

Bartosz Janik¹

University of Silesia in Katowice, Poland

An explanatory framework for legal grounding²

1. Introduction

Some legal scholars want to know what lies in the real, fundamental layer of legal reality. The primary assumption of their analysis is usually that there are social and legal facts and there is a substantial difference between these two, meaning that there is no easy way of reducing the legal facts to social facts. This might be due to the normativity of the legal facts. Bearing this in mind, the problem of legal fundamentality and reality boils down to the analysis of the relationship between the legal and the social facts, or, in other words, the apparently non-reductive relationship between the social facts and the legal facts.

For the sake of argument about the fundamentality of relations in the legal domain, we can assume that social facts and legal facts are well defined, while the fundamental level for analyzing legal ontology is social ontology. This means that, for the legal domain and for the explanation of the legal facts, those social facts are cannot be further analyzed. This is just the working assumption, as there is a great deal of literature on the appearance of the social facts from, for instance, collective intentionality.³ In this manner, social facts are more fundamental than legal facts, but they are not strictly fundamental given that being fundamental is not to be grounded by anything.⁴

On the side-line, the question arises of whether the objective of achieving an understanding of true legal fundamentality is the main objective of the philosophy of law. It can be claimed that, when analyzing legal ontology, starting from legal facts or properties, we have to rely on the notion of collective intentionality, which might be analyzed in the notion of individual intentionality with the help of certain laws of aggregation.⁵ This might be the farthest point in the analysis of legal fundamentality, as the precise examination of the individual intentionality requires the analysis of the mind-body problem, which is intuitively not a central problem of the philosophy of law. Therefore, this analysis is restricted to the level of social and legal facts.

¹ ORCID number: 0000-0002-7471-6402. E-mail address: bartosz.janik@us.edu.pl

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³ L. Burazin, K.E. Himma, C. Roversi, *Law as an Artifact*, Oxford 2018; G. Yaffe, *Collective intentionality in the law*, in: M. Jankovic, K. Ludwig (eds.), *The Routledge Handbook of Collective Intentionality*, Routledge 2017.

⁴ J. Schaffer, *On What Grounds What*, in: D. Chalmers, D. Manley, R. Wasserman (eds.), *Metametaphysics: new essays on the foundations of ontology*, Oxford 2009.

⁵ G. Yaffe, *Collective intentionality...*

Taking into account social and legal facts and adopting the positivistic thesis that legal facts ultimately depend on social facts, we might wonder what this dependence means and whether we have the requisite metaphysical tools to express it and study it further. This research program became somewhat fruitful in recent years with the concept of grounding emerging as a primary metaphysical tool for expressing the puzzling dependence between social and legal facts.⁶

The basic understanding of the grounding relationship is the metaphysical explanation.⁷ According to this view, the relationship in question links certain entities or truths about the target domain and offers a metaphysical explanation of the grounded entities in terms of more fundamental entities. Other takes on grounding rely on the notion of dependency or constitution.⁸ In the legal domain, the explanatory understanding of grounding prevails, as an account of the grounding of legal facts always refers to the possible explanation from this approach. However, it should be noted that this explanation usually has an existential flavor. In stipulating that legal facts are grounded in social facts, we say that the social state of affairs gives rise to the legal state of affairs. This should be noted because, in the general metaphysical literature, it is argued that the said explanatory property of grounding might have a conceptual or logical flavor, which is typically not endorsed in writings in the jurisprudential domain.⁹ This does not preclude the aforementioned understanding of grounding of legal facts, but will be put aside as it requires a somewhat different analysis.

2. The Need for Constitutive Determination

In the first part of this article, I would like to tackle a straightforward question regarding the grounding of legal facts: do we have sufficient reasons to claim that there is such a thing as the grounding of legal facts? This might strike the reader as a somewhat trivial question, as the authors usually assume that there is some kind of dependence between the social and the legal. From that point on, they proceed to unravel the features of the grounding relationship and the precise formulation of grounding between social facts and legal facts. Nevertheless, the first step in this analysis is whether we have sufficient reasons to post grounding as a relationship between social and legal facts, one which seems to be overlooked.

For the use of the concept of grounding in the metaphysics of law, we might offer a number of simple arguments. First, we could argue that, in legal parlance, especially in the positivist tradition, the relationship between social facts and legal facts is usually described by expressions such as ‘in virtue of’, ‘makes’, or similar. This might indicate that the intuitions of legal scholars are similar to those connected with the notion of

⁶ S. Chilovi, *Grounding-based formulations of legal positivism*, “Philosophical Studies” 2020/11, pp. 3283–3302; S. Chilovi, G. Pavlakos, *Law-determination as grounding: A common grounding framework for jurisprudence*, “Legal Theory” 2019/1, pp. 53–76; T. Gizbert-Studnicki, *The social sources thesis, metaphysics and metaphilosophy*, in: P. Banas, A. Dyrda, T. Gizbert-Studnicki (eds.), *Metaphilosophy of Law*, Oxford–Portland 2016, pp. 121–146; M. Greenberg, *How facts make law*, “Legal theory” 2004/3, pp. 225–264; S. Mazurkiewicz, *Legal Positivism Social Source Thesis and Metaphysical Grounding: Employing Metaphysical Grounding Based on Metaphysical Laws*, “Archiwum Filozofii Prawa i Filozofii Społecznej” 2019/2, pp. 5–19; D. Plunkett, *A positivist route for explaining how facts make law*, “Legal Theory” 2012/2, pp. 139–207.

⁷ K. Fine, *Guide to ground*, in: F. Correia, B. Schnieder (eds.), *Metaphysical grounding: Understanding the structure of reality*, Cambridge 2012, pp. 37–80.

⁸ R.C. Koons, T. Pickavance, *The atlas of reality: A comprehensive guide to metaphysics*, Hoboken 2017.

⁹ R.C. Koons, T. Pickavance, *The atlas...*

fundamentality, which is essential for grounding. To back this up, we could cite a famous quote regarding the need for specific grounds for legal truths:

Everyone thinks that propositions of law are true or false (or neither) in virtue of other, more familiar kinds of propositions on which these propositions of law are (as we might put it) parasitic. These more familiar propositions furnish what I shall call the 'grounds' of law.¹⁰

Second, the central thesis of positivism, the social sources thesis, is usually framed in a way that suggests dependence and fundamentality, which again indicates that a metaphysical reading of this thesis should incorporate some relationship that encompasses both the fundamentality of social facts and the dependence of legal facts, and this relationship could easily be referred to as grounding.¹¹ This might beg the question of the extent to which grounding is inherently present in legal positivism, and the extent to which this concept is theory-dependent, meaning that, by accepting legal positivism, we are forced to adopt grounding as a thesis about the metaphysical reality of legal positivism. This again is problematic because it can be argued that the grounding of legal facts will only become the description of the basic fabric of the reality of law if the positivist thesis is adopted. If, however, we argue that the social sources thesis should be formulated differently, we could end up with a different stance on legal metaphysics. But, is this inevitable? The argument here applies to the nature of legal facts, meaning that their intrinsic connection to social facts makes dependence and fundamentality implicit for legal metaphysics. This means that, in a way, the grounding thesis is a different formulation of an assumption that is fundamental to legal theory. The critical question here is whether the adoption of grounding as a relationship between social and legal facts, in fact, gives us something more than a simple rephrasing of the known and intuitive relationship between those two kinds of facts.

Knowing that grounding might be an especially natural concept to utilize in the philosophy of law, a theory could be presented that explicitly relies on this notion and tries to explain the nature of law. The theory in question has recently been proposed by Samuele Chilovi,¹² and is limited to the positivistic theory of law, while having explanatory ambitions. The theory starts with a simple formulation of the positivistic thesis using the grounding relationship and proceeds to analyze its consequences. It appears that this simple formulation is inadequate because of specific problems with differentiation between positivism and non-positivism, but could be refined. The refined theory uses the notion of an enabler, understood as a condition that determines whether a given fact grounds another fact. This could be easily incorporated into positivistic theory by stipulating that secondary rules are, in fact, enablers, and it could be summarized by saying that: 'Necessarily, all enablers responsible for the grounding of legal facts are social; & possibly, some legal fact is not grounded in any moral fact'.¹³ The introduction of an enabler is crucial to his position because, among other things, it accounts for the explanation of why legal facts are obtained. So to have a simplified but complete picture of this proposal, social facts enable the grounding of legal facts and enable morality to have a grounding role in certain cases, while, on the other hand, having some kind

¹⁰ R. Dworkin, *Law's empire*, Cambridge 1986, p. 4.

¹¹ For a discussion on the social sources thesis see: S.J. Shapiro, *Legality*, Cambridge 2002.

¹² S. Chilovi, *Grounding-based...*

¹³ S. Chilovi, *Grounding-based...*, p. 12.

of explanation for obtaining the legal facts. Bearing in mind the central tenets of the theory, we can now move on to the central problem of this article.

3. Metaphysical explanation and the philosophy of law

The second question I would like to ask is related to the first. Having established that we have sufficient, albeit peculiar reasons to claim that there is a relationship of metaphysical dependency between social and legal facts and this relationship could be the relationship of grounding, we wonder about the extent to which this relationship could give us a metaphysical explanation of the relationship between those two domains and what we mean precisely by saying that the thesis that legal facts are grounded in legal facts gives us a metaphysical explanation of the legal facts. This explanatory role is usually assumed by views proposing the use of grounding in legal philosophy.

We should start with the issue of the metaphysical explanation, as most of the grounding literature assumes that grounding is closely related to its notion.¹⁴ An attempt to define this notion has to start with the answer to the connection between the metaphysical explanation and the ordinary explanation. It could be assumed that the connection is very close and that the metaphysical explanation is a kind of ordinary explanation or, conversely, that the metaphysical explanation is distinct from the ordinary explanation.

However, the latter strategy might result in us losing our grasp on the nature of the metaphysical explanation.¹⁵ The view that the metaphysical explanation is a kind of ordinary explanation has its own weaknesses. This view might prove problematic as we want grounding to be a worldly and objective relationship, while the explanation is partly subjective because of its pragmatic features.¹⁶ This might be puzzling, but only to the extent to which we stipulate that there is just a single notion of the explanation and that, by definition, it is pragmatic in nature. The literature offers two different approaches to this problem. One is to accept the concern and break the ties between grounding and explanation. However, as a result, this makes grounding useless; as standard practice in the literature is to derive the characteristics of grounding from the concept of an explanation.¹⁷ The second response to the problem is to change the understanding of the explanation to allow its pragmatic features that will be on a par with the objective nature of grounding.¹⁸ Before we move on to this proposal, I would like to emphasize one issue that is sometimes overlooked in the use of grounding in the philosophy of law.

The grounding issue seems to be influential in contemporary legal philosophy. Many scholars have formulated questions and approaches to the legal philosophy that explicitly use the notion of grounding. I have so far presented just one of these approaches of Chilovi¹⁹ to illustrate the potential use in formulating the traditional problems of

¹⁴ K. Fine, *Guide...*; J. Schaffer, *On What Grounds...*; N. Thompson, *Grounding and metaphysical explanation*, "Proceedings of the Aristotelian Society" 2016/1, pp. 395–402.

¹⁵ N. Thompson, *Grounding...*

¹⁶ A.-S. Maurin, *Grounding and metaphysical explanation: It's complicated*, "Philosophical Studies" 2019/6, pp. 1573–1594; A. Skiles, K. Trogdon, *Should explanation be a guide to ground?*, "Philosophical Studies" 2021/178, pp. 4083–4098; N. Thompson, *Grounding...*

¹⁷ A.-S. Maurin, *Grounding...*

¹⁸ A. Skiles, K. Trogdon, *Should explanation...*

¹⁹ S. Chilovi, *Grounding-based...*

philosophy. I would now like to move to the issue of the explanatory force of grounding in contemporary legal philosophy. This will allow the reconstruction of the explanatory needs of analytical theories of law and enable their analysis using the metaphysical debate about the explanatory force of grounding. A caveat is needed here; I will not discuss the debates regarding grounding in the philosophy in law in full; instead, I would like to distill the issues regarding explanation from them.

When dealing with the question of the grounding of legal facts in the social facts, some authors focus on the metaphysical relationship between them, treating this kind of explanation as constitutive and giving both epistemic and ontic insights.²⁰ Furthermore, according to the Mark Greenberg's proposal, the explanation provided by the grounding of legal facts should foster intelligibility, transparency and reason-giving.²¹ This constraint gives us a certain view of the explanatory demands of the successful use of the grounding thesis in the philosophy of law.

These three constraints are tailored to account for the intelligibility of grounded facts, understand the mechanism of the change, and provide explanatory reasons as to why the grounded legal facts obtain.²² In summary:

The driving insight, in other words, appears to be that the content of the law should in principle be accessible to someone who is aware of the law-determining facts, so that it should be possible for someone who possesses knowledge of all the legal determinants to acquire knowledge of the legal facts on the basis of this prior knowledge.²³

At this point, the scope of the inquiry should be restricted. One might wonder how to properly build a legal ontology, possibly based on the notion of reason-giving, from the problems of specifying the grounding base.²⁴ For this inquiry, I will use the notion of reasons-why in the last part of the article by arguing how to make room for this notion in the objective and worldly theory of legal grounding, and I will not elaborate any further on the legal epistemology, as the questions posed in this article are more metaphysical. As mentioned in the literature, those constraints are mainly epistemic in nature, but this epistemic flavor is translatable into the metaphysical realm. As for the metaphysical side of the story, some scholars assume that grounding is closely related to the explanation, either being or backing its metaphysical explanation.²⁵

This suggests that there is an intimate relation between the notion of ground and that of a reason why: if something is a ground for something else then it should be apt for figuring within an explanation of the grounded fact, and should be so apt in virtue of providing a reason why the grounded fact obtains.²⁶

The problem of specifying the correct relationship between the metaphysical explanation and grounding seems to be orthogonal to the questions of legal metaphysics for legal scholars. I claim the contrary.

To summarize the main views regarding the peculiar character of legal grounding, some scholars seem to favor a special character for legal grounding, effectively posing

²⁰ M. Greenberg, *How facts...*; D. Plunkett, *A positivist...*

²¹ S. Chilovi, G. Pavlakos, *Law-determination...*; M. Greenberg, *How facts...*

²² M. Greenberg, *How facts...*

²³ S. Chilovi, G. Pavlakos, *Law-determination...*

²⁴ S. Chilovi, G. Pavlakos, *Law-determination...*

²⁵ S. Chilovi, G. Pavlakos, *Law-determination...*

²⁶ S. Chilovi, G. Pavlakos, *Law-determination...*, p. 67.

problems for the metaphysics of law. Some views suggest that legal grounding might not be grounding at all. This passage commenting Mark Greenberg's views summarizes this issue well:

In this vein, several remarks by Greenberg (see especially 2004, pp. 160, 164, 165, 170) revolve around the idea that though in general metaphysical determination can be brute, in the sense that even a perfectly rational creature may not be able to see how a certain derivative fact is related to its determinants, this is not so in the legal case. The case of legal grounding is special, in that the explanation must make the explanandum intelligible, and the relation between legal facts and their grounds be transparent: legal facts – unlike perhaps other sorts of facts – should in principle be accessible to a rational creature who is aware of their grounds. In Greenberg's (2004, p. 160) words, '[i]f it is not in principle intelligible why the determinants of legal content – the relevant descriptive facts – make the law have certain content, then it does not have that content'.²⁷

However, this interpretation has been criticized by stating that the special character of grounding manifests itself in the epistemic realm by stipulating the special reason-giving feature of legal grounding, something which is not in conflict with the ordinary concept of grounding.²⁸

To return to the main line of thought, we can summarize a legal theoretician's view on grounding and the explanatory role it should serve for the philosophy of law from the above remarks. This should allow us to discuss some additional problems and answer the question of whether grounding is useful for the philosophy of law. Therefore, from the legal perspective, grounding should be a constitutive determination relationship between social and legal facts. Furthermore, it should give an explanation of this connection (or back some kind of explanation). The explanation should be metaphysical, thereby giving us a view into the ultimate legal reality. Moreover, in the legal theoretic literature, and as suggested earlier, one of the crucial points is the link between metaphysical determination and reason giving: or rather, reasons for offering a way of elucidating the explanation through the idea that the grounds of legal facts should always provide normative (epistemic) reasons for believing that the facts they ground obtain. According to the 'Reasons Why' view, grounds offer epistemic support for the truth of the legal propositions they determine, by constituting evidence that the legal facts are as they are:

if some facts Δ ground a legal fact L , then Δ provide objective reasons for L , so that knowing the facts in Δ – or possessing the reasons they give – would provide one with subjective reasons to believe that L is the case.²⁹

Therefore, having access to a grounding base for legal facts would be a sufficient reason to justify one's beliefs that legal facts are obtaining. This could be the case not only for legal grounding, but also for ordinary grounding and could be a way of dealing with the known problem of justifying the pragmatic structure of explanation in the case of grounding as an explanation: 'One could therefore even speculate that a principle such as reasons why constitutes the correct explication of the often assumed, but hard to pin down, contention that grounding is explanatory in a distinctively epistemological sense'.³⁰

²⁷ S. Chilovi, G. Pavlakos, *The Explanatory Demands of Grounding in Law*, "Pacific Philosophical Quarterly" 2021/4, pp. 900–933.

²⁸ S. Chilovi, G. Pavlakos, *The Explanatory...*

²⁹ S. Chilovi, G. Pavlakos, *The Explanatory...*

³⁰ S. Chilovi, G. Pavlakos, *The Explanatory...*

4. Unionism, Separatism, and Explanatory Force of Grounding

Thus far, I have glossed over the debate regarding the connection between metaphysical explanation and grounding. Now, having established that the notion of reason-giving might be especially useful in the metaphysics of law, we should inspect this issue more closely. The problem posed earlier, connected with understanding the grounding relationship and its ties to the metaphysical explanation, boils down to the observation that, usually, when we are using the concept of grounding to characterize the target domain, we assume that grounding is an objective relationship which stands for the real nature of things. Furthermore, grounding should be closely connected to the explanation, usually in the form of a metaphysical explanation.³¹ This might pose a noteworthy worry because the metaphysical explanation is usually perceived as having agent-relative features that are on par with the objective characteristics of grounding.³²

Moreover, the precise manner in which grounding and metaphysical explanation are related to one another is an object of another debate, which might complicate things even further. The debate about the relationship between these two notions is moving in two directions. First, there are grounding theoreticians, who assume that grounding is simply a metaphysical explanation.³³ Second, we could say that there is a strong connection between grounding and explanation, but this connection manifests itself in grounding a backing explanation.³⁴ The debate between those two views, called unionism and separatist respectively, are not merely verbal as:

Unionists are committed to there being instances of a distinctive form of explanation and providing an account of what it's like. They do not have a corresponding commitment regarding any form of determination. For separatists, things go in the reverse.³⁵

If we assume that the pragmatic features of the explanation pose a serious threat to the theory of grounding, we should address this concern. It should be noted that adopting the unionist or separatist stance might complicate things unduly. For unionism, apparently, the problems seem to be more forcing: as grounding and explanation are to be identical, there is no room for incorporating any pragmatic features and for being consistent with grounding as being objective and worldly. This forced some scholars to conclude that, for unionism, the explanatory nature of grounding is somewhat abnormal and, in turn, grounding cannot be characterized in terms of the ordinary explanation as it is usually done.³⁶ Things do not look much better for the separatists, because we might say that the problem is not that considerable due to the existence of the backing connection between those two. However, at the same time, we do not have sufficient reason to back the grounding aptness of backing the metaphysical explanation.³⁷ This might warrant the conclusion that we should separate the grounding

³¹ L. DeRosset, *Getting priority straight*, "Philosophical Studies" 2010/1, pp. 73–97; K. Fine, *The question of realism*, in: A. Boltani, M. Carrara, P. Giaretta (eds.), *Individuals, Essence and Identity*, Berlin 2002, pp. 3–48; K. Fine, *Guide...*; N. Thompson, *Grounding...*

³² N. Thompson, *Grounding...*

³³ S. Dasgupta, *Constitutive explanation*, "Philosophical Issues" 2017/1, pp. 74–97; J.E. Litland, *Grounding, explanation, and the limit of internality*, "Philosophical Review" 2015/4, pp. 481–532.

³⁴ P. Audi, *A clarification and defense of the notion of grounding*, in: F. Correia, B. Schnieder (eds.), *Metaphysical grounding: Understanding the structure of reality*, Cambridge 2012, pp. 101–121; J. Schaffer, *On What Grounds...*

³⁵ A. Skiles, K. Trogdon, *Should explanation...*, p. 4.

³⁶ A.-S. Maurin, *Grounding...*

³⁷ A.-S. Maurin, *Grounding...*, p. 1573.

from the explanation and develop a different strategy for analyzing the grounding relationship. Another view of Alexander Skiles and Kelly Trogdon suggests that we have a way to say that explanation is objective and still does not claim that it is unmotivated, meaning that it does not have any subject-related features.³⁸ According to this proposal, we could develop a representational account of the explanation by creating models that represent ontic relations (backing the tracking of grounding into the explanation) and an explanation according to the model whereby it must be in relation to the content of the model to a certain extent, which must be epistemically available.³⁹ In turn, this makes representations fully objective (ontic condition), and the whole model puts us in a position of understanding how certain entities produce phenomena (subject condition).⁴⁰ The main objective of this proposal is to claim that the subject condition is not part of the nature of the explanation, which in turn will enable a close connection to be presented between an explanation and grounding. As for the weaker take on explanation, which we might apply for specific endeavors, does a general worry still apply? Skiles and Trogdon claim that we have independent reasons to assume a close connection between grounding and explanation.⁴¹ As for the unionists, the problem might be answered again, by adopting the representational approach to explanation and avoid the conundrum and, even endorse the objective approach to the explanation.⁴²

As for legal grounding, the standard assumptions are that the grounding is a fully objective and worldly relationship (strong grounding realism), while, at the same time, an explanation should generate some agent-relative features of the explanation. Fully objective should be understood as not being, by its nature, subject-involving.⁴³ The first assumption should not be problematic, as the reasons for introducing grounding to the legal theory strongly suggest that the grounding of legal facts in social facts is an objective matter. This means that the grounding of legal facts in the social facts obtains objectively and not only if certain epistemic conditions are satisfied. The grounding of legal facts in social facts is not dependent on the epistemic or psychological state of a certain agent. However, the second assumption should be unraveled and analyzed in greater depth. The crucial issue is that the explanation arising from the grounding of legal facts should provide reasons as to why this obtains. The relationship between the reason why and grounding, assumed by the legal scholars, is: 'Reasons Why If a collection of facts Δ fully grounds a legal fact L, then the facts in Δ provide epistemic, explanatory, reasons why L obtains'.⁴⁴ This suggests that Reasons Why are a part of the explanation that arises from the grounding of the legal facts and therefore that explanation is not fully objective because it essentially involves subject-dependent features. This in turn begs the question: how to make room for the reason-giving nature of the legal grounding within the picture of objective grounding?

Let us reframe the picture of legal grounding in legal positivism. Using the framework used by Chilovi,⁴⁵ we could say that the enablers for legal grounding are social, and possibly some legal facts are not grounded in moral facts. This should give us the objective notion of a grounding relationship between social and legal facts. This thesis should be generally

³⁸ A. Skiles, K. Trogdon, *Should explanation...*, p. 5.

³⁹ A. Skiles, K. Trogdon, *Should explanation...*

⁴⁰ A. Skiles, K. Trogdon, *Should explanation...*

⁴¹ A. Skiles, K. Trogdon, *Should explanation...*

⁴² A. Skiles, K. Trogdon, *Should explanation...*

⁴³ A. Skiles, K. Trogdon, *Should explanation...*

⁴⁴ S. Chilovi, G. Pavlakos, *The Explanatory...*

⁴⁵ S. Chilovi, *Grounding-based...*

supplemented with another that the full grounding of a given legal fact should give us an epistemic, explanatory reason as to why it obtains.⁴⁶ Chilovi and Pavlakos assume that the reason provided by this thesis is a normative reason.⁴⁷ Therefore, the final question of this article will be: how exactly should we structure an explanation by grounding to allow the grounding of legal facts to give us reasons why it obtains? It will not be surprising that I think that the correct approach to grounding in legal philosophy will be that of a separatist nature, conjoined with the representational nature of the explanation with the Reasons Why as the additional, agent-relative input. As for the separatist approach, it seems to me that, for legal scholars, the main task of the grounding is to be a determination between social and legal facts, and this, in turn, should back such an explanation of this state of affairs. In this framework, the explanation is a representational model for the ontic relationship between legal and social facts; in this sense, it will account for the backing relationship needed by the separatist account of grounding. In turn, the content of the model should be available for the subjects, creating a good or successful explanation which supplies the normative reasons required by legal theoreticians. In this manner, both grounding and explanation remain objective. Explanation is the guide to the ground and, on the other hand, we allow the creation of normative reasons based on the representational model of the ontic structure of the legal domain.

5. Conclusion

The relationship between social and legal facts is a central problem in the philosophy of law. In recent years, the advent of tools from analytical metaphysics has allowed a different perspective to be taken by offering new conceptual ways to explain this puzzling relationship to satisfy the explanatory needs of a successful legal, philosophical theory. One highly debated concept used by analytical legal philosophers is that of grounding. This article has presented a simple analysis of a possible framework for understanding legal grounding, one which assumes that, due to the reason-giving nature of legal grounding, the concept of explanation employed within a legal theory should be representational in nature, while grounding should be understood in a separatist manner. However, the above inquiry should be treated as a starting point of the debate, as the exact meaning of the representational explanatory model for a legal theory should be investigated further and the debate between unionists and separatists in the legal domain should receive its own discussion.

An explanatory framework for legal grounding

Abstract: The objective of this article is to provide an explanatory framework for legal grounding. Grounding, understood in recent years as a metaphysical determination, has proved to be a fruitful object of inquiry for legal theorists trying to explain the thesis about the relationship between social facts and legal facts in metaphysical terms. However, the debate on the use of the notion of grounding in the philosophy of law lacks a concise and precise differentiation of the various assumptions behind grounding that philosophers have recently discussed. This article offers a prospect for analysis of a debate about grounding of legal facts and an interpretation of focal terms in light of recent metaphysical debates.

Keywords: grounding, explanation, philosophy of law, legal facts, social facts

⁴⁶ S. Chilovi, G. Pavlakos, *The Explanatory...*

⁴⁷ S. Chilovi, G. Pavlakos, *The Explanatory...*

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