
WHAT DOES ‘LEGAL OBLIGATION’ MEAN?

BY

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Abstract: What do normative terms like ‘obligation’ mean in legal contexts? On one view, which H.L.A. Hart may have endorsed, ‘obligation’ is *ambiguous* in moral and legal contexts. On another, which is dominant in jurisprudence, ‘obligation’ has a distinctively *moralized* meaning in legal contexts. On a third view, which is often endorsed in philosophy of language, ‘obligation’ has a *generic* meaning in moral and legal contexts. After making the nature of and disagreements between these views precise, I show how linguistic data militates against both rivals to the generic meaning view, and argue that this has significant implications for jurisprudence.

In his ‘Legal Duty and Obligation’, H.L.A. Hart set out three common views about the semantics of normative terms like *obligation* in legal contexts:

‘Obligation’ and ‘duty’ are frequently used in reference to both law and to morals, and also to matters which do not fit into either of these two categories. But many philosophers (even as diverse in outlook as O.W. Holmes and Kelsen) would deny that there is any unitary concept of obligation and insist that only confusion arises from treating ‘legal obligation’ and ‘moral obligation’ as species of a single genus. Others (including Bentham and John Stuart Mill) have insisted that there is a common element determining the *meaning* of obligation in both legal and moral contexts, and that the differences do not affect the meaning of obligation but constitutes different species of obligation reflecting the different standards used in determining what acts are obligatory. There is also the stronger view, advocated by some contemporary writers, ... that not only is there a common element in legal and moral obligation but the former is a species of the latter or at least in some sense presupposes it.¹

Call the first view Hart mentions ‘the Ambiguity View’: there is no univocal meaning (or ‘unitary concept’) of *obligation* as it is used in moral and legal contexts. Hart is often read as endorsing this view: i.e. as denying ‘the identity of meaning of ‘obligation’ in moral and legal contexts.’² Call the second ‘the Generic View’: there is a univocal meaning of *obligation*, and

adjectives like *legal* and *moral* modify obligation in the exact same way: by modifying the 'standards used in determining what acts are obligatory.' Call the third 'the Moralized View': *obligation* has a distinctively moral meaning in legal contexts.

In this article I have four interrelated aims. First, I argue that we should reject the Ambiguity View, as it is inconsistent with linguistic data and is less parsimonious than its competitors. Second, I clarify the disagreement between the remaining views, which is rarely discussed. The Generic View has been largely ignored in contemporary jurisprudence, but is widely accepted in other fields. The Moralized View, by contrast, was first endorsed by Joseph Raz, and has since become the dominant view in contemporary jurisprudence;³ but it is largely ignored in other fields. To look ahead, I argue that the disagreement concerns whether *legal* modifies *obligation* in roughly the same way that *moral* modifies *obligation*, or in roughly the same way that *Kantian* modifies *obligation*.

Third, I argue the Moralized View is also inconsistent with linguistic data. I demonstrate this with data about modifier stacking. When *Kantian* modifies *obligation* by marking a distinct perspective about morality, it is acceptable to stack modifiers (*Kantian moral obligation*) to clarify this. By contrast, *legal moral obligation* is not an acceptable clarification of the meaning of *legal obligation*. The Moralized View predicts otherwise, as it takes *legal obligation* to mark a distinct perspective about morality. So we should reject this View.

Finally, I show that embracing the Generic View has important implications for jurisprudence. Some philosophers of law have gone so far as to claim that 'the moral semantics claim is absolutely essential to holding together the [legal] positivist picture of law', such that 'the [legal] positivist cannot really live without the moral semantics claim.'⁴ I suspect that this is hyperbolic.⁵ But I follow two paths to show that embracing the Generic View matters in jurisprudence. First, by reconsidering central arguments for its rivals: once we see what motivates the Ambiguity View and the Moralized View, we can put pressure on common commitments about the relationship between morality and law. (For instance: does law claim to be morally authoritative, as Raz famously held?) Second, by reconsidering arguments that invoke its rivals: once we reject the Moralized View, we lose the most popular explanation for why legal positivism does not violate Hume's Law that one cannot derive an *ought* from an *is*. These points illustrate the dialectical importance of claims about the meaning of *legal obligation* and cognate terms for contemporary philosophy of law.

1. *Why reject the ambiguity view?*

Let's start by clarifying the commitments of the Ambiguity View, in order to see why it should be rejected. Consider these two sentences:

1. Antigone is morally obligated not to bury Polynices.
2. Antigone is legally obligated not to bury Polynices.

As it was described by Hart, the Ambiguity View holds that *moral obligation* and *legal obligation* are not species of the same genus. Analogously, we might say that *river banks* and *investment banks* are not species of the same genus. In other words, this View holds that *obligated* is not univocal in moral and legal contexts; instead, it has different meanings in sentences like (1) and (2).⁶

This View will face two related obstacles. The first concerns linguistic data. It is standardly thought that the onus is on those who posit lexical ambiguities to proffer linguistic data that supports their position,⁷ and proponents of the Ambiguity View have put forward no such data. Worse yet, when we apply standard tests for lexical ambiguity, they yield linguistic data that is inconsistent with the Ambiguity View. For instance, one standard test for lexical ambiguity uses Conjunction Reduction to elicit probative data about zeugma.⁸ To illustrate, consider the following sentences: 'Pale colors are light'; 'Feathers are light'; 'Pale colors and feathers are light.' The first two sentences contain a purportedly ambiguous term (*light*), while the third sentence conjoins those sentences using *light* only once in a context that encourages both meanings. Here *light* seems zeugmatic, in that it has been used once in relation to two parts of the sentence (*colors, feathers*) and must be understood differently in relation to each (in terms of brightness, and in terms of weight). This is evidence for thinking that *light* is lexically ambiguous. Similarly, if *obligated* is lexically ambiguous in (1) and (2), *obligated* should seem zeugmatic in (3):

3. Antigone is morally and legally obligated not to bury Polynices.

After all, (3) just conjoins (1) and (2), using the purportedly ambiguous term (*obligated*) once in a context where both meanings are encouraged. But we do not need to understand obligated differently in relation to *morally* and *legally*.

This is by no means the only standard test for lexical ambiguity. Elsewhere I have argued that we obtain similar results when we apply other plausible tests for ambiguity to deontic modals and other normative terms like *obligated*.⁹ So the linguistic data are stacked against the Ambiguity View.

The second obstacle concerns theoretical virtues. A widely accepted maxim in semantics is that we should not multiply meanings beyond necessity.¹⁰ The Ambiguity View is less parsimonious than its competitors, insofar as it posits two distinct lexical entries for *moral ought* and *legal ought*, rather than one entry for *ought*; *mutatis mutandis* for other normative terms. This concern about parsimony is amplified when we note that it is not clear why a proponent of this View would stop with distinct moral and legal

oughts. Hart, recall, noted that *obligation et al.* 'are frequently used in reference to both law and to morals, and also to matters which do not fit into either of these two categories.' As Alex Silk recently noted in a related context, there are 'prudential "ought"s, rational "ought"s, legal "ought"s, aesthetic "ought"s, and so on'; a consistent treatment of all such cases would posit that speakers have 'a proliferation of "ought" entries in their lexicons', and that position is both 'profligate and unexplanatory.'¹¹

There are responses available to proponents of the Ambiguity View. Most promisingly, proponents of the View could posit that *obligated* is ambiguous, but not homonymous: rather, it is polysemous. A univocal term has a single meaning. An ambiguous term has multiple meanings. But the meanings of ambiguous terms can be related or unrelated. Homonymous terms, like *bank* (financial institution/riverbank), have multiple unrelated meanings. Polysemous terms, like *book* (abstract work/concrete copy), have multiple related meanings. If the hypothesis is that *obligated* and other normative terms are polysemous, this will not yield linguistic data that favors the Ambiguity View. But it might provide an alternative explanation of linguistic data that seem to militate against the View. This is because the standard tests for lexical ambiguity discussed above seem well designed to distinguish univocality from homonymy; however, partly due to the unresolved questions about the nature of polysemy,¹² it is unclear whether they reliably distinguish univocality from polysemy.¹³

The hypothesis that *obligated* is polysemous may also fare somewhat better with respect to the aforementioned theoretical vices. Some hold that the different meanings of a polysemous term form a single lexical entry; this may ameliorate the concern that the Ambiguity View is profligate. But it should not undermine that concern entirely. As Falkum and Vicente (2015) note, while some linguists 'may distinguish between polysemy and homonymy based on whether the different senses or meanings are thought to belong to a single lexical entry or not, this difference does not seem to carry much weight at the level of storage or of processing. In both polysemy and homonymy, senses or meanings are thought to be stored as distinct representations.'¹⁴ If we postulate an indefinite number of distinct meanings for *obligated* and other normative terms, we must then postulate an indefinite number of distinct stored representations. This is not just ontologically profligate; it is unexplanatory insofar as it suggests that processing simple sentences would be far too confusing and cognitively demanding (especially in everyday conversations where *obligated et al.* are relativized to standards that are not made explicit by the use of adverbs like *legally*).¹⁵

Perhaps the problem here is not the hypothesis that normative terms are polysemous, but the general view that different meanings of a polysemous term are stored as distinct representations. Some linguists deny this, holding instead that the different meanings of a polysemous term either belong to or depend upon a single representation. There are various ways of cashing this

out. For instance, Ruhl (1989) held that the different meanings of a polysemous term all share a single core abstract meaning. This might provide a better explanation of linguistic processing. It also might help explain general features of the meanings of deontic modals. For instance, in general, *obligation* and *permission* are interdefinable: 'Antigone legally must bury Polynices' is equivalent to 'It is *not* the case that Antigone legally can *not* bury Polynices'; mutatis mutandis for *morally must* and *morally can*, and for any other normative standard to which must and can are relativized.¹⁶ What would explain this pattern? Views which take deontic modals to be univocal have significant explanatory power insofar as they can offer one meaning of *must*, and one meaning of *can*, which explain why the two are interdefinable. Views on which deontic modals are ambiguous (at least in moral and legal contexts) seem to owe us multiple explanations for this single pattern, and other similar patterns in English,¹⁷ and other natural languages.¹⁸ But they might be able to provide a single explanation *if* they posit that each normative term has a single core abstract meaning.

This seems more promising. However, once we adopt any view of polysemy like this, proponents of the Ambiguity View will struggle to vindicate their commitments about the differences between the meanings of terms like *obligated* in moral and legal contexts. Specifically, they will struggle to explain how these different meanings fall under one core abstract meaning. This is a specific instance of a more general problem. Proponents of the Ambiguity View hold that the meanings of *obligated* in moral and legal contexts are not just different, but unrelated.¹⁹ It is hard to square that position with the hypothesis that these meanings are related in some deep way, let alone with the hypothesis that there is a single core meaning for terms like *obligated* in moral and legal contexts. Indeed, once one adopts this understanding of polysemy in order to provide a semantic theory that is sufficiently modest and explanatory, it is hard to specify why one has not just embraced the Generic View under another name.

2. *What do the generic and moralized views (dis)agree about?*

So far I have argued against the Ambiguity View. This is, however, by no means my central aim in this article, for two reasons. First, there is a great deal of literature about this general type of disagreement – about univocality and ambiguity – in linguistics and philosophy. Far less has been said about the specific disagreement between the Generic and Moralized Views, and indeed it is hard to locate any similar disagreement *apropos* non-legal language. Second, the Generic and Moralized Views are both dominant, albeit in different fields.

For my purposes, then, it need not matter if you think more can be said on behalf of the Ambiguity View. Consider the forgoing arguments a mere

appetizer before the main course. *If* we are persuaded by these appeals to linguistic data, parsimony and explanatory power, which of the other Views should we accept about the semantics of normative terms in legal contexts?

So stated, it is hard to answer the question because the difference between the Generic and Moralized Views is unclear. These Views agree that *obligated* has a single meaning in moral and legal contexts. But they disagree about whether that single meaning is in some sense moral. What does this mean?

The debate between these views is rarely discussed directly.²⁰ My aim in this section is to remedy that problem. I start by saying what the Views agree about. This be provide a useful common ground in at least three important ways: (a) it will set the stage for explaining what they disagree about; (b) it helps assuage some concerns one might have about the Moralized View;²¹ and (c) it undercuts some motivations that have been offered for the Moralized View.²² I will mostly dwell on the first of these points as that is our main focus.

Insofar as the Generic and Moralized Views agree that *obligated* has a single meaning in moral and legal contexts, I propose that both Views should be interpreted as agreeing about the formal semantics for *obligated*. Interestingly, this makes this disagreement quite different from the disagreements these Views have with the Ambiguity View. One standard way of explaining the univocality of a normative term like *ought*, in our formal semantics, is to take *ought* to mean a Kaplanian character: a function from contexts to contents. This is the formal semantics that Angelika Kratzer (1977, 2012), among others, have developed.

The crucial innovation from Kratzer is that normative terms are relativized to both a circumstantial background and an ordering source. The former represents the descriptive information that we hold fixed. Notice that we can explicitly shift the circumstantial background: 'Given *what she knows*, Antigone should bury Polynices. But *given the facts*, she should not do so.' The latter represents the *demands* of the *relevant standard*. Notice that we can also explicitly shift the ordering source: '*According to morality*, she should bury Polynices. But *according to the law*, she should not do so.' Typically, both the circumstantial background and ordering source are left implicit, and made salient to the audience by features of the context. For the sake of clarity I am using modifiers to make the ordering source explicit; this makes our examples somewhat stilted.

We can illustrate Kratzer's approach by taking the following truth-conditional function to be our candidate for the character, or univocal meaning, of *obligated*:

$$\mathbf{Obligated}_{f,g} \varphi = 1 \text{ iff } \forall w((w \in [[F]] \wedge [[G]]) \supset w \in [[\varphi]]).$$

Let's walk through what this formalism means, then illustrate its application to the examples above. The 'circumstantial background' *f* provides a set

of propositions, F , which represents the relevant circumstances. The 'ordering source' g provides a set of propositions, G , which represents the demands of the relevant standard. Then we consider the intersection of those two sets of propositions: roughly, we look at all the worlds that are consistent both with the relevant circumstances and with the demands of the relevant standard.²³ It is true that ' A is obligated to φ ' iff ' $A \varphi$ ' at all of those worlds: i.e. at every world in the intersection of F and G . This is fairly abstract. Let's apply it.

Consider (2): 'Antigone is legally obligated not to bury Polynices'. What would the relevant circumstances be? A set of propositions like 'Polynices died attacking Thebes'. That will give us F . What will the demands of the relevant legal standard be? A set of propositions like 'If x died attacking Thebes, no one buries x '. That will give us G . Hopefully it is now clear how we could consider the intersection of F and G : it will be all of the worlds that are consistent a set of propositions like 'Polynices died attacking Thebes' and 'If x died attacking Thebes, no one buries x '.²⁴ In any of those worlds, does Antigone bury Polynices? No. So this tells us that (2) is true: 'Antigone is legally obligated not to bury Polynices' is true iff 'Antigone does not bury Polynices' is true at every world in the intersection of F and G . It should be clear how this approach can apply in the exact same way to (1): when we switch from *legally* to *morally*, we switch the ordering source to a different set of propositions which represents the demands of morality, e.g. 'No one leaves their kin unburied'.

There are many important questions to ask about the details of how this approach should be implemented, but we need not dwell on them. The specific formalism above does not matter at all for our purposes. What matters is the broad ambition behind this formal semantics: to explain the meaning of *obligated* in terms of a truth-conditional function, wherein uses of *obligated* are explicitly or implicitly relative to different ordering sources (legality; morality).

This formal semantics is perfectly consistent with the spirit and the letter of the Generic and Moralized Views. And it should be taken as the common ground that these Views agree about. For one thing, the Kratzerian approach illustrated above has been described as the 'dominant', 'canonical', and 'textbook' formal semantics by such people as Kai von Fintel and John Horty.²⁵ Proponents of the Moralized View should welcome the result that they need not take up arms against the textbook formal semantics, especially since they have provided no rival account of the formal semantics for normative terms. There is an even more important reason why proponents of the Moralized View should embrace this formal semantics, but I will not focus on it.²⁶

If we take it as given that the Moralized and Generic Views agree about the formal semantics, we can understand their disagreement as concerning the interpretation of how modifiers change the ordering source. To warm

up to this, notice that we use the same machinery (ordering sources) to represent two different phenomena, which are intuitively distinct in the following sentences:

- (4) Morally, Antigone ought not bury Polynices. But prudentially she ought to do so.
- (5) Morally, Antigone ought not bury Polynices. But Creon thinks that morally she ought to do so.

There is an intuitive difference between how *prudentially* and *Creon thinks that morally* modify the term *ought* in (4) and (5). Let's introduce some jargon to mark this difference. In (4), *prudentially* marks a different normative *source*. Metaethically, we might say that morality and prudence are distinct sources of requirements. *What Creon thinks* is not a distinct source of requirements. Rather, it is a distinct *perspective* about moral requirements. This intuitive distinction makes no difference at the level of the formal semantics we illustrated above: *prudentially* and *Creon thinks that morally* modify *ought* in the same way, namely, by taking us to a distinct ordering sources, or set of demands.²⁷

This distinction bears some similarities to a distinction that Shapiro (2006) drew between adjectival and qualified readings of *legal* as it modifies normative terms such as *ought*. Here's how he summarized that point in *Legality*:

When claims sans the word 'legal' are made, they express propositions with moral significance. To say that you are obligated to pay your taxes, for example, implies that you morally ought to pay your taxes. When the word 'legal' is used to preface the use of normative terminology, the speaker might be either expressing her judgment about a moral reason for action (namely, that the reason results from the operation of a legal institution) or exploiting the perspectival interpretation of the word.²⁸

There are some serious problems with Shapiro's view here. The first two sentences assert – without, in context, any argument – that by default, bare deontic modals (like *ought*) and cognate terms like *obligated* are understood as being relativized to morality: 'you ought not split infinitives' implies that you *morally* ought not split infinitives. Indeed, read literally, the first quoted sentence says that all normative claims sans the modifier *legal* imply moral propositions: even 'you *grammatically* ought not split infinitives' implies that you morally ought not split infinitives. This is a mistake.²⁹ The final sentence offers what Shapiro takes to be the two possible interpretations of the modifier *legal*: the adjectival interpretation on which it marks what I will call the *ground* of a moral or prudential reason (see §3 below), and the perspectival interpretation on which it marks a *perspective* on moral or prudential reasons. I agree with Shapiro that one option for interpreting *legal* is that

it marks a perspective in this way; but I do not think we must choose between this and an adjectival interpretation.

Indeed, the disagreement between the Moralized and Generic Views is best understood in terms of a disagreement about how to interpret the modifier *legal*: the former insists on a perspectival interpretation, while the latter insists on a fairly natural interpretation that Shapiro does not even consider as a possibility. According to the Generic View, in (1)–(3) *morally* and *legally* modify *obligated* in the same way: by marking a difference in the source of Antigone's requirements. There is one generic meaning of obligation, and (in Hart's words) *moral* and *legal* obligation constitute 'different species of obligation reflecting the different standards used in determining what acts are obligatory.' By contrast, according to the Moralized View, in (1)–(3) *morally* and *legally* modify *obligated* in different ways: *morally* marks the source of Antigone's requirements, while *legally* marks a perspective about moral requirements. In Hart's terms, 'not only is there a common element in legal and moral obligation but the former is a species of the latter or at least in some sense presupposes it.' The idea of a perspective on moral obligations presupposes the idea of moral obligations.

Outside of contemporary jurisprudence, the Moralized View does not have a wide allegiance. In fact, it is largely ignored. Kratzer herself treats legal, prudential, and moral ordering sources in exactly the same way: she says that 'what the law provides', 'what is good for you', and 'what is moral' each provides a distinct 'ideal' or source of requirements.³⁰ Michael Ridge writes that a 'legal standard issues a requirement', and later clarifies that he takes legal standards to be a source of requirements.³¹ The Generic View is also widely accepted in other subdisciplines. In his discussion of requirements, for instance, John Broome claims that the only viable interpretation of *legal requirement* is that 'the law is a source of requirements.'³² The thought that legal might instead mark a perspective does not seem to be seriously entertained.

Within contemporary philosophy of law, however, the Moralized View is dominant. Since the View is rarely developed with any discussion of formal semantics, the details of the View can seem fuzzy. Jules Coleman, for instance, defends what he calls 'the moral semantics claim': 'that legal content is best understood as moral directives about what is to be done.' He goes on to elaborate that the 'moral semantics thesis is the view that the content of law can be truthfully *re-described* as expressing a moral directive or authorization.'³³ I do not typically understand claims about semantics in terms of claims about truthful (or 'accurate') re-description. But as Coleman notes, 'Raz and Shapiro are among the strongest advocates of the moral semantics claim',³⁴ and the latter at least states his view quite clearly: Shapiro tells us that the claim that one is legally obligated to perform some action 'may be understood to mean

that from the legal point of view one is (morally) obligated to perform that action'.³⁵

By contrast, Raz's position is somewhat harder to parse. Raz has argued that 'statements of what ought to be done according to law ... simply state what one has reason to do from the legal point of view'.³⁶ Two crucial details of this picture need to be filled in. First, to state what is the case from the legal point of view is at least analogous to stating 'what is the case from the point of view of [a] theory or on the assumption of the theory';³⁷ Shapiro has made similar remarks.³⁸ And second, that the relevant propositions are propositions about exclusionary moral (or 'content-independent') reasons, which are the *analysans* of moral obligations.³⁹ Others have similarly formulated the Moralized View in terms of reasons: for instance, Leslie Green writes that "legally speaking there is an obligation to φ " means that from the point of view of the law there are binging reasons to φ and exclusionary reasons not to act on some of the reasons to the contrary;⁴⁰ where the latter is offered as an analysis of moral obligation.

It is striking how little engagement there is between advocates of the Generic and Moralized Views. In jurisprudence, the latter is often portrayed as the *only* alternative to the Ambiguity View. For instance, Scott Hershovitz writes:

Some people think that there is a distinctively legal domain of normativity, separate from other normative domains like morality ... Other positivists, however, think that law employs the same concept of obligation as morality so ... claims about a person's legal obligations are really claims about her moral obligations.⁴¹

Hershovitz, to be clear, is summarizing a central motivation for Raz's position.⁴² But he seems to endorse the conditional that if legal and moral language involve the same 'concept of obligation', it must be a distinctively moral concept of obligation. This ignores the position that law and morality share a generic concept of obligation. An analogy might be helpful in explaining why this is a mistake. We saw above that *obligation* has a Kaplanian character, just like indexicals (*I*, *you*): that is, *obligation* can be relativized to standards (*moral*, *legal*) in the way that *I* can be relativized to speakers (me, you). It would be a mistake to say that all uses of *I* share the same meaning, so all uses of *I* are really claims about me (the author of this article, and the content of my uses of *I*). Likewise, it is a mistake to say that all uses of *obligation* share the same meaning, so all uses of *obligation* are really claims about *moral* obligations.⁴³

The above shows that the Moralized View is often poorly motivated by its proponents. But it does not amount to an objection to the View itself. I will now argue, however, that linguistic data militate against the Moralized View.

3. *Why reject the moralized view?*

Having clarified what the Generic and Moralized Views agree and disagree about, we are now well placed to see why the latter should be rejected. Recall that Raz and Shapiro take ‘the legal point of view’ to be analogous or identical to the perspective of a normative theory. Neither has pointed this out,⁴⁴ but this provides a helpful analogue for their view about how *legal* modifies *obligation*. Consider how adjectives like *Kantian* or *utilitarian* modify *obligation*. At the level of our formal semantics, they contribute distinct orderings (just like *moral*, *prudential*, and *legal*). But intuitively, one’s Kantian obligations just are one’s moral obligations according to the point of view of the Kantian moral theory. Kantianism and utilitarianism are distinct perspectives about moral obligations, not distinct sources of moral obligations. Aside from the small point that *Kantian* and *utilitarian* lack an adverbial form (like *legally*), everything that Raz says about *legal obligation* seems to be true of *Kantian* and *utilitarian* obligation. For instance, it is crucial for Raz that we can say:

6. Antigone has a legal obligation not to bury Polynices, but she has no moral obligation not to do so

when we do not endorse the legal point of view. Similarly, we can say:

7. Antigone has a Kantian obligation not to bury Polynices, but she has no moral obligation not to do so

when we do not endorse the Kantian point of view. Ditto for *utilitarian*.

So far we have seen that according to the Moralized View, *legal* modifies *obligation* in the same way that *Kantian* and *utilitarian* modify *obligation*. This lets us make testable predications about how *legal obligation* should function in discourse: namely, it should function in the way *Kantian obligation* functions. However, there is at least one obvious, important difference between how these modifiers function. *Kantian* can be ‘stacked’ in a way that *legal* cannot.

To ‘stack’ modifiers is to string together multiple modifiers before a noun. For instance, one can have a *highly demanding* obligation to give away one’s property, or a *utilitarian* obligation to do so, or a *highly demanding utilitarian* obligation to do so. Likewise, one could have a *highly demanding legal* obligation to pay one’s taxes. Sometimes modifier stacking results in sentences that are intuitively unacceptable because they are ‘semantically anomalous’ – that is, they can only be ascribed a bizarre meaning – even though they are grammatical. This is typically designated with a # symbol. Chomsky’s famous example

'Colorless green ideas sleep furiously' is an instance of this phenomenon: while it is grammatical to do so, we cannot stack *colorless* and *green* (let alone as modifiers of *ideas*) without producing a semantically anomalous sentence.

Now we can consider two sentences that will provide useful linguistic data:

8. Antigone has a Kantian moral obligation not to bury Polynices.
9. # Antigone has a legal moral obligation not to bury Polynices.

In (8), *Kantian* and *moral* can be stacked in a way that is perfectly acceptable. Since *Kantian* designates a perspective on our moral obligations, 'Kantian moral obligation' has a clear meaning; in fact, intuitively it has the same meaning as 'Kantian obligation', as *moral* just clarifies what the Kantian point of view is about. (Similarly, in (5) we could have said 'Creon thinks that' or 'Creon thinks that *morally*'; the addition of *morally* merely clarifies what Creon's thoughts are about.) But this interpretation of (9) is not available.

I take (9) to be semantically anomalous. Here I am primarily relying on data from introspection, which is common in linguistics but contentious all the same. Still, if one does not share this judgment – that is, if one takes 'legal moral obligation' to be acceptable – that may well be fine for my purposes. What matters here is not whether (9) is semantically anomalous, but whether (9) is equivalent in meaning to the first conjunct of (6): that is, whether 'legal moral obligation' just clarifies the meaning of 'legal obligation' in the way that 'Kantian moral obligation' just clarifies the meaning of 'Kantian obligation'. This is what the Moralized View predicts. But it seems to be quite implausible.

In fact, the best interpretation of (9) I can think of is to take *legal* to mark what we might call the 'ground' of the relevant moral obligation.⁴⁵ (I do not think that this interpretation is very plausible, but proponents of the Moralized View might wish to take this route as a Hail Mary pass.) To clarify this suggestion, consider how *promissory* and *familial* modify *obligation*. For instance, a promissory obligation is a moral obligation that one has because of a promise (that one has made, presumably). This provides another way that we can understand stacked modifiers in this context. 'She has a promissory moral obligation to pick me up from the airport' is acceptable. Here *promissory* marks the ground (a promise) that makes it the case that she has a moral obligation. Similarly, we might interpret (9) to mean that the law made it the case that Antigone had a moral obligation not to bury Polynices. If we have this interpretation in mind, we should agree that the following is unacceptable:

10. # Antigone has a legal moral obligation not to bury Polynices, but she has no moral obligation not to do so.

in the same way that ‘She has a promissory moral obligation to pick me up from the airport, but she has no moral obligation to do so’ is unacceptable. This example is also helpful in highlighting how unhelpful the *grounds* interpretation is for those who accept the Moralized View: modifiers that mark the grounds of obligations are factive, whereas those that mark perspectives are not. If one has a promissory moral obligation, it follows that one has a moral obligation.⁴⁶ By contrast, if one has a Kantian moral obligation, it does not follow that one has a moral obligation because as a perspective Kantianism can be false. A central tenet of the Moralized View as it is defended by Raz, Shapiro, Green, and Coleman is that the law provides a perspective that can be false. Without this, the Moralized View would support a form of legal anti-positivism, along the lines defended by Dworkin (2011), Greenberg (2014) and Herskovitz (2015): legal obligations would be, in Hart’s words, a species of moral obligations.

So far we have seen that the Moralized View does not explain the linguistic data about sentences involving stacked modifiers, such as (9). This is evidence against the Moralized View. But it is not yet evidence that favors the Generic View over the Moralized View. Does the Generic View also have a problem in explaining these linguistic data? No. Leaving aside alternative interpretations like the one in the above paragraph, the Generic View predicts that (9) will be unacceptable. One can stack a perspective (Kantian) and the source (moral) that this perspective is about. One can stack a ground (promissory) and the source (moral) of the obligation that is grounded. But one cannot stack separate sources of obligations: ‘Antigone had a moral prudential obligation to bury Polynices’ and ‘Antigone had a prudential moral obligation to bury Polynices’ are semantically anomalous, just as (9) at least *prima facie* appears to be.

This completes my argument against the Moralized View, and in favor of the Generic View. The former makes testable predictions about the meaning of constructions like stacked modifiers, and those predictions are strikingly at odds with linguistic data. If we reject the Ambiguity View in part because it is inconsistent with linguistic data, we should reject the Moralized View for the same reason. Since the Generic View explains these data, it should be preferred.

4. *Why does this matter?*

What’s at stake in the debate between these Views? Assuming that we should accept the Generic View and reject its rivals, why does this matter? Below I will focus on two ways of teasing out implications of our discussion for jurisprudence.

4.1. IMPLICATIONS OF THE GENERIC VIEW: ARGUMENTS *FROM* ITS RIVALS

One way to tease out implications of our discussion of the Generic View involves reconstructing arguments *from* its rivals. If these rivals are false, these arguments give us no ground for believing their conclusions. That's important.

Since the Ambiguity View is widely rejected, it is perhaps unsurprising that most of the relevant arguments in jurisprudence invoke the Moralized View. Perhaps the clearest and important appeal to the Moralized View in philosophy of law concerns Hume's *is/ought* gap.⁴⁷ To set the scene, consider what Shapiro calls one of the central problems for 'all forms of legal positivism':

According to the legal positivist, the content of the law is ultimately determined by social facts alone. To know the law, therefore, one must (at least in principle) be able to derive this information exclusively from knowledge of social facts. But knowledge of the law is normative whereas knowledge of social facts is descriptive. How can normative knowledge be derived exclusively from descriptive knowledge? That would be to derive facts about what one legally *ought* to do from judgments about what is the case. Legal positivism, therefore, appears to violate the famous principle introduced by David Hume (often called 'Hume's Law'), which states that one can never derive an ought from an is.⁴⁸

Raz calls this 'the problem of the normativity of law', and like Shapiro he takes the problem to centrally concern 'the use of normative terms to describe the law.'⁴⁹ Raz's proposed solution to the problem was that 'the way to explain statements of what ought to be done according to law' is that such sentences 'state what is the case from the point of view of the theory'; while (1) is a normative statement, (2) is 'a normative statement from a point of view.'⁵⁰ The details of Raz's proposed solution are both unclear and (unnecessarily) controversial;⁵¹ Shapiro's proposed solution takes a similar but simpler form.

According to Shapiro, 'on the perspectival interpretation of the word 'legal,' statements of legal authority, legal rights, and legal obligations are *descriptive*, not normative. They describe the normative point of view of the law.' So legal positivism 'conforms to Hume's law': when we derive information about what we legally ought to do exclusively from knowledge of social facts, this 'does not involve the derivation of an ought from an is, but rather an is from an is.'⁵²

If we reject the Moralized View, Raz and Shapiro's proposed solution to the problem posed by Hume's Law fails. If statements about what one is legally obligated to do, unlike statements of Kantian obligations, do not describe what one is morally obligated to do according to some normative theory, then they have offered no good explanation for why such legal statements are descriptive rather than normative. Now, this might not be troubling if there were a good alternative route for classifying such legal

statements as descriptive; but Shapiro explicitly disavows other options in an effort to shore up his preferred solution.⁵³ So this leaves us with an unsolved puzzle for legal positivists: an explanation is still owed for why positivism does not violate Hume's law, and by Raz and Shapiro's lights this one of the central problems in philosophy of law.

4.2. IMPLICATIONS OF THE GENERIC VIEW: ARGUMENTS FOR ITS RIVALS

Not everyone is persuaded that the is/ought gap poses a genuine problem for positivists. So, let's turn to another way to tease out implications of our discussion, by reconstructing arguments *for* rivals to the Generic View. If these rival views are false, at least one premise of each of these valid arguments must go. This is important, as these arguments all hinge in part on common core philosophical commitments about the relationship between morality and law.⁵⁴

It is worth noting a few things in advance. First, rejecting the relevant core commitment about the relationship between morality and law will not be the only option; in many cases, we may wish to reject the other premise of the argument, which will often be the premise that has received far less attention. Second, appealing to the truth of the Generic View to show that we should reject premises in arguments for its rivals may strike many as patently question-begging. I do not think that it is, however. The first virtue of a semantic theory should be to fit and explain the relevant linguistic data, and the rivals to Generic View fail to meet that desideratum. This strike against rivals to the Generic View outweighs any considerations that have been marshaled in their favor. Some may disagree, however, with this way of weighing desiderata; given that, I will show that rejecting the relevant premises can be independently motivated.

Enough preamble. Let's turn to the arguments themselves. First, consider the best argument I know of for the Ambiguity View, from Richard Holton:

[O]n the account proposed here, 'P is legally obligatory' does not entail 'P is morally obligatory'. So 'legally obligatory' and 'morally obligatory' mean different things. However, that does not show that 'obligatory' has a different sense in each construction [...]. There is, though, a consideration which has lain behind much of our discussion so far, and which does show that 'obligatory' has different senses in the two constructions. Statements of legal obligation are made true simply in virtue of social facts; that is guaranteed by the truth of the social thesis. Statements of moral obligation, in contrast, are not. In short, they fall on either side of the is/ought divide. Since they have such radically different sorts of truth conditions, we can quite reasonably think of them as having distinct meanings.⁵⁵

Holton's argument seems to be: If 'P is legally obligatory' is made true in virtue of social facts and 'P is morally obligatory' is not, then 'obligatory' has a different sense in each construction; 'P is legally obligatory' is made true in virtue of social facts and 'P is morally obligatory' is not; so,

'obligatory' has a different sense in each construction [i.e. the Ambiguity View is true]. This is a valid argument for a false conclusion, so one of the premises must be false.

One could deny premise two either by rejecting legal positivism or by embracing, say, moral conventionalism. Either way, we would have to give up a common (though by no means consensus) philosophical commitment that there is an important difference in the types of facts explain moral and legal facts.⁵⁶

The simpler option, however, is to reject premise one. It rests on a mistake. The mistake that Holton makes here is one that was ably diagnosed by Kevin Toh in a different context: Holton has conflated *truth conditions* with *grounds*.⁵⁷ Notice the slide in the final three sentences from statements being 'made true in virtue of' something to statements having 'different sorts of truth-conditions'.

Consider the formal semantics that was set out above. What it tells us is the truth-conditions of statements of the form 'P is obligatory', including when it is relativized to different standards; in other words, it tells us that 'P is legally obligatory' and 'P is morally obligatory' do not have radically different sorts of truth conditions. That's what gives us the univocality of 'obligatory'. It does not require us to take a stand on *in virtue of what* these statements are true.⁵⁸

Now let's turn to two common arguments for the Moralized View. These are more difficult to reconstruct without getting tangled in exegetical matters that I wish to avoid for the sake of brevity. The reconstructions that I offer are reasonable, and interesting in their own right.

The 'decisive' argument that Raz offered for the Moralized View was:

The decisive argument concerning the meaning of statements of legal duties is that the law claims for itself moral force. No system is a system of law unless it includes a claim of legitimacy, of moral authority. That means that it claims that legal requirements are morally binding, that is that legal obligations are real (moral) obligations arising out of the law.⁵⁹

Raz's argument seems to be: If necessarily legal systems claim to be morally authoritative, then 'obligatory' has a moral meaning in legal contexts; necessarily, legal systems claim to be morally authoritative; so, 'obligatory' has a moral meaning in legal contexts [i.e. the Moralized View is true]. Again, this is a valid argument for a false conclusion, so one of the premises must be false.

It is not immediately obvious what can be said in favor of the first premise. When we turn to a further argument from Raz, however, we will see that there is an indirect route to thinking that this first premise is fairly plausible.

What about the second premise? Is it true that, necessarily, law claims authority? An interesting observation about this Razian commitment is that Raz appeals to it in his 'decisive argument' for the Moralized View, then

appeals to the Moralized View in arguing for the commitment.⁶⁰ To use the commitment to motivate the Moralized View, we need an *independent* argument for it.

Are there good independent arguments for the Razian commitment that necessarily law claims authority? Consider the centerpiece of John Gardner's defense of this commitment in the relevant section of his chapter 'How Law Claims, What Law Claims'. After arguing that *how* law makes claims is through legal officials, Gardner turns to *what* law claims:

The place to begin, nobody doubts, is with the language that law-applying officials use. In explaining the law, they cannot but use the language of obligations, rights, permissions, powers, liabilities and so on. What they thereby claim – and they cannot say it without claiming it – is that the law imposes obligations, creates rights, grants permissions, confers powers, gives rise to liabilities, and so on. The question is: What do these claims amount to?

Some people hold that the full necessary extent of the claims made by officials who use this language is that there are *legal* obligations, *legal* rights, *legal* permissions, *legal* powers, *legal* liabilities, and so on. Now it is certainly true that there are such things, and that their existence can be and routinely is claimed by law-applying officials. But this claim cannot be law's claim. Why? Because a legal obligation or right is none other than an obligation or right that exists according to law. And an obligation or right that exists according to law is none other than an obligation or right, the existence of which law claims. So the claim that there is a *legal* obligation or right – whether made by a law-applying official or by anyone else – is a second-order claim, a claim *about* what law claims. Now it is true, of course, that law could make a second-order claim about its own claims. But not this one. For as we already learnt, a claim has to be capable of being true or false. It is not a claim unless there is logical space for its falsity. And it makes no sense to attribute to law a false claim about these legal obligations and rights, for there is no criterion of legal truth and falsity that is independent of law...

It is against this background that the proposal emerges that law's own claim is a moral one: that when, according to law, there are obligations and rights and so on, law's claim is that these are *moral* obligations and rights and so on, not merely legal ones.⁶¹

I quote this at length to highlight three important features of the argument. First, the argument presupposes a key aspect of the Moralized View: that 'a legal obligation or right is none other than an obligation or right that exists according to law', as opposed to a 'real' obligation. In other words, *legal* modifies *obligation* in roughly the same way that *Kantian* modifies *obligation*, namely, by marking a perspective. Without this presupposition, nothing explains why we should treat law's claims about legal obligations as 'second-order' claims.

Second, the argument presupposes that if claims about obligations, rights, permissions, powers, and liabilities are not claims about *legal* obligations *et al.*, they must be claims about *moral* obligations at all. This seems to

presuppose that there is no generic sense of *obligation*: i.e. that the Generic View is false.

Third, on its face, the argument seems to turn on a simple confusion about disjunction. Grant that *legal* marks a perspective, and that there is no generic sense of *obligation*. If this is right, why can't law's claims concern legal obligations? Because such claims would (necessarily?) be true, and 'a claim has to be capable of being true or false. It is not a claim unless there is logical space for its falsity.' Grant that a claim has to be capable of being *true or false*: it must have a truth value. It does not follow that it must be capable of being false! To satisfy a disjunction something need not satisfy each disjunct. If there are any axioms of logic, they are claims – claims like 'If *p*, then *p*' or 'If *p*, then *p* or *q*' or 'If *p* and *q*, then *p*' – even though there is no logical space for their falsity. That logical axioms are true suffices for them to have truth-values. Ditto for the law's claims about legal obligations and rights and so on. So even if 'it makes no sense to attribute to law a false claim about these legal obligations and rights', it is unclear why that would show that the law's claims do not concern legal obligations and rights.

So we have seen that the Razian commitment that necessarily law claims moral authority plays a crucial role in arguments for the Moralized View, and vice versa. If we have independent evidence against the Moralized View, this puts the Razian commitment itself under considerable pressure: it may be poorly motivated (because its defense relies on a false semantic thesis) or it may (together with other premises that Raz and his followers accept) entail a false semantic thesis.

There is, however, a different argument that Raz offered for the Moralized View. Before the 'decisive argument' quoted above, Raz started discussing whether "'duty" and "obligation" mean the same when one talks of legal and of moral duties and obligations' by 'taking judges' statements as a test case':

It is possible that while judges believe that legal obligations are morally binding this is not what they say when they assert the validity of obligations according to law. It may be that all they state is that certain relations exist between certain people and certain legal sources or laws. Their belief that those relations give rise to a (moral) obligation may be quite separate and may not be part of what they actually say when asserting obligations according to the law. But such an interpretation seems contrived and artificial.⁶²

This suggests a different argument for the Moralized View. And one that also provides a rationale for the first premise of the 'decisive argument' above:

Judges, if anyone, take the law as it claims it should be taken. They more than anyone acknowledge the law at its own estimation. To understand legal statements we should interpret them as

meant by those who take them and accept them at face value, those who acknowledge the law in the way it claims a right to be acknowledged.⁶³

Let's walk through this. The most central commitment here is that we should 'understand legal statements' by 'interpret[ing] them as meant by those who take them and accept them at face value', namely judges. This is key to how we could get from the Razian commitment that law claims authority to the Moralized View. Assume, for the moment, that the Razian commitment is independently well-motivated: the law claims moral authority (i.e. the law claims that legal obligations are moral obligations arising out of the law). Since judges 'acknowledge the law in the way it claims a right to be acknowledged', and take the law's claims at face value, they thereby take legal obligations to be moral obligations arising out of the law. And this should guide how we understand the meaning of statements about legal obligations.

So understood, Raz's second argument can be understood as a falling under a more general strategy for arguing for the Moralized View, which is roughly:

- P1: A sincere, competent speaker's statements of the form 'A is legally obligated to ϕ ' expresses the speaker's moral attitude towards A ϕ -ing.
- P2: If P1 is true, 'obligated' has a moral meaning in legal contexts.⁶⁴
- C: So, 'obligated' has a moral meaning in legal contexts.

This is a valid argument with a false conclusion, so one of the premises must go. Given the current literature in philosophy of law, the most obvious pressure point is the first premise. Following Raz, many have argued that the 'internal point of view' that judges *et al.* take towards the law and express in sincere 'internal' legal statements should be understood, *contra* Hart, as a moral point of view. Kevin Toh (2005, 2007, 2010) has argued at length against this. Indeed, he argues that the internal point of view should be understood in terms of the expression of a generic non-cognitive attitude, 'acceptance'; coupled with a corresponding version of the second premise, this yields an argument against the Moralized View and for (an expressivist version of) the Generic View.

It is worth noting, however, that Raz's P2 and Toh's corresponding version thereof rely on a Gricean metasemantic program in which we explain 'sentence meaning' in terms of 'speaker meaning'. This program has been widely adopted by expressivists, who 'explain the meaning of a term' via the 'states of mind the term can be used to express' in sincere speech acts; what the expressivist adds to the Gricean position is that normative terms like *obligated* express non-cognitive attitudes like plans or approval or acceptance.⁶⁵ Many deny not only that normative terms express non-cognitive

attitudes, but that we should explain the meaning of terms via the states of mind they express.⁶⁶ So if one wishes to retain the view that the internal point of view is a moral point of view, another option is to drop any allegiance to a metasemantic program that has been widely assumed – without much discussion – in philosophy of law.

Indeed, it is quite striking how little has been made in philosophy of law of another way of thinking about what 'internal legal statements' express, which also derives from influential work by Paul Grice (1957). We could think that such statements pragmatically implicate that the speaker has the relevant (moral or non-cognitive) attitude. As Holton put the idea, 'in making a legal judgement [the judge] will have pragmatically *implicated* that she believes there is a moral obligation to obey that judgement. But that doesn't mean she thinks she has strictly and literally *said* that there is a moral obligation, or said anything that entails this.'⁶⁷ This allows one to grant everything that Raz or Toh would want to say about (in Raz's words) 'what [judges] say when they assert the validity of obligations according to the law', but insist that what they say (pragmatically) and what their statement literally means (semantically) come apart.

There is much more to say here, of course, about both the metasemantics and pragmatics of legal language. My point is not that we must give up on P2 because there are alternative ways of thinking about language. It is that we should not treat anything like P2 as a fixed commitment that (coupled with other commitments) forces us to accept certain views about the semantics of legal language, or at least, not without first exploring such alternatives.

Where does this leave us? We have seen three common commitments about the relationship between morality and law play a role in motivating rivals to the Generic View: that moral and legal facts are explained in terms of different types of facts; that necessarily the law claims moral authority; and that the internal point of view towards the law is a moral point of view. There are independent reasons to give up these commitments. But I have also noted that their defenders also have the option of rejecting the often under-discussed ancillary premise that was supposed to show how we could move from the relevant commitment to a claim about the semantics of normative terms in moral and legal contexts.

In many ways, this should be regarded as a welcome result. The central motivation that has driven philosophers of law to accept a moralized semantics seems to be a core commitment about the role of moral attitudes in legal thought and talk. Once we recognize how that commitment can be paired with different views about metasemantics and pragmatics, we can see that it need not drive philosophers of law to adopt an independently implausible semantic theory.

5. Conclusion

In this article, I have argued that we should reject the view that terms like *obligated* are ambiguous in moral and legal contexts, and reject the view that *obligated* has a distinctively moral meaning in legal contexts. If this is right, we should accept (at least as a default) the view that is largely ignored in contemporary philosophy of law and widely accepted in other fields: that *obligated* has a univocal generic meaning in moral and legal contexts. This has implications for how we think about the relationship between morality and law.

I do not take these arguments to be decisive. It would be awfully hubristic to think that such a short foray into such a significant philosophical disagreement would settle the underlying issues. However, I hope to have at least clarified what this under-discussed philosophical disagreement is about, and to have shed some light on how it can be resolved. Semantic theorizing should not proceed unmoored from linguistic data. If legal positivists continue to embrace what Coleman calls ‘the moral semantics claim’ – and if, like him,⁶⁸ they take it to be ‘absolutely essential to holding together the positivist picture of law’—they owe us an explanation of the linguistic data that militates against this view (modifier stacking), and at least some linguistic data that motivates their view.⁶⁹

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NOTES

¹ Hart, 1982, pp. 127–128, emphasis his, internal citations omitted.

² Hart, 1982, pp. 159–160. This reading of Hart is offered by Timothy Endicott: ‘According to Hart, the meaning of normative language differs in morality and in law’ (Endicott, 2016). Toh, 2005, offers some compelling reasons for rejecting this reading. I will say something about Endicott and Toh’s views later, but I will not take a stand on the exegetic issue. I wish to thank a referee for clarifying the difficulties in attributing the Ambiguity View to Hart.

³ See, among others, Raz, 1999; Shapiro, 2011; Green, 2002; and Coleman, 2007.

⁴ Coleman, 2007, pp. 592–593.

⁵ Finlay and Plunkett (forthcoming), for instance, are legal positivists who seem to manage to live without the moral semantics claims; they embrace a version of the Generic View. Toh (2005) is also a positivist who aims to embrace the Generic View (see p. 89), though elsewhere I have raised doubts about whether he – and other expressivists – can do so. See Wodak, 2017.

⁶ Richard Holton (1998) is a proponent of the Ambiguity View. He argues that not only do “legally obligatory” and “morally obligatory” mean different things’ (which is compatible with any View), but that “obligatory” has different senses in the two constructions’ (p. 617).

⁷ See, *inter alia*, Kripke, 2011.

⁸ Sennet, 2011.

⁹ Wodak, 2017. For instance, here’s an application of Stanley’s (2005) Binding Test. Zoe has three kids: Joe, Kim and Leo. Joe just promised his friend that he would not speak for five

minutes. Kim is near a dangerous predator, and if she makes a peep it will attack her. Leo is in a legally designated noise-reduction zone. Now consider the sentence 'All of Zoe's kids must be quiet.' Here *must* is used acceptably while it is implicitly relativized to different standards (moral, prudential, legal), while being used once and bound under a universal quantifier. As Stanley discusses, this test can be used in different ways: it can appeal to linguistic intuitions about zeugma, as well as to formal considerations about syntactic structures. I thank a referee for pushing me to clarify this point. More can be said about these tests, of course.

¹⁰ This maxim is often credited to Grice (1989, pp. 47–49), but the underlying idea dates back at least to Aristotle's position that an 'item has more than one lexical meaning if there is no minimally specific definition covering the extension of the item as a whole, and that it has no more lexical meanings than there are maximally general definitions necessary to describe its extension': Geeraerts, 1993, p. 230, paraphrasing Aristotle's *Posterior Analytics* II.xiii.

¹¹ Silk, 2014, pp. 2–3. This point was first raised by Kratzer (1977) ('How many kinds of "must" do we have to distinguish? How many deontic ones? How many epistemic ones? How many dispositional ones? And how many preferential ones? Obviously many, many of each group. We do not just refer to duties. We refer to duties of different kinds. ... All this leaves us with many different "must"s and "can"s', p. 339).

¹² See Falkum and Vicente, 2015.

¹³ See Geeraerts, 1993.

¹⁴ Falkum and Vicente, 2015, p. 3. See also references therein.

¹⁵ It is worth noting that in a recent, thorough defense of the view that modals are polysemous, Viebahn and Vetter (2016) respond to this type of objection by emphasizing the modesty of their proposal: they do not 'posit many meanings for modals', but rather 'just a handful of "can"s and "may"s, one for each flavour of modality' (p. 16). That is, they posit that modals – *ought*, *must*, and *can* – are polysemous, but deontic modals are univocal: this is why their hypothesis only yields a handful of meanings. By contrast, the view under consideration posits that deontic modals are polysemous. Since there are a finite number of flavors of modality (deontic, metaphysical, epistemic, etc.) and an indefinite number of flavors of deontic modality (moral, legal, rational, prudential...), the hypothesis under consideration is comparatively immodest. That is why this objection is so damning to the Ambiguity View.

¹⁶ See Swanson, 2007, p. 1195.

¹⁷ For discussion, Finlay, 2014, pp. 55 ff. See also Chrisman, 2007 (especially pp. 308–9) for further critical discussion of the hypothesis that *ought* is lexically ambiguous.

¹⁸ See especially von Fintel and Iatridou, 2008.

¹⁹ For instance, Hart (1982) suggested that a cognitivist theory is well suited to moral contexts but a 'different, non-cognitive theory' is '(f)ar better adapted to the legal case': pp. 159–160. As was noted above, there are exegetical questions about whether this was indeed Hart's view. But the main issue here is noting where the motivations that push Hart to suggest this version of an Ambiguity View lead. See Wodak, 2017, for further discussion.

²⁰ The disagreement is widely discussed *indirectly*, insofar as it relates to a contentious issue in philosophy of law: whether speakers express the same kind of (moral or generic) attitude in claims about moral and legal obligations (for discussion, see below, §4.2).

²¹ See footnote 26 and 29, below, and surrounding text.

²² See footnotes 41 and 42, below, and surrounding text.

²³ I am treating 'worlds' as equivalent to sets of propositions, but nothing hangs on this; I use 'worlds' a few times in these paragraphs simply because it is somewhat easier to track than talk of sets of propositions being consistent with the intersections of other sets of propositions.

²⁴ As this example hopefully illustrates, the circumstantial background and ordering source are both represented with similar descriptive propositions: the requirement that 'In *C*, everyone must not φ ' is represented as 'In *C*, no one φ s.' A truth-conditional account of the meaning of deontic modals would not get us far if it invoked deontic modals in the *explanans*.

²⁵ See Horty, 2014, p. 424, n.2, and references therein. Horty advocates abandoning this ‘classical’ semantics, but does not defend the view that *ought et al.* are ambiguous (p. 450); in fact, he seems to be committed to rejecting that view (p. 430).

²⁶ To put the point briefly, if these philosophers of law adopt something like the formal semantics above and the distinction between sources and perspectives below, they are under far less pressure to adopt (quite implausible) generalizations of their view about *legal* to other modifiers like *grammatical*. (Recall footnote 11 and surrounding text.) There is much uncertainty among philosophers of law about whether the Moralized View should be generalized to other uses of normative terms, such as claims about what one *grammatically* ought to do, or uses of deontic modals in games. (Cf. Raz, 1999, p. 176 and Gardner, 2012, p. 136 here.) It is a significant cost to the Moralized View about *legally ought* if it forces us to posit and explain the existence of a grammatical normative theory, such that *what we grammatically ought to do* means what we morally ought to do according to the grammatical point of view. This is an important reason for proponents of the Moralized View to welcome the result that they need not take up arms against a Kratzerian formal semantics like the one illustrated above.

²⁷ Should such a difference appear in the formal apparatus? And if not, why not? These are interesting questions, but they threaten to draw us off of our main thread. So let me just say this: I take it to be an advantage of semantic theory if it can explain myriad uses of ordinary terms with minimal machinery; adding new bits and bobs of formal machinery to cover subtle differences in use quickly yields something unwieldy. Some might disagree here: so they may offer different, incompatible formal apparatuses for the Generic and Moralized View, respectively.

²⁸ Shapiro, 2011, p. 191.

²⁹ As I noted above (footnote 26), the Moralized View need not force its proponents to take on this implausible commitment. For discussion of why it is ill-motivated, see Toh, 2007, especially at pp. 417–418, noting that ‘aside from moral statements, (there are) other normative statements that carry the purport of giving objective or categorical reasons. Statements of aesthetics, etiquette and prudence come to mind.’ (This point is further developed in relation to ‘rules’ and reasons in Toh, 2010, p. 1292.) So the observation that legal statements or bare deontic modals purport to give objective or categorical reasons does not mean that they must be understood as *moral* (if ‘moral’ is used in a non-stipulative sense, such that the claim is non-trivial). For a more plausible motivation for the commitment Shapiro embraces here, see Thomson, 2008, and for a compelling response, see Finlay, 2014, pp. 235–236.

³⁰ Kratzer, 1991, p. 646.

³¹ This is in his complex discussion of how Kratzerian approaches should handle inconsistent obligations. Ridge (2014) also implies that he takes *legal* and *moral* to modify *obligation* in the exact same way: ‘each obligation can, while still being a genuinely legal (or moral, or whatever) obligation, be indexed to a different specific law’ (p. 34).

³² John Broome (2007) notes that ‘requirements issue from various sources: morality, prudence, evidence, Catholicism and so on. Each source sets up a system of requirements.’ Broome makes a different distinction to the one below. He distinguishes *source requirements* from *property requirements*. The latter ‘follows the model of “survival requires”’. “Survival” is the name of a property. “Survival requires you to eat” means that your eating is a necessary condition for your possessing the property of survival. It means that, necessarily, if you survive you eat. Correspondingly, “Morality requires you to be kind to strangers” means that, necessarily, if you are moral – if you have the property of morality – you are kind to strangers.’ Broome claims that source requirements ‘follow the model of “the law requires”’. The law is a source of requirements, and ‘the law’ is not ambiguous (between a property and source) in the way that “morality” and the rest are; it is never the name of a property.’

³³ Coleman, 2007, p. 581. The full elaboration is: ‘The moral semantics thesis is not the claim that the content of law is a moral directive. It is a claim about how the content of the law can be (accurately or truthfully) described. The moral semantics thesis is the view that the content of law can be truthfully *redescribed* as expressing a moral directive or authorization. In claiming that law calls for a moral semantics, the thought is as follows. “Mail fraud is illegal” expresses

the directive: "mail fraud is not to be done." That is the content of the law. The moral semantics claim is that 'mail fraud is not to be done can be redescribed truthfully as "mail fraud is morally wrong"' (p. 592). See also Coleman, 2011, pp. 22, 78.

³⁴ Coleman, 2007, p. 593.

³⁵ Shapiro, 2011, p. 185.

³⁶ Raz, 1999, p. 175.

³⁷ Raz, 1999, p. 175.

³⁸ For Shapiro, the 'legal point of view' is 'the perspective of a certain normative theory' that holds that the laws of the relevant legal system 'are morally legitimate and obligating' but is 'silent on how to answer' all other moral questions, 2011, pp. 185–186).

³⁹ See Raz, 1999, ch. 1 and Postscript.

⁴⁰ Green, 2002, p. 519.

⁴¹ Hershovitz, 2015, pp. 1168–1169.

⁴² Raz, 2009, p. 158; see also his pp. 38–39.

⁴³ To be clear, from all that I've said here it may well be that all uses of *obligation* are really claims about *moral obligations*; the point is simply that we cannot infer this from the claim that all uses of *obligation* share the same meaning, as Raz and Hershovitz suggest.

⁴⁴ Raz (2009) offers analogies – with examples of 'advice' that is 'given from a point of view' (p. 156) – to illustrate his View, but they are better interpreted as claims about rational obligations than claims about moral obligations according to a point of view. *Kantian obligation* is, at the very least, a particularly clear case of the phenomenon he has in mind.

⁴⁵ See footnotes 28–29 above and surrounding text. Hershovitz (2015) offers this interpretation of *legal obligation* but uses 'source' rather than 'ground'. I avoid 'source' because, like Hershovitz, I take there to be an intuitive sense in which promises ground a moral obligation that is distinct from the sense in which morality is a distinct source of obligations.

⁴⁶ A referee offered a challenging rejoinder here: Suppose you make a promise to pick me up from the airport, but also have familial responsibility to be home that day. In such a case, could it be appropriate to say 'You have a promissory moral obligation to pick me up from the airport, but you have no moral obligation to do so'? Perhaps: it would be charitable to read the first instance of 'obligation' as *prima facie* and/or *pro tanto*, and the second as (in the referee's words) 'without qualification'. This reading will not always be available: consider '..., but you have no moral obligation to do so *whatsoever*'. And even if Raz *et al.* are forced to adopt it, it still spells doom for their broader commitments: the semantics alone would force us to accept that legal obligations are a species of *qualified* moral obligations, *a la* the anti-positivists below. I would like to thank an anonymous referee for raising this issue.

⁴⁷ For other appeals to the Moralized View, see Coleman, 2007, and cf. Himma, 2001.

⁴⁸ Shapiro, 2011, p. 47.

⁴⁹ Raz, 1999, pp. 154–5 and *passim*.

⁵⁰ Raz, 1999, pp. 175–76.

⁵¹ As Shapiro notes (2011, p. 422 fn. 23, pp. 414–415 fn. 44), his solution to the problem (see below) is 'heavily indebted to the work of Joseph Raz', but does not share two related commitments that are central to Raz's view: (a) that statements like (2) can 'express a normative proposition – a proposition about what ought to be done—and yet have descriptive truth-conditions', and (b) the 'unorthodox semantic theory' that we do not individuate propositions 'according to their truth conditions.'"

⁵² Shapiro, 2011, p. 188.

⁵³ For example, Shapiro rejects Austin's positivism, which 'permits the derivation of an ought from an is' by denying that 'concepts such as ... OBLIGATION are descriptive in nature.' Shapiro 'agrees with Austin that legal statements are descriptive,' but 'maintains that the main concepts that they employ are moral and hence normative' (2011, p. 191).

⁵⁴ This does not characterize all motivations that have been canvassed in the literature. The Moralized View is often motivated by alleged failures of the Ambiguity View and/or Hart's

view; we already saw this above (in §2), and it is also true of many of the arguments discussed and criticized at length by Toh (2007, 2010). With one exception, I set these arguments aside, in part because I agree with much of what Toh says in defense of Hart, and in part because once we recognize that there are other alternatives to Hart's view that these arguments leave unscathed, they cannot succeed as arguments *for* the Moralized View in particular.

⁵⁵ Holton, 1998, p. 617.

⁵⁶ The former option is taken by Dworkin (2011), Greenberg (2014) and Hershovitz (2015). There are moments where Hart flirted with the latter option, though I do not think it reflects his considered view given his commitments in Hart, 1994, ch. 8.

⁵⁷ Toh, 2005, p. 107

⁵⁸ Notably, according to most Kratzerian views, *modals* are univocal. This does not mean that facts involving metaphysical, epistemic, and deontic modals are made true in virtue of the same facts.

⁵⁹ Raz, 1984, p. 131.

⁶⁰ For discussion of how Raz's arguments for the view that necessarily law claims to be morally authoritative tacitly rely on the Moralized View, see Himma, 2001, pp. 288–296. Kramer (1999) also points out that 'one cannot sustain Raz's view (about law's claim to moral authority) by simply pointing to legal officials' use of deontic terms such as "obligation" and "duty". Any such terminological observation would patently beg the question' (p. 385).

⁶¹ Gardner, 2012, p. 133, internal references omitted.

⁶² Raz, 1984, p. 131.

⁶³ Raz, 1984, p. 131.

⁶⁴ A wrinkle must be acknowledged here. Standardly, those who appeal to principles like P2 appeal foremost to what is expressed in *sincere* uses of a term. But some of Raz's central arguments turn on the expression of *sincere* or *pretend* moral attitudes in 'internal' and 'detached' legal statements of the form '*A* is legally obligated to ϕ ', respectively. For discussion of Raz's appeals to detached statements, see Toh, 2007, pp. 407–414, and Toh, 2010, pp. 1290.

⁶⁵ See Gibbard, 2003, p. 7, and see also Gibbard, 1990.

⁶⁶ This is, I take it, what Endicott (2016) intends to deny when he writes that 'Hart had nothing to say about the meaning of normative expressions such as "ought" and "must" or "obligation" or "right" (except that their meaning differs in law and in morality). He only pointed out that people display an attitude when they use such language.'

⁶⁷ Holton, 1998, p. 611. I discuss a similar pragmatic view about the relation between the expression of speakers' non-cognitive attitudes and the Generic View in Wodak, 2017. And similar appeals to pragmatics are explored by Finlay and Plunkett, forthcoming.

⁶⁸ Coleman, 2007, pp. 592–593.

⁶⁹ I would like to thank Hrafn Asgeirsson, Philip Pettit, David Plunkett, Samuel Preston, Gideon Rosen, Michael Smith, Jack Woods, two referees Pacific Philosophical Quarterly, and audiences at Princeton, Stanford, and the University of Sydney Law School.

REFERENCES

- Broome, J. (2007). 'Requirements,' in T. Rønnow-Rasmussen, D. Egonsson, J. Josefsson and B. Petersson (eds) *Hommage à Wlodek: Philosophical Papers Dedicated to Wlodek Rabinowicz*. Lund: Lunds universitet.
- Chrisman, M. (2007). 'On the Meaning of "Ought",' *Oxford Studies in Metaethics* 7, pp. 304–322.
- Coleman, J. L. (2007). 'Beyond the Separability Thesis: Moral Semantics and the Methodology of Jurisprudence,' *Oxford Journal of Legal Studies* 27(4), pp. 581–608.

- Coleman, J. L. (2011). 'The Architecture of Jurisprudence,' *Yale Law Journal* 2(121), pp. 61–126.
- Dworkin, R. (2011). *Justice for Hedgehogs*. Cambridge, MA: Belknap Press.
- Endicott, T. (2016). 'Law and Language,' in E. N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/archives/sum2016/entries/law-language/>
- Falkum, I. L. and Vicente, A. (2015). 'Polysemy: Current Perspectives and Approaches,' *Lingua* 157, pp. 1–16.
- Finlay, S. (2014). *Confusion of Tongues: A Theory of Normative Language*. Oxford: Oxford University Press.
- Finlay, S. and Plunkett, D. (forthcoming). 'Quasi-expressivism About Statements of Law: A Hartian Theory,' in J. Gardner, L. Green and B. Leiter (eds) *Oxford Studies in Philosophy of Law vol. 3*. Oxford: Oxford University Press.
- von Fintel, K. and Iatridou, S. (2008). 'How to Say Ought in Foreign: The Composition of Weak Necessity Modals,' in J. Guéron and J. Lecarme (eds) *Time and Modality: Studies in Natural Language and Linguistic Theory*. Dordrecht: Springer, pp. 115–141.
- Gardner, J. (2012). 'How Law Claims, What Law Claims,' in his *Law as a Leap of Faith: Essays on Law in General*. Oxford: Oxford University Press, pp. 125–148.
- Geeraerts, D. (1993). 'Vagueness's Puzzles, Polysemy's Vagaries,' *Cognitive Linguistics* 4(3), pp. 223–272.
- Gibbard, A. (1990). *Wise Choices, Apt Feelings*. Cambridge, MA: Harvard University Press.
- Gibbard, A. (2003). *Thinking How to Live*. Cambridge, MA: Harvard University Press.
- Green, L. (2002). 'Law and Obligation,' in J. L. Coleman, K. E. Himma and S. J. Shapiro (eds) *The Oxford Handbook of Jurisprudence and Philosophy of Law*. Oxford: Oxford University Press, pp. 514–547.
- Greenberg, M. (2014). 'The Moral Impact Theory of Law,' *Yale Law Journal* 123(5), pp. 1118–1625.
- Grice, H. P. (1957). 'Meaning,' *Philosophical Review* 66(3), pp. 377–388 Reprinted as ch.14 of Grice, 1989, pp. 213–223.
- Grice, H. P. (1989). *Studies in the Way of Words*. Cambridge, MA: Harvard University Press.
- Hart, H. L. A. (1982). *Essays on Bentham: Jurisprudence and Political Theory*. Oxford: Oxford University Press.
- Hart, H. L. A. (1994). *The Concept of Law*, 2nd edn. Oxford: Oxford University Press.
- Hershovitz, S. (2015). 'The End of Jurisprudence,' *Yale Law Journal* 124(4), pp. 882–1345.
- Himma, K. (2001). 'Law's Claim of Legitimate Authority,' in J. L. Coleman (ed.) *Postscript: Essays on the Postscript to the Concept of Law*. Oxford: Oxford University Press, pp. 271–310.
- Holton, R. (1998). 'Positivism and the Internal Point of View,' *Law and Philosophy* 17(5/6), pp. 597–625.
- Horty, J. (2014). 'Deontic Modals: Why Abandon the Classical Semantics?' *Pacific Philosophical Quarterly* 95, pp. 424–460.
- Kramer, M. (1999). 'Requirements, Reasons, and Raz: Legal Positivism and Legal Duties,' *Ethics* 109, pp. 375–407.
- Kratzer, A. (1977). 'What "Must" and "Can" Must and Can Mean,' *Linguistics and Philosophy* 1, pp. 337–355.
- Kratzer, A. (1991). 'Modality,' in A. V. Stechow and D. Wunderlich (eds) *Semantics: An International Handbook of Contemporary Research*. Berlin: De Gruyter, pp. 639–650.
- Kratzer, A. (2012). *Modals and Conditionals: New and Revised Perspectives*. Oxford: Oxford University Press.
- Kripke, S. (2011). 'Speaker's Reference and Semantic Reference,' in his *Philosophical Troubles: Collected Papers*, Vol. 1. Oxford: Oxford University Press, pp. 99–124.

- Raz, J. (1984). 'Hart on Moral and Legal Duties,' *Oxford Journal of Legal Studies* 4(1), pp. 123–131.
- Raz, J. (1999). *Practical Reason and Norms*. Oxford: Oxford University Press.
- Raz, J. (2009). *The Authority of Law: Essays on Law and Morality*. Oxford: Oxford University Press.
- Ridge, M. (2014). *Impassioned Belief*. Oxford: Oxford University Press.
- Ruhl, C. (1989). *On Monosemy: A Study in Linguistic Semantics*. Albany, NY: SUNY Press.
- Sennet, A. (2011). 'Ambiguity,' in E. N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy*, Spring 2016 edn. <https://plato.stanford.edu/archives/spr2016/entries/ambiguity/>
- Shapiro, S. (2006). 'What is the Internal Point of View?' *Fordham Law Rev* 75, pp. 1157–1170.
- Shapiro, S. (2011). *Legality*. Cambridge, MA: Harvard University Press.
- Silk, A. (2014). 'Why "Ought" Detaches: Or, Why You Ought to Get with My Friends (If You Want to Be My Lover),' *Philosophers' Imprint* 14(7), pp. 1–16.
- Stanley, J. (2005). 'Semantics in Context,' in G. Preyer and G. Peter (eds) *Contextualism in Philosophy: Knowledge, Meaning, and Truth*. Oxford: Oxford University Press, pp. 221–254.
- Swanson, E. (2007). 'Modality in Language,' *Philosophy Compass* 3(6), pp. 1193–1207.
- Thomson, J. J. (2008). *Normativity*. Peru, IL: Open Court Publishing.
- Toh, K. (2005). 'Hart's Expressivism and his Benthamite Project,' *Legal Theory* 11, pp. 75–123.
- Toh, K. (2007). 'Raz on Detachment, Acceptance, and Describability,' *Oxford Journal of Legal Studies* 27(3), pp. 403–427.
- Toh, K. (2010). 'Some Moving Parts of Jurisprudence,' *Texas Law Review* 88, pp. 1283–1321.
- Viebahn, E. and Vetter, B. (2016). 'How Many Meanings for "May"? The Case for Modal Polysemy,' *Philosopher's Imprint* 16(10), pp. 1–26.
- Wodak, D. (2017). 'Expressivism and Varieties of Normativity,' in R. Shafer-Landau (ed.) *Oxford Studies in Metaethics*, Volume 12. Oxford: Oxford University Press, pp. 265–293.