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On asking why in the study of human affairs

Grégoire Webber*

Abstract: For the study of human affairs, there is a strategic question that directs inquiry: Why? Why did persons act the way they did? What are their reasons for so acting? When one seeks to study human affairs of a time and place, one puts the question ‘why?’ to the persons of that time and place and seeks to understand the reasons why they act as they conceive them. But when one seeks to study human affairs generally, one puts the question ‘why?’ to oneself and interrogates what truly good reasons there are for acting. Law earns a place in the study of human affairs only if there are truly good reasons to favour it and, if there are, those reasons will identify the central case of law. That central case of law will be united by the various and varying accounts of law of different times and places by way of network of similarities and differences, none of which deny the realities of human experience. The argument suggests that there is an order of priority in the questions one asks in order to develop a general theory of law: ask ‘why choose law?’ before and in order to answer ‘what is law?’

Keywords: general jurisprudence, human affairs, description, explanation, central case, central case method

I. Questions

Every inquiry begins with a question. Why do the leaves on that tree change colour in the autumn? How does this conclusion not follow from the stated premises? Should I obey this law even if no one is watching and no one will find out if I don’t? Why won’t my car start? Each question discloses some understanding, even if it is only of ignorance of the answer. The inquiry cannot begin unless one recognises there to be an inquiry to pursue, a question to be asked. In this respect, one’s inquiry is made possible because there is something that one already understands, even if radically imperfectly, and that understanding is the starting place for the inquiry, its guiding question, and the search for answers that it initiates.¹

Even if the starting point of one’s inquiry is the question that initiates and so directs it, that question may need to be deferred until other questions have been asked and answered. These secondary questions are identified because answers to them will assist one in answering the question with which one began. Consider this example, from Collingwood. My car will not start. Why? For an hour, I search for the answer by asking *other* questions. I will take out and test the first spark plug and conclude that it is not the cause of the failure. What question is this conclusion an answer to? Not the hour-long question with which I began—‘Why won’t my car go?’—but rather

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¹ Michael Oakshott’s account of the ‘activity of understanding’ has influenced much of my thinking in this section: ‘What is Political Theory?’ in *What is History? and other essays*, ed. Luke O’Sullivan (Charlottesville, VA: Imprint Academic, 2004) 391-402.

the more detailed and specific three-minutes-long question, ‘Is it because number one plug is not sparking that my car won’t go?’² So too with my conclusions regarding the second spark plug and the amount of petrol in the tank and . . . Each of these conclusions will be answers to questions other than the question with which I began. My conclusions that neither the first nor the second plugs nor the petrol in the tank are to blame are not a series of failures to answer the question directing my inquiry; they are correct answers to questions asked in order to answer the directing question, a question that can only be answered by asking and answering the more specific questions on which my inquiry proceeds.

A similar strategy is deployed by HLA Hart in the opening chapter of *The Concept of Law*. Entitled ‘Persistent Questions’, the chapter begins with the question, ‘What is law?’, being one of the few questions in the study of human affairs that has been asked ‘with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways’.³ After investigating some of the reasons why proffered answers have failed to command consensus notwithstanding fairly settled consensus on standard cases of law and legal systems, Hart proposes to ‘defer’ answering the opening question by asking instead, ‘What more do they [who have asked or attempted to answer the question ‘What is law?'] want to know and why do they want to know it?’ A more promising path into the inquiry is here opened up, for Hart is confident that to ‘*this* question something like a general answer can be given’.⁴ That general answer is offered in the form of three issues, formulated as further questions, that ‘underlie the recurrent question “What is law?”’.⁵ Answers to these questions will ‘come together’ to answer the question with which the inquiry began, such that the question ‘What is law?’ is not to be answered first, but last and only after answers to other questions are settled.⁶

These examples suggest that one arrives at understanding by providing the right answers to the right questions asked in the right order.⁷ So, if one wishes to investigate the relationship between law and morality and proceeds, with Hart, by framing the question as one about the relationship between law and *morality as a type of social phenomenon*—a set of reasonable and unreasonable, true and false beliefs about morality held by persons of a time and place—one will not investigate what one has sought to investigate. One’s answer will be to the question asked, and in that sense will not be a wrong answer. But the resulting inquiry will not achieve what it set out to do; for that purpose, the wrong question was asked. The inquiry sought to

² R. G. Collingwood, *An Autobiography* (Oxford: Clarendon Press, [1978] 2002) 35.

³ H.L.A. Hart, *The Concept of Law* (3rd edn, Oxford: Clarendon Press, 2012) 1.

⁴ *Ibid.* 5 (emphasis in original).

⁵ *Ibid.* 16. These questions are formulated and expounded upon throughout the opening chapter, before being grouped together and summarised at *ibid.* 13: ‘How does law differ from and how is it related to orders backed by threats? How does legal obligation differ from, and how is it related to, moral obligation? What are rules and to what extent is law an affair of rules?’

⁶ In the course of settling upon answers to these further questions, Hart is confronted with yet a further set of questions. For example, in arriving at the rule of recognition which provides for a system of rules and criteria of validity, Hart reports that ‘relatively new’ and ‘fascinating and important’ questions are confronted, questions that were ‘veiled so long as jurisprudence and political theory were committed to the older ways of thought’. *Ibid.* 110.

⁷ Collingwood *An Autobiography* 25. The right order of questions for Collingwood’s and Hart’s respective inquiries plays a different role. For Collingwood, his secondary questions are hypotheses, which, if true, provide an answer to the initial question, whereas for Hart, the secondary questions underlie the general question and help him understand and answer it. My strategy in this essay tracks Hart’s.

investigate the relationship between law and morality; the question directed the inquiry to the relationship between law and *mores*.⁸ Being clear on the questions one asks and the order in which one asks them is a ready remedy to misdirected inquiries.

The question I set out to answer is this: How should one proceed in one's inquiries into questions like 'What is government, or friendship, or a constitution, or law?'' With Collingwood and Hart, I propose to approach this question by deferring it and asking and answering other questions, including: Is there is a strategic question that directs the study of human affairs? (sec. II) Is that strategic question differently put when one seeks to describe and explain human affairs of a time and place, on the one hand, and human affairs generally, on the other? (sec. III-IV) Answers to these questions will allow a return to the directing question, by specifying it: In the descriptive-explanatory study of human affairs generally, does one look to facts or to reasons? (sec. V) In looking to reasons, does one ignore the realities of human experience? (sec. VI) Is there, then, an order of priority for questions when inquiring into human affairs generally? (sec. VII)

As these questions suggest, my focus is on contemplative inquiries, inquiries directed not to determining how one should act, but to understanding some subject matter, as the scientist seeks to understand why leaves change on that tree or the lawyer seeks to understand the law of his province and country so as to provide advice to a client. The subject matter of inquiry on which I direct my attention is human affairs, understood as human actions resulting from deliberation, judgment and choice. Human affairs are themselves practical of course, as humans confront questions about how to reason to action; but their study—one's contemplative inquiry into them—is not practical: one seeks to understand human affairs by understanding the questions asked and answered by persons other than oneself. My special focus throughout will be law, which is as it is because humans past and present have exercised judgment and choice to bring law about and sustain it.

II. Asking why

For the study of human affairs of which law is a part, there is a strategic question that directs inquiry, a question that demarcates the study of human affairs from the study of the natural sciences. That question is: Why? Why did persons act the way they did? Synonymously: What were their reasons for so acting? I label the question 'why?' *strategic* because, without it, one's understanding and descriptive explanations of human affairs will be incomplete. It is a question that one cannot proceed without if one is to understand human affairs.

The counsel to ask 'why?' is articulated by Aristotle. In the *Posterior Analytics*, the philosopher explains that 'in all our searches we seek either whether there is an explanation or what the explanation is' and that 'it is evident that *what* something is and *why* it is are the same'. To the question '*What* is an eclipse?', Aristotle answers with the explanation: 'Privation of light from the moon by the earth's screening.' How is that answer supported? By the question: '*Why* is the moon eclipsed?' The answer: 'Because the light leaves it when the earth screens it.'⁹ That the commitment to ask

⁸ Hart *Concept of Law* v, 17. For criticism, see John Finnis, 'Hart's Persistent Questions' in Luis Duarte d'Almeida, James Edwards, and Andrea Dolcetti (eds) *Reading HLA Hart's The Concept of Law* (Oxford: Hart Publishing, 2013), esp. at 229, 231.

⁹ *Posterior Analytics* II.2: 90a5–20.

‘why?’ is illustrated by Aristotle in reference to a study of the natural world discloses that the question is not privy to the study of human affairs. Nonetheless, this commitment has a special significance for this study, for the question ‘why?’ is asked in a special sort of way when it comes to the study of human actions resulting from deliberation, judgment, and choice. For here, the explanation tracks the reasons—good or not, clear or confused—held by persons, the reasons according to which they act or do nothing.

The study of human affairs is the study of self-directing and self-determining human actions, none of which would be as they are in the absence of human willing and intending. Such action is the execution of the answer to the questions: How should I act? What am I to do? The answers that direct action are not predictions of what one will do, but conclusions about what one is to do. This does not deny that the answers given may be confused, founded on mistaken assumptions, misguided, unreflective, radically unreasonable, etc. The study of self-directing and self-determining human conduct is the study of the actions executing choices resulting from deliberation on and evaluation of *more or less* reasonable courses of action. It is the study of the action’s point, purpose, goal, value, objective, rationale, reason for acting, as conceived and understood by the person whose action it is.¹⁰ For this study, to understand, describe, and explain *what* something brought about by human judgment and choice is requires that one ask *why* that something was brought about.

Consider this example from Aristotle. Someone is walking to the cupboard. One could describe this observable fact and no more. At a superficial level, that is *what* the person is doing. But this would fail as a descriptive explanation of human action because one would fail to understand *why* the person is walking to the cupboard. So let us ask that someone: Why have you walked to the cupboard? The answer: ‘To get some herbs. Why? To mix a potion. Why? To lose weight. Why? Because that way I’ll feel fit and be *healthy* again.’¹¹ With these answers, one can reconstruct the questions asked and answered by the person mixing the potion. Before the act of walking begins, the person asks: ‘What shall I do? Restore my health. How? By mixing a potion. What do I need? Herbs. Where are they? The cupboard. Let me walk over there.’ Although the person mixing the potion was indeed walking, ‘*what* [he] was doing (in walking) was not taking a walk but preparing medicine’.¹² How do we know? Because taking a walk was not *why* he was walking. One’s understanding of this simple factual matrix would be incomplete and misleading if it rested on no more than the observable fact that someone was walking. Complete understanding of human action requires paying attention to that person’s purpose (point, goal, value, objective, rationale, reason for acting), *his* reasons for walking to the cupboard as he understood them. Even in this simple example, the purpose is not singular, but layered. The person walks *in order to* get to the cupboard; he opens the cupboard *in order to* retrieve the herbs; he mixes the herbs *in order to* make a potion; and so forth. These many purposes are all united in a series of ends-means complexes in order to restore health (‘be healthy again’), being the answer to the governing question asked by the person whose action it was: What shall I do?

¹⁰ This list (point, purpose, goal, ...) is intended to communicate the idea that the study of human action requires understanding a person’s reasons for acting, as the person understood them. It allows that what the person took to be reasons were, on a more exacting standard, *not reasons* (not truly good reasons, sub-rational motivations, etc.). Compare sec. V.

¹¹ The example is reported in John Finnis, *Aquinas: Moral, Political and Legal Theory* (Oxford: Oxford University Press, 1998) 30-31, with references to Aristotle’s *Physics* and *Metaphysics*.

¹² *Ibid.* 30.

Consider now an example closer to law: Hart's on the conduct of persons at a traffic signal on a busy street. One could describe what is going on merely by recording the high probability that, when the light turns red, the cars will stop. The red light on this description is akin to a 'natural *sign that* people will behave in certain ways, as clouds are a *sign that* rain will come'.¹³ Hart's analogy to the natural sciences is well placed, for descriptions that predict human behaviour as though it is not the result of human judgment and choice 'miss out a whole dimension of the social life' of persons being observed. For these persons, the red light is 'not merely a sign that others will stop' or, more tellingly, a sign to themselves that they will stop; rather, it is for them (and others) 'a *signal for* them to stop, and so a reason for stopping'.¹⁴ Their stopping is not a foregone conclusion just because the light turns red, as sunset and sunrise are foregone conclusions of the earth's rotation around the sun, and this is true no matter how many times in the past persons have stopped at a red light. For each time one confronts a red light, one must determine what to do, what is to be done; there would be no stopping but for the self-directing choice to stop. So to answer the question—What do persons on this busy street do when the light turns red?—one asks why they act the way they do: they take the red light as a reason to stop. What are their reasons? One may suppose to be: to secure their own and others' safety, to reduce the risk of accidents, to coordinate traffic, to do as others do, etc. No suggestion here that there will be a singular answer.

Hart's reflections on rule-governed behaviour are summarised by his strong claim that, for the study of law, the 'methodology of the empirical sciences is useless; what is needed is a "hermeneutic" method which involves portraying rule-governed behaviour *as it appears to its participants*'.¹⁵ The perspective of the participant—what Hart terms the internal point of view—is the perspective of the person who acts for (what the person considers to be) reasons. Hart develops this idea with special reference to the *internal aspect of rules*, that is, understanding the rules from the point of view of persons who accept the rules as guides to conduct, who 'use the rules as standards for the appraisal of their own and others' behaviour'.¹⁶ Hart's introduction of the internal point of view has wider appeal than the question of understanding rule-governed behaviour. By awarding priority to persons in the study of law, Hart rightly insisted on attending to the reasons for acting as conceived and understood by the persons acting. He would deploy this commitment to the internal point of view to correct many of the misunderstandings about law indebted to the 'constant pull' towards analysis in terms of "'scientific", fact-stating or predictive discourse'.¹⁷ So, employing Hart's method, we can say: power-conferring rules are to be understood, described, and explained by attending to their function, that is, the reasons why persons introduce such rules and act in accordance with them, reasons which differ from the reasons why persons introduce and act in accordance with duty-imposing rules; secondary rules of recognition, change, and adjudication are to be understood, described, and explained by attending to the defects they remedy, that is, the reasons why they are introduced, acknowledged, and followed. And so on.

¹³ Hart *Concept of Law* 90.

¹⁴ *Ibid.* 90.

¹⁵ H.L.A. Hart, 'Introduction' in *Essays in Jurisprudence and Philosophy* (Oxford: Clarendon Press, 1983) 13 (emphasis added). See also Joseph Raz, 'Authority, Law, and Morality' in *Ethics in the Public Domain* (revd edn, Oxford: Clarendon Press, 1994) 237: 'unlike concepts like "mass" or "electron," "the law" is a concept used by people to understand themselves'.

¹⁶ Hart *Concept of Law* 98.

¹⁷ *Ibid.* 99.

As these examples suggest, practical and contemplative inquiries are closely related in the study of human affairs. One's attempt to understand a human action or practice—an action or practice that exists only because of the judgments and choices of persons past and present to bring the action or practice about and to sustain it—is not itself directly practical: one is not a participant in the practice under study and so does not confront the questions asked by participants. And yet, to understand the practice so as to provide an explanation and description of it, one must attend to the practical inquiries pursued by the participants themselves and report, as *fact*, what participants, from the internal point of view, understand as *reasons*.

The study of human affairs is no easy undertaking. One must understand the questions persons ask themselves and the answers, perfect and imperfect, they provide. To do so, one will not always have access to the participants so as to ask them directly what questions they asked and what answers they gave. One must find other ways to understand their internal point of view, their reasons. The historical method provides an illustration of one such way. How am I to understand what Lord Nelson meant when he said 'in honour I won them, in honour I will die with them'? Collingwood's counsel is to search for the question to which Nelson's statement was an answer. I must imagine myself in 'the position of being all covered with decorations and exposed at short range to the musketeers in the enemy's tops, and being advised to make myself a less conspicuous target'.¹⁸ Confronted by that advice, I ask myself (with Nelson): 'Shall I change my coat and so remove my decorations?' I answer (with Nelson): 'No: in honour I won them, in honour I will die with them.' Of course, I am not myself exposed to the enemy's line of fire and I myself have won no medals. But to understand what Nelson meant, I need understand his question. I must attend to his point of view. I may fail: Nelson's life is not mine. If his point of view is not accessible to me, my study of his acts and words will be incomplete; but this need not deny that the internal point of view can be intelligible to me as an observer without myself adopting it.

The study of human affairs proceeds from understanding to describing and explaining what one has come to understand. For the study of law, one may pursue two possible contemplative inquiries: the study of law of a time and a place and the study of law generally. The former—'What is the law of England today?', 'What was the law of contracts in France at the time of Napoleon's Civil Code?'—closely tracks the method I have been examining: answer the question 'why?' by attending to the internal point of view of the participants of that time and place. For the latter inquiry—'What is law?'—the strategic question 'why?' is differently oriented because there is, I will argue, no internal point of view to appeal to. To see this, it will be important first to appreciate how the strategic question is put for the former study.

III. Describing law of a time and a place

One can understand, describe, and explain the law of a time and place. One's contemplative inquiry is not itself practical even if that which is studied are the practical inquiries of legal subjects and legal officials. One studies what is the case—the answers given to questions asked by persons; *their* plans, purposes, goals, objectives, values, rationale, reasons for acting, etc. No requirement here of endorsing or sharing the plans under study: it is possible to describe and explain evil, unreasonable, misguided, and corrupt laws, judgments, rulings, and administrative

¹⁸ Collingwood, *Autobiography* 112.

decisions, all by attending to the point of view of persons whose laws, judgments, rulings, and decisions they are.

Inquiring into a given community's legal practices requires understanding facts about what persons have done and now do and for what reasons. Saying this is not to endorse the 'sources thesis' about the existence conditions for law in the community under study. There is no question of approaching a community's legal practices with that thesis already settled as part of one's description and explanation.¹⁹ The only foundations for such a conclusion here are the facts: the actions of legal officials and legal subjects as conceived by the persons being studied. Perhaps they adhere to the view that '[t]he existence of law is one thing; its merit and demerit another.'²⁰ Perhaps not. Perhaps the judges of the legal community under study are Hercules or adhere to the view that radical injustice denies validity to legislation. Only the facts will tell. For a descriptive-explanatory inquiry, nothing should make its way into one's study except by the measure of 'fit'.

On this view, it is not open to the inquirer to 'impos[e] purpose on an object or practice in order to make of it the best possible example of the form or genre to which it is taken to belong.'²¹ No doubt this can be done, but when it is done it is for an inquiry pursued to answer a different question. For the descriptive-explanatory inquiry, no question of *imposing* purpose or putting a practice in any light except its own arises. One's descriptive-explanatory project is to be faithful to the descriptive endeavour by understanding the law of this time and place as conceived by the persons of that time and place, the reasons that they take themselves to have in having these laws and applying them. It is no criticism of a descriptive explanation that what it describes and explains is morally bankrupt or contradictory or discloses no unity of purpose or point. If that is the state of the law in this time and place, then the fault lies with the law, not with the descriptive-explanatory account of it. It is the practice of *persons of that time and place* that the study seeks to understand, describe, and explain.

It is sometimes thought that to say of another that he is a 'good descriptive scholar' is faint praise. It is not. The work of the historian, sociologist, anthropologist, and political scientist is not a simple matter of observing and reporting. The task requires more. A mere reporting of all of the facts that one can observe will not make for a good descriptive explanation. Truth is not 'a sufficient condition for good description'.²² An evaluative judgment of which facts are important and significant must be made. One's primary guide for this judgment must be the considerations of

¹⁹ There is another question whether something (some thesis about law) needs to be part of one's description and explanation in order to know which actions to describe and explain. Accepting that the external perspective of observing actions and consequences is insufficient to form an adequate descriptive-explanatory account of human affairs, and accepting Hart's insight that the internal perspective of those who take law (rules) as a reason for action is necessary to understand *law (rules)*, then some evaluation of law as a special kind of reason—in relation to and justified by reasons other than law—would be part of any adequate description of the law of a particular time and place. I am indebted to Adam MacLeod for this challenge, which I explore inadequately in sec. VII.

²⁰ John Austin, *The Province of Jurisprudence Determined*, ed. W.E. Rumble (Cambridge: Cambridge University Press, [1832] 1995) 157.

²¹ Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Belknap Press, 1986) 52. The passage is part of Dworkin's account of 'creative interpretation'.

²² Amartya Sen, 'Description as Choice' (1980) 32 *Oxford Economic Papers* 353, 354. Sen adds that truth may not even be a 'necessary condition' for good description. He gives the example of someone reporting the population of India at 900 million. For certain purposes, that is a good description, even if it is false: the truth may be 876,493,179.

importance and significance as conceived by the persons under study. To this end, the descriptive legal scholar may be assisted by the fact that a given community may demarcate and categorise its legal affairs: legal officials may draw distinctions between criminal and civil law, contract and tort, judges and legislators, Acts and regulations, rules and rulings, and so forth. In some jurisdictions, judgments are reasoned and the parliamentary process includes debates and ministerial statements on the rationale for a legislative enactment. In this way, ‘the law comes with its own running commentary, telling us its objectives and reasons’.²³ One’s study will be much assisted by it.

However, such running commentary will likely not be uniform in every respect. Given the range of actors in a legal community, the descriptive-explanatory task is not an easy feat. There may be competing rationales for the same legal rules; the presence of dissenting opinions in the Supreme Court may disclose divisions on constitutional fundamentals; and compliance with law by officials and subjects alike may be motivated by a diversity of reasons and otherwise be imperfect. The legal community under study may be the poorer for all this, but one’s study of it will not be: failures of law do not translate into failures of one’s study of law. The task of identifying those facts that are important and significant will be complicated if the persons under study are not unanimous on what is important and significant about their legal affairs. So again the person undertaking the descriptive explanation will exercise judgment. She may simply report the dissonance and divergence of views held or she may suggest some unifying idea, like Hart’s appeal to ‘acceptance’ for rule-governed behaviour, which captures a range of reasons, including ‘deference to tradition’, ‘the wish to identify with others’, ‘the belief that society knows best what is to the advantage of individuals’, ‘a critical reflective attitude to certain patterns of behaviour as a common standard’, and beyond.²⁴

This evaluation of importance and significance is not ‘direct evaluation’ of the merits (moral or otherwise) of the law of a time and a place. Instead, it is ‘indirect evaluation’, evaluation mediated by the evaluation of the participants.²⁵ Judgments of importance and significance are indebted to what the descriptive scholar concludes are important and significant *for the participants*. Perhaps it would better to say that there is, on the one hand, *direct* evaluation of what is being described and explained (which is not the task of the descriptive-explanatory undertaking) and, on the other hand, *direct* evaluation of what makes for a good descriptive explanation (which is a necessary part of the explanatory-descriptive undertaking). This direct evaluation of what makes for a good descriptive-explanation includes not only *indirect* evaluation of what is important and significant, but judgments on what level of generality to describe and explain the law of this time and place, the intended audience of one’s descriptive explanation, and more generally the purpose for which the inquiry is undertaken. Two descriptive explanations of the law of the same time and place can be different in any number of respects without it being the case that either one or both of them is false, fails to ‘fit the facts’.

No need to labour the point any further: there is no faint praise in being a ‘good descriptive scholar’. Indeed, it is possible, without transgressing the bounds of descriptive explanation, to describe and explain to persons of the very legal

²³ Charlie Webb, ‘Law and Evaluation’ in *Reason and Restitution* (Oxford: Oxford University Press, forthcoming), manuscript p. 10.

²⁴ Hart *Concept of Law* 257, 57.

²⁵ The key terms ‘direct’ and ‘indirect’ evaluation are indebted to Julie Dickson, *Evaluation and Legal Theory* (Oxford: Hart Publishing, 2001).

community under study their law in a manner that will elucidate their own understanding. One may tell persons ‘new things about things they already know about law’.²⁶ But throughout, the starting point and firm point of reference for one’s descriptive explanation of the law of a time and place is the persons of that legal community and *their* reasons, plans, purpose, values, etc., together with *their* judgments of importance and significance. It is in relation to *these* persons that the question ‘why?’ is asked and answered.

Of course, the decision to study *these* persons of *this* place and time and so *their* law is itself an evaluative decision—I will choose to do so for (what I take to be) reasons and in this respect the inquiry is practical, not contemplative. But once I have settled that this is what I am to do, my inquiry is no longer practical but contemplative: my practical evaluation is external to my contemplative study of the practical inquiries of persons identified by my decision to focus on the legal community of this time and place. It is *those* persons and *their* practical inquiries that I will study and my direct evaluations in settling that it is them rather than some other set of persons that I am now to study in no way colours my indirect evaluation of their practical inquiries.

IV. Describing law generally

It is, then, possible to say something true and particular about law: to describe and explain law of a time and a place. But can anything be said about law that is true and *general*? Is there a study of law that is not bounded by time and place? Certainly, many have thought that the philosophy of law distinguishes itself from the history, sociology, or anthropology of law precisely by aiming to do for law in general what those inquiries do for law in particular times and places. The philosophy of law devotes itself to the question ‘What is law?’, and not to the question ‘What is law in this time and place?’ What, then, is it to study law generally, to develop a *general theory* of law?

Different philosophers of law have sought to capture this question. Hart described a ‘general theory’ as one that is ‘not tied to any particular legal system or legal culture’, but rather one that ‘seeks to give an explanatory and clarifying account of law as a complex social and political institution’.²⁷ Gardner asks if ‘there anything both interesting and true to say about law in general, law as such, law wherever it may be found?’, an inquiry directed to identifying ‘things which must be true of something if it is to qualify as law, and hence if it is properly to be included in the data set when making either empirical or evaluative observations about law’.²⁸ Green notes how law is ‘a parochial business whose character and content depends on local institutions, events, and understandings’, such that the question is raised of how far we can hope for ‘an explanation at some level of generality’, ‘a theory of law *as such*, that will apply ... in Estonia as much as in England’.²⁹ With similar appeal to alliteration, Dworkin identifies the task as one of answering questions about law ‘not just for a particular legal system, like English law, but for law in general, whether in Alabama or

²⁶ This idea is well set out in Luís Duarte d’Almeida, James Edwards, and Andrea Dolcetti ‘Hart’s Readers’ in Luís Duarte d’Almeida, James Edwards, and Andrea Dolcetti (eds), *Reading HLA Hart’s The Concept of Law* (Oxford: Hart Publishing, 2013) 2.

²⁷ Hart *Concept of Law* 240. The sentence continues: ‘with a rule-governed (and in that sense “normative”) aspect.’

²⁸ John Gardner, ‘Law in General’ in *Law as a Leap of Faith* (Oxford: Oxford University Press, 2012) 270.

²⁹ Leslie Green, ‘General Jurisprudence: A 25th Anniversary Essay’ (2005) 25 *Oxford Journal of Legal Studies* 565, 565.

Afghanistan, or anywhere else'.³⁰ Dickson identifies the task of the philosophy of law as 'explaining the nature of law by attempting to isolate and explain those features which make law into what it is', that is, by identifying 'those essential properties which a given set of phenomena must exhibit in order to be law', those 'properties of law which make it into what it is', that is, those properties that 'law, at any time, and in any place, must exhibit'.³¹

The directing question of this essay now reasserts itself: On what basis does one arrive at a general theory of law? Where does one look? There is broad consensus that one does not look to how the word 'law' is used with the aim of uncovering the criteria persons use, knowingly or not, when they employ the word. The word 'law' is used by persons to designate not only that which interests the philosopher of law, but also a myriad of other matters: Murphy's law, laws of physics, laws of nature, the law of diminishing return, laws of attraction, the law of gravity, etc. What is more, not all that interests the philosopher of law goes by the label 'law', even if the label can be used to describe it: Act of Parliament, legislation, judicial precedent, ruling, regulation, decree, etc. Even if these contingent truths were otherwise, there is no suggestion that a singular set of criteria would emerge amongst English-language users. Add to this that there is no non-arbitrary reason for a general theory to limit itself to how English-language speakers employ the term 'law' and that some languages have not one word for 'law' but two: they track the Latin vocabulary of *ius* and *lex*. Should both terms be attended to? What if they disclose different criteria for use? What then? It is for reasons like these that there is consensus that 'philosophers are not lexicographers'³² and that the philosophy of law 'aspires to be more than a conjunction of lexicography with local history' or even the more ambitious 'juxtaposition of all lexicographies conjoined with all local histories'.³³ Nothing true and general to be found here.

A different strategy is to begin with an uncontroversial instance of law and to interrogate whether the truths about this instance can be general truths about law. In framing his inquiry into the question 'What is law?', Hart appeals to the thoughts about law of 'most educated people', 'any educated man', 'ordinary [lay, non-lawyer] educated men', to 'common knowledge', and to what 'no one in his senses doubts'.³⁴ Hart does not seek to set the standard too high; he claims that 'an education would have seriously failed if it left people in ignorance' of certain facts about law, facts that 'we would hardly think it a mark of great sophistication' if they were known.³⁵ The idea is to identify some 'salient features' of law, a 'clear, standard case or paradigm', a 'settled situation', allowing for 'deviations' and 'questionable cases'.³⁶ Hart's basis for placing these salient features in the mouth of the educated person is his own experience and knowledge of law in England; he appeals to the thoughts of 'Englishmen' and contrasts knowledge of 'the laws in England' with the law in 'France or the United States or Soviet Russia and, indeed, in almost every part of the world which is thought of as a separate "country"', a contrast which yields a 'broadly similar

³⁰ Ronald Dworkin 'Hart's Postscript and the Character of Political Philosophy' (2004) 24 *Oxford Journal of Legal Studies* 1, 19. Cf. Dworkin's take on this question in *Law's Empire* 26: 'I am defending an interpretation of our own political culture, not an abstract and timeless political morality.'

³¹ Dickson *Evaluation and Legal Theory* 17-18.

³² Joseph Raz, 'The Problem about the Nature of Law' in *Ethics in the Public Domain* 196.

³³ John Finnis, *Natural Law and Natural Rights* (2nd edn, Oxford: Oxford University Press, 2011) 4.

³⁴ Hart *Concept of Law* 3, 240.

³⁵ *Ibid.* 3.

³⁶ *Ibid.* 3, 4, 23.

structure' of legal systems 'in spite of important differences'.³⁷ None of this is a precursor to providing an account of the law of England—Hart appeals to the special perspective of the educated Englishman only for the purposes of identifying a clear, standard case of law from which to initiate a general theory of law. True to his insightful method, his analysis proceeds by attending to the point of view of a participant to examine this clear, standard case. But an unanswered question in Hart's development of a general theory of law is this: 'Whose internal point of view should be attended to?' Of course, it is the internal point of view of the participants,³⁸ but of which ones? Is it the point of view of the educated Englishman from which the clear, standard case was identified? That could narrow the reach of the resulting general theory. So which participants of which legal system(s) or legal culture(s) should govern a general theory 'not tied to any particular legal system or legal culture'? All participants of all times and places?

The point is important, for [t]ime and again [Hart] appeals to his reader to use an informed person's knowledge of the legal world to test the claims of legal philosophy'.³⁹ To the question, 'Are there really such things as legal rules?', Hart's method suggests the answer: *Look and see*. To the question, 'Does every legal system have an illimitable sovereign?', Hart's method suggests the answer: *Look and see*.⁴⁰ In short, Hart's method 'holds itself responsible to the facts'.⁴¹ *But which facts?* The previous section argued that the study of the law of a time and place should attend to the self-understandings of the persons of that time and place and, in turn, suggested that, in any given time and place, the internal points of view of participants will likely yield a multiplicity of different self-understandings about law, different evaluations of point, purpose, goal, value, objective, rationale, reason for acting, etc. Is a *general* theory to be one that proceeds from the internal points of view of all participants across all times and places? If so, the question arises: How are these countless particulars to be organised, united, and arranged into a general theory? A descriptive explanation of the law of a time and place could satisfy itself by reporting divergences and no more, but a general theory of law aspires to more.

Perhaps this is the wrong way to approach the question. Perhaps a general theory is not tied to any time or place and so not tied to any internal point of view. If so, the question then arises: Who identifies the clear, standard case of law? How might one respond to the person who objects to the account of the clear, standard case on the grounds that 'it doesn't look that way to me'? Can the answer be anything more sophisticated than the stipulation: 'Well, it does to me'?⁴²

A different strategy is deployed in Julie Dickson's methodologically conscious scholarship, which expands upon some of the positions she identifies in Raz's philosophy of law. A philosopher of law can identify what is true and general about

³⁷ Ibid. 3.

³⁸ For Hart, not all members of a group are participants because some members reject the group's rules and 'are only concerned with them when and because they judge that unpleasant consequences are likely to follow violation': *ibid.* 90. These non-participant members adopt the external point of view.

³⁹ Leslie Green, 'Introduction' in Hart, *Concept of Law* xlv.

⁴⁰ Ibid. The passage continues, *ibid.*: 'If there is a conflict between an *a priori* theory and ordinary knowledge of the law, go with the latter' (emphasis added).

⁴¹ Ibid. Green elsewhere interprets Hart as displaying that a 'theory of law should be true to the self-understandings of law-users': 'General Jurisprudence' 575.

⁴² See L.L. Fuller, 'Positivism and Fidelity to Law—A Reply to Professor Hart' (1958) 71 *Harvard Law Review* 630, 631.

law by making evaluative judgments of importance and significance ‘in a way that is sufficiently sensitive to those already existing self-understandings in terms of law held by those who create, administer, and are subject to law’.⁴³ The evaluative judgments of importance and significance do not go to the merits of what is evaluated; rather, a judgment that some feature of the law, X, will be important to explain may be supported (a) ‘by the fact that X is a feature that law invariably exhibits and that hence reveals the distinctive mode of law’s operation’, (b) ‘by the prevalence and consequences of certain beliefs on the part of those subject to law concerning that X, indicating its centrality to our self-understandings’; (c) ‘by the fact that the X in question bears upon matters of practical concern to us’; and/or (d) ‘by the way in which that X is relevant to or has a bearing upon various directly evaluative questions concerning whether it and the social institution that exhibits it are good or bad things’.⁴⁴

Two related sets questions arise from this. First: against what data set are claims of ‘invariability’ and ‘prevalence and consequences of certain beliefs’ being made? Dickson’s appeals to ‘data’ are regular,⁴⁵ but no regular attention is awarded to justifying which data earn their place into the set under consideration. The question is important, for it is clear that claims of ‘invariability’ and ‘prevalence’ depend on what is being identified *pre-theoretically*—that is, *before* a general theory of law is developed—as part of the data set of law. What is less clear is how any resulting claims would establish something about law that is both true and *general*. They would be true *about the data set* and so particular to it; at best, they would be true as *generalities* within this data set. But in the study of human affairs, what is true about *one* data set makes no claim about a datum not included within it. The resulting descriptive-explanatory truth about law will be contingent on the data set from which it emerges and, as the data changes, so too will the descriptive explanation be liable to change. Yet, that is not how claims about ‘invariability’ are usually understood. For example, Raz’s claim that law ‘invariably claims moral authority’ is taken to deny legal status to something that does not claim moral authority, even if that something has all of the other identified ‘invariable’ or ‘prevalent’ features associated with law. On one view (which I do not ascribe to Raz), the conferral or denial of the status of law to that ‘something’ turns, it would seem, on *when* judgments of ‘invariability’ are made: are they made before or after consideration is given to this ‘something’? If *before*, then this something is not law: it is denied membership in the data set of law because the invariable features of law were identified on the basis of a data set that excluded it and which now denies it membership. If *after* and this something is included in the data set under consideration, then it will be concluded that law does not invariably claim moral authority—this ‘something’ denies that conclusion. There is, then, a standing danger that claims about law *in general* made on the basis of a *particular* data set will be taken

⁴³ Julie Dickson, ‘Methodology in Jurisprudence: A Critical Survey’ (2004) 10 *Legal Theory* 117, 125–126.

⁴⁴ Dickson ‘Methodology in Jurisprudence’ 126.

⁴⁵ Dickson ‘Methodology in Jurisprudence’ 125 (‘judgments about which data to focus on and how to order and arrange materials for explanation’), 139 (‘participants’ self-understandings are an important part of the data of legal theory to be explained, being constitutive of those practices that legal theorists study’); *Evaluation and Legal Theory* 23 (‘it is necessary for any such theory to deal with the data which it purports to characterise in a way which is appropriate to, and adequate in respect of, the nature of that data’), 140–141 (‘[when we approach a given society and want to know whether it is regulated by law] we already find ourselves faced with a richness of obvious data, in the form of courts and other legal institutions and officials ...’).

to police the boundaries of what will henceforth be included in the data set of law. A pre-theoretical data set is an unstable foundation for a general theory of law.

A second set of questions arising from Dickson's methodological strategy is this: Who is this 'us' who have 'self-understandings' about law? Starting with the true premise that 'all human societies have [not] thought of law in the same way',⁴⁶ Dickson proceeds with the aim of a general theory of law because '*we* regard there as being something special about certain forms of social organisation which *we* account as legal' and '*we* recognise that, throughout history, some forms of social organisation have amounted to legal systems', such that 'the only way in which *we* can begin to investigate what this particular form of social organisation is like ... is by attempting to isolate and explain those features which are constitutive of it, and which make it into what it is'.⁴⁷ Regular appeals to 'we' and 'us' and 'our' self-understandings are to be found throughout Dickson's inquiries into a general theory of law.⁴⁸

There is no denial that one may apply the descriptive-explanatory account of law of a time and a place (for example, 'our self-understandings' about the law of our time and place) to another time and place. As Raz explains, '[t]here is nothing wrong in interpreting the institutions of other societies in terms of our typologies. This is an inevitable part of any intelligent attempt to understand other cultures.'⁴⁹ No objection here, except insofar as it is thought that a descriptive-explanatory account of law of our time and place amounts to developing a general theory of law. Perhaps Dickson's 'we' and 'us' is more general and encompasses all persons of all times and places: 'we humans' or 'we members of legal communities'. But again, as with Hart, the judgments of importance and significance that 'we' make are not uniform. There are, as Dickson highlights, both anarchists who deny and natural lawyers who award presumptive and defeasible moral authority to law in our community. How is this 'we' to be constructed given the different perspectives that constitute it? This is a different formulation of the problem confronting Hart. The counsel to be 'responsib[le] to the views about law held by those subject to it', to make 'evaluative judgements regarding what is important and significant about law which take account of, and attempt to explain, the way in which it is viewed by those living under it', to privilege the beliefs, attitudes, behavior, etc. of those 'under consideration' do not assist the philosopher of law confronted by a myriad of different beliefs, views, attitudes, etc.⁵⁰ How is an account of law that is true and general to emerge from countless particulars with more or less competing accounts of importance and significance?

⁴⁶ Dickson, *Evaluation and Legal Theory* 19.

⁴⁷ *Ibid.* 19 (emphasis added). The quotation continues by clarifying that those features that 'can be nothing more nor less than law's essential properties, and it will be necessarily true that law exhibits such properties'.

⁴⁸ See Dickson, 'Methodology in Jurisprudence' 125 ('Legal theory tries to help us understand ourselves and our social world in terms of law'); *Evaluation and Legal Theory* 48 ('a legal theory is explanatorily adequate only if it correctly picks out and explains what is important and significant in the way in which we understand ourselves and our social world in terms of law'), 141 ('it is part of our common understanding of the law that wherever a legal system is in existence it operates via ...').

⁴⁹ Joseph Raz, *The Authority of Law* (2nd edn, Oxford: Oxford University Press, 2009) 50.

⁵⁰ Dickson *Evaluation and Legal Theory* 43. In an important passage (69), Dickson reports how 'even an anarchist harbouring wholehearted moral disapproval of the very idea of legal regulation may understand what a legal system is trying to do'. How will the anarchist do so? By identifying and explaining 'the most important and significant features of this social institution'. But is this strategy not placing the anarchist in the position of the philosopher and so removing the anarchist from membership in the community of which he is a part? Does the anarchist not subtract himself from the 'we' under study?

The challenges confronting Hart and Dickson can be generalised: what justifies looking to some facts about the world as one's clear, standard case of law or data set for the purpose of developing a general theory? The question did not quite arise in sec. III. It was there recognised that a decision to study law of a given place and time and so to look to the internal point of view of *these* persons is itself in need of justification. But once it was settled that one was to examine the law of this time and this place (this data set), the question was set and the answer was to be provided by attending to the point, purpose, goal, value, objective, rationale, reason for acting, etc. of law as conceived by the persons under study. One could study the data set and draw conclusions from it, conclusions that would purport to be no more general than the data set under study.

For a *general theory* of law, the question of which facts about the world to look to is all-important for the answer purports to be about law in general. Where, then, to begin in order to say something both true and general about law? If one begins with a pre-theoretical data set, there is a standing risk of circularity: the pre-theoretical data set is identified because it counts as law and from this data set a general theory of law is developed, a general theory that is to identify that 'which must be true of something if it is to ... be included in the data set'.⁵¹ Is there a way into this circle? Is there a philosophical justification for identifying the data set from which a general theory of law may be developed?

V. Facts and reasons

A descriptive-explanatory account of law of a time and place aims to identify and report, as *fact*, what participants, from the internal point of view, understand as *reasons*. Those facts are identified by asking why persons of a time and place acted the way they did: Why did they introduce law in their community? Why did they do so in this rather than that way? What was their point, purpose, goal, value, objective, rationale, etc.—in short, their reasons for so acting? The previous section argued that such facts, *no matter how many*, cannot amount to a *general* theory of law. So what can?

Return to the strategic question in the study of human affairs outlined at the end of sec. II. Asking why opens up not one, but two contemplative inquiries. One inquiry looks to the *reasons persons had and have* for acting the way they did and do. The other looks to *reasons themselves* and awards them centre-stage, unmediated by concerns about whether it is true that such reasons have been or presently are shared and held by others. No pre-theoretical data set here. No circle here. This line of inquiry charts a path to a *general* theory of law because reasons, truly good reasons, are general. They are general not in the sense of being widely shared or statistically frequent (though they made be); they are general because good reasons are reasons for any self-directing and self-determining person. I, the inquirer seeking to identify those reasons, puts the question 'Why?' to myself rather than to others. I ask myself: Why should I favour introducing, having, endorsing, maintaining, complying with, and enforcing this kind of thing or practice (or something like it) that gets called 'law' in my time and place?⁵²

⁵¹ Gardner, 'Law in General' 270. In citing Gardner here, I am not attributing to him the view on data sets that I challenge.

⁵² This is the organising question in John Finnis, 'Law and What I Truly Should Decide' (2003) 48 *American Journal of Jurisprudence* 107.

In answering this question, I will identify some point, purpose, goal, value, need, good, end, etc. which identifies something to be done. My aim is to understand and identify the truly good reasons for action that are available to any self-directing and self-determining human person. Those reasons will be mine but I will think them candidates for being yours because—so far as I can judge—they are *good* reasons for me, you, and anyone else. It is on this foundation that a general theory of human affairs is to be developed. Now, will ‘law’ figure in this development? I award no priority or presumption that there ought to be this thing (or something like it). Of course, the presence of such a thing or something like it in my time and place is a fact, but it is perhaps part of my time and place otherwise than because reason favours it. Perhaps it is part of my time and place due to some defect of reason, like the self-interest of rulers, or the senseless joy of domination for domination’s sake, or the tools of capitalist oppression, or ... So my orienting question does not presume that there are good reasons for law. It is best reframed by asking the more basic questions: What is right for me to choose? What should be done by me and others in my community? What reasons—truly good reasons—have I and anyone to act on? In answering these questions, I, the inquirer, am aware that many things get called ‘law’ in many different times and places and that observable fact is important in my critical reflections. But I am also aware that many things get called ‘coercion’, ‘the gun-man situation writ large’, ‘capitalist oppression’, and ‘managerial control’ and that those labels have been directed by some to what others call ‘law’. So ‘law’ will only figure in my general theory if I judge there to be reasons to favour introducing, having, endorsing, maintaining, complying with, and enforcing this kind of thing (or something like it) that gets called law in my time and place. Perhaps there are no truths about law that are general because there are no good reasons favouring law, but only a series of particular truths, truths about reasons held by persons in different times and places, understood from *their* internal point of view, *their* practical inquiries. In order to award a place to something called ‘law’ in a general theory of human affairs that I, the inquirer, am developing, I need to justify introducing the idea of law.

If there is to be a general theory of law, then, it is to be a theory identifying and understanding the reasons for law, reasons that are to be identified by me, the inquirer. Does this mean abandoning the commitment to the internal point of view of participants? Yes: for a general theory, there is no question of attending to the internal point of view of *other persons* for any purpose other than drawing insights (more on this below).⁵³ The method of the internal point of view is the method of a descriptive-explanatory account of law of a time and place and not of a descriptive-explanatory general theory of human affairs. Indeed, a general theory of human affairs cannot hold itself hostage to the reasons held by situated persons lest it close itself off to the possibility of identifying truly good reasons *even if* those reasons have never been held or acted upon by persons of times and places.

Perhaps there is another strategy for maintaining the internal point of view for the development of a general theory of law. Aristotle, Aquinas, and Finnis each argue in favour of privileging the internal point of view of the *spoudaios* (Aristotle), the *studiosus* (Aquinas), the person of practical reasonableness (Finnis), being ‘the serious, morally weighty, mature person whose views and conduct deserve to be taken seriously—the right-minded person, a person of practical reasonableness and integrated character, a

⁵³ To clarify: Hart’s insight that the existence of an internal point of view is necessary to understand the internal aspect of rules is in no way rejected. The claim here is rather than the internal point of view of participants of a time and place is not part of a general theory of law.

person who is (in that rich sense) truly virtuous'.⁵⁴ On this view, concepts (like law) are to be identified, selected, and formed in a general theory by attending to the point of view of the person that acts on good reasons for action. Why privilege this point of view from amongst the near countless points of view of persons across time and place? Two reasons are offered. First: all other internal points of view are 'parasitic' upon the internal point of view of the practically reasonable person because only that person identifies and acts upon the reasons that 'brings law into being as a significantly differentiated type of social order and maintains it as such'—the other participant viewpoints 'will, up to a point, tend to maintain in existence a legal system', but only 'if one already exists'.⁵⁵ Second: the person who acts on good reasons 'can understand the concerns of other people of other character, while the converse does not hold; in other words, the concerns and understanding of the mature and reasonable person provide a better *empirical* basis for the reflective account of human affairs'.⁵⁶ On this account, a general theory of law can be developed *if* there is an internal point of view that identifies good reasons for organising human affairs in a certain way, the way of a legal order. If there is such a viewpoint, '[w]hat reason could one as a descriptive theorist have for rejecting the conceptual choices and discriminations of these persons, when one is selecting the concepts with which one will construct one's description of ... law as a specific social institution?'⁵⁷

Is this not explicit endorsement of the method of the internal point of view for *general* theory, a method that looks to the fact that some situated person—a practically reasonable person—has reasons to favour law? No. It should be clear that the internal point of view of the practically reasonable person is appealed to *not because* it is the point of view of some situated participant but rather *because* it is practically reasonable.⁵⁸ That point of view can only be identified once I, the person undertaking the inquiry, have settled on what the requirements of practical reason really are, what truly are good reasons for acting, reasons that I identify by answering the question: What reasons—truly good reasons—have I and anyone to act on? Once I have answered that question, I need not search out for some matching internal point of view *out there* or declare that my attempt to develop a general theory is a failure because I have not been able to identify some participant, somewhere, who shares the reasons I have identified.

Consider the point of view adopted by Hart in the 'Eureka'⁵⁹ chapter of *The Concept of Law*, the chapter introducing the idea of law as the union of primary and secondary rules. Hart reports that a community of a sufficient size governed only by primary rules of obligation will encounter certain 'defects' in need of 'remedy', with such remedies being provided by secondary rules of recognition, change, and adjudication. The introduction of these rules is said by Hart to be 'a step forward as important to

⁵⁴ Finnis, *Aquinas* 48. See also Finnis *Natural Law and Natural Rights* 14–15.

⁵⁵ Finnis *Natural Law and Natural Rights* 14.

⁵⁶ *Ibid.* 15, n37, referring to Plato *Rep.* IX: 582a–e.

⁵⁷ *Ibid.* 15.

⁵⁸ See *Ibid.* 16: 'For theorists cannot identify the central case of that practical viewpoint ... unless they decide what the requirements of practical reasonableness really are, in relation to this whole aspect of human affairs and concerns.' See also John Finnis, 'On Hart's Way: Law as Reason and as Fact' in *Philosophy of Law, Collected Essays: Volume IV* 255: 'Trying to understand the internal point of view makes, I would say, no sense as a method in social theory unless it is conceived as trying to understand the intelligible goods, the reasons for action, that were, are and will be available to any acting person'.

⁵⁹ John Gardner, 'Why Law Might Emerge: Hart's Problematic Fable' in *Reading HLA Hart's The Concept of Law* 81.

society as the invention of the wheel'.⁶⁰ From whose internal point of view are these evaluations made? Hart does not say. He does not speak of what 'they' (some persons of some time and place) think are defects or think are remedies. Hart identifies defects and remedies himself, not as a participant of a time and place, but as one interrogating the reasons why any participant of any time and place would, under the right circumstances, judge there to be a defect in need of remedy. The point of view adopted is 'his, yours, and mine, not because they are his, yours, or mine, but because it seems true to him, you, and me, that there is *value* in having the rules at stake, *reason* for having them'.⁶¹

So, when developing a general theory, what purpose, if any, is served by appealing to the internal point of view of a person of practical reasonableness? I think it is this: that point of view serves as a ready reminder to me, the inquirer, that the reasons I am to identify are to be good reasons not only for me, but for anyone. I must be conscious of my own fallibility, inabilities, past errors and risk of present error, that is, of the possibility that the reasons I will identify will not be truly good.⁶² No reason is to be accepted by me merely because it is mine; it is to find a place in the general theory I am developing only if it is a good reason. Here, the study of human affairs of a time and place—that is, the study of the reasons held by other persons and understood from their internal point of view—will serve as a series of challenges to my own views about the point, purpose, rationale, etc. of law. In this 'implicit dialogue' between my own views and those of others, be they participants of a time and place or others developing a general theory, I am reminded that the question for me is not 'what I think, or others think' but rather 'what ought to be thought, *what any of us should think* (e.g. about what to do)'.⁶³ Regular appeals to the internal point of view of a person who acts only on good reasons can help me remain on the steady and to make my evaluations of point, purpose, value, etc. explicit, so that they may be judged by others on their merits, as reasons stand to be judged.

Given that there is, for general theory, no internal point of view of another for me to describe and given that the strategic question 'Why?' is to be answered *by me*, it might be contended that a general theory of human affairs is not contemplative but practical. There can be no doubt that the inquiry into a general theory of law differs from the inquiry into the law of a time and a place, but the differences do not extend to denying that both share a contemplative purpose. In developing a general theory of law, the inquirer asks questions not with a view to action, but rather with a view to understanding, description, and explanation of reasons, rather than of facts about reasons held by others. In order to do this, the inquirer must ask and answer the same

⁶⁰ Hart *Concept of Law* 42.

⁶¹ Finnis, 'Law and What I Truly Should Decide' 120. The quotation continues, *ibid.*: '(which is not in the least incompatible with our also understanding that there might be circumstances where countervailing reasons might give sufficient reason not to have them).' Many have objected that Hart is not because read *this way*. Nothing turns for my purposes on what the best reading of Hart is on this point.

⁶² I take it that something along these lines is what concerns N.W. Barber in his account of sound methodology in *The Constitutional State* (Oxford: Oxford University Press, 2010) c.1. See eg 11: 'An unhappy consequence of this is that a theorist's account will be conditioned by her ethical beliefs.' Barber's references to 'political ideologies' (11) as more or less synonymous with 'ethical beliefs' and 'ethical framework' are unfortunate, given the closed-minded connotations of an ideology. In developing a general theory, one should be open to acknowledging one's errors, that is, one should *not be ideological*.

⁶³ Finnis, *Natural Law and Natural Rights* 433 (emphasis in original).

(sort of)⁶⁴ question that he will put to himself when engaged in the practical inquiry of determining what to do. A general theory of human affairs is dependent, then, upon the evaluations of what are good reasons for action, evaluations made by the person who is not now deliberating about what to do, but rather engaged in providing a descriptive-explanatory account of human affairs. Does a general theory of law (and of human affairs generally) therefore renounce claim to being descriptive-explanatory? Yes and no. Yes when measured against the descriptive-explanatory standards of accounts of the law of a time and place, where evaluations are mediated by the participants whose law is under study. But no given the nature of the inquiry, which invites a close relationship of contemplative and practical inquiries. Both Raz and Finnis, for example, affirm the ‘inextricable intertwining’⁶⁵ and ‘interdependence’⁶⁶ of contemplative and practical inquiries as inescapable for a general theory of human affairs. On the argument being defended, this is a function of the directing question ‘Why?’ in the study of human affairs.

VI. Central case and central case method

I have argued that from accounts of law that are true and particular, no general theory of law may emerge. But what about the relationship in the other direction? Can a theory identifying what is both true and general about law speak to what is true and particular? For what is true about law of a time and a place may be that persons favoured introducing, having, endorsing, maintaining, complying with, and enforcing (something like) law for poor reasons or for only a fraction of the good reasons favouring law. Can a general theory of law developed exclusively by appeal to good reasons do more than deny that particular truths are truths *about law*? Will a general theory of law have any explanatory power with respect to what persons of times and places conceive of as law?

Some have doubted it. Hart expressed concern with what he took to be appeals to an ‘ideal form of law’ which, he thought, was liable to offer an ‘unbalanced perspective’, a ‘distortion’ of the facts, and ‘obfuscating complexities’.⁶⁷ Should we think, with Hart, that the realities of the human experience—realities that disclose how persons act on good *and* bad reasons—are liable to be overlooked by a theory of law developed only by appeals to good reasons? Certainly this would be a risk if the resulting general theory of law set out to establish ‘essential features’ or ‘necessary and sufficient conditions’ or what law must ‘invariably’ do. Truths about law in general would then define out of existence some or much of the law of times and places, law favoured for less than all of the good reasons identified by the inquirer developing a general theory of law.

⁶⁴ The qualification is warranted because my contemplative inquiry abstracts away from my time and place, whereas my practical inquiry is situated in my time and place.

⁶⁵ See Joseph Raz, ‘Introduction’ in Joseph Raz (ed), *Authority* (New York: New York University Press, 1990) 1 (‘the conceptual-clarificatory and the moral-justificatory issues are inextricably intertwined’). Raz’s claim here and in the next footnote is made in relation to a general theory of authority.

⁶⁶ See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1988) 63 (‘there is an interdependence between conceptual and normative argument’), Finnis, *Natural Law and Natural Rights* 19 (‘There is thus a mutual though not quite symmetrical interdependence between the project of describing human affairs by way of theory and the project of evaluating human options with a view, at least remotely, to acting reasonably and well’), 426 (‘theory descriptive in purpose must be evaluative in method if it concerns human actions (as societies or social relations do)’).

⁶⁷ H.L.A. Hart, ‘Introduction’ in *Essays in Jurisprudence and Philosophy* (Clarendon Press, [1983] 2001) 11, 12.

On the argument developed here, the ambition of a general theory of law is certainly to articulate all and only the good reasons for favouring law. The resulting account of law will be the *central case of law*. There is no magic in the expression ‘central case’. It is an expression that has been appealed to by Hart,⁶⁸ Raz,⁶⁹ Gardner,⁷⁰ and others,⁷¹ and most fully developed by Finnis in drawing the works of Aristotle and Aquinas.⁷² Notwithstanding differences in their general theories of law, the coincidence of terminology is no accident, for it communicates the idea that there can be *non-central cases of law*. For Hart, the central case of law is the clear, paradigm, standard case, as contrasted with other cases ‘where there are reasons for both asserting and denying’ that the matter under consideration is law.⁷³ For Raz, the central case of law illuminates our understanding of law, and ‘degenerate cases of legal systems’ do not disprove what are ‘otherwise sound characterisations of the law’.⁷⁴ For Gardner, the central case of law identifies members of the category of law ‘par excellence’, of what law ‘by its nature’ ought to be, which cannot be disproved by any number of counterexamples.⁷⁵

So, key to understanding the central case of law is to understand its place in central case methodology, which unites general and particular truths about law without denying the differences or looking for the one thing common or invariable across all instances of law. The central case method, on this understanding, resists the idea that a general theory of law sets out to identify law’s ‘essential features’ or ‘necessary and sufficient conditions’ or what law ‘invariably does’.⁷⁶ No part of the complexity of the human experience is to be denied attention or dismissed merely because it is imperfect and no part of the central case method is to be misconstrued as ‘about ideal cases, still less about ideal worlds untroubled by wrongdoing, scarcity, misunderstanding, and fear’.⁷⁷

Following the account developed in the previous section, the central case of law will be the account of law developed by attending to the good reasons why one would favour introducing, having, endorsing, maintaining, complying with, and enforcing law. One’s understanding of those reasons and so of the central case of law will be sharpened by situating it in relation to the various and varying non-central cases, identifying where and why particular truths about law of a time and a place fail to earn their place as general truths about law. The failures are unlikely to be total: good reasons will always be appealing to intelligent and reasonable persons and so ‘one

⁶⁸ Hart *Concept of Law* 123. See also 81.

⁶⁹ Joseph Raz, ‘About Morality and the Nature of Law’ (2003) 48 *American Journal of Jurisprudence* 1, 5.

⁷⁰ John Gardner, ‘Nearly Natural Law’ (2007) 52 *American Journal of Jurisprudence* 1, 3; John Gardner, ‘Hart on Legality, Justice, and Morality’ in *Law as a Leap of Faith* 228.

⁷¹ See eg Barber *Constitutional State* c. 1.

⁷² See, inter alia, *Natural Law and Natural Rights* c. 1, *Aquinas* c. II, and ‘Law and What I Truly Should Decide’.

⁷³ Hart *Concept of Law* 123. See also 81.

⁷⁴ Joseph Raz, ‘About Morality and the Nature of Law’ (2003) 48 *American Journal of Jurisprudence* 1, 6.

⁷⁵ Gardner ‘Nearly Natural Law’ 3; John Gardner, ‘Hart on Legality, Justice, and Morality’ in *Law as a Leap of Faith* 228.

⁷⁶ Cf. Dickson, *Evaluation and Legal Theory* 77: ‘I regard Finnis’ “degrees of law” thesis as problematic for the reason that it does not seem to take seriously the enterprise of identifying what law’s essential properties are.’

⁷⁷ Finnis, *Aquinas* 47.

should anticipate finding in existence, to one degree or another, in any human community' more or less central cases of law.⁷⁸ Yet, no matter their number, the non-central cases will not undermine or thin out the account of the central case—it is central not because it is statistically frequent and 'fits the facts', but rather because it 'fits reason', is truly justified. The relationship between general and particular truths about law is rather this: the non-central cases earn their place in a general theory of law because of and as what they are: not *fully* law.⁷⁹ What is fully law is complex. It is not a question of merely exhibiting one feature or condition or one invariable. The central case of law is a complex of ends-and-means, pursuing a multiplicity of points, purposes, values, etc., with means that, some argue, distinguish law from other aspects of human affairs in a way that its ends do not.⁸⁰ The reach of a general theory of law is everything that relates to the central case of law. Those relations will be many: some non-central cases of law will be non-central because they undermine the reasons for favouring law; others will be non-central because they realise only some of the reasons for favouring law. But note this: the central case of law will not provide a comprehensive blueprint for a perfect legal system. Why not? Because truly good reasons will not answer all of the questions in need of answering in the design of a legal system. Any number of arrangements needed for the regulation of a community could take any number of reasonable but different forms, such reason will not arbitrate between them, but only between having and not having any such arrangements. In such circumstances, only a decision in compliance with, but not determined by reason will settle upon *the* arrangement for *this* community. In this way, the reasonable law of a time and place will be more comprehensive than the central case of law.

If it is accepted that the reasons favouring law are plural, then two different non-central cases of law can be united by their relationship with the central case, even if they otherwise share no common features or properties. Any given two non-central cases of law may not be liable to be compared and ranked in their degree of non-centrality; they may be non-central in different ways. Consider this simplified illustration and assume a central case with elements A, B, C, and D. In non-central cases, less than all four of these elements will be present. For example, non-central case 1 may be lacking elements C and D whereas non-central case 2 may be lacking elements A and B. On this simplified account, there is nothing that unites cases 1 and 2 except by their reference to the central case of law. They share no common elements, but are nonetheless united *as law* by sharing elements with the central case. One promise of the central case method is to bring unity to varying particulars without denying or underplaying their differences. The more multifaceted the central case of law, the greater 'the *network of similarities and differences*, the analogies and disanalogies, for example, of form, function, or content' between it and non-central cases of law.⁸¹ In each case, the non-central will differ from the central by what Aristotle terms a 'watering down', a subtraction from the reasons that are realised in the central case of law.⁸²

⁷⁸ Finnis, 'Law and What I Truly Should Decide' 113.

⁷⁹ John Finnis, 'A Grand Tour of Legal Theory' in *Philosophy of Law, Collected Essays: Volume IV* 109.

⁸⁰ See Leslie Green, 'Law as a Means' in Peter Cane (ed) *The Hart-Fuller Debate in the Twenty-First Century* (Oxford: Hart Publishing, 2010). For some thoughts on different means-ends relations, see Christopher Essert, 'How Law Matters' in *Why Law Matters?* (2015) *Jerusalem Review of Legal Studies* (forthcoming), sec. 1.

⁸¹ Finnis, *Natural Law and Natural Rights* 11.

⁸² *Politics* II.1: 1262b17, as cited in *ibid.* 145.

How then to highlight the differences between the central and non-central cases of law? How are they to be labeled? The central case of law may be designated as mature, healthy, flourishing; the non-central cases as primitive, corrupt, deviant, undeveloped, immature, watered-down, or parasitic as *cases of law*.⁸³ One will always situate the label 'law' in the context of what is being labelled and so appreciate that, sometimes, one is ascribing the label 'straight forwardly', 'without qualification', 'simply speaking' (*simpliciter*), whereas other times one is ascribing the label only 'in a sense', 'in some respects', 'in a manner of speaking', 'relatively speaking', 'in a qualified sense', 'in a way' or 'according to something' (*secundum quid*).⁸⁴ The distinction tracks the difference between the focal meaning of law (the use of the term 'law' to identify its central case) and its non-focal meanings (the use of the term 'law' to identify any one of the non-central cases). So long as one is alive to the fact that a complex term like 'law' is not univocal, there is no reason not to apply the label to non-central cases. We can say, with Hart, that even in a legal system in which only officials use the system's criteria of legal validity and in which the community of persons is 'deplorably sheeplike', there is 'little reason for ... denying it the title of a legal system'.⁸⁵ Little reason indeed for denying it the title, but great reason for acknowledging that the title 'legal system' is here being used in its non-focal sense.⁸⁶

Aristotle's term for 'focal meaning' is *pros hen* homonymy, signifying how the same word may carry two related, but not identical meanings. Between synonyms (like 'rich' and 'wealthy'), on the one hand, and 'chance homonyms' (like 'river bank' and 'savings bank'), on the other, *pros hen* homonymy is 'the relation holding among things having the same name and sharing some, but not all features'.⁸⁷ Such core-related, core-dependent homonyms, homonyms which are related to one thing (the central case), allow one to employ the same term (e.g. 'law') to communicate two different but related meanings. There are familiar examples: 'an invalid argument is not an argument', 'a disloyal friend is not a friend', 'an unjust law is not a law'. In each example, the non-focal meaning of the key term (argument, friend, law) is paired with the focal meaning, with the difference highlighted by the withdrawal of one feature of what makes the focal meaning *focal* (argument:validity, friendship:loyalty, law:justice). Each example avoids contradiction by assuming that the central case of argument, friendship, and law is multifaceted, i.e. is not central *only* on the basis of validity, loyalty, justice. If we grant that the central case of law includes a source-based requirement for validity and a requirement of justice, an unjust law is a law because, say, posited by the relevant legal authority in accordance with the legal system's standards of validity, but it fails to be a central case of law by failing in justice. All this is the clearer if the homonymy is replaced with a tautology: a non-central case of law is not a central case of law.

⁸³ See Finnis, *Natural Law and Natural Rights* 10-11; Finnis, 'A Grand Tour of Legal Theory' 109.

⁸⁴ Finnis, *Natural Law and Natural Rights* 10; Finnis *Aquinas* 44.

⁸⁵ Hart *Concept of Law* 114.

⁸⁶ Although Hart allows for non-focal meanings of law ('the diverse range of cases of which the word "law" is used are not linked by any such simple uniformity, but by less direct relations—often of analogy of either form or content—to a central case', *ibid.* 81), I suspect that Hart would not take this example to deny the legal system central case status. At *ibid.* 116, Hart identifies 'two minimum conditions necessary and sufficient for the existence of a legal system', both of which are arguably satisfied where a community of persons is 'deplorably sheeplike' and even if they end up in the slaughterhouse.

⁸⁷ Julie Ward 'Aristotelian Homonymy' (2009) 4 *Philosophy Compass* 575, 575. Ward terms the homonyms of present interest 'core-related homonyms' (577), homonyms related to a core kind of instance, a central case.

Inattention to the different meanings which the singular word ‘law’ may carry—meanings that correspond to the central and non-central cases of law—has allowed some to suggest that those who appeal to ‘law’ in both its focal and non-focal senses tolerate ‘an unresolved ambiguity in the meaning of the word “law”’⁸⁸ or deploy ‘what might be viewed as a sleight of hand—it is law in one sense and yet not in another’.⁸⁹ And yet, it is generally accepted that words may carry more than one meaning. So why the hesitation with the word ‘law’? Is there something about law that pulls it towards univocality? Yes: its positivity. Let us suppose that a general theory of law will identify the need for and value in determining which past acts by persons in authority bear here and now on what persons and officials should choose to do. What identifies such a past act will be a test of validity confirming something as law or not-law, a test that, if well designed, will close off debate whether something is law or not *for certain purposes*. What are those purposes? They include the ones identified by Hart: the need to rectify the defect of uncertainty as to what one’s primary obligations are by introducing a rule of recognition that will settle, conclusively, whether something is an obligation under the law or not. There are indeed sound reasons for settling upon the ‘sources thesis’. For the purpose of the sources thesis, an unjust law duly posited in accordance with the rule of recognition *is a law*. No objection here. Indeed, for the purposes of the sources thesis, there is no tolerated ambiguity: something is or is not a law. The label ‘law’ is univocal. The same may be said of citizenship. There will be procedures for determining who is and who is not a citizen of a country. Once satisfied—say, by birth, by lineage, by immigration—one is awarded the status of citizen. For *this purpose*, there is no point in denying that one is a citizen, even if one is a life-time non-resident of one’s country, has never voted even to spoil one’s ballot, has engaged in treason, has attempted or been successful in terrorist attacks against one’s peaceful government, etc. So, once a standard has been set for determining what is to count as law or who is to count as a citizen, the words ‘law’ and ‘citizen’ may be awarded univocal meaning for that purpose. It is a short, but mistaken step to conclude that those standards which determine what is to count as law or who is to count as a citizen do so not only for the specific purpose of resolving uncertainty, but for all purposes favouring law and citizenship.

For here, the question confronting those standards—those tests of legal validity or membership as part of the citizenry—is: Why? Why have standards of validity and membership? What are the reasons for certainty when it comes to primary obligations in law or political membership in a community? In answer to *these* questions, the standard of validity or membership is no answer. As measured against the reasons one will identify to answer those questions, one is *not a citizen* if one does not vote, or leaves and plans never to return, reveals state secrets to the enemy, engages in treason or terrorism, etc. All of these actions go against the reasons favouring citizenship and it is no answer, *for this purpose*, to hold up one’s passport and insist that one is a citizen. One is a non-central case of citizen: non-central because acting in a manner that undermines the reasons for citizenship. So too with law: the reasons favouring the sources thesis should not be taken to overshadow the other reasons favouring law.

VII. Priority of questions

Some have thought that, in relation to law, the answer to the question ‘what it is’ can be asked independently of the answer to the question ‘why have it’. John Gardner, for

⁸⁸ Gardner, ‘Nearly Natural Law’ 21.

⁸⁹ Dickson, *Evaluation and Legal Theory* 76.

example, has argued that ‘picking out the relevant ideal(s) [for law] is irrelevant to the truth or the importance of (LP*)’, where LP* stands for the claim that ‘[i]n *any legal system*, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits (where its merits, in the relevant sense, include the merits of its sources)’.⁹⁰ Gardner had previously held the view that the ‘what’ question had logical priority over the ‘why’ question, a view he has since revised, not by inverting the order of priority, but rather by denying priority between these questions.⁹¹ The ‘study of the conditions of legal validity’ (what counts as law) and the ‘study of law’s point or objective’ (why have law) can be separated.⁹² In some passages, Gardner comes close to maintaining some version of his now abandoned logical priority claim, as when he suggests that ‘a moment’s thought shows that one already needs at least some other relatively independent criteria to identify the thing in question, such that one can begin to discuss its (that very thing’s) point or objective’.⁹³ Others have made similar arguments.⁹⁴ For present purposes, it does not matter whether the argument is best cast as awarding priority to ‘what’ over ‘why’ or as denying any priority between them. The view I have been defending throughout is that there is a ‘logical priority’ to asking why.

No need here to rehearse the arguments of the previous sections. Instead, the argument can be deployed differently by asking: Why accept LP*? It is no answer to say that one accepts LP* if one is a legal positivist, for that only begs the question: Why be a legal positivist? To ask these questions is not to doubt that LP* is true, but rather to highlight that if it is true, it is because there are good reasons for favouring a source-based account of legal validity. Gardner’s claim that ‘in *any legal system*’ legal validity depends on the law’s source, not its merits, is a claim about what is true about law in general and not some generalisation about what happens to be true about law in this or that or any number of times or places. As a general truth, then, it is one that can only be arrived at on the basis of reasons, reasons that will point to why one (anyone) ought to favour source-based criteria of legal validity. If that is right, two questions present themselves. First, if one is appealing to reasons in order to inform one’s understanding of law in general, why limit oneself to say *only this* about law? Second, and more importantly: is it not the case that the reasons that favour LP* are reasons that will identify ‘law’s point or objective’? In other words, there are no reasons to favour introducing LP* for its own sake. Any reasons that favour LP* will be situated in a more general set of reasons that favour law.

Two possible misunderstandings should be discarded. One misunderstanding is that the argument I am defending for law in general implies that for the law of a time and place, it is also not possible to identify what it is without first evaluating whether there are any good reasons to favour it. That does not follow. As set out in sec. III, one can

⁹⁰ John Gardner, ‘Legal Positivism: 5½ Myths’ (2001) 46 *American Journal of Jurisprudence* 199, 226, 201 (emphasis added).

⁹¹ Gardner, ‘Legal Positivism: 5½ Myths’ 226, as revised in the version of the essay appearing in *Law as a Leap of Faith* 53. The need for the correction was highlighted in Gardner, ‘Nearly Natural Law’ 15 n27.

⁹² Gardner, ‘Nearly Natural Law’ 15 n27.

⁹³ *Ibid.* 15.

⁹⁴ See Dickson, *Evaluation and Legal Theory* c. 7. Dickson summarises her argument in this chapter as ‘certain questions in jurisprudence, questions that have to do with the particular sort of social institution that law is ... must be answered prior to asking and attempting to answer questions such as whether and under what conditions legal norms ought to be obeyed and which values legal systems ought to live up to’: ‘Law and Its Theory: a Question of Priorities’ in John Keown and Robert P. George (eds), *Reason, Morality, and Law* (Oxford: Oxford University Press, 2013) 365.

study the law of a time and place by attending to the internal point of view of participants. One's study of that internal point of view requires understanding the reasons persons have for acting the way they do, including for introducing law and applying it, *as they conceive them*. Agreeing, with Hart, that such an understanding requires understanding that there could be no law but for treating law as giving participants a certain kind of reason, it nonetheless remains the case that a lawyer can describe the law to a client without taking a position on the merits of the law and the merits of the reasons why it was brought about and will be applied. Here the lawyer studies the rules of legal validity that operate within the legal system and uses those rules to identify the law, subject to reading the law as the lawyer predicts the relevant officials will read it when it is applied to the client's case. As argued in sec. II-V, the strategic question 'why' is differently put for the study of law of a time and place and for the study of law generally. It is for the latter that I argue that one cannot identify what law is without evaluating the reasons (if any) why one should favour law.

Another possible misunderstanding is to draw a conclusion from the fact that the theorist developing a general theory of law will inevitably begin with some knowledge of the law of his or her time and place and so with some understanding of what law is before then turning to evaluate why law should be favoured. The argument that a general theory of law is constructed by appeal to reasons, not facts, in no way denies that, in the order of inquiry, one is first confronted by facts. After all, one comes to ask the philosophical question, 'What is law?', only because one understands there to be a question to be asked, an understanding owed to one's experience with the law of one's time and place. Does this not then award priority to knowledge of what law is before inquiring into why law should be favoured? Yes and no. *Yes* insofar as one's inquiry cannot begin unless one recognises there to be an inquiry to pursue, a question to be asked. Consider this analogy to friendship: one who has never experienced friendship is unlikely to ask about friendship and to judge well the reasons favouring friendship in human relations. But this same person inquiring into what friendship is will inquire into the reasons favouring friendship without binding the inquiry only to reasons of which he is aware he and others have acted on in their relations with others. So, *no* insofar as one's general theory is developed only on the basis of the reasons *why* any person of any time and place should favour law and not on the basis of what persons here and there have thought those reasons to be. Of course, the inquirer developing a general theory of law will benefit from widespread knowledge of and experience with the law of different times and places. That knowledge will sharpen the mind on the reasons (if any) favouring law. The greater one's experience, the greater the 'implicit dialogue' that one may engage in to evaluate those reasons, which, again, is not to say that one's general theory of law will be bounded by that experience.

One upshot of all this is that the answer to the question 'why?' allows for a different sort of description of the law of a time and place. One may describe the law of a time and place from the internal point of view of persons of that time and place (sec. III). But there is a different possible description: description from the point of view of the central case of law (if you like: from the point of view of the person of practical reasonableness). This description adopts not the method of the historian or sociologist or anthropologist, but the method of the theorist who, having developed the central case of law, now employs it to describe, by way of a network of similarities and differences with the central case of law, the law of this time and place, a description that need not conform to how the persons of that time and place understand law. In this respect, it is the answer to the question 'why have law' that makes possible this kind of answer to the question 'what is law here and now or there and then'. In this

theoretical description of the law of a time and place, the evaluations of importance and significance will not be mediated by the internal point of view of persons of that time and place, by rather by the multifaceted features of the central case of law, features that will evaluate the law of this time and place as central or non-central, and so *describe* it as sophisticated, flourishing, mature, healthy or primitive, corrupt, deviant, undeveloped, immature, watered-down, decayed, parasitic. In this way, it can be said that there is one way of describing what law what is that is conditional on first inquiring into the reasons to favour it.

VIII. Answers

One develops a general theory of law by identifying the reasons (if any) that favour introducing, having, endorsing, maintaining, complying with, and enforcing the kind of thing (or something like it) that gets called 'law' in my time and place. That, in brief, is the answer to the organising question identified in sec. I.

In order to arrive at this answer, a series of other answers, to other questions, have been offered: the strategic question 'Why?' directs the study of human affairs (sec. II); that question is put to the persons of a time and place when one seeks to describe and explain the law of a time and place (sec. III); that same question cannot be put to persons of a time and place if one seeks to develop a general theory of law (sec. IV); instead, one ask and answer the question 'Why?' oneself in order to identify what is true and general about law (sec. V); the resulting general account of law will relate to the law of different times and places by way of a network of similarities and differences to what a general theory of law will identify as the central case of law (sec. VI). In sum, asking why has priority before attempting to answer what in relation to law in general and, in one way, in relation to the law of a time and place (sec. VII).