secondly, in attributing a criterial semantics not only to positivism but to a range of jurisprudential views including natural law theory, Dworkin also seems to suggest that positivists and natural lawyers—whatever their substantive differences—share not only a common view of the relationship between semantics and jurisprudence but a common semantics as well. There is nothing in positivism or natural law theory that warrants or suggests such a convergence of views. There is no reason to suppose that jurists as diverse as Bentham, Austin, Kelsen, Hart, Aquinas, and Fuller—or for that matter, Raz and Coleman—share not only a conception of jurisprudence as a semantic project but the same view as to the semantics appropriate to the jurisprudential project.

Dworkin contrasts semantic theories with what he calls "interpretive" ones. According to interpretivism, we begin with a pretheoretical but revisable conception of a practice. Our aim is to understand the practice, and that requires offering a constructive interpretation of it. In a constructive interpretation, we attribute to the practice a point or purpose that orients our understanding of it. The practice itself constrains what can count as a plausible point or purpose to ascribe to it. We then interpret the practice in its best light, which is to say that we view it as constituting the best it can be of the kind of practice it is. We do so in the light of the point or purpose we attribute to it. For Dworkin, such interpretations are necessarily normative. In the case of law, those, like Dworkin, who defend so-called "normative jurisprudence" contend that an interpretation appeals necessarily to contestable norms of first-order political morality. This is the sense in which for proponents of normative jurisprudence, including Dworkin,

3. According to WEBSTER'S, "law" is: "(1) a binding custom or practice of a community; a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority (2): the whole body of such customs, practices, or rules." These conditions may be necessary but they are not sufficient for being law. (They apply as well to other kinds of rules and systems thereof.) In claiming that positivists are criterialists, Dworkin invites the inference that positivists associate "law" with a definition.

jurisprudence is necessarily normative—the sense in which it is a part of political philosophy.[4]

The menu Dworkin offers in *Law's* Empire of methodological options available for jurisprudential inquiry is limited; philosophical inquiry into the nature of law can be either an account of the meaning of "law" or an interpretation of the practice of law. Semantic theories are, moreover, criterial. The aim of jurisprudence understood semantically is to identify the shared criteria for properly applying the term "law." Because semantic theories require that individuals share the same criteria for "law," they cannot adequately explain the nature and scope of disagreement about what the criteria for "law" are—disagreement, as Dworkin notes, that is a pervasive feature of both linguistic and legal practice. This is the infamous "semantic sting" argument, and it constitutes, for Dworkin, a fatal objection to all semantic projects in jurisprudence. We are told that because the semantic sting is fatal to all semantic projects, charity precludes us (at the end of the day) from treating a jurisprudence as a semantic theory, requiring instead that we treat all jurisprudential theories as interpretive. The semantic sting is thus pivotal in *Law's* Empire because it warrants Dworkin's reformulation of competing substantive jurisprudential projects as alternative constructive interpretations of law.

Recast as a constructive interpretation, positivism is transformed into what Dworkin calls "conventionalism." What first is represented as a descriptive but hopeless account of the meaning of "law" (because of its vulnerability to the semantic sting) is recast as a normative theory of law whose theoretical resources are drawn not from a stockpile of references to the ways in which experts and other competent speakers of English use "law," but from a certain picture of the point or purpose of law—specifically, the purpose of securing and sustaining preexisting expectations. As Dworkin has it, the conventionalist interprets adjudicatory practice so that its patterns of justification are understood in an entirely backward-looking fashion. Past political acts constrain adjudication insofar as they identify the set of expectations courts are charged with enforcing, expectations their decisions in large measure must sustain. In deciding a case, the judge is understood to be determining which decision fits best with the pattern of judgments that renders expectations most secure and stable. The problem is that the

4. For Dworkin, the contrast between semantic and interpretive theories is to be drawn at many levels. The difference between semantic and interpretive theories represents, for him, the difference between those who see the projects of jurisprudence (and the methods suitable to their pursuit) as "descriptive" and those who advocate a "normative" jurisprudence. More important, the distinction between semantic and interpretive theories of law represents for Dworkin a distinction between Archimedean and anti-Archimedean philosophical stances. Archimedean theories allow that there is a place outside substantive or first-order theory from which we can evaluate first-order theories or their claims; anti-Archimedeans deny that there is a place outside first-order theory from which such judgments can be made. As we read Dworkin, all descriptive theories are Archimedean in this sense.

conventionalist interpretation of adjudicatory practice is inadequately attentive to the underlying justice or fairness of the expectations thereby entrenched in the web of prior authoritative acts. In contrast, pragmatism (the other alternative to law-as-integrity that Dworkin discusses at length in *Law's Empire*) looks exclusively to the consequences of legal decisions and thus fails adequately to take into account the important role past political acts play in our actual justificatory practices. The distinctive feature of law-as-integrity is the way in which it integrates the past with the present, settled expectations with fairness, and thus explains the actual patterns of justification in law. When measured against the criteria appropriate to interpretive theories, both positivism and pragmatism pale in comparison to law-as-integrity.

It cannot be surprising that positivists are suspicious that beginning with his discussion of the methodological dimensions of jurisprudence Dworkin has done little more than stack the deck against them. They grant the distinction between the methodological and substantive dimensions of jurisprudence, as well as the analytic priority Dworkin accords the former.[5] The problem begins with the limited menu of methodological options: jurisprudence as either semantic or interpretive theory. Neither strikes the positivist as an apt or plausible characterization of his project. Like Dworkin, positivists take themselves to be offering an account of law, not "law." Yet neither do they see their project as interpretive in Dworkin's sense, and certainly not if positivism, perhaps the most politically progressive of all jurisprudential views, is to be recast as conventionalism—the rather conservative view that the point of law is to sustain entrenched expectations.

To be sure, the menu of methodological options Dworkin offers is both overly restrictive and inadequately motivated. If one wants to attribute a semantic interpretation of the project of jurisprudence to positivism, then one has to show how, if carried out successfully, such a project could in principle illuminate important features of law. This is clearly Dworkin's burden, and in his haste to dismiss the semantic interpretation of jurisprudence, he has done far too little to motivate it. The net effect is that, whether or not Dworkin's argument is ultimately sound, his failure to motivate central parts of it, and the subsequent off-the-cuff dismissal of it by most of those whose views it targets, has left the core of the argument underexplored, its real challenges largely unmet, its most important and philosophically radical features inadequately appreciated.

Perhaps the most interesting methodological issue posed in *Law's Empire* is the initial invitation to explore the relationship between semantics (and metasemantics) on the one hand and jurisprudence on the other.[6]

5. This is a distinction and a priority that Dworkin himself cannot in the end endorse. *See note 4.*

6. The distinction between semantics and metasemantics will be discussed in fuller detail below. For now it suffices to say that semantics is concerned to specify the semantic contents of expressions, whereas metasemantics is concerned with explaining how it is that expressions have their semantic contents.

Unfortunately, of all the ways in which the semantics of "law" and jurisprudence might be related, the only one that receives any sustained attention in *Law's Empire* is the least plausible: namely, the hypothesis that jurisprudential theories—theories of law—are semantic theories—theories of the meaning of "law."

II. THE HISTORY OF THE PROBLEM

Our immediate aim is to remedy this situation and in so doing to map an explanatory terrain. In mapping the terrain, the problem we confront goes much deeper than a poorly framed question about whether jurisprudential theories are or can be semantic theories. Even a cursory review of the literature reveals that several very different claims are treated as interchangeable, and not just in philosophically untutored accounts. The following is a partial list of the different questions that are often conflated within current debates in the philosophy of law:

(1) What is law?
(2) What is a law?
(3) What is the law?[7]
(4) What is the nature of law?
(5) What is the meaning of law?
(6) What is the concept of law?
(7) What is the meaning of the concept of law?[8]
(8) What is the meaning of "law"?

In focusing on the semantics and metasemantics of "law" we propose to address a variety of issues pertaining to question 8. In doing so, we expect to be able to locate all but question 5 and 7 in their respective locations within a semantically informed jurisprudential inquiry. As for questions 5 and 7, if they are not to be dismissed as ill-formed, their scope lies outside the concerns of semantics, metasemantics, and jurisprudence altogether.[9] Question 5, for example, under its most natural interpretation would be

7. Dworkin conflates 1 and 3 from the opening pages of LAW'S EMPIRE. In the chapter titled *What Is Law?*, Dworkin explains that the focus of the chapter is the question: "What is the pertinent law?"

8. The locutions "the meaning of law" (without quotation marks flanking the last word) and "the nature of law" appear as part of the title of Section II of Joseph Raz's recent *Two Views of the Nature of the Theory of Law: A Partial Comparison, in* HART'S POSTSCRIPT 1–37 (Jules Coleman, ed., Oxford, 2001).

9. If concepts are construed as candidate meanings (semantic contents), then neither law nor any concept can have a meaning, in which cases 5 and 7 are category mistakes. If "concept" is taken to refer to a piece of mental syntax—an expression in Mentalese—then 7 is not ill-formed and concerns the content of some mental particular. But such use of "concept" is irrelevant for present purposes. On the other hand, to speak of the concept of law is sometimes just an oblique way of speaking about the nature of law, so that an account of the concept of law is just an account of what law is. Hence we treat questions 1, 4, and 6 as interchangeable.

construed as analogous to "What is the meaning of life?" As such, it does not fall within the scope of our present concerns, and we will have nothing more to say about either 5 or 7 here.

In what follows we shall assume that 1, 2, and 3 are distinct questions, each of which must also be distinguished from question 8. We shall also assume that questions 4 and 6 are interchangeable with question 1. In asking about the relationship between the semantics of "law" and jurisprudence, we are in effect asking about the relationship between 8 and questions 1 to 3. In focusing on question 8 and distinguishing it from questions 1 to 3, we hope to clear up certain confusions that have beset the philosophy of law for some time. Our initial focus, however, is on the semantics and metasemantics of "law." These are the issues around question 8 to which we now turn our attention.

As noted above, the question "What is the relationship between the semantics of 'law' and jurisprudence?" has been identified by Dworkin with the question of whether jurisprudential theories are semantic theories. Dworkin denies that jurisprudential theories are semantic theories, and he is right to do so. The problem is not with his conclusion but with the argument he offers in support of it. No contemporary jurisprudent of note endorses the view that Dworkin criticizes. Moreover, the argument itself is, in fact, harmless against its intended target. Taking a moment to establish these points is important because doing so paves the way for the more refined discussion of the relationship between jurisprudence and semantics to follow.

The success of the methodological argument in *Law's Empire* depends on two key attributions. The first is that positivism (and other legal theories) have semantic ambitions and underpinnings; they are most accurately construed as seeking to provide an account of the meaning of "law." The second is criterialism about meaning, according to which, as Dworkin puts it, "we follow shared rules . . . in using any word: these rules set out criteria that supply the word's meaning."[10] These jurisprudential views offer accounts of the meaning of "law," and such accounts consist in identifying shared criteria for properly applying the term "law." The semantic sting is meant to undermine the criterial project. Anchored as it is to criterialism, positivism sinks along with it. Unable to stay afloat as a semantic theory of "law" positivism, along with other jurisprudential views in the same boat, must be recast as constructive interpretations of law.

The most important of these attributions is the claim that positivism is committed to a criterial semantics. It is that attribution that enables Dworkin to interpret positivism as a semantic jurisprudence and it is criterialism again that renders positivism vulnerable to the semantic sting. Of these two points, the second is familiar; the first may not be. That Dworkin believes that criterialism renders positivism a semantic jurisprudence is clear for he writes that the "very meaning of the word 'law' makes *law* depend on certain

10. Coleman, *supra* note 8, at 31.

specific criteria, and . . . any lawyer who rejected or challenged those criteria would be speaking self-contradictory nonsense."[11] Again, in a similar vein, he writes: "if legal argument is mainly or even partly about pivotal cases, then lawyers cannot all be using the same factual criteria for deciding when propositions of law are true and false. Their arguments would be mainly or partly about which criteria they should use."[12] From this he concludes: "If two lawyers are actually following different rules in using the word 'law,' using different factual criteria to decide when a proposition of law is true or false, then each must mean something different from the other when he says what the law is."[13] Dworkin takes the first two clauses—"actually following different rules in using the word 'law'" and "using different factual criteria to decide when a proposition of law is true or false"—to come to the same thing, so that the truth of either is thought to entail that "each must mean something different from the other when he says what the law is."

For Dworkin, jurisprudence is an inquiry into what he calls the "grounds of law." Criterialism about "law" implies that those who successfully employ the term share an extension-fixing criterion for "law." Lawyers who are "actually following different rules in using the word 'law'" necessarily are "using different factual criteria to decide when a proposition of law is true or false." So criterialism implies as well that those who share the same extension-fixing criterion for "law" must also share the same grounds of law (or criteria of legality) in their community. Thus, in identifying the criterion for "law," a legal theorist is solving not only a semantic problem but the jurisprudential puzzle of determining the grounds of law—or so Dworkin's reading of the implications of criterialism would suggest. With so much riding on positivism's alleged commitment to criterialism, it is surprising that Dworkin offers no evidence to support this key attribution—no citation to any positivist who endorses or embraces criterialism as the semantic foundation or ambition of his jurisprudence. This suggests that Dworkin ascribes criterialism to positivism by way of an interpretive construal of it. If so, it is hardly a charitable one, since by his own lights criterialism leads positivism into so much confusion and mischief.

Setting aside the fairness of attributing criterialism to positivism, the fact is that even were positivism committed to criterialism, this would render positivism neither semantic jurisprudence nor vulnerable to the semantic sting. For criterialism about meaning does not entail that two lawyers (or anyone else) employing different criteria for "law" must disagree about the criteria of legality in their community. Nor is criterialism, properly or sympathetically understood, vulnerable to the semantic sting. To be so vulnerable, criterialism would have to imply that two lawyers who disagree about the

11. Coleman, *supra* note 8, at 31. Notice that Dworkin's reference here is to disagreement among lawyers, not to a disagreement among ordinary speakers.
12. Coleman, *supra* note 8, at 41.
13. Coleman, *supra* note 8, at 41.

grounds of law must be employing different extension-fixing criteria for "law." But while it is true that according to criterialism, if two individuals follow different rules for applying the word "law" (i.e., different extension-fixing criteria) then "law" in each idiolect has a different semantic content, it hardly follows that if two individuals use different factual criteria to decide whether a proposition of law is true or false then they must be employing "law" with different extension-fixing criteria in mind. Nor, for that matter, does it follow that individuals who disagree about extension-fixing criteria for "law" must disagree about the criteria of legality in their community. Consider the second case first.

For the sake of the argument we suppose that the semantic content of "law" is indeed given by an extension-fixing criterion. We can agree that in our shared legal community a rule that violates the Equal Protection Clause of the Fourteenth Amendment is not valid law while disagreeing on the extension-fixing criterion for "law." You may believe that the best explanation for the fact that a rule violating the Equal Protection Clause is not valid law is that substantive morality is a criterion of legality whether or not such a constraint is practiced, and this belief may evidence the criterion for "law" that you apply. On the other hand, I may believe that the best explanation of the fact that the Equal Protection Clause constrains legality in the United States is that there is a conventional practice of refusing to treat as binding rules that fail a test of substantive equality, and my belief may evidence a different criterion for "law" that I apply. So we can disagree about the extension-fixing criteria for "law" without disagreeing about the criteria of legality in our community.

On the other hand, we can disagree about the criteria of legality in our community while sharing the same extension-fixing criterion for "law." Suppose we disagree about the criteria of legality in our community. Even so, we might well share the same criterion for applying "law"; for it may be that our shared criterion, whatever it is, applies to instances of a certain form of governance in which disagreement about the criteria of legality is pervasive throughout the community. Our disagreement about the criteria of legality in our community is not only consistent with our sharing the same extension-fixing criterion for "law"; it may, under these conditions, provide evidence that we share the same extension-fixing criterion—that we are on, so to speak, the same page as to what "law" means.

The claim that criterialism entails the view that disagreements about the grounds or criteria of law are or must be expressed in disagreements about the criteria for "law" is so clearly wrong that charity precludes ascribing it to Dworkin. Charity, likewise, should have precluded Dworkin from attributing it to positivism, but it has not—and for an understandable but not a very good reason. Without attributing to positivism the inference from criterialism to the claim that disagreements about the criteria of legality imply disagreements about the meaning of "law," Dworkin would be left without a basis for his allegation that positivism is appropriately construed

as a semantic theory.[14] This is no trivial problem either. If Dworkin fails to motivate construing positivism as a semantic theory of "law," then large chunks of the argument in *Law's Empire* will seem pointless. The contrast between interpretive and semantic conceptions of jurisprudence will come off as not merely limited and artificial but also largely disingenuous.

Not only is it a mistake to think that criterialism implies that jurisprudential theories committed to it must treat disagreement about the nature of law as disagreements about the criteria for "law," but the semantic sting is harmless against any plausible interpretation of it. The criterialist claim that for proficient speakers to share the meaning of a concept-word is for them to share an extension-fixing criterion is open to many possible interpretations. For example, individual speakers may be said to grasp and share an extension-fixing criterion only implicitly, in the sense that each speaker's linguistic behavior evidences one and the same criterion without any speaker being presumed to be able to formulate it properly. Or speakers may be said to share an extension-fixing criterion in the sense that the linguistic behavior of their linguistic community taken as a whole evidences the criterion, without, once again, any speaker being presumed to be capable of formulating it properly. The possibility of theoretical disagreement about the criteria of "law" is harmless against any of these interpretations of criterialism. In fact, the only interpretation of the criterialist claim that is actually vulnerable to the semantic sting is the one that is least plausible, namely, that for individual speakers to share the meaning of a concept-word is for them to have propositional knowledge of one and the same extension-fixing criterion. And while this version of criterialism is vulnerable to Dworkin's argument, it is independently implausible in light of devastating objections to it proffered by the likes of Burge, Kripke, McDowell, Putnam, and, most famously, Wittgenstein.[15] It is surely Dworkin's burden to show that legal positivists are committed to this otherwise implausible version of criterialism. Yet neither in *Law's Empire* nor since has Dworkin defended the claim that positivism must be committed to such a view.

14. To be precise, Dworkin attributes to positivism two things: (1) criterialism about meaning, and (2) the identification of disagreements about the criteria of legality (in a particular community) with disagreements about the extension-fixing criteria for "law." He also alleges that (2) follows from (1). What we do not know is whether *he* believes that (2) follows from (1), in which case positivism is stuck with (2) in virtue of its commitment to (1), or whether he believes that *positivists* believe that (2) follows from (1). Our point is that it is plain that (2) does not follow from (1), and so, as a matter of charity, we should not understand Dworkin as himself believing that it does. The inference is so patently invalid that if Dworkin cannot demonstrate that positivists explicitly endorse it, he should not attribute it to them either. If he believes that (2) follows from (1), his failure is philosophical. If, however, he attributes the inference to positivism, his failure is interpretive.

15. *Cf.* Tyler Burge, *Individualism and the Mental*, 4 MIDWEST STUD. PHIL. 73–121 4(1979); Saul Kripke, NAMING AND NECESSITY (1980); John McDowell, *On the Sense and Reference of a Proper Name*, 86 MIND 159–185 (1977); *Hilary Putnam, The Meaning of "Meaning," in* 2 MIND, LANGUAGE AND REALITY: PHILOSOPHICAL PAPERS, 215–271 (1975); Ludwig Wittgenstein, PHILOSOPHICAL INVESTIGATIONS (1953).

Nor does Dworkin appear to have backed away from the argument in the methodological sections of *Law's Empire*, insisting both that positivism is best construed as a semantic theory, and that the semantic sting is devastating to it. For their part, positivists have largely ignored rather than engaged his arguments, justifiably feeling that none of Dworkin's arguments threaten their actual methodological or substantive claims. The failure to engage the arguments, however, has had the deleterious effect of leaving several central questions about the relationship between methodological and substantive issues in jurisprudence inadequately addressed. It is against this backdrop that we begin in earnest to present an account of the semantics and metasemantics of "law" and to explore the relationship of both to jurisprudence.

As we noted above, Dworkin is right to dismiss criterialism as an account of the meaning of "law." The problem with Dworkin's argument is not this conclusion but his argument for it. Dworkin thinks that positivism is committed to criterialism and that the semantic sting is fatal to criterialism and therefore to positivism, accurately, if not charitably so construed. The first claim is groundless; the second is false. Still, criterialism is hopeless, quite apart from any alleged connection it may or may not have to positivism. Because we reject the idea that the semantic content of "law" is given by an extension-fixing criterion, the first order of business is to provide the decisive argument against criterialism that Dworkin has failed to provide. Our immediate aim then is to explain why criterialism is mistaken both as a view about meaning in general and as an account of the meaning of "law" in particular. Our objection applies not only to the independently implausible version of criterialism that Dworkin targets; it applies to other forms of the view as well.

If we are right, criterialism is not an option. This raises the obvious questions: What, if anything, does the failure of criterialism imply about the relationship of theories of the meaning of "law" to theories of the nature of law? What, if anything, does the failure of criterialism imply about the relationship between what "law" means and what law is? Interestingly, many of those who share our view that the semantic content of "law" is not given by an extension-fixing criterion are drawn instead to the view that our capacity to speak determinately about law, that is, to refer to laws (and to nothing else) when using the term "law," depends, at bottom, on an implicit reliance on the findings of jurisprudence. They hold, to put it more generally, that the capacity of ordinary speakers of the language to speak determinately about law by employing "law" is somehow *mediated* by the findings of jurisprudential inquiry. This is an instance of a general view that is rather common in philosophy—that the capacity of ordinary speakers to speak determinately about things rests on the pedestal of a theoretical inquiry into the nature of the things referred to. One version of the view might be that when using a common noun "N," speakers invariably intend "N" to pick out items with a particular nature to be revealed (or already revealed) by a theoretical inquiry of the relevant sort. Let us refer to the general claim as the "pedestal

view." The pedestal view is as old as philosophy itself, and it remains a seductive picture that has a stronghold in jurisprudence comparable to that Dworkin attributes to criterialism.[16]

In fact, neither criterialism nor the pedestal view can be sustained as an account of the content of "law" or of common nouns more generally. Our argument against both depends on a general account of the way in which the contents of common nouns are determined. It is now a commonplace that one of the important lessons of the so-called new theory of reference is that the determination of the contents of common nouns has both an environmental and a social dimension. The environmental dimension of content-determination allows us to fix the extensions of our terms on the basis of beliefs that are far too schematic to qualify as extension-fixing criteria. As we shall see, criterialism simply does not appreciate the role that the environment plays in determining semantic contents. On the other hand, the social dimension of content-determination allows ordinary speakers of a language to succeed in referring to items with whose nature they possess only a superficial and largely uninformed rapport by relying on the discriminatory capacities of experts within the community. This "division of linguistic labor" is an important but nevertheless limited feature of our linguistic practices. Implicit reliance on expertise is not the rule, and while it is a noteworthy feature of our linguistic practices, its presence calls for explanation. The problem with what we are calling the pedestal view is that it overstates the reach of the division of linguistic labor, and in doing so mischaracterizes the social dimension of content-determination.[17]

In contrast to both criterialism and to the pedestal view, our account of the metasemantics of common nouns explains the capacity of ordinary speakers to speak determinately about law in a way that relies neither on extension-fixing criteria nor on jurisprudential expertise. If we are correct,

16. In jurisprudence, there is no more vivid illustration of the pedestal view than that expressed in the following quotes from Nicos Stavropoulos:

> The rough overall claim through the entire essay is that the application of concepts is sensitive to theory. The arguments in the philosophy of language to be considered will support this overall claim, by showing that theory must explain and justify a concept's past application—its use—through substantive claims about what property the concepts picks out, and how that property's nature determines future applications. (LAW AND OBJECTIVITY, 15).
>
> Theory. . . guides future applications. . . . "Theory" here is meant not as a body of formal or abstract reasoning, but rather as a set of substantive claims amenable to argument. Notice that theory will be relevant *whatever* the property picked out by the concept is, whether complex and difficult to identify, or simple and identifiable by everyone. What matters is that *which* property is involved is understood to be a substantive issue. (*I*.)

17. It may be supposed that an alternative to criterialism and to the pedestal view is a more robustly metaphysical account, according to which the expression "law" refers to instances of law by virtue of speakers intending to refer to anything having the same underlying nature as paradigmatic instances of law. We do not discuss this alternative in detail here, but do elsewhere. *See* Jules L. Coleman and Ori Simchen, *Referential Intentions and the Contents of Common Nouns* (manuscript on file with authors). For a brief indication of why such a view is no more plausible than pedestalism, *see note* 43 below.

not only does the capacity of ordinary speakers to speak determinately about law not rely on the findings of jurisprudential inquiry; the metasemantics of "law" imposes constraints on what can count as a plausible answer to various jurisprudential questions. In other words, whereas the pedestal view claims that jurisprudential inquiry contributes to how "law" gets its content, the truth is that the metasemantics of "law" imposes an epistemic constraint on what can count as a plausible answer to jurisprudential inquiries.

These are complex and ambitious claims, but we begin more modestly by drawing preliminary distinctions between semantics and metasemantics. This is the first step in establishing the inadequacies of criterialism and the pedestal view with respect to "law" and its provides some of the groundwork necessary to setting out the general account outlined below and more fully developed elsewhere.[18]

III. THE BASIC ACCOUNT[19]

It falls within the province of semantics to parse a fragment of the language into semantically significant units, to specify the semantic contents of basic units, and to show how they interact with one another so as to compose the contents of nonbasic units. Thus, for example, if the direct reference view of names is correct, ordinary names should be assigned their bearers as their contents. Metasemantics, on the other hand, asks: How is it that a given expression has the content it does? How does an expression come to possess a certain content rather than some other one, or none?[20] If the historical-chain view of names is correct, then a name has its content—the bearer—by virtue of a certain historical chain going back from its contemporary use to an initial act of naming the bearer, a linguistic baptizing ceremony of sorts.

When asking after the semantics of an expression, we need to distinguish among its various typical occurrences. Consider the following somewhat controversial jurisprudential claim: "Despite the fact that law is a comprehensive system of governance by laws, the law may be silent with respect

18. *See Referential Intentions and the Contents of Common Nouns* (manuscript on file with authors) and Jules L. Coleman and Ori Simchen, LAW AND LANGUAGE (forthcoming, Harvard University Press).

19. We hope it is apparent that our project is not to apply accepted doctrine in the philosophy of language to the philosophy of law. The only commonly accepted doctrine in the philosophy of language on which we rely is the view that there is both a social and an environmental dimension to content determination. In fact, it was in thinking about the case of "law" that doubts about pedestalism more generally arose for us. Our positions in the philosophy of language are as contestable as are our claims in the philosophy of law. Our aim is to employ the tools and explore the central issues in both the philosophy of law and the philosophy of language to inform each other.

20. For more on the distinction between semantics and metasemantics, *see* David Kaplan, *Afterthoughts*, in THEMES FROM KAPLAN 565–611 (Joseph Almog, John Perry, and Howard Wettstein, eds., Oxford, 1989), especially the section entitled *Taxonomy: Semantics and Metasemantics*, at 573–576. For a recent elaboration, *see* Robert Stalnaker, *On Considering a Possible World as Actual*, 75 PROC. ARISTOTELIAN SOC' Y 141–156 (2001).

to particular disputes arising under it." We have three occurrences of "law" within this claim; yet the noun occurs somewhat differently in each of the three sentential contexts. For example, the first type of occurrence of "law" does not admit of pluralization. It also refers to something that, if the above claim is true, has a certain system of the referents of the second type of occurrence of "law" as its instance. Finally, in its third occurrence, preceded by the definite article, "law" may be indexed to some definite political locale in a way that the other occurrences of the noun are not. On the other hand, the various occurrences of "law" do not appear to constitute a case of lexical ambiguity, as in the occurrences of "bank" in "The manager of the bank enjoys rowing along the bank." In contrast to the latter case, there is an unmistakable semantic link between the content of "law" in any one of its occurrences and its content in any of the others.

As is evident from the above, "law" has both mass-occurrences and count-occurrences. But in its count-occurrences it behaves rather differently from what we might expect. Consider for contrast "philosophy," "religion," "science," "morality," and "art." Each of these nouns has mass- and count-occurrences. You can study philosophy or religion; or you can study a philosophy or a religion. Science tells us that the universe is expansive in ways far surpassing what the ancients believed; its origin and evolution are objects of study for a science—cosmology. Few deplore morality, but many deplore particular moralities. And if a certain genre of photography is art, then photography itself is most likely an art. What these five nouns have in common is that in their count-occurrences they refer to certain systems of truths, beliefs, principles, or practices.

"Law" is different. In its count-occurrences it does not refer to systems of rules but rather to individual rules. In this, it is more akin to nouns such as "justification," "virtue," and "punishment." You may offer justification for your position or you may offer only a (single) justification. You may devote your life to the pursuit of virtue while already possessing a virtue. Punishment may be justified in the case of a particular kind of offence, yet a particular punishment may not be. However, a justification is not a system of reasons or explanations. It is one such reason or explanation. A virtue is not a system of moral excellences but one such (*pace* Socratic claims to the contrary); a punishment is not a system of sanctions; a law is not a system of rules. In short, at least *semantically* "law" seems closer to "virtue" than to "morality."[21]

In asking after the semantics of "law" we need to make a certain theoretical choice: whether or not to treat "law" in its mass- and count-occurrences as lexically ambiguous. In a recent thorough study of the semantics of mass-occurrences of nouns, Kathrin Koslicki has offered an argument sufficient

21. This should not be confused with the claim that law seems closer to virtue than to morality. Whether or not the latter is the case is a substantive, philosophical issue implicating claims in jurisprudence, not a semantic issue.

to create a presumption against treating common nouns in their mass- and count-occurrences as lexically ambiguous. [22] Her argument invites us to consider the relative ease with which nouns with one type of occurrence come to acquire the other kind. Thus, for example, in what is perhaps a linguistic innovation introduced by the advertising industry, the noun "car," which at one time had only count-occurrences, has come to have mass-occurrences ("With us you can get more car for your money"). At the same time, the noun "e-mail," which until recently had only mass-occurrences, has come to have count-occurrences ("I sent you an e-mail this morning"). As a general matter, the relative ease with which count-occurrences are introduced from prior mass-occurrences and vice versa argues against the view that nouns having both kinds of occurrence are lexically ambiguous. The truth-conditional difference between count- and mass-occurrences of "law" is just as we might expect: "is a law" is true of x just in case x is a law (whatever being a law turns out to be); "is law" is true of x just in case x is law (whatever being law turns out to be).

With this brief and preliminary excursion into the semantics of "law," we now turn to the more pressing task of outlining its metasemantics. Our present concern is how the content of "law" is determined, how the noun happens to possess the content it does. Given the absence of lexical ambiguity and the general relative ease with which nouns with one type of occurrence come to acquire the other kind, an account of the metasemantics of "law" can proceed by focusing on either its count- or its mass-occurrences. The account offered below targets mass-occurrences of the noun, but nothing of significance turns on our choice.[23]

In its mass-occurrences "law" refers to instances of law, that is, to instances of legal practice. And insofar as instances of law do not form a natural kind, we can safely say that "law" is not a natural-kind term. Natural kinds are the kinds found in nature.[24] Accordingly, among natural-kind terms are the

22. Kathrin Koslicki, *The Semantics of Mass-Predicates*, 33 NOÛS 46–91 (1999), at 51–2.

23. Even though our account focuses on mass-occurrences of the noun, a parallel; treatment applies to "law" in its count-occurrences. From a metasemantic standpoint, it makes no difference whether we focus on mass- or count-occurrences of the noun.

24. We are using "nature" while attempting to remain as neutral as possible regarding any metaphysical presumption about "joints of nature" and the like. On this reading, natural kinds are kinds of nonartificial items. Thus, for example, "earth" in its mass-occurrence is a natural-kind term on our reading, as is "pebble." This contrasts with the rather entrenched and self-consciously metaphysically robust view according to which natural kinds are distinguished from so-called nominal kinds in that the former are determined by nature itself independently of human interests, whereas the latter are merely expressive of human interests and are thus purely conventional. Our choice to construe natural kinds in an attempt to remain metaphysically neutral expresses our preference to distance ourselves for our present purposes from the metaphysical fray surrounding the natural/conventional distinction. As it happens, we are suspicious of the tenability of the distinction in its received metaphysical guise, but the larger issue is beside our present concerns. Our present concern is the metasemantics of common nouns, and nothing follows metasemantically from construing natural kinds in the way we do here rather than in the metaphysically more committed and robust way.

terms whose metasemantics is most relevant to the philosophy of science: substance terms ("water," "gold"), species terms ("lemon," "tiger"), organ terms ("brain"), and the like. What kind of term is "law" then? In what follows we argue that the metasemantics of "law" groups this noun together with nouns for simple artifacts such as "chair" and "hammer," rather than with terms whose metasemantics is most relevant to the philosophy of science, such as "water" and "gold."

In a series of path-breaking papers within the so-called new theory of reference, Hilary Putnam convincingly argues that the semantic contents of most common nouns are determined by their extensions rather than the other way around. This is one of the main contributions of Putnam's work. That the content of a typical common noun is determined by its extension undermines criterialism. According to the new theory of reference, the semantic content of a typical common noun is determined by its extension. Contents generally do not determine extensions. Extensions *constitute* semantic contents: different extensions—different contents. By contrast, according to the old criterialist story about content, the content of a common noun is given by an extension-fixing criterion. Thus, for example, the content of "gold" on the criterialist view is a set of severally necessary and jointly sufficient conditions for being gold. And proficiency with the term consists in having grasped this extension-fixing criterion. On the new view, there may be a very small minority of common nouns, nouns such as "vixen" or "mare" or "sow," whose contents may be thought of as extension-fixing criteria. These are one-criterion nouns and they are clearly the exception among the nouns.

What the contents of typical common nouns actually are on the new view is somewhat controversial. But nothing turns on this semantic question for our purposes here, and we won't discuss it much further. Some philosophers of language now assume that extension is the crucial ingredient in the overall content of a typical common noun, and that an extension-fixing criterion is no part of that overall content. This appears to be Putnam's original position. Others assume that it is the relevant property that is the crucial ingredient in the overall content (under some favored understanding of "property"), and that an extension-fixing criterion is no part of the content. But whether the content of the noun includes the extension or includes the property, how the extension of the noun is determined is going to be the most important part of the overall metasemantic story about how the noun gains its overall content. This is so even according to the latter view, according to which it is the property that enters into the content of the noun rather than the extension, because the only way the noun can come to have a particular property as its content rather than some other property (or none) is through the interactions of speakers with instances of the property in question—in other words, their interactions with members of the extension. Much more on this issue below. Accordingly, in what follows we focus on the issue of extension-determination.

Putnam's critique of the old criterialist picture has two importantly distinct components. The first component consists in showing that the determination of the extension for common nouns such as "gold" and "water" is a social matter. The second component consists in showing that such a determination is sensitive to the actual environment of the linguistic community. Thus semantic content is determined both socially and environmentally. We take up these two points in turn. As for the social aspect of content-determination, fixing the extension of a noun such as "gold" cannot just be a matter of the individual speaker's psychological state. Even if you cannot distinguish gold from a superficially similar substance (say, iron pyrite), when you employ "gold" you refer to gold and not to either-gold-or-iron-pyrite. In a memorable passage from "The Meaning of 'Meaning,'" Putnam offers the following radical rethinking of what is required of an individual speaker in order to be credited with proficiency with "gold":

> [E]veryone to whom gold is important for any reason has to acquire the word "gold"; but he does not have to acquire the method of recognizing if something is or is not gold. He can rely on a special subclass of speakers. The features that are generally thought to be present in connection with a general name—necessary and sufficient conditions for membership in the extension, ways of recognizing if something is in the extension ("criteria"), etc.—are all present in the linguistic community considered as a collective body; but that collective body divides the "labor" of knowing and employing these various parts of the "meaning" of "gold."[25]

An average speaker of English need not have any idea how to distinguish gold from a superficially similar substance. Yet when the average speaker employs "gold," he or she refers to gold and not (also) to iron pyrite. How is this determination achieved? It is achieved, first of all, by the cooperative activity of the entire linguistic community in determining the extension of "gold." Putnam dubs this kind of cooperation "division of linguistic labor." Ordinary speakers succeed in referring to gold by employing "gold" because there are others—metallurgists—in the linguistic community who can distinguish samples of gold from samples of iron pyrite and on whose expertise ordinary speakers rely.

All by itself, the notion of a division of linguistic labor may encourage the idea that while individuals may not be in possession of an extension-fixing criterion for being gold, the community as a whole must be. Thus a committed criterialist can accommodate the phenomenon of division of linguistic labor by simply shifting on the issue of possession of content from individual speakers to the entire speech community. Thus it can still be claimed that contents are invariably extension-fixing criteria, except that it turns out that individual speakers do not typically grasp them. Individual speakers merely

25. Putnam, *supra* note 15, at 227–8.

contribute in various ways to the entire linguistic community's "grasp" of contents. In other words, if all that Putnam added to the traditional story had been the idea that the community as a whole possesses the criteria for properly applying a noun, then his account would not pose any threat to a communitywide criterialism about semantic content.

But the social dimension of content-determination is only half the story of how the extension of "gold" is determined, the half that is consonant with a communitywide criterialism about content. The other half of the story undermines any form of criterialism altogether. This is what the famous Twin-Earth thought experiments were supposed to establish. Putnam asks us to consider two prescientific linguistic communities that are identical to one another in all respects but for the fact that one community is situated on Earth while the other is situated on Twin-Earth, a sufficiently remote planet identical to Earth in all relevant respects but for the fact that all and only instances of water on Earth are paralleled by instances of some alien substance on Twin-Earth that cannot be distinguished from water by any prescientific means. Now, if communitywide criterialism were correct, then we would expect the word "water" as used by speakers on Earth to be coextensive with "water" as used by speakers on Twin-Earth. But intuitively, this is clearly false. It seems intuitively obvious that "water" on Earth means water whereas on Twin-Earth it mean the alien substance. More theoretically, "water" appears to have a different semantic content in each community by virtue of having a different extension, and it has a different extension in each community by virtue of the actual physical environment of the community.

While the Twin-Earth thought experiments are familiar enough, some of their most salient implications are still widely underappreciated. Let us turn, then, to the environmental dimension of content-determination. A familiar thesis of the new theory of reference is that an actual referent of a typical common noun falls within the extension of the noun in any counterfactual situation in which it exists ("rigidity").[26] Rigidity itself is not of much concern to us here, but one of the fruitful insights in "The Meaning of "Meaning"" is that the rigidity of a typical common noun derives from an indexicality in fixing its extension. Take "water." Its extension is thought to be determined by the following condition:

$$(*) \qquad \text{water}(x) \leftrightarrow \text{same}_L(x, \text{this}).$$

The term "water" applies to a given sample of a substance (in any possible world) just in case it bears a certain equivalence relation (sameness_L) to a

26. Consider, e.g., "man." No man in the actual world is a non-man in any possible world. This is importantly different from the one-criterion noun "bachelor." A bachelor in the actual world need not be a bachelor in other possible worlds. Thus a man who happens to be a bachelor in the actual world need not be a bachelor in all possible worlds in which he exists, but must be a man in all such worlds.

paradigmatic sample demonstratively referred to by "this" as spoken in the actual world (say the substance in some puddle).[27]

The account just offered involves a certain philosophical idealization of course. In the natural course of things, in which the extension of "water" is actually determined, no employment of (∗) is ever undertaken. But (∗) makes explicit the environmental aspect of content-determination for "water." Speakers use "water" *as if* they are committed to (∗) as an extension-fixing stipulation; "water" refers to whatever bears the $\text{sameness}_{\text{L}}$ relation to the stuff around here. When it comes to considering the general question of how "water" refers to whatever it happens to refer to, something along the lines of (∗) provides a sketch of an answer. But notice that "thing bearing the $\text{sameness}_{\text{L}}$ relation to this [the substance in the puddle]" is not meant to be giving the semantic content of "water." Rather, it is meant only to provide a schematic answer to the metasemantic question of how the content of "water" is determined. The content of "water" includes the extension itself as a crucial ingredient, an extension that is fixed by "thing bearing the $\text{sameness}_{\text{L}}$ relation to this [the substance in the puddle]." But the content of the phrase "thing bearing the $\text{sameness}_{\text{L}}$ relation to this [the substance in the puddle]" is no part of the content of "water."

Much of Putnam's discussion, and all of Kripke's parallel discussion in *Naming and Necessity*, is aimed at an important subclass of common nouns—terms like "water," "gold," "tiger," and "lemon"—that refer to natural kinds for which membership is a matter to be determined by a certain expertise. Yet the account is clearly meant to extend to other common nouns as well: terms for natural kinds, membership in which is not left to experts, such as "pebble," "puddle," and "pond,"[28] and terms for simple everyday artifacts such as "chair," "pencil," and "hammer."

There is an important difference between natural-kind terms such as "water" and "gold" and everyday-artifact terms such as "chair" and "hammer," a difference that is underplayed by Putnam and all but ignored by many other theorists.[29] We can appreciate this difference by delving deeper into what is supposed to determine the extension of a typical common noun. Consider "water" again. To fall within its extension is to bear a certain equivalence relation ($\text{sameness}_{\text{L}}$) to paradigmatic samples. But what is this relation supposed to be? In this case we are told that it is sameness in nature as appropriate for liquids, which is roughly microstructural identity. A given sample of a substance is a sample of water just in case it is microstructurally identical to paradigmatic samples of water. In this way (∗) exhibits a certain

27. As a technical aside, the rigidity of "water" on this view derives from a certain semantic fact about indexicals, namely, that the content of "this" is fixed with respect to the actual context of use and does not vary with circumstances of evaluation. In this way, "this" takes wide scope relative to intentional operators.

28. Once again, we use "nature" and "natural kind" in as metaphysically neutral a sense as possible.

29. A notable exception is Hilary Kornblith. *See* Kornblith, *Referring to Artifacts*, 89 PHIL. REV. 109–114 (1980).

reliance on scientific expertise in determining the extension of the term as spelled out by the thesis of the division of linguistic labor. Determining whether or not a given sample is indeed the same_L as a paradigmatic sample of water is not something an average speaker can be presumed capable of doing. It is a matter left to the experts. The average speaker's ability to speak determinately about water depends on an implicit reliance on expertise. Henceforth, we shall follow common parlance in describing nouns that exhibit a division of linguistic labor as "linguistically deferential" and in calling the phenomenon itself "linguistic deference."

If we now shift our attention from "water" and "gold" to other common nouns, this picture needs to be amended somewhat. Consider a simple artifact term such as "chair" or "hammer." Such nouns are not linguistically deferential.[30] In contrast to such cases as "water" and "gold," proficiency with "chair" does not involve reliance on experts. There are no chair-experts in the relevant sense. Yet there is just as much an environmental component to the determination of content for "chair" as there is to the determination of content for "water." This is the feature of Putnam's account that turns criterialism on its head and which will be the focal point of most of the discussion to follow.[31]

The following will determine the extension for "chair":

$$(**) \qquad \text{chair}(x) \leftrightarrow \text{same}_F(x, \text{this}),$$

where sameness_F is a sameness relation appropriate for furniture. Now, to the best of our knowledge, nowhere in Putnam's work are we told how to think about the sameness relation as befitting a simple artifact term such as "chair." In the only sustained discussion of artifact terms in "The Meaning of 'Meaning,"' Putnam envisions the epistemic possibility that what we take to be the artificial kind of pencils turns out to constitute a natural kind of pencil-shaped organisms. In that scenario, it seems that the sameness relation that enters into the determination of the extension for "pencil" turns out to demand the kind of scientific expertise suitable for a natural-kind term such as "water" or "gold" after all.[32] The scenario Putnam envisions as an epistemic possibility is one in which it turns out that there is a "deep story" about what pencils really are that goes far beyond what ordinary speakers take pencils to be. Once it is discovered that pencils are really organisms, the sameness relation through which the extension of "pencil" is determined seems to

30. As Putnam puts it, "some words do not exhibit any division of linguistic labor: 'chair,' for example." Putnam, *supra* note 15, at 228.

31. "'Pencil' is just as indexical as 'water' or 'gold.'" *I.*, at 243. That the indexical aspect is more prevalent than the social aspect in determining the extensions of common nouns is often overlooked. All but the one-criterion nouns manifest a hidden indexicality. Of those, only some nouns require reliance on experts in fixing their extensions; others do not. The implications of this are far-reaching, as we are about to witness.

32. Putnam speaks of it turning out, once we "cut them open and examine them under the electron microscope," that pencils are actually alive. Putnam, *supra* note 15, at 242.

become a matter to be studied by the life sciences. But given that pencils are genuine everyday artifacts, such an account will clearly not do for them.

As mentioned above, nouns such as "chair" are not linguistically deferential. This means that there are no chair-experts in the sense that there is no subclass of speakers in our linguistic community upon whose knowledge we all rely for fixing the extension of "chair." In the same sense, there are neither pencil-experts nor hammer-experts. Accordingly, the sameness relations appropriate for the determination of the extension for "chair" (sameness_F) or for "hammer" (call it "sameness_T"—"T" for "tool") do not require any expertise in determining whether or not they obtain. In other words, the ability of members of the linguistic community to speak determinately when using terms like "chair" and "hammer" does not depend on their reliance on furniture or tool expertise. Thus whether or not sameness_F or sameness_T obtain depends on the abilities of average speakers to classify furniture or tools. These typical ways of classifying furniture will very likely include what speakers generally take to be the intended function of the thing and its general appearance, but may well include othr determinants as well. Whatever these ways of classifying artifacts are is a much studied question of the psychology of cognitive development.[33] Schematically, to be a chair is to be taken by the average speaker as having the same intended function, general appearance, and so on as paradigmatic chairs. Determining whether or not some item bears the sameness_F relation to a paradigmatic chair is something which an average speaker can be expected to do, in contrast to the case of determining whether or not sameness_L obtains among samples of liquid. Putting the matter somewhat figuratively, we may say that the "essence" of chairs depends on ordinary speakers' everyday classificatory capacities.

The account just given may invite one to infer that artifact terms are never linguistically deferential. Such an inference would be rash, however. Terms for scientific instruments, such as "electron microscope," can easily be linguistically deferential, as are terms for rare or otherwise exotic artifacts.[34] The average speaker could not identify an electron microscope and could not distinguish it from other, similar-looking items—say, ordinary microscopes attached to unfamiliar electronic equipment. Yet ordinary speakers use "electron microscope" to refer to electron microscopes and not also to superficially similar instruments, in virtue of the fact that there are some in the linguistic community who can identify electron microscopes for what they are. With respect to the phenomenon of linguistic deference, the sameness relation for "electron microscope" is more akin to the sameness relations for "water" and for "gold" than to the sameness relations for "chair" and for "hammer."

33. For some illuminating work on this issue, *see* F.-C. Keil, CONCEPTS, KINDS, AND COGNITIVE DEVELOPMENT (Cambridge, MA, 1989).

34. Kornblith offers the example of Chippendale furniture for such artifacts. *See* Kornblith, *supra* note 27, at 113.

The important difference is between terms that are linguistically deferential and terms that are not. But that distinction cuts across the distinction between natural- and non-natural-kind terms. For there are natural-kind terms that are not linguistically deferential, such as "pebble" or "pond," and non-natural-kind terms that are, such as "electron microscope" and "operating system." In short, the distinction between natural- and non-natural-kind terms cannot act as our guide in deciding whether a given term exhibits reliance on expertise.

We now turn our attention specifically to "law." The question before us is how its extension is fixed. "Law" is clearly not a one-criterion noun. So its extension is not fixed by an extension-fixing criterion as its content—whether one grasped by individual speakers or one "grasped" by the community as a whole. The new theory of reference, with its insistence on the environmental dimension of content-determination for most common nouns, puts the lie to criterialism of any sort. This means that once we incorporate the full measure of the theory, the interesting question about extension-fixing is not which form of criterialism about "law" is plausible—none is. The interesting question is whether "law" is linguistically deferential or not.

It is useful to formulate our question as a search for where to place "law" within the following matrix:[35]

	Natural-Kind Terms	*Non-natural-Kind Terms*
Specialized extension-fixing	"water," "gold," "lemon," "tiger," "elm," "brain"...	"electron-microscope," "Chippendale chair," "operating-system"...
Non-specialized extension-fixing	"pebble," "pond," "puddle," stick...[36]	"chair," "hammer," "pencil," "coin," "recipe,"...

As mentioned above, whatever "law" is, it is obviously not a natural-kind term. So our question becomes where to place "law" in the second column. But how are we to decide whether a given common noun is linguistically

35. But of course we do not mean to suggest that the two distinctions represented by the dimensions of the matrix are sharp. Indeed, in both cases there appear to be continua of cases. The matrix itself is only meant to serve as a heuristic aid.

36. An interesting class of cases consists of everyday nouns such as "pond" and "puddle," which gain a certain technical usage within a particular science. It has been suggested to us that there is a technical usage of "pond" and "puddle" according to which a pond is a body of water which has both ingress and egress surface flow and a puddle is a body of water which lacks ingress surface flow. The emphasis here is on "technical." What we have here is technical usage bestowed upon expressions whose extensions are otherwise fixed in nonspecialized ways. That puddles, with "puddle" used in its technical sense, have no ingress surface flow is not so much an empirical discovery as it is a definition. Our claim is that the extension of the term "puddle" in its everyday sense is not fixed by reliance on expertise as to what puddles really turn out to be upon closer scientific scrutiny. Thus, for example, the accumulation of water

deferential? Oddly, this question, central as it is to the metasemantics of common nouns, has gone largely unasked, let alone answered. In answering it, we take our cue from Dworkin's suggestive claim that disagreement among experts—namely judges, lawyers, and jurisprudents—about what law is is a salient feature of our linguistic and legal practices both. We claim that lack of agreement among experts, if salient, undermines reliance on expertise in fixing the extensions of our terms. In particular, a perceived lack of agreement among jurisprudents would constitute a key factor as to why the extension of "law" is not fixed by reliance on jurisprudential expertise.

As much as we take linguistic deference to be an important feature of our linguistic practices, it is a specialized phenomenon tied to an increasing specialization within our culture as a whole. Of particular importance is the rise of science and its relative success in enabling us to negotiate our way through the world, an enhanced capacity that we may think of broadly as including the capacity to understand relevant aspects of the world and our place within it. In order to explain the relevance of the prominence of expertise within our culture to the phenomenon of linguistic deference, we offer the following piece of "mythological reconstruction,"[37] focusing on substance terms such as "water" and "gold."

In the "beginning," the extensions of substance terms were fixed by the average speaker's everyday classificatory capacities. Such capacities were no doubt heavily informed by the superficial characteristics of substances in various everyday situations, the perceived properties of the substances in different spatiotemporal locations, and the like. When speakers back then used a substance term, they were referring to samples of stuff bearing a certain equivalence relation to paradigmatic samples. But the equivalence relation itself was determined by speakers' ordinary stuff-involving classificatory capacities.

With the rise of science and its explanatory forays into the constitution of substances, speakers have become increasingly reliant on expert knowledge for fixing the extensions of their substance terms. With natural science gaining its hold on our culture, the extensions of our substance terms have come to be determined through equivalence relations that are tracked by experts who are able reliably to classify instances of substance by constitutional common denominators. So when the ancient Greeks, for example, used their term for gold, they were referring to samples of substance that had the same underlying constitution as paradigmatic samples of gold as judged by their experts in the light of the theories of the day. And later gold-experts have

---

surrounding a clogged drain on the side of the road would be correctly regarded as a puddle by the average speaker, even if this does not conform to the technical sense of the term. We thank Eric Cavallero for bringing this class of cases to our attention.

37. We offer this in the spirit of Wilfrid Sellars, *Philosophy and the Scientific Image of Man, in* SCIENCE, PERCEPTION AND REALITY (Atascadero, CA, 1963). Think of the ensuing account as a metasemantic genealogy which enables us to make sense of our present linguistic practices.

become better than the Greek gold-experts at determining this sameness in underlying constitution.

Now, how is reliance on expertise in the case of substance terms to be explained? The following is as reasonable a hypothesis as any. The fact that ordinary speakers rely on expert knowledge to fix the extensions of their substance terms is best explained by the *trust* that members of the linguistic community generally place in the expert knowledge in question. The resounding successes of natural science in enabling us to negotiate our way through the natural world have had a profound impact on the popular perception of natural science as authoritative within our culture. Speakers rely on scientific expertise in fixing the extensions of everyday substance terms because of their perception that science surely has it right when it comes to what the substances really are. These facts about the nature of substances, while largely unknown to most speakers, generally matter because of the potential of such facts to figure crucially in the interactions of speakers with their environment. In short, it is the popular trust in scientific doctrines about the constitution of substances and the concomitant reliance by members of the linguistic community on the relevant expertise that explain linguistic deference for substance terms. That trust, in turn, is a consequence of the overwhelming success science has had in enabling ordinary members of the community to negotiate the natural world.

This mythology helps to shed light on the relevance of the prominence of expertise within our culture to the phenomenon of linguistic deference. What appears to be important is the extent to which ordinary speakers are confident in the ability of an expert doctrine about the nature of things to contribute to their capacity to negotiate the world. A perceived absence of agreement among experts on a received doctrine is often reason enough for ordinary speakers to be dubious about the reliability of the experts. In cases where the relevant expertise is relatively salient within the culture, it is not so much the *fact* of agreement among the experts or the lack thereof that holds the key to distinguishing those cases that exhibit reliance on expertise from those that do not, as it is the common *perception* of one or the other within the linguistic community as a whole. That ordinary speakers perceive a disagreement on a received doctrine undermines their confidence in the existence of a doctrine that will contribute substantially to their ability to negotiate the world.

Many factors are likely to contribute to determining the metasemantic implications of the status of theoretical inquiry into the nature of things, and so some care is required to sort through them. Our organizing hypothesis so far is that a term will exhibit linguistic deference when there is widespread trust within the linguistic community that there is a received expert doctrine on the nature of the things to which the term refers that is thought to contribute to speakers' capacity to negotiate the world, the latter capacity understood broadly to include the general capacity to understand relevant aspects of the world. There are three variables that figure in this

formulation: (1) a sufficiently salient received expert doctrine, (2) concerning the nature of the thing to which the term refers, that (3) is commonly believed important to success in negotiating the world. If any of these conditions are not satisfied with respect to a given term, it is unlikely that the term will be linguistically deferential.

Unlikely, but not altogether impossible. Some disagreements among experts about the nature of things may well be commonly perceived as merely transitory, likely to yield to further inquiry. We do intend to preclude the possibility that speakers might exhibit reliance on a future received doctrine. But reliance on a future doctrine is the exception rather than the rule. It is plausible to attribute to speakers reliance on a future doctrine only if it is also plausible to attribute to them the notion of progress within the relevant theoretical domain. The notion of scientific progress in certain areas (e.g., cutting-edge areas of medical expertise) may well be sufficiently entrenched within our linguistic community to support an attribution to ordinary speakers of reliance on a future rather than on a current expertise. But despite what many philosophers are inclined to suppose, such an attribution of reliance on a future doctrine is hardly always adequate. Specifically, it seems outright inadequate to attribute to ordinary speakers an implicit reliance on what a future (or "best") philosophical account will tell them about the nature of things, a point the significance of which we take up in more detail below.

Our immediate goal is to identify the factors that bear on linguistic deference and in doing so to spotlight the importance of trust in a received expert doctrine that is believed to contribute to success in negotiating the world and, more generally, the importance of the actual epistemic situation of speakers. These factors help explain why the view that referential success must rest on a pedestal of philosophical or scientific inquiry is misguided. Such a view attributes reliance on expertise even in circumstances in which ordinary speakers lack the notions that are necessary for reliance to be plausibly ascribed to them. Specifically, it attributes reliance even when ordinary speakers have no grounds for trust in the existence of a received doctrine that they have reason to believe important to success in negotiating the world. Linguistic deference is not, *pace* the pedestal view, the rule. And while reliance on a current received doctrine is not exceptionless, reliance on future expertise is quite exceptional. The overall point that needs to be emphasized is the pragmatic one that individuals are linguistically deferential when they have reason to believe that an expert doctrine will contribute to their capacity to negotiate the world. The sense that there is such an agreed-upon doctrine contributes to confidence; the sense that there is not undermines it.

In identifying the circumstances under which reliance on expertise may be plausibly attributed to ordinary speakers, we have focused primarily on the successes of natural science, but the argument we offer is not restricted to the rise of natural science. There is growing confidence (warranted or not)

in economic theory and in rational-choice theories of human agency more generally. Such schools of thought have broadly received doctrines, and in the event that reliance on the relevant theories meets with increasing success in enabling individuals successfully to negotiate the social world, we should expect to find increased reliance on them manifesting itself in our linguistic practices. The hope nowadays held out for rational-choice theory was once held out for Freudian psychoanalytic theory.[38] Indeed, there seems to be no principled reason to suppose that philosophical theories could not play a role in our ability to negotiate the social world, in which case we might expect this fact about them to become manifest in our linguistic practices. Perhaps such theories have figured prominently in the past. That they may again is hardly out of the question. The problem is not that we cannot imagine circumstances under which philosophical theories play a substantial role in determining the contents of terms in a public language—the problem, we fear, is that philosophy often cannot imagine it otherwise.

At the end of the day, ordinary speakers remain much less impressed by the capacity of philosophy to enable them to negotiate the social world than they are about the ability of scientific theories to help them chart a successful path through the natural one. We must not lose sight of the fact that what is distinctive about linguistic deference for terms for such quotidian fare as water and gold is that speakers' reliance on experts for fixing the extensions of these terms presupposes a popular perception of the achievements of the relevant expert knowledge. But there is no parallel perception of the achievements of philosophy in general and of jurisprudence in particular. We are just not members of the culture of jurisprudence as we are members of the culture of science. Jurisprudence can hardly be authoritative for everyday uses of "law" in the same way that chemistry or metallurgy are authoritative for everyday uses of "water" or "gold."

We apply our findings thus far towards a metasemantic account of "law" as follows. "Law" is clearly not a one-criterion noun. But even among the nouns that are not one-criterion nouns, that is, the majority of nouns, linguistic deference is not the rule. Therefore anyone defending the claim that "law" is linguistically deferential incurs the burden of explaining why that should be so. The environmental dimension of content-determination entails that very little by the way of propositional knowledge about law is required of ordinary speakers in order that they be able to refer to instances of law using "law." Given this fact, together with the familiar observation that ordinary speakers have numerous interactions with instances of law in everyday life,

38. What is noteworthy about psychoanalytic theory today is that even though it does not enjoy much prominence as a science, it does seem to command authority for everyday uses of that portion of its vocabulary which has become common parlance ("ego," "repression," and the like). One thing this shows is that whether or not a term exhibits a division of linguistic labor is really a matter of the trust that the relevant expertise enjoys within the linguistic community as a whole. Apparently, being discredited as a science does not inevitably undermine such trust within our community.

there has to be some good reason to suppose that ordinary speakers rely on jurisprudential expertise to fix the extension of "law." This explanatory burden in turn creates the need to identify the factors that bear on whether a term exhibits a reliance on current or future expertise. Such reliance is plausible, we suggest, when ordinary speakers have trust in the existence of a received doctrine on the nature of things of the relevant sort that will contribute to their capacity to negotiate the world.

Unfortunately for Dworkinian defenders of pedestalism about "law," a perceived lack of agreement among experts about the nature of law—the kind of disagreement that Dworkin emphasizes and no one disputes—undermines the trust necessary for reliance on jurisprudential expertise. Nor can the absence of an agreement among the experts be swept aside or trivialized by introducing the notion of popular trust in a future theory. For there are no grounds for attributing to ordinary speakers a notion of jurisprudential progress corresponding to the notion of scientific progress. Thus it is implausible to understand ordinary speakers' referential intentions in a way that attributes to them reliance on a future jurisprudential doctrine. Even were it plausible to attribute to ordinary speakers the notion of jurisprudential progress likely to converge on a particular theory of the nature of law, that would still fall short of making the case for a pedestalist account of the content of "law." That is because, at the end of the day, what generally matters is whether speakers have reason to suppose that a jurisprudential theory is important to successfully negotiating the social world. But the problem is that ours is not a culture of jurisprudence.

To unpack this last claim, we may reflect on the fact that the very existence of a jurisprudential enterprise of inquiring after the nature of law is a matter of which ordinary speakers are aware to varying degrees. For heuristic purposes we may draw a sharp distinction between those who are aware of the enterprise and those who are not, even though there is surely a continuum of such awareness here, ranging from those who are intimately familiar with the enterprise to those who are entirely ignorant of the fact that anyone is concerned with such issues as the nature of law as such. As for speakers belonging to the second class, it is safe to say that the conditions are lacking for attributing to them reliance on jurisprudential expertise for fixing the extension of "law." To be sure, like everyone else, such speakers sometimes need to know what the law around here is, and they rely on the advice of lawyers and other experts to help them with that practical problem. But they have no idea that there is a further question as to what law is, nor are they aware that of the existence of a theoretical discourse surrounding it. Still less are they aware of any role such theorizing might play in helping them negotiate the world. In short, it is not plausible to attribute reliance on an expertise of which they have no notion.

On the other hand, for speakers belonging to the first class, the kind of disagreement among experts that Dworkin emphasizes is both salient and highly relevant for determining whether or not "law" is linguistically

deferential. We assume that such speakers are aware of theoretical inquiry into the nature of law and that they are open-minded as to whether the existence of an expert doctrine about its nature could contribute to their capacity to negotiate the world. The problem here is that disagreement among theorists undermines their trust in a current expert doctrine. And the absence of a notion of jurisprudential progress, which may itself reflect a more general suspicion that has reached the level of a cliché in our culture to the effect that philosophers can never seem to agree on anything, undermines attributing to them a trust in a future doctrine. In summary, there is no reason to suppose that speakers of either class have the kind of confidence in jurisprudence that would underwrite a metasemantics of "law" in which the capacity of speakers to refer determinately to instances of law by employing the term "law" is built on a pedestal of jurisprudential inquiry.

While individuals recognize the existence and often rely upon the advice of experts as to what *the law around here* is, there is no relying on jurisprudential expertise for what *law as such* is. Yet it is precisely such reliance that would be required in order to ground linguistic deference with respect to "law." Consider, once again, the case of "gold" for contrast. Speakers are aware in general terms that someone or other is concerned with the underlying nature of the stuff in question. They may not be able to identify experts as metallurgists or to characterize the parameters of metallurgy as a field of inquiry. Indeed, this is likely. All they need believe is that there are experts who look into the nature of gold in particular and metals more generally, and that the doctrines they rely on inform and sharpen their classificatory capacities. But ordinary speakers lack even such rudimentary beliefs about the existence of jurisprudential experts.

Pedestalism about "law"—the view that the average speaker's ability to refer determinately to laws by employing the term "law" is to be explained by attributing to her an implicit reliance on jurisprudential expertise—may well be widespread but it is staggeringly implausible nonetheless. It is implausible because ordinary speakers are fully capable of fixing the extension of "law" without reliance on experts; implausible because ordinary speakers have no grounds for trusting that there is a received doctrine about the nature of law that is important for their success in negotiating the social world; implausible, moreover, because while ordinary speakers rely on experts for what the law is, they do not rely on jurisprudential experts for what law is. Those who advance such a view, in its many variations, are inadequately attentive if not completely blind to the roles that trust and the actual epistemic situation of speakers play in any plausible metasemantics of common nouns.

Because it is not plausible to claim that the extension of "law" is fixed by reliance on jurisprudential expertise, we place "law" in the bottom-right quadrant of the above two-dimensional matrix. Metasemantically, "law" behaves much like simple artifact terms such as "chair" and "hammer," which are not linguistically deferential. To fall under the extension of "law" is

to bear the appropriate similarity relation to paradigmatic instances. But the determination that something or other bears this similarity relation to a paradigmatic instance of law is a task that the average speaker can be expected to be able to carry out. And just as it is an open question of empirical psychology how speakers identify a given item as relevantly similar to a paradigmatic chair, it is an open question what the similarity relation for "law" is. Schematically, to be law is to bear the relation of sameness_P ("P" for "Practice") to a paradigmatic instance of law.[39] And once again, what this relation of sameness_P is, such that an average speaker is capable of discerning whether or not it obtains, is an empirical question.

For the sake of the ensuing discussion we offer the following highly schematic hypothetical possibility: For x to be the same_P as y is for x to govern behavior in the same way (unspecified) as y. Whether or not sameness_P obtains between a given item and a paradigmatic instance of law is determined by the average speaker's ordinary classificatory capacities. In short, the extension of "law" is determined by the following condition:

$$(***) \qquad \text{law}(x) \leftrightarrow \text{same}_P(x, \text{this}).$$

IV. OBJECTIONS

In this section we amplify our general claim about the metasemantics of "law" by briefly considering two natural objections to it that might arise. Both objections are designed to raise doubts about our view that the extension of "law" is fixed by the classificatory capacities of ordinary speakers. They aim to defend pedestalism indirectly. For we have argued above that ordinary speakers are capable of fixing the extension of "law," and so a special case must be made for the claim that "law" is linguistically deferential. We then argued that the conditions of linguistic deference are not satisfied. These objections are designed to show that, contrary to our account, ordinary speakers are not capable of fixing the extension of "law," and this means that pedestalism about "law" must be reconsidered as a plausible account of its metasemantics. That would suggest that we have probably inadequately formulated the conditions that must be satisfied for a term to exhibit linguistic deference or we have overlooked some reason for thinking that those conditions apply.[40] The first objection queries the ability of ordinary speakers to fix the extension of "law" due to the coarseness of their beliefs about law. If the beliefs about instances of law that ordinary speakers

39. Regarding "law" it its count-occurrences, we would say something along the following lines: To be a law is to bear a certain similarity relation of the appropriate type to paradigmatic laws. Again, whether or not the relevant similarity relation obtains between a given item and a paradigmatic law is determined by the average speaker's ordinary classificatory capacities.

40. An alternative implication of these objections is that both our view and pedestalism are mistaken and there is yet a better account of the metasemantics of "law." We discuss the obvious alternative account briefly below in note 42 and in more detail elsewhere.

have are not sufficiently fine-grained to distinguish law from other human practices—say, morality or business—then, the objection alleges, in using "law" speakers would be referring not only to instances of law but also to instances of the other practices. Yet surely instances of morality or business should not fall under the extension of "law."[41]

This objection represents just the kind of residual criterialism we mean our account to uproot. The view that the only beliefs adequate to fix a term's extension are those that would constitute extension-fixing criteria misunderstands the lesson of the new theory of reference. It follows from the indexical dimension of content-determination that the beliefs necessary to fix the extension of most common nouns can fall far short of specifying extension-fixing criteria. In the case of "law," for example, it follows from the claim that the extension of "law" is specified indexically *via* a certain equivalence relation of the appropriate type ($\text{sameness}_{\text{P}}$) that all that is required of the average speaker is that she be capable of making the determination that a given item does or does not govern behavior in the same way as this thing here (some paradigmatic instance of law, say a given law). This will be enough to distinguish distinct equivalence classes under one and the same equivalence relation $\text{sameness}_{\text{P}}$. We may even assume that the extensions of "law," "morality," and "business" are all determined *via* one and the same schematic relation, $\text{sameness}_{\text{P}}$. In other words, even if we assume that the average speaker's *de dicto* beliefs about law are completely general and schematic in the sense that they apply equally to other types of actual practice, the extension of "law" will be distinguished from the extensions of the neighboring terms by virtue of the indexical element in the extension-fixing condition. We cannot emphasize this point enough, so strong is the tendency to miss or to misunderstand it. So let us make it even more powerfully and vividly.

Suppose that the average speaker has only the following highly schematic belief about laws in general: that *they have some intended function*, the content of which is left completely unspecified. Let us also suppose that it so happens that the average speaker has only the following highly schematic belief about recipes in general: that *they have some intended function*, where that function, again, is left completely unspecified. On this assumption, speakers have the same belief about laws in general that they do about recipes in general, and the belief they have about both is incredibly thin: namely, that some items have some intended function. Does it then follow that when speakers use "law" in its count-occurrences they are talking about laws and recipes both? No. The extension of "law" will be determined by "thing having the same intended function as this [some paradigmatic law]"; the extension of "recipe" will be determined by "thing having the same intended function as this [some paradigmatic recipe]." And these extensions will differ provided that speakers will generally treat a given law as having a different intended

41. Scott Shapiro first voiced a variant of this objection to us in private correspondence.

function (again, completely unspecified) from the intended function (unspecified) of a given recipe, despite the fact that it is the very same relation of x-having-the-same-intended-function-as-y (call it "sameness$_{IF}$") which enters into the fixing of the extension of both "law" and "recipe." All that would be required to distinguish the extension of "law" from the extension of "recipe" is that the average speaker be able to determine that laws and recipes have different intended functions, whatever they are. The indexical dimension in fixing the terms" extensions, along with the fact that the knowledge required of speakers is in the first instance practical and not theoretical, explains how it is that the extension of "law" and the extension of "recipe" can be distinct equivalence classes under one and the same equivalence relation, in this case sameness$_{IF}$. This is so, we urge, even if the average speaker has no discriminating *de dicto* beliefs to distinguish the two extensions. The ability to discriminate or classify is a practical one, informed, of course, by whatever *de dicto* beliefs ordinary speakers have about laws and recipes. But these may be extremely schematic. By the same token, that discriminatory capacity depends on ordinary speakers' everyday transactions with laws, recipes, moral rules, or whatever. The beliefs that enter into fixing the extensions of the relevant nouns are paradigmatically *de re*—beliefs of the form "this is the same$_{IF}$ as that."

Even if it turns out that neither laws nor recipes have any unique intended function, this will have little effect on the demarcation of distinct extensions for "law" and "recipe." If the above account is correct, then even if it turned out that there are no interesting characteristics distinguishing law from other practices, "law" would still refer to instances of law and not to instances of the other practices. Something belongs to the extension of "law" just in case it would be deemed by the average speaker as relevantly similar to paradigm cases. As long as the extension of "law" is fixed by what speakers consider to be relevantly similar to paradigm cases, then even if we learned at some hypothetical "end of jurisprudential inquiry" that there are no distinguishing common characteristics to all and only instances of law, "law" would still refer to all and only instances of law.

Given that "law" refers only to instances of law and not also to, say, instances of morality or business, we may ask the further jurisprudential question: What is it to be law? What common characteristic, over and above being included in the extension of "law," do all and only instances of law share? And the answer to that question may well be "none," in which case the only common characteristic distinguishing law from everything else is that instances of law constitute the extension of our term "law." This would be the extreme case where the semantics and the metasemantics of "law" offer the only sustainable answer to the jurisprudential question of what it is to be law. In that case, to be law is to fall under the extension of "law," and there would be nothing further to say in answer to the jurisprudential question.

This brings us to a related objection. According to this objection, the problem with our account is not that ordinary speakers are unlikely to have

general beliefs adequate to specify extension-criteria for "law" or for common nouns generally. The problem is rather that the beliefs ordinary speakers have about law may turn out to be false. They may turn out to be false, moreover, in the light of jurisprudential inquiry. How could beliefs of ordinary speakers fix the extension of "law" if those beliefs might turn out to be false? Indeed, how could the extension of "law" be fixed if *not* by what jurisprudential inquiry reveals law to be?

Put this way, the objection is too vaguely formulated and inadequately differentiated to be of interest. The possibility that one's beliefs may turn out to be false is too pervasive to distinguish those terms that exhibit linguistic deference from those that do not. At a hypothetical end of inquiry into the nature of things, the beliefs of both ordinary speakers and experts might turn out false. In that case, the objection would undermine pedestalism as well as the view defended here.

In answering the objection, it is useful to distinguish between beliefs that figure prominently in extension-fixing ("extension-fixing beliefs") and beliefs that do not. For example, the belief that pencils are meant for writing is likely among the beliefs that inform most significantly the classificatory capacities of ordinary speakers in fixing the extension for "pencil." On the other hand, the belief that pencils are inorganic, though basically universally shared, plays only a minor role, if any, in fixing the extension of "pencil." So in inquiring after the metasemantic implications of the possibility that one's beliefs about the things one refers to might turn out to be false, we distinguish between the cases in which speakers' extension- and non-extension-fixing beliefs turn out to be false. Let us begin with the latter case first.

We noted earlier that in the course of the "Meaning of 'Meaning,'" Putnam raises the epistemic possibility that upon closer scrutiny pencils turn out to be alive. In Putnam's discussion, the scenario was inadequately described, and given that description, we suggested in passing that once the discovery about the animate nature of pencils is made, the extension of "pencil" becomes a matter to be determined by the relevant life sciences. We are now in a better position to develop the example more fully and to examine its implications for the metasemantics of "pencil" with correspondingly greater care. Consider two possibilities in the light of the discovery that pencils are living organisms. In the first scenario, the discovery turns out to have a profound impact on ordinary speakers' daily transactions with pencils. Pencils are handled differently in a variety of ways. Perhaps they are thought to have certain rights—maybe it is considered cruel to sharpen them. Perhaps they are kept around the house as pets and are taken to the veterinarian when damaged. In this scenario, our interactions with pencils are transformed as a result of the discovery of their animate nature. We no longer treat them as instruments that serve our interests but as entities that are entitled to a certain form of treatment, as the sorts of things on whose behalf others can make moral and other kinds of claims. In these circumstances, it would be unsurprising were we to come to rely on the relevant expertise in fixing the

extension of "pencil." Pencils would come to constitute for us a portion of the world our dealings with which can be greatly enhanced by reliance on the relevant expert knowledge.

It is important in this scenario that expertise impacts our interaction with pencils. We could easily imagine in these circumstances that in determining the extension of "pencil," superficial characteristics of pencils can easily get pushed aside in favor of "deep" characteristics elaborated by the relevant expertise. Such is one possible reaction to the scientific discovery that reveals the animate nature of pencils—a significant change in the metasemantics of the term. The scientific discovery of the animate nature of pencils might have semantic implications as well. That is, in the wake of this discovery one can imagine that mechanical-pencils[42] will no longer be considered a kind of pencil at all, especially in circumstances in which the difference between a cleverly constructed mechanical pencil and a living one is not easily discernible. Such might be the semantic effect of our new reliance on biological expertise in fixing the extension of "pencil."

Alternatively, the discovery that pencils are organisms could turn out to have very little effect on the average speaker's pencil-involving transactions. In that case, people would continue to use pencils in all the ways they have used them thus far, with little concern for their underlying nature. They continue to relate to pencils as items designed to assist them in achieving their goals. In other words, people continue to treat pencils completely instrumentally. Expertise about the underlying nature of pencils does not figure in the way ordinary people interact with pencils. In these circumstances, the metasemantics of "pencil" remains unaltered. The discovery about the underlying nature of the average pencil has no effect on how the extension of "pencil" is fixed.

These alternative pencil-scenarios illustrate that the discovery that our ordinary beliefs about the nature of things are false may but need not have metasemantic implications. Such a discovery has metasemantic implications to the extent that it impacts our transactions with the things in question; otherwise not. This implies that the *falsity* of our ordinary beliefs need have no metasemantic implications; such implications will depend on the effects, if any, that the *discovery* of their falsity has on our transactions with the items in question. As the second scenario shows, even the startling discovery that pencils are alive need not have metasemantic implications. What matters is whether such a discovery alters in fundamental ways our interactions with pencils—something about which we can only speculate. Whether our interactions with pencils is fundamentally altered will depend on whether or not we come to the view that such knowledge about the nature of pencils contributes substantially to our capacity to negotiate the world. If the expert knowledge about the organic nature of pencils

42. We are relying on a familiar distinction between wooden pencils (the kind we sharpen) and mechanical-pencils (the kind into which the lead is fed: the kind that go "click-click").

seems important to us in making our way through the world, it will not be surprising to find this fact reflected in the metasemantics of "pencil." In contrast, if the scientific discovery does not alter our interactions with pencils, the metasemantics will remain unaltered.

Turning to "law," the fact that our ordinary non-extension-fixing beliefs about law may turn out false cannot by itself imply that the extension of "law" is fixed by reliance on jurisprudential expertise. Indeed, it is the fact that our account distinguishes between metasemantic and jurisprudential inquiries that enables it to entertain the range of possibilities available in the event of jurisprudential findings into the nature of law. The falsity of our ordinary non-extension-fixing beliefs about law would not by itself have any effect on the metasemantics of "law." The discovery that those beliefs are false might or might not have metasemantic implications, depending on how the discovery affected our everyday transactions with law. There are at least two possibilities. If our transactions with law remained largely unaffected by the jurisprudential discovery, then there is no reason to suppose that the metasemantics of "law" would come to display a reliance on expertise. If our transactions with law underwent a significant change as a consequence of jurisprudential discoveries, then the metasemantics of "law" might be expected to undergo a similar change. What matters metasemantically is not whether jurisprudential inquiry can show us that our beliefs about laws are false but whether the truth of the matter, if discovered, is accompanied by a substantial change in the way we interact with the items in question—whether pencils, hammers, or instances of law.

We turn now to the possibility that extension-fixing beliefs turn out to be false. Given our account of the metasemantics of "law," the extension of the term is fixed by the average speaker's classificatory tendencies. But those tendencies themselves are informed by the mundane beliefs that ordinary speakers have about law. And surely those beliefs might turn out to be false. Wouldn't that pose a problem for our account? Again the answer is "no."

Recall that the extension of a typical common noun N is fixed indexically as follows: x is N just in case x bears a certain sameness relation of the appropriate type to this thing here (some paradigmatic instance of N). A main point implicit in this formulation must be emphasized before we can respond to the objection. The knowledge that is central to the activity of fixing the extension of terms is in the first instance practical, not theoretical; it is the capacity to identify sameness in the relevant respects. Very little in the way of propositional knowledge must figure in the exercise of the practical capacity. In fact, the propositional contents of the beliefs that are adequate to fix the extensions of our terms can be so thin that it is hard to imagine circumstances under which they will turn out to be false.

Because the propositional content of the beliefs that are in fact required to fix the extension of terms may be so thin, in order to make the present objection interesting we need to suppose that the extension-fixing beliefs in question have a somewhat more elaborate propositional content. Let us

suppose, then, that the beliefs which enter into the capacity to discern the sameness relation appropriate for "law" boil down to the belief that all and only instances of law have some special distinguishing characteristic F. Isn't it possible that the belief that all and only instances of law have characteristic F would turn out to be false? And if so, wouldn't that pose a grave problem for our construal of the metasemantics of "law"?

Absolutely not. Indeed, we could be wrong about distinguishing characteristics of even the most familiar of artifacts, and that need not impact the way in which the extensions of the relevant artifact terms are fixed. Not only can we all be wrong about law; we can even be wrong about simple artifacts like hammers. Seeing how this could be so makes the case for our view even more compelling.

Can we be all wrong about the intended function of hammers? Yes. Let us suppose that our ordinary beliefs about how to classify hammers is in terms of their having the distinguishing characteristic of having the intended function of driving things like nails. We believe that hammers have the intended function of driving nails, and this belief, we are assuming, figures in our capacity to fix the extension of "hammer." Now let us suppose further that something like Freudian theory on a social or cultural scale turns out to be true, and that upon subjecting our practices to psychoanalytic reflection we discover that hammers really exist as murder weapons. There just so happens to be something about us as a culture that prevents us from acknowledging aspects of our aggressive, destructive natures. This leads us to act in a conflicting way. We develop tools of destruction and aggression, on the one hand, but we are careful to do so in ways that can be easily disguised. They can appear to us to have an innocent use or purpose. Indeed, psychoanalytic theory suggests that self-deception can work only if there is more than a little truth in the deception. Consequently, a "cultural myth" grows up around hammers: namely, that their intended function is to drive nails. And indeed, most of the time people use hammers in just that way. Accordingly, these tools are identified in our culture with practices of construction, not destruction; they are employed by and large to create rather than to annihilate. People's ordinary interactions with hammers are thus understood in that way. Still, every now and again, there is the brutal murder-by-hammer. The standard and familiar use masks the true intended purpose of hammers, which is to be available as particularly brutal murder weapons.

The example is fanciful, perhaps, but its point is not. The term "hammer" can continue to refer to hammers. It can continue to pick out all and only those things that ordinary individuals believe to have the same intended function of driving nails as paradigmatic hammers. The extension of "hammer" is thereby fixed even though beliefs that figure in fixing its extension turn out to be false by the discovery concerning the real (intended) function of hammers. The account that specifies the "true intended function" of hammers—of what it is to be a hammer—does not itself enter into fixing the extension. Once we discover the true purpose of hammers, it turns out that

our ordinary beliefs about the intended function of hammers are false. Even so, "hammer" can still refer to hammers, and nothing we have uncovered about the true intended purpose of hammers need have any implications for the metasemantics of the term.

That is not to say that the metasemantics of "hammer" could not be affected by the discovery that the true intended function of hammers is very different from what we had previously taken it to be. If our dealings with hammers changes fundamentally as a result of this psychoanalytic discovery, then we may turn to expertise to fix the extension of "hammer." On the other hand, if our rapport with hammers proceeds as it has prior to the relevant discovery, there is no reason to expect the metasemantics of "hammer" to change. Again, this means that the mere falsity of the extension-fixing belief would have no metasemantic consequences. It is, rather, the discovery that the belief in question is false which may or may not have such consequences, depending on whether or not the discovery about the true intended function of the thing affects our interactions with it. And this is just as true of extension-fixing beliefs as it is of non-extension-fixing beliefs.

It is fair to say that the two objections we have considered do not fully absorb the lessons of the new theory of reference. The theory teaches us that for a typical common noun, (1) the extension is a crucial ingredient of the overall content, and (2) the extension is not, as the old criterialist picture would have it, determined by an associated general extension-fixing criterion. While allowing that extension is an ingredient of content and that it is possible for extensions to be fixed by the beliefs of ordinary speakers, the first objection holds, in effect, that those beliefs need to be sufficiently fine-grained to constitute general extension-fixing criteria. In short, the objection fails to absorb (2): ordinary speakers have no such beliefs regarding law and so cannot fix the extension of "law" by themselves, relying instead on jurisprudential expertise. But this is no more than residual criterialism. The entire point of our account is that the *de dicto* beliefs that are adequate to fix the extension of a typical kind-term can be so schematic that they could never generate necessary and sufficient conditions for applying the term. As our discussion makes clear, the very same extension-fixing schema may apply to "law," "morality," and "business," and yet be adequate to distinguish the extension of each from that of the others.

Neither the falsity of criterialism about "law" nor the possibility that the beliefs of ordinary speakers about law are false implies the pedestalist doctrine that our capacity to refer to law by employing "law" is mediated by the findings of jurisprudential inquiry. What matters is not whether ordinary beliefs about law in general turn out to be false but whether discovering the truth, as revealed by jurisprudential investigation, impacts speakers' day-to-day transactions with law. Ordinary speakers have sufficient resources to fix the extension of "law." But this is not to deny the mere possibility that they might come to rely on jurisprudential expertise at some later time. The important point is that when speakers do rely on experts to fix the extension

of their terms, it is not because speakers are beholden to expertise for no good reason. At the end of the day, it is not simply the fact that experts possess knowledge—practical or theoretical—that explains why some terms are linguistically deferential. Rather, it is the trust in the capacity of the relevant expertise to contribute to speakers' capacity to negotiate the world that grounds their reliance on the classificatory capacities of the experts.

Nevertheless, some theorists remain attracted to the pedestal view. The view remains attractive for them because under a certain utopian guise, according to which speakers invariably rely not just on some current theory about the nature of things but on the final word on the subject at some hypothetical end of inquiry, it seems to provide a plausible explanation for the stability of reference in the face of radical changes in belief. After all, the issue of fixity of reference across radical theory-change was Putnam's central concern at the time of writing "The Meaning of 'Meaning.'" So it is no surprise that proponents of the pedestal view take their cue from a certain interpretation of Putnam's account—an interpretation that we are intent on resisting.[43] We can begin to see the problem with the utopian pedestalist solution to the problem of fixity of reference across radical theory-change by considering the following simple question: How could the ancient Greeks have been referring to gold with their term for gold ("chrysos")? It is tempting to answer as follows: In their use of "chrysos," Greek speakers were implicitly relying on *the best theory* of the nature of gold. The extension for the Greek term was thus determined by the condition "thing bearing

43. The same is of course true of certain versions of a more metaphysically robust "nature view" according to which speakers' referential intentions are understood to be tapping into the nature of the things referred to directly, as it were, without the mediation of any theoretical endeavor on the matter. Many have read Putnam's essay in this way as inviting or even entailing a kind of metaphysical realism. But this is just a mistake, both as an interpretation of Putnam and as a general metasemantics. Briefly, in order to explain human behavior one can only attribute intentions that imply the possession of notions that are part of the conceptual repertoire of the agents. And the same goes for explaining linguistic behavior by attributing referential intentions. This is part of what it means for an explanation to be constrained by the agent's actual epistemic situation. The pedestal view discussed in the text holds in effect that referential intentions of speakers are to be construed as intentions to refer to anything that is relevantly similar to paradigmatic instances according to some current, future, or ultimate theory about the underlying nature of the things referred to. Our objection to this account is that while such a construal is sometimes plausible (i.e., when the conditions we set out for a term to be linguistically deferential are met), the view in question grossly overstates the extent to which those conditions are met. Most important for our purposes, they are not met in the case of "law." The problem with the nature view is a related but nevertheless different failure to attend to the epistemic situation of speakers. The problem is that such a view attributes to speakers, when using a kind term N, the intention to refer to everything having the same underlying nature as some paradigmatic sample of N quite apart from what any expert doctrine about the nature of N does or would reveal. But speakers cannot be plausibly ascribed any such intention because it requires attributing to them a robust metaphysical notion that is simply not likely to be part of their conceptual repertoire.

To see what is wrong with interpreting putnam as committed to metaphysical realism even as early as the time of writing the *Meaning of "Meaning,"* *see* Ori Simchen's encyclopedia entry, *Hilary Putnam*, *in* THE ENCYCLOPEDIA OF THE PHILOSOPHY OF SCIENCE (Routledge, forthcoming).

sameness$_M$ ("M" for "metal") to this thing here (a paradigmatic instance of gold)," where sameness$_M$ was thought to be a matter to be determined by the best theory of the nature of the thing. But then, provided that the paradigmatic instances of gold that were so regarded by the Greeks were indeed instances of gold, it is no wonder that their term is coextensive with ours. In using "gold," we too implicitly rely on the best theory of the true nature of gold for discerning sameness$_M$.

On our view, it is generally unwarranted to impute to ordinary speakers such a high-flown reliance on a "best theory" of anything. It would be remarkable indeed if the average speaker in ancient Greece had any notion at all of a best theory of the nature of things. Such a notion presupposes a prior notion of theoretical progress, a notion that ordinary speakers then most likely lacked. In all likelihood, ordinary speakers then were relying on the expertise of their time for discerning the relevant sameness relation, and something similar can be said of us here and now, at least regarding gold. In other words, it is the fact that there has been a convergence of their classification and ours which explains that their term for gold is coextensive with ours, not the alleged fact that ancient speakers and contemporary speakers have been relying on one and the same "best theory" of the nature of gold.

Implicit in the utopian pedestalist account of how it is that we are justified in translating their "chrysos" onto our "gold" is the view that the intertranslatability of our respective terms depends on those terms having the same metasemantic account. On this view, we can translate their term onto ours because the content of their "chrysos" is determined in the exact same way as the content of our "gold." Another way of putting the point is to say that the view in question assumes that metasemantic overlap is necessary for semantic overlap. And even if we set aside the question of why anyone should suppose that semantic overlap requires metasemantic overlap, the problem with this view is that its attribution of referential intentions to ordinary speakers is clearly implausible given the speakers' overall epistemic situation. Nothing warrants the attribution of reliance on the best theory of the nature of gold to the average speaker of ancient Greece.

As for the assumption that semantic overlap and hence intertranslatability, require metasemantic overlap, at the end of the day the utopian pedestalist fails to appreciate the difference between semantics and metasemantics. Our warrant for translating the Greek's term into our own depends on the extent to which the semantic contents of the terms overlap, not on whether the story of how their "chrysos" gained its content coincides with the best explanation of how our "gold" gained its content. Surely an important part of the metasemantic story of how their term gained its content will have much in common with the metasemantic story of how our term gained its content, to the extent that the contents are largely the same. But this is a far cry from assuming, mistakenly, that intertranslatability requires metasemantic overlap. In matters of translation, it is the semantic facts that matter, not the metasemantic ones.

Even if jurisprudence offers a promissory note that investigation will ultimately reveal the true nature of law, and even if it can someday deliver on that promise, that would not be enough to warrant the claim that "law" is linguistically deferential. For all we know there is or may someday be a flourishing chair-discourse that promises to reveal to all the true nature of chairs, and a burgeoning theoretical discourse on hammers that offers the same. Still, unless theories of chairs and hammers are thought to contribute in significant ways to the abilities of ordinary speakers to negotiate the world, we would have little reason for thinking that either "chair" or "hammer" is linguistically deferential. Should the promise of jurisprudence be fulfilled, and should the true nature of law, and of governance by laws, be revealed for all to see, then it may be that the term "law" will come to exhibit linguistic deference. But that will not be because there is a theoretical discourse surrounding law; it will be because the best theories of what law is are seen as contributing to our ability to negotiate the social world. At this point in time—laudable or lamentable as the case may be—this aim of jurisprudence is merely aspirational and provides no basis whatsoever for thinking that the extension of "law" is fixed by reliance on jurisprudential expertise. Jurisprudents who continue to miss these points do so at their peril.

V. THE DOMAIN OF JURISPRUDENCE

We close this essay by returning to the concerns that first stimulated it. Having completed our basic account of the semantics and metasemantic of "law," it remains to explain the relationship of each to jurisprudence—to substantive accounts of the nature of law. Our discussion of this topic will be abbreviated and schematic; we limit ourselves to formulating and defending general claims about the relationship of the semantics and metasemantics of "law" to jurisprudential projects more generally. Our concluding remarks fall into three categories: (1) metasemantic constraints on jurisprudence; (2) the explanatory priority of various jurisprudential projects to one another; and (3) the possibility of a descriptive jurisprudence.

(1) It is important to the pedestal view that in the same way that scientists uncover the nature of water, philosophers of law uncover the nature of law—just as the best theory of the nature of water determines the content of "water," the best theory of the nature of law determines the content of "law." This approach expresses the idea that jurisprudence somehow figures in the semantics and metasemantics of "law"; or, to put the point in a somewhat less contested way, that the metasemantics of "law" is secondary to jurisprudence in the order of explanation. It is not just that the pedestal view is mistaken as a general metasemantics. On our view, it has the relationship between metasemantics (and semantics) and jurisprudence exactly backwards. It is not that what jurisprudence reveals about law figures prominently in the

metasemantics of "law"; rather, an important implication of our view is that the metasemantics of "law" imposes a constraint on possible answers to the jurisprudential question. Here is what we mean.

Suppose that some eccentric logician proposes a crazy jurisprudential theory about the nature of laws: Given some standard formalization of the syntax of legal English, the Gödel numbers of legal English formulations of laws all have a certain exotic number-theoretic property. So to be a law, on this account, is to be expressed by a string of signs whose Gödel number has this number-theoretic property. Would that be a plausible answer to the jurisprudential question of what it is to be a law (over and above falling under the extension of "law" in its count-occurrences)? Of course not, but not just because such a view of what laws are is unilluminating. Rather the fact that it is unilluminating is connected to the deeper point that this particular answer to the jurisprudential question of what laws are makes it utterly mysterious how all and only members of the extension of "law" in its count-occurrences, as determined by everyday beliefs, happen to share this exotic property. This is not to say that it is impossible that they do. All and only members of the extension of "law" in its count-occurrences share countless exotic properties. It is just that this would not be an adequate answer to the jurisprudential question to the extent that it makes the connection between the answer to the metasemantic question and the answer to the jurisprudential question seem completely arbitrary. In that way, the metasemantics of "law" constrains admissible answers to the jurisprudential question. In fact, we would argue that this kind of constraint is already implicitly operative in the various serious efforts to answer jurisprudential questions about the nature of law. Thus, if laws have a common property—or if systems of governance by laws share common properties—those properties cannot be so far removed from our ordinary everyday capacities to classify them under the term "law" as to make it utterly mysterious how they could have this characteristic.

(2) We have taken pains to distinguish mass- and count-occurrences of "law" and to argue that the metasemantics of the latter parallels that of the former. These considerations were offered in support of our view that as far as the metasemantics of "law" goes, theoretical indifference between mass- and count-occurrences is warranted. But indifference with respect to the metasemantic questions about "law" in its mass- and count-occurrences does not entail a corresponding theoretical indifference in jurisprudence.

We have identified at least three different kinds of jurisprudential questions: "What is a law?" (or "What are laws?"), "What is law?" (or "What is it to be governed by law?"), and "What is the law around here?" We include the latter so as not to beg the question against Dworkin's jurisprudential project or against aspects of his anti-Archimedeanism. That is, at some level Dworkin's claim is that we cannot approach the question of what law is as such in any way other than in the context of answering the question of what the law is around here. In a similar vein, he appears to hold that we cannot

approach the question of what a jurisprudential theory is in any way other than in the context of defending a particular substantive jurisprudential view.

With respect to the jurisprudential project, we are inclined to the view that the question "What is law?" has an explanatory priority over the question "What is a law?" Laws are rules and other standards of conduct, but what distinguishes them from other standards of conduct is their place within a particular scheme of governance that constitutes an instance of law. In that sense, we cannot know what laws are without knowing what it is to be governed by law. Our particular view to one side, nothing we have said about the metasemantics of "law" implies anything as regards the explanatory priority of law to laws and of either to law indexed to particular political systems. That is the point we mean to emphasize here.

(3) Dworkin takes the rejection of the semantic interpretation of jurisprudence and its replacement with interpretivism to imply the rejection of descriptive jurisprudence in favor of normative jurisprudence. Now that we have developed a more sophisticated understanding of the relationship between the semantics and metasemantics of "law" and the nature of law, we can revisit briefly the possibility of a so-called "descriptive jurisprudence."

Only those properties that satisfy the metasemantic constraint can qualify as an answer to any of the jurisprudential questions we have identified. On the other hand, philosophical inquiry may reveal that there is no property shared by all and only systems of governance by law, or by all and only laws, other than the property of belonging to the extension of "law." The question of whether there are properties that all and only systems of governance by law share or that all and only laws share is clearly a jurisprudential concern. It is as well, if anything is, a descriptive project. So the thought that jurisprudence must be normative—that there are no jurisprudential questions that can be approached descriptively or as part of a descriptive, theoretical project—is unsupportable.

On the other hand, it would be an unfortunate mistake to suppose that the only interesting jurisprudential questions are those that seek to identify properties that all and only systems of governance by law share or that all and only laws share—and for two reasons. First, at least some such properties (that satisfy the metasemantic constraint) may prove to be completely uninteresting or unrevealing of law—of what it means to be governed by law or of what laws are. Second, many properties that are central to our understanding of law need not be shared by all systems of governance by law or by all laws. Our understanding of law would be greatly diminished if we did not adequately attend to the fact that laws are generally coercive and that legal regimes deploy force to enforce the standards of conduct they announce. This is so even if not all laws are backed by sanctions and *even* if sanctioning is not a necessary feature of all legal regimes.

The same is true, as one of us has argued, of law's guidance function. Even if not all laws are in fact capable of guiding conduct as content-independent

reasons for action, our understanding of what law is would be greatly diminished if we failed to appreciate law as providing content-independent reasons for action.[44] Too many commentators have understood the project of jurisprudence to be an effort to identify a set of necessary and sufficient conditions for being law or necessary and sufficient conditions for being the concept LAW. Many of the features of legal practice that are most illuminating for what it is to be law, or to be laws, are neither necessary nor sufficient conditions of legality. Hart understood this as well as anyone and displayed his sensitivity to it in his jurisprudence. That he is associated with efforts to articulate a set of necessary and sufficient conditions that define the concept LAW or provide a definition of "law" remains not only a puzzle but something of an embarrassment to the philosophy of law.[45]

In defending the possibility of important descriptive projects within jurisprudence, nothing we have said implies that jurisprudential projects cannot be normative. To be sure, any jurisprudential project—descriptive or normative—must satisfy the metasemantic constraint formulated at the outset of this secton. Beyond that, the account we have given of the metasemantics of "law" is neutral as to whether normative or descriptive projects of jurisprudence will prove more valuable and which particular ones are more illuminating of legal practice. Our account leaves open the explanatory priority of law to laws, allows for the possibility of both descriptive and normative projects in jurisprudence,[46] and begs no questions as to which if any of these projects is more valuable. These features of our account recommend it as a philosophical reconstruction of how the content of "law" is determined and define a view that represents distinctive answers to the questions with which this essay began; namely, what is the relationship between the meaning of "law" and what law is? What is the relationship Between theories of the meaning of "law" and theories of what law is?

44. An analogy with human hearing may be helpful in this context. It is not a necessary feature of humans that they hear or be capable of hearing. Nevertheless, we would not understand very much about our actual natures if our explanation ignored the capacity of humans to hear.

45. For a contrasting view, *see* the work of Dworkin's protégé, Nicos Stavropoulos, including *Hart's Semantics, in* Coleman, *supra* note 8. Influenced as he was by both the later Wittgenstein and J.L. Austin, it is implausible that Hart's project was to identify the criteria specifying any such thing as a concept in terms of necessary and sufficient conditions. Instead, as we read him, Hart's project was to determine whether there are features of law, of legal systems and of laws, that are common to all; whether, if there are such properties, they are interesting or illuminating of legal practice. Hart's concern was whether there are features of laws and of governance by law discoverable by philosophical investigation that contribute to our self-understanding and to our understanding of our social world.

46. In short, the aim of jurisprudence in our view is to offer up a conception of law. The best such view is the one that fits best within our overall theory of the world. Such a theory will illuminate the relationship between law and other institutions in its social neighborhood. In doing so, it will answer to familiar theoretical norms and not, in the first instance, norms of moral and political philosophy. For a fuller development of this general view in jurisprudence, *see* Jules L. Coleman, THE PRACTICE OF PRINCIPLE. For a fuller development of the methodological questions concerning the relationship of jurisprudence to the philosophy of language, *see* our forthcoming THE LANGUAGE OF LAW.