

Repackaging Normativity

Author : Andrew Halpin

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Triantafyllos Gkouvas, *The Metric Approach to Legal Normativity*, in [Unpacking Normativity](#) (Kenneth Einar Himma, Miodrag Jovanovic & Bojan Spaic, eds. 2018).

The subject of legal normativity has attracted a great deal of attention recently. The collection in which [Tria Gkouvas](#)'s chapter appears does much to display the variety of perspectives, themes and issues that inform the current debate. Or, perhaps, current debates, given that a number of positions being expounded here and in other works on normativity over recent years tend to fix the normativity debate with a particular character prior to making a contribution to it. Gkouvas's chapter is particularly stimulating in seeking to develop an approach that cuts across different perspectives and joins together different roles of normativity in what he presents as a "standard of normative robustness." (P. 17.)

This approach is styled the "metric approach" precisely because it can be used to measure the normative robustness of quite different legal theories. It offers to do this by concentrating on "the *Nexus* space of reason-giving facts," (P. 18) in which the different roles of action-guidance, evaluation of action, and explanation of action cohere in a single fact (Pp. 18-19). Gkouvas's notion of Nexus is borrowed from Joseph Raz's use of the term in [From Normativity to Responsibility](#) to indicate the connection between the normative force of a fact and its explanatory potential in a normative/explanatory nexus. Gkouvas amplifies this nexus as covering the three normative roles just mentioned of guidance, evaluation, and explanation; corresponding to "three distinct component functions (metaphysical, evaluative and explanatory)." (P. 18.)

Gkouvas stresses (P. 21) that the use of the Nexus is to measure normative robustness within a theory of law and not to investigate the extent to which legal facts for their existence depend on possessing normative force. By this he means to indicate that the Nexus is neutral as between positivist and non-positivist theories of law. What the Nexus does measure in terms of normative robustness is then the ability of a particular theory to deliver legal facts that can fulfill the three roles, or the three "component functions." After detailed investigation, he concludes that the theories of Raz and Greenberg do, whereas those of Dworkin and Shapiro amount to "deviant" theories that may nevertheless be measured by the Nexus. (P. 31.)

Within the detailed examination of both compliant and deviant theories, we are given further insights into how Gkouvas understands the three roles/components within the Nexus. Of particular interest are the different ways in which he sees Dworkin and Shapiro deviating in "need[ing] supplementation by extra-legal facts in order to account for the performance of one of the three functions that constitute a *Nexus* reason." (P. 31.) Dworkin falls down on the second, in not providing "a robust *evaluative* role for legal facts" while Shapiro on the third in failing to deliver "the *explanatory potency* of legal plans." (P. 36.)

As devised and utilized by Gkouvas, the metric approach accordingly provides a novel framework in which to assess different characteristics of legal theories, beyond the familiar oppositions of positivist/non-positivist. It also stimulates further lines of inquiry on legal normativity. The neutrality he claims for his approach is clearly one that is premised on "answer[ability] to the *Nexus* standards" (P. 31), yet the Nexus itself is regarded as governing theories that relate legal facts to moral and social

facts in different ways (P. 17), so the metric approach is extensive in its reach. Its fuller implications merit further reflection. Among them is quite possibly an interesting angle on the *sui generis* perspective on legal normativity, which has been featured in recent writing. If the satisfaction of normative robustness by a theory is dependent on not requiring supplementation by extra-legal facts, but the legal facts can exist “atop a stratified ontology featuring moral and/or social facts,” (*Id.*) it seems to follow that a robust legal normativity without the need for supplementation may nevertheless incorporate moral and social facts into a fully legalized normativity. This holds out the prospect of a *sui generis* understanding of legal normativity enjoying a richer profile than might at first be thought.

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