

## Metaphysical Quietism and Functional Explanation in the Law

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In his introduction to *The Future for Philosophy*, Brian Leiter divides contemporary philosophers into two camps: “naturalists,” who deny the distinctiveness of philosophical methods but who continue trying to answer questions about the nature of mind, knowledge, morality, and other traditional philosophical problems; and “quietists,” who deny not only that philosophy has any distinctive method but also that the traditional philosophical problems are capable of being solved at all. Instead, quietists see philosophy as a form of “therapy” that dissolves, rather than solves, philosophical problems. One way quietists seek to do so, according to Leiter, is by looking to the history of philosophy in order to explain “how we came to think there were such things as *philosophical* problems and *philosophical* methods in the first place” (Leiter 2004, 2).

The quietist label has been embraced by some philosophers. Richard Rorty, though disputing aspects of Leiter’s characterization of the quietist position, endorses the basic naturalist/quietist distinction Leiter draws and places himself firmly on the quietist side (Rorty 2010, 57). For Rorty, traditional metaphysical debates about the “reality” of some domain of discourse – whether of mind, morals or whatever – are no longer “culturally salient” and should thus be abandoned in favor of intellectual histories that help us understand why certain philosophical notions “gained currency.” We ought not debate which “world picture” is the

proper one, as philosophers have traditionally done; instead, “at most we need a synoptic narrative of how we come to talk as we do” (ibid., 58).

The philosophers who have devoted the most attention to articulating and defending a quietist position are the Australian philosophers David Macarthur and Huw Price. In a series of papers, Macarthur and Price have, jointly and separately, given grounds for going quietist about various metaphysical debates, particularly those about the metaphysics of values and reasons.<sup>1</sup> Like Rorty, who explicitly endorses Price’s version of quietism, Price and Macarthur describe their *meta*-metaphysical quietist position as one inspired by pragmatism (Rorty, 69-52; Macarthur and Price, 93-95). The position has both a negative and constructive aspect. The negative part calls for the rejection of metaphysical debates about whether the concepts invoked in some disputed domain of discourse are “real” or not. The positive part seeks to replace such traditional debates with a genealogical inquiry into how humans have come to use the vocabularies they do (Price and Macarthur, 95).

This paper offers a critique of the quietist stance developed by Price, Macarthur, and Rorty. It does so, however, from the perspective of a philosophical pragmatist sympathetic to many of the aspirations of these philosophers but concerned about the consequences of going down the quietist path. In other words, it seeks to challenge quietism on its own terms. Specifically, its aim is to cast doubt on both the possibility and desirability of dissolving the traditional philosophical questions and replacing them with anthropological genealogies. Since comparing and evaluating such genealogies naturally invite various metaphysical questions, such questions are not, contra Rorty, irrelevant to intellectual life outside Anglo-American philosophy

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<sup>1</sup> See in particular, Macarthur and Price (2007); Macarthur (2009); Price and Jackson (1997). Price has collected several of his essays expressing quietist themes in his recent book, *Naturalism without Mirrors* (2011). In the introduction to that book, Price observes that his view “requires and entails” metaphysical quietism. Ibid., 13.

departments. To the contrary, they arise out of debates within and among the human and natural sciences.

My argument proceeds in three steps. I first summarize Price and Macarthur's arguments for both the negative and constructive components of the quietist stance, showing why their approach seems to offer a promising strategy for handling the so-called "placement problem," which refers to the difficulty of "placing" contested domains of discourse – like that of morals and mental states – in a naturalistic ontology. Then I try to show, using an example from legal discourse, how the functional accounts envisioned by quietists generate precisely those kinds of metaphysical questions Price and Macarthur seek to avoid. Finally, I argue that such questions are not only natural and perhaps inevitable but are also worth asking, and that the pragmatist should welcome the disputes they engender, not remain quiet about them.

### I. Metaphysical Quietism

The route to metaphysical quietism begins with the "placement problem," which describes the difficulty of explaining how certain familiar concepts used in everyday life – e.g., mental states, moral facts, counterfactuals, and numbers – can exist in the physical world (Price and Macarthur, 93-94; Price and Jackson 1997, 247). Over the centuries, philosophers have advanced various strategies for "solving" the placement problem, but each comes with serious costs. At one extreme, one might simply deny the need to make room for such concepts at all, seeing them as properly discarded in light of modern science (*eliminativism*); at the other extreme, one could insist that such domains are beyond the reach of science and so cannot and need not secure any validation from it (*non-naturalism*). But the first of these approaches seems unable to appreciate the significance of the disputed domains for human life, while the latter seems to depend on an elaborate and mysterious metaphysics (Price and Jackson, 247).

So those who find these extremes tough to swallow have developed alternative strategies, including *reductionism* and *noncognitivism* (or nonfactualism). Reductionists seek to explain the concepts of the target domain by reference to those of another more basic or fundamental vocabulary (ibid., 248). Noncognitivists, meanwhile, deny that the concepts in the disputed discourse are properly understood as propositional or fact-stating discourses in the way that, say, scientific discourse is. Instead, they are best understood as serving some function, such as to *express* a speaker's attitude or to *prescribe* a certain course of action.<sup>2</sup>

The quietism of Price and Macarthur has its roots in the expressivist branch of noncognitivism, for it includes the claim that we ought to understand various discourses in light of their expressive linguistic functions. But it is crucial to see how their form of expressivism differs from traditional expressivism. For both reductionism and expressivism are first-order metaphysical doctrines. That is, they are claims about whether, or in what way, the concepts under scrutiny refer to things in the world. The reductionist says that the terms in discourse X *really* refer to things in the world that we can better describe in a more basic or fundamental discourse Y (ibid., 281). The expressivist says that, despite appearances to the contrary, the terms in discourse X do not really *refer* to anything at all in the world. Rather, they only express one's attitude about something. Quietism, however, is a *meta*-metaphysical position; it is a claim about whether, or in what way, it is appropriate to ask the first-order metaphysical question about the reality or unreality of a given discourse. So how do we get from conventional first-order expressivism to this kind of second-order version of it?

The answer lies in what may be loosely referred to (as Price and Macarthur do) as “semantic minimalism” (Macarthur and Price, 93). According to this view, semantic concepts

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<sup>2</sup> For well-known treatments of expressivism and prescriptivism, respectively, see Blackburn (1998) and Hare (1952).

like reference and truth do not mark out any substantial relation between propositions and things in the world, but rather merely amount to an assertion of the propositions themselves. So, to use the classic example, to say, “‘snow is white’ is true” is just to say that snow is white. There are a variety of minimalist views, which differ in important ways,<sup>3</sup> but for our purposes, the key is to see why, for the expressivist, this general minimalist strategy with respect to semantic terms promises to be both a blessing and a curse.

It is a blessing because it seems to offer the expressivist a way of vindicating the surface-level, descriptive features of a given discourse without giving up on her expressivism. For if to say that “it is true that slavery is wrong,” is just to say that slavery is wrong, then the expressivist can agree with that statement (assuming she does in fact think slavery is wrong), and can even agree that that proposition states a *fact*, since to say that it states a fact, or is true, or describes reality, or whatever, just amounts to asserting it.<sup>4</sup> At the same time, the curse of minimalism for the expressivist is that it threatens to obliterate the very distinction on which its core position seems to depend, namely that between, on the one hand, genuine fact-stating, propositional discourses and, on the other, those discourses that serve a mere expressive linguistic function. That is, without any substantial semantic properties, it becomes unclear how one can distinguish, with respect to its propositional nature, the statement “the earth is round” from the statement “incest is wrong.”<sup>5</sup>

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<sup>3</sup> For instance, Macarthur and Price (2010, 117) ascribe to Simon Blackburn a position that is minimalist about truth but not about reference.

<sup>4</sup> Dreier (2004) makes this point well, showing how the philosophical trend he styles “creeping minimalism” makes it increasingly difficult to distinguish anti-realist views in meta-ethics from those of even the prototypical moral realist, G. E. Moore.

<sup>5</sup> Boghossian (1990) develops this argument. Jackson, Oppy, and Smith (1994) respond that Boghossian wrongly assumes that minimalism about truth entails minimalism about truth-aptness. But Macarthur and Price insist that they do not think such a distinction is necessary to vindicate their brand of expressivism. Macarthur and Price, 105 n.14.

Hence the appeal of quietism, which we can now see as the metaphysical counterpart to semantic minimalism. The quietist bites the bullet and embraces the consequences of what I've called the "curse" of minimalism by making her expressivism complete or "global." That is, she gladly accepts that no distinction between "merely expressive" and "genuine fact-stating" discourses can be drawn at all. Under this view, it no longer *makes sense* to ask whether the terms of some contested domain of discourse, such as that of morality or folk psychology, "really" refer to anything in the natural world.<sup>6</sup> Rather, the only sense in which such concepts can be "explained" is by looking to the function that they serve in the social life of human animals. As Price and Macarthur put it, "if we can explain how natural creatures in our circumstances naturally come to speak in these ways, there is no further puzzle about the place of the topics concerned, in the kind of world described by science" (Macarthur and Price, 95).

Thus, the placement problem is not so much solved as dissolved, and dissolved in a way congenial to a philosophical pragmatist since it offers, in Price's phrase, "naturalism without representation" (Price 2011, 184). For once such an anthropological explanation of a term's function has been given, the further question of the "reality" of the phenomena to which the term purports to refer no longer arises. (Macarthur and Price, 248; Macarthur 2009, 28). One thus gets the "benefits of non-naturalism, without the metaphysical downside" (Price and Jackson, 248). At that point, according to Rorty, the philosopher should "consult anthropologists and historians," who "can tell you how our species progressed from organizing searches for food to building cities and writing books" (Rorty, 61).

## II. Legal Discourse and Metaphysical Questions

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<sup>6</sup> At times, Rorty makes only the weaker claim that such questions are not relevant to any culturally significant issue. See, e.g., Rorty, 58.

But is it the case that metaphysical questions will lapse once we begin consulting the anthropologists and historians? I am skeptical that they will, and in support of my skepticism, I offer some evidence from my own area of relative expertise, the law. Legal discourse is a useful domain to consider, because, despite widespread agreement among legal scholars that both the existence of law itself and its particular content, are properly understood in functional terms, debate about the meaning of terms, and the existence of the concepts, used in such explanations persists undeterred.<sup>7</sup> In other words, metaphysical debate has not disappeared, it has only been relocated.

Let us take the concept of “negligence,” as used in Anglo-American tort law. One could imagine various standard metaphysical positions about negligence:

*Non-naturalist* – The concept of negligence refers to a non-natural property that attaches to conduct in which A wrongfully exposes B to an unjustified risk of physical harm, thereby risking violation of B’s rights to property or bodily integrity.

*Reductionist* – The concept of negligence just describes conduct in which a person has failed to take cost-justified precautions, where “cost justified” is determined by comparing the price of the precaution with the probability that harm will ensue without the precaution, multiplied by the cost of that harm.

*Anti-realist (Expressivist)* – The concept of negligence merely amounts to an expression of a jury’s disapproval of the defendant’s conduct.<sup>8</sup>

*Anti-realist (Error theorist)* – When judges and juries talk of conduct being “negligent,” they think they are ascribing a real (non-natural) property to that conduct, but since there are no such properties, they are systematically mistaken when they engage in such talk.

For the quietist, all of these positions are misguided insofar as they assume that questions that ask whether some term really is *true* or which kind of phenomena some term *refers* to are

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<sup>7</sup> In other words, what Jules Coleman (2001) says of tort theorists is also true of legal scholars’ view of law generally: “No philosopher of tort law would deny that it is a human institution—a social construct in an obvious and unproblematic sense of the term—and that it responds to or serves a variety of human interests.”

<sup>8</sup> Or, as one of my colleagues, an eminent torts scholar, once said in person, a jury verdict expresses its view that “The defendant is either a son-of-a-bitch or he’s not a son-of-a-bitch.”

meaningful questions with substantial answers. In fact, though, there is nothing more to the concept of negligence than how it is used in certain human practices. In this case, that may amount to the set of inferences a finding of negligence warrants within the language of the law, such as that the defendant breached his legal duty to take reasonable care in the circumstances and that he must therefore pay the plaintiff damages (assuming the plaintiff has no affirmative defenses). The only relevant question that one can ask about the meaning of negligence that is not answered by the surface grammar of tort law, then, is “How is that natural creatures in our circumstances came to speak of ‘negligence’”? That is, what *social function* does the use of the concept serve?

In this case, that question is a particularly apt one because the origin of the negligence doctrine happens to be a source of lively scholarly dispute. So let us consider four possible explanations:

1. Prior to the nineteenth century, in England and the United States, in most cases of accidental harm, liability was *strict*, which means that the plaintiff needed to show only that the defendant caused the plaintiff harm, not that he or she acted unreasonably in some way. But as the industrial revolution got under way, accidents became more frequent and were often the unavoidable result of efforts to build bridges, railroads, and factories, all of which were considered socially desirable. Courts adapted to these changes by developing the concept of “negligence,” which enabled society to express, through its organs of official power, the social interest in economic development. They did so by lowering the costs (in the form of reduced liability) of building factories, railroads, etc., while at the same time still compensating innocent victims of conduct that was judged to be unreasonably dangerous by the common man (as

represented by a jury).<sup>9</sup> This seems to be, quite literally, an historical (or “anthropological”) explanation of how humans came to use the language of negligence to “build cities.”<sup>10</sup>

2. In the early nineteenth century, strict liability was replaced by negligence, but it was not because of any general social interest in economic development. Rather, the cases that reached the appellate courts developing tort doctrine at this time involved systematic conflicts between distinct classes and interests, pitching employer against employee, and industrialist against farmer. And because the appellate judges themselves belonged to the commercial class, they consciously changed the legal rules in order to protect their own and their class’s economic interests and to shift the costs of industrialization onto the poorer and more agrarian parts of society. Under this view, too, the concept of negligence arose in order to serve a “function,” though not exactly a “social” one. Rather, it functioned as an ideological tool of the powerful segments of society to “subsidize” industrial firms at the expense of the less powerful segments of society.<sup>11</sup>

3. Judges in the nineteenth century developed the concept of negligence as a means of efficiently regulating safety in a rapidly changing economy. The judges and juries who applied the concept in cases were thus expressing simultaneously (1) their disapproval of businesses that failed to take cost-justified precautions when conducting certain activities (by deeming them to be “negligent” and thus requiring them to compensate victims for any harms caused), and (2) their approval of businesses that did take cost-justified precautions (by deeming them to be “not negligent” and thus *not* requiring them to compensate victims hurt by such activities). Under this view, the social function of negligence was not merely to encourage economic development and

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<sup>9</sup> For an account roughly along these lines, see Gregory (1951).

<sup>10</sup> Rorty, 61.

<sup>11</sup> For an account along these lines, see Horwitz (1977).

compensate victims but to incentivize firms to allocate their resources for safety precautions in an efficient manner.<sup>12</sup>

4. Courts developed the concept of negligence in the nineteenth century in order to work out a coherent system of corrective justice. Because corrective justice only requires that A compensate B when A acts wrongfully toward B and thereby causes him harm, negligence doctrine enabled judges to respond to the demands of morality and vindicate parties' rights.<sup>13</sup>

Now we have four different historical or “anthropological” accounts of the function served by a particular linguistic phenomenon, namely the term “negligence” as it is used in Anglo-American legal discourse. Let us call these, respectively, the *sociological* explanation, the *ideological* explanation, the *economic* explanation, and the *moral* explanation. The question I want to ask is whether, or in what way, we are able to evaluate and compare these accounts.

The first thing to note is that the quietist would object straight off to the last of the four, the moral explanation. That is because, though framed in the language of “function,” it makes direct reference to the underlying disputed phenomena – in this case, “rights” and “wrongful conduct” – and thus violates their minimalist semantics (Price and Jackson, 256; Macarthur 2009, 27). I will argue below that this dismissal is unwarranted, but let us put that issue, and the moral explanation that raises it, aside for now.

In considering the first three accounts, there are two relatively uncontroversial ways in which one could evaluate each of them on their own terms. First, one could ask whether the accounts have empirical support. That is, does the historical data – as interpreted in the terms of the explanation – support the thesis advanced. So one might challenge the ideological explanation by looking to actual appellate court decisions to see if they bear out the claim that

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<sup>12</sup> See Posner (1972).

<sup>13</sup> This account is inspired by Weinrib (1995), though he does not frame his argument as a particular historical account.

courts did in fact rapidly replace rules of strict liability with a negligence standard, or one could show instances in which courts seemed to interpret, or make exceptions to, the negligence rule in favor of plaintiff recovery.<sup>14</sup> Second, one could ask whether the concepts employed in the explanation are internally consistent. If, for instance, it turned out that the concept of “social interest,” as employed in the first example, was simultaneously used to *explain* why cases came out a certain way and was also *defined by* the outcome of cases, then it would seem to reduce the sociological explanation to a mere tautology.<sup>15</sup>

But questions of a different sort also may come to mind. One might want to ask of the sociological explanation, *what exactly is a “social interest” anyway?* This question asks not merely whether that concept is used in a consistent and non-tautological way in the explanation itself, but rather about what, if anything, in the world it purports to describe? Is it merely an expression of an attitude of approval of a certain event or state of affairs, or does it describe a set of real features of the world?<sup>16</sup> Of the ideological explanation, one might want to ask, *does the concept of “subsidy,” as used in its account, describe a meaningful category of economic activity?*<sup>17</sup> Or is it used merely to express disapproval of a particular distribution of wealth? Or we might ask similar questions about the concept of “efficiency” as used in the economic explanation.<sup>18</sup>

The answers to such questions are hardly sufficient to condemn or vindicate the explanations to which they are put, but all of them seem to have prima facie relevance to their overall plausibility, which is likely why, as evidenced by the footnotes above, scholars have in

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<sup>14</sup> Schwartz (1981, 1729-31, 1759) levels these types of criticisms against Horwitz’s account.

<sup>15</sup> Gordon (1980, 1029-30) suggests this general criticism of explanations of legal change like the sociological one. Arguably, all accounts are ultimately tautological in some sense, but the point here is that it would be directly tautological in a way that would deprive it of any explanatory force.

<sup>16</sup> Llewellyn (1930, 45) makes precisely this kind of objection to theories based on “social interests.”

<sup>17</sup> See Posner (1972, 30).

<sup>18</sup> See Rizzo (1980).

fact raised them. Of course, the fact that such questions *are* asked hardly entails that they *ought* to be asked – a question taken up below – but the point here is just to suggest that these questions are metaphysical questions. For it is just as hard to place concepts like “interests,” “efficiency,” or even “subsidies,” in the empirical world as it is to place concepts like meanings, beliefs, reasons, and values. And far from being irrelevant to intellectual debates outside philosophy, as Rorty claims, questions about the existence or meaning of these concepts seem to be naturally generated by such debates.

### III. The Pragmatic Value of Metaphysical Debate

At first blush, it may seem that the quietist approach would welcome such questions. Macarthur and Price say, for instance, that they have a “radically non-quietist attitude to . . . use-explanatory issues” (Macarthur and Price, 118). So maybe they only object to metaphysical debates about certain discourses and would welcome them in the context of anthropological-explanatory theories. But that would be a serious misreading of the quietist position. Macarthur and Price are non-quietist about use-explanatory issues in the sense that they are open to the possibility (indeed, it seems entailed by their approach, but more on that below) that the explanation of the linguistic practice will be in a different vocabulary than the target discourse itself. That is, they do not endorse the deeply skeptical view, attributed by some to Wittgenstein, that it is impossible to offer any kind of philosophical account of a set of social practices, linguistic or otherwise, from a perspective “outside” of that form of life (ibid., 119). But their view does not condone asking questions about whether the terms of a given explanatory account *really* refer to anything in the world.

To the contrary, such questions are ruled out by the quietist’s commitment to semantic minimalism. The quietist would recognize that insofar as she accepts an anthropological account

of a given practice, she is thereby committed to the “existence” of the concepts relied on in the explanatory account (e.g., “social interests,” “classes,” or “efficiency”). But since she denies that “truth” and “reference” are substantial semantic properties, there is nothing more to such ontological commitments than a recognition of the role such terms play in the overall account.

This picture, which Macarthur and Price largely adopt from Quine and Carnap, has two important consequences for theory evaluation. The first is that a theory or linguistic framework must be accepted or rejected *in toto* or, as it were, “holistically.” That is not to say that one cannot tweak the concepts used within a theory to improve it, but the point is that since the only sense in which a concept may be said to “exist” is in its role as an “irreducible posit” in the best theory available, a decision to accept the theory precedes, rather than follows from, a judgment about whether the concepts that constitute it exist (Macarthur 2009, 21).<sup>19</sup> The second consequence is that the criteria for determining whether to accept a given theory or linguistic framework are *pragmatic* only, not theoretical. So one can ask whether the framework is useful, productive, or effective for achieving one’s goals, but one cannot intelligibly ask if one picture is more “true” than another.<sup>20</sup>

Now for Carnap and Quine, the most plausible pragmatic criteria for evaluating scientific theories seem to have been their capacity to enable us to predict and control our environment effectively.<sup>21</sup> Contemporary quietists seem a bit more liberal in what pragmatic criteria they bring to bear, largely because they do not think all theories worth the name are scientific theories and thus may serve other human needs and interests, whether social, moral, or whatever. Indeed,

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<sup>19</sup> On this front, see Carnap (1950). For Price’s endorsement of Carnap’s approach, see Price and Jackson, p. 248-51.

<sup>20</sup> Quine went further than Carnap, insisting that even what Carnap considered “internal,” factual questions also responded to pragmatic concerns. See Quine (1951, 43).

<sup>21</sup> Quine talked of “working a manageable structure into the flux of experience,” (1951, 41); Carnap talked of “efficiency” (1950, 24).

one of the chief motivations for quietism is its *pluralism* – i.e., its recognition that, since human beings have a variety of needs and interests, their discourses may properly respond to them (Price and Jackson, 252; Rorty, 58). The important thing is that the theoretician display the (Deweyan) intellectual virtues of tolerance, openness to criticism, and willingness to revise her judgments (Macarthur 2009, 20).

This pluralist picture is unquestionably an attractive one for philosophical pragmatists, who are rightly suspicious of all forms of absolutism. Nevertheless, I want to suggest that it may come with considerable costs in the form of a tendency to stifle social, moral and intellectual debate. Let me be clear at once, though, about an objection I am not making. An obvious, and oft-leveled, objection to the view that only pragmatic criteria are available to judge linguistic frameworks is that it leads to a dangerous form of relativism that leaves one incapable of distinguishing, e.g., between the intellectual respectability of astrology and that of molecular biology. That worry seems to me a very real one, but I want to put it aside on the ground that there may be grounds for distinguishing between better and worse pragmatic criteria for accepting a discourse.

Rather, I want to focus on the quietist's embrace of the multiplicity of interests that could drive inquiry and thus provide diverse criteria for theory evaluation. The benefit of this approach is that it allows different discourses to "peacefully coexist," but the danger of it is that it discourages the clash of ideas on which one might think intellectual and moral progress depend (Rorty, 58). Consider our negligence example, for instance. Let us assume that each of the explanations offered are roughly equivalent in terms of their empirical support and internal conceptual consistency. If that is the case, then the quietist is committed to saying that there is no further question as to which one of them is *true* or which better captures the social

phenomena under scrutiny. Rather, each may be equally useful for its own purpose. So perhaps the sociologist interested in looking at large-scale legal change over time finds the first explanation most helpful, whereas perhaps the historian interested in class conflict within a society at a particular time is aided by the second, and an economist concerned to explore how legal rules may reflect certain kinds of economic rationality is helped by the third account. Or a legal treatise writer, who may take her task to be that of “rationalizing” the law, might well embrace the fourth, moral explanation.<sup>22</sup> Each enquirer comes to the linguistic phenomena under scrutiny with a different set of cultural (or disciplinary) assumptions and interests and thus finds different explanations helpful.

But what if you are not a sociologist, historian, economist, or writer of legal treatises? Instead you are a policymaker faced with the decision of whether or not to introduce the doctrine of negligence in some new jurisdiction or in some new area of law. Now of course other considerations will no doubt bear on – indeed, may even dominate – your decision, but which explanation of how we came to use the term “negligence” you find most persuasive would seem to be at least *relevant* to your decision. That is because the different accounts characterize negligence in different ways: one sees it as a natural and healthy response to pressing social needs; another sees it as an instrument of exploitation; yet another sees it as a device for incentivizing a particular kind of conduct. So depending in part on your background assumptions are about the appropriate goals of tort liability, you may look more or less favorably on the use of negligence depending on which explanation you think the most likely one. But

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<sup>22</sup> That is not to say that the moral explanation is the only one that offers a method of “rationalizing” the law. The sociological or economic ones could also perform that role.

whichever account you choose, presumably it will be because you want to know *what was really going on* when negligence came into widespread usage.<sup>23</sup>

That, of course, is what metaphysicians traditionally seek to discover. They do so not by asserting that they can attain a unique, “metaphysical” perspective on reality outside of language; rather, they ask whether or when it is possible that the terms of one vocabulary are better understood in a different, more basic, fundamental vocabulary (Macarthur 2009, 11). Frank Jackson, therefore, makes a similar criticism of Price’s approach, noting the way in which its pluralistic approach proves unhelpful when we are faced with a “clash” of discourses and want to know whether, for example, certain psychological concepts are better understood in neurophysiological terms (Price and Jackson, 281). The policymaker in the example above is presented with a similar kind of clash of discourses.

Now it will be immediately objected that I am confusing two very different sorts of explanation. What Jackson and other philosophers are concerned with is *metaphysical* explanation, which asks how the terms of one vocabulary *make true*, as a conceptual matter, the terms of another vocabulary. This kind of inquiry requires the tools of conceptual analysis. That is a quite different matter than historical or anthropological explanation, which is a *causal* claim, requiring an empirical form of inquiry. This distinction is crucial for the quietist because it is the abandonment of the first form of explanation in favor of the latter that virtually defines metaphysical quietism (Price 2011, 48; Macarthur 2009, 24).

But it is precisely the distinction between causal and metaphysical explanation whose value for the pragmatist I mean to question. Macarthur, for instance, defines the goal of metaphysics as the attempt “to explain phenomena or the appearances of things in terms of some

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<sup>23</sup> Taylor (1985, 92) argues that the “basic task of all social theory” is to answer that question.

conception of what is *really* basic, fundamental or real.”<sup>24</sup> That is a plausible formulation, but from the perspective of a person faced with a choice among competing accounts of some social practice, the question is equivalent to asking, “what set of concepts, and relationships among those concepts, do I need to know such that, if they are true, tell me everything I need to know about the practice in question?” From this perspective, it is not so clear what the practical difference between, say, the economic reductionist metaphysical account (negligence *just is* the failure to take cost-justified precautions) and the anthropological-functional variant on it (the social function of the term negligence is to register disapproval of those who fail to take cost-justified precautions). In either case, if true, this understanding of the term “negligence” tells the decisionmaker what considerations require attending to when putting the term to proper use.

Equally important, the same kinds of conceptual objections – one’s that go to, for instance, the objective status of “social interests” or “efficiency” – threaten to undermine both types of accounts. The potential threat such objections pose to the conceptual account are obvious (which is not to say they are justified). But they are equally problematic for the social-functional version because, to the extent that they cast into doubt the concepts employed in the explanation, they suggest that a more fundamental causal explanation may be available.

We can now see why what I called the “moral explanation” of negligence above should not be dismissed as a possible anthropological explanation. Recall that Macarthur and Price’s analysis suggests that we ought to rule out such explanations on the ground that they depend on a substantial conception of reference (to mysterious things like “rights” and “wrongful conduct”), with which the quietist has no truck (Price and Macarthur, 97). But we have seen that the other explanatory theories rely on terms (e.g., “social interest,” “efficiency”) that are just as mysterious. So if the quietist allows in the other explanations as live hypotheses on the ground

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<sup>24</sup> Macarthur (2009, 11).

that their ontological commitments are simply “irreducible posits” of the explanatory accounts in which they figure, then there seems little justification for not allowing in the moral explanation on the same basis – unless, of course, they think that moral concepts are somehow more dubious or mysterious than economic or sociological concepts. But that is precisely the kind of *metaphysical* judgment that the quietist, qua second-order *meta*-metaphysician, is so concerned to avoid making!

Of course, I have been arguing that such an explanation – as with any proposed explanation – *is* appropriately subject to metaphysical scrutiny that asks whether we can better understand its terms in some other vocabulary. That is because, as I’ve suggested, if only “internal” questions and pragmatic “external” questions are allowed, the loose pluralism that results prevents the clash of vocabularies on which, it seems to me, intellectual and moral progress depend. So, for example, even if we do not ultimately accept Marx’s social theory, for instance, we may think that his effort to lay bare *what is really going on* in a capitalist economy contains genuine moral and political insight. And we might further think that there is some profit in reflecting on whether, e.g., false consciousness is a real phenomenon, and that such reflection – even if it results in a conclusion that false consciousness was a harmful myth – would be more profitable than asking how it is that we came to talk of “false consciousness.” At least within legal theory, in my view, arguments to the effect that what has long been taken to be “real” (whether rules, reasons or rights) are in fact better understood as something else entirely (e.g., that rules are merely predictions of judicial behavior) has, in the long run, encouraged clearer thinking about legal concepts and improved legal practice. And that is true even when those attacks turn out to be misguided or only partially successful.

Of course, I cannot possibly support such a broad claim. And others may well disagree. But perhaps the best way to see the point I'm trying to make is to consider the anthropological approach that quietists themselves advocate. Granted that this approach does not, as a conceptual matter, require taking an anti-realist view about the discourse to be explained, as Macarthur and Price are concerned to emphasize (Macarthur and Price, 100). It is nonetheless worth considering whether the question quietists seek to answer – “how is it that people came to talk of X?” – would have come to be seen as a profitable, interesting, or useful question to ask had the “reality” – and hence causal explanatory sufficiency – of the underlying phenomena to which X purports to refer never been challenged or denied. I am doubtful it would have. After all, why would it even occur to one to ask about the “social function” of, say, religion, unless one were skeptical that the terms of the religious discourse in question in fact described reality?

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Let me conclude by briefly stating where, I think, my dissatisfaction with quietism ultimately lies. As we saw at the outset, quietism is motivated by a desire, which I share, to resist the hegemony of a scientific-naturalistic account of the world in which there is no “place” for things like morals, meanings, or mental states. At the same time, though, quietists – or at least some of them<sup>25</sup> – insist upon remaining faithful to the lessons of science insofar as “science tells us that we humans are natural creatures” (Price 2011, 186).<sup>26</sup> Thus, they insist that any discussions of those contested discourses must be restricted to functional accounts of how the words came into use. They will be evolutionary accounts that tell stories that “contain no sudden

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<sup>25</sup> Elsewhere, Macarthur suggests that he endorses a more liberal naturalistic world picture that allows for “nonscientific understanding and explanation.” See Macarthur (2010, 137). I find his argument there intriguing, but it seems to me in some tension with the quietist denial that there is any real question about the existence of values and norms in the natural world. Still, this very well could be due to my own failure to properly understand Macarthur’s views on this matter.

<sup>26</sup> Rorty (2010, 11) endorses Price’s view, which Price dubs “subject naturalism.” Price (2011, 186).

discontinuities” and instead show a “gradually increasing complexity of physiological structure facilitating increasingly complex behavior” (Rorty 2010, 61).

In my view, this stance still imports too much of the current scientific world picture. For there is no *a priori* reason why evolutionary accounts must be “gradual,” nor even include the notion of “function” at all. Now the quietists will respond, quite rightly, that such an assumption does not derive from *a priori* reasoning but instead follows from the current best account of what science tells us about how homo sapiens came to be as we are. But if it is even conceivable that a future best scientific account of, say, the development of human institutions, linguistic and otherwise, would make no use at all of the concept of “function” – and I do not see why that could not happen – then, insofar as quietism limits philosophy’s domain to asking questions that presuppose such a functional form of analysis, it characterizes as illegitimate or misguided any challenge to its own implicit metaphysical picture. And that, it seems to me, ought to be of concern to philosophical pragmatists.

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