



LAW AND PRACTICAL REASON

**BERNARD WILLIAMS ON
LAW AND JURISPRUDENCE**

FROM AGENCY AND RESPONSIBILITY
TO METHODOLOGY

EDITED BY
DANIEL PEIXOTO MURATA,
JULIETA A RABANOS AND
VERONICA RODRIGUEZ-BLANCO

BERNARD WILLIAMS ON LAW AND JURISPRUDENCE

This book is the first collection of essays on Bernard Williams' moral and political philosophy to shed light on the nature of law, and key legal concepts. By the time of his death in 2003, Williams was widely regarded as the most important moral philosopher of his generation. Surprisingly, his work is still largely under-discussed in legal theory. This book aims to fill this gap with brand new discussions from scholars both from law and philosophy.

The first part of the book focuses on Williams' work on responsibility and regret and its implications for law. Drawing from Ancient Greek authors, Williams maintained that luck might play a key role in our practices of responsibility and that some dimensions of responsibility are tied to the notion of having a character. What we do – intentionally or not – might affect our understanding of ourselves and of our place in the world. How do those ideas help us in making sense of legal responsibility? How do broader concerns about our practices of responsibility impact the law? Those are some of the questions addressed by the authors in this part.

The second part looks at how Williams' understanding of philosophy can shape the way we do jurisprudence. Williams' work on the methodology of philosophy combines resources from analytical philosophy, continental authors, history, and literature. He understood philosophy as a humanistic discipline. The authors in the second part of the book draw from Williams' work, notably his innovative take on the genealogical method, to discuss how we could practise legal philosophy in this same spirit.

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Bernard Williams on Law and Jurisprudence

*From Agency and Responsibility
to Methodology*

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CONTENTS

<i>Acknowledgements</i>	vii
<i>List of Contributors</i>	xi

<i>Introduction: Bernard Williams as a Legal Philosopher</i>	1
Daniel Peixoto Murata, Julieta A Rabanos and Veronica Rodriguez-Blanco	

PART I RESPONSIBILITY, REGRET, AND THE LAW

1. <i>'The Idea of the Voluntary is Essentially Superficial': Bernard Williams on Responsibility and Political Freedom</i>	23
Ulrike Heuer	
2. <i>The Politics of Civic Maturity v the Politics of Justice: Reflecting on Bernard Williams' Separation Thesis</i>	41
Veronica Rodriguez-Blanco	
3. <i>Internal Reasons, Motivation, and the Proleptic Nature of Blame</i>	67
Gerald Lang	
4. <i>Taking the Edge Off Professional Ethical Dilemmas</i>	85
Emmanuel Voyiakis	
5. <i>Response-Norm Concepts in Law and Morality: A Qualified Defence of Moral Luck</i>	103
Benjamin C Zipursky	
6. <i>Thinking about Shame and Necessity in Liberal Constitutional Theory</i>	125
Emily Kidd White	
7. <i>Political Realism, Tragedy, and the Violent Foundations of the State: Reading The Man Who Shot Liberty Valance with Bernard Williams</i>	141
David Owen	

PART II WILLIAMS ON THE METHODOLOGY OF PHILOSOPHY AND JURISPRUDENCE

8. <i>Creon's Revenge: Lawfulness and the Genealogy of Law</i>	161
Stephen Bero	

9. <i>Law and Lawfulness: Genealogy, Jurisprudence and the Thought of Bernard Williams</i>	181
Christopher Tollefsen	
10. <i>The Idea of Humanistic Middle-Range Theory</i>	197
Damian Cueni	
11. <i>Why Can't Law be More Like Morality?</i>	219
Christopher Kutz	
12. <i>An Unusual but Successful Philosophical Marriage in Bernard Williams: Nietzsche and Wittgenstein</i>	229
Ronaldo Porto Macedo Jr	
13. <i>Law as a Test of Conceptual Strength</i>	249
Matthieu Queloz	
14. <i>Practical Reasoning as Interpretation: Williamsian Remarks on Dworkin's Methodology</i>	269
Daniel Peixoto Murata	
15. <i>A Williamsian Account of Jurisprudence as Conceptual Morphology</i>	285
Miodrag Jovanović and Bojan Spaić	
<i>Index</i>	303

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Introduction: Bernard Williams as a Legal Philosopher

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I. Bernard Williams: An Overview and Some Lessons for Legal Philosophy

Bernard Arthur Owen Williams is often considered one of the most prominent moral philosophers of the 20th century. Having studied *Greats* at Oxford, he was as comfortable discussing minutiae of contemporary philosophy as he was in discussing opera and Greek literature. His erudition and humanistic character were not the only traits that separated him from most analytical philosophers, however. Williams was also engaged in British political life. He took part in many royal commissions and committees, such as the drug abuse and the gambling ones, and famously chaired the Committee on Obscenity and Film Censorship (*The Times* 2003). In the academic realm, he held positions at the Universities of Cambridge, Princeton, Berkeley, and Oxford, among others. Williams was knighted in 1999 and passed away in 2003 after four years battling against cancer.

Also different from other great moral and political philosophers of his time, such as John Rawls, it is hard to identify a *Williamsian* way of doing philosophy. We can confidently say that Will Kymlicka and Samuel Freeman are *Rawlsians* (despite all the inherent distortions that such *isms* and *ians* entail). There are some traits that we can pinpoint, such as the use of a certain philosophical toolbox that distinguishes a thinker as Rawlsian. This is not as straightforward regarding Williams; however, as we will try to argue – or rather, gesture – in this Introduction, there indeed *is* a Williamsian way of doing philosophy, and legal philosophy has much to gain from it. Within the scope of this text, we can only hope to present in fairly schematic terms some of Williams' insights and their relevance to jurisprudence.¹

One aspect of Williams' corpus that certainly plays a role in explaining why it is difficult for people to identify *the Williamsian way* is that much of his work,

¹ For the purposes of this Introduction, we will use 'jurisprudence', 'legal theory' and 'legal philosophy' as synonyms.

Webber *et al* (2018) *Legislated Rights: Securing Human Rights Through Legislation* (Cambridge, Cambridge University Press).

Williams, B (1979) 'Internal and External Reasons' in B Williams, *Moral Luck* (Cambridge, Cambridge University Press).

— (2002) *Truth and Truthfulness: An Essay in Genealogy* (Princeton, Princeton University Press).

— (2005) 'Realism and Moralism in Political Theory' in B Williams (G Hawthorn, ed), *In the Beginning Was the Deed* (Princeton, Princeton University Press).

— (2006) 'Philosophy as a Humanistic Discipline' in B Williams (AW Moore, ed), *Philosophy as a Humanistic Discipline* (Princeton, Princeton University Press).

10

The Idea of Humanistic Middle-Range Theory

DAMIAN CUENI*

I. Introduction

In his Annual Lecture of the Royal Institute of Philosophy in the year 2000 on 'Philosophy as a Humanistic Discipline', which subsequently lent its name to a posthumously published edited collection, Bernard Williams prominently called for philosophy to be understood and practised as a 'humanistic discipline' (Williams 2006a: 180). But while especially Williams' later work was clearly meant to exemplify such an approach,¹ it is far from clear *what* it ended up exemplifying. In this chapter, I shed light on this question through an analogy between theories of the middle range in sociology and Williams' work on a range of topics such as truthfulness, blame, voluntariness, and liberty. This will highlight the *humanistic middle-range* character of significant parts of Williams' work that has so far largely been missed and suggest new ways of thinking about how 'a space is to be found between facts and norms' – a phrase that Williams (2005c: 10) adopted from Jürgen Habermas (1996) – that can then also be generalised to legal scholarship.

My chapter makes three contributions: first, I develop the relevant sense of *humanism* by contrasting it with two other '-isms' that preoccupied Williams throughout his work, scientism and moralism. I will show that both scientism and moralism are connected to an ideal of *purity from contingency* and suggest that Williams himself, in calling for philosophy as a *humanistic* discipline, meant to embrace the *impurity* of a more integrative approach. Second, I explicate the sense

* This chapter was first written during my time as a postdoctoral fellow at the Bonavero Institute of Human Rights and Lincoln College, University of Oxford. I thank all the participants of the conference on this volume at the University of Surrey for their helpful feedback as well as Matthieu Queloz, David Owen, and the editors for written comments on an earlier draft. My research for this chapter was supported by grants no 191264 and no 206544 of the Swiss National Science Foundation.

¹ See in particular the reference to 'a case on which I am presently working, the virtues associated with truthfulness' in (Williams 2006a, 192). This ultimately became Williams' final major work (Williams 2002).

in which Williams was a humanistic *middle-range theorist* along five dimensions. To do so, I take Williams' invitation to look for 'models or ideals or analogies' that help us think 'about the ways in which philosophy should be done' (Williams 2006a: 180) to heart and draw a surprisingly illuminating analogy between his philosophical work and 'theories of the middle range' in sociology, especially in the work of Robert K. Merton.² Third, what emerges from my account is the precise sense in which Williams was a *humanistic middle-range theorist* that can then also be generalised to legal scholarship. I provide a general methodological framework for humanistic middle-range theories, and thus for practising both philosophy and law as a *humanistic discipline*.

Given my aim to develop the idea of humanistic middle-range theory in philosophy and legal scholarship, my chapter is written in Williams' spirit of engaging with the history of philosophy – in this case with Williams' own philosophy – to contribute to contemporary philosophical and legal debates. Section II explains what intellectual currents Williams was responding to in calling for philosophy as a *humanistic discipline* and what this implies for how we are to understand this idea. Section III suggests that Williams' understanding of philosophy as a humanistic *discipline* can be further elucidated by drawing an analogy to theories of the middle range in sociology and presents an account of such theories that can serve as a basis for the analogy. Section IV draws on that account to explain the sense in which Williams' work on topics like truthfulness, blame, and voluntariness can be understood as a *humanistic middle-range theory*. Finally, section V uses Williams' account of liberty as a political value to sketch a humanistic middle-range theory of the doctrinal distinction between 'infringing' and 'violating' basic rights and thus illustrates how we can extend the idea of humanistic middle-range theory from philosophy to legal scholarship.

II. Philosophy as a Humanistic Discipline?

Williams himself never offered a complete account of what he meant by his call to practise 'philosophy as a humanistic discipline'. I will thus begin by offering my own negative and a positive characterisation.

Starting with the negative characterisation, Williams' call to practise philosophy as a humanistic discipline can be understood as a response to two intellectual distortions that preoccupied him throughout his work: scientism and moralism. Whereas scientism concerns our empirical picture of the

² While this analogy is primarily of independent interest, Williams was also an enthusiastic reader of Merton's work, which provides an additional reason for pursuing it in the context of this chapter. I thank Patricia Williams for making me aware of Williams' keen interest in Merton's work in our personal conversations.

world and aims to rid that picture of the impurities of more local descriptions, moralism concerns our normative outlook towards the world and aims to rid that outlook of any empirical influences. Both are intellectual distortions that attempt to escape what Richard Moran (2016) has called the inescapable 'impurity' of any inquiry that engages with the contingencies of human sense-making and acting. In considering these two intellectual distortions together, we can thus also come to understand that what animated Williams' 'humanism' was a search for something that lies beyond the purity demanded by scientism and moralism.

The problem of scientific distortion is central to Williams' lecture on philosophy as a humanistic discipline. With the term *scientism*, Williams refers to an outlook that 'tends to assimilate philosophy to the aims, or at least the manners, of the [natural] sciences' (2006a: 182). What preoccupied him the most was the idea that philosophy should aspire to emulate the natural sciences in describing the world 'as it is in itself, independent of perspective' and thus remain pure from the contingencies of more local ways of sense-making (2006a: 184). Williams did not agree with those who deny that such independent descriptions are possible at all. For him, there *is* a fundamental contrast between philosophy and the natural sciences, because the aim to describe the world in a way that is 'to the largest possible extent independent of the local perspectives or idiosyncrasies of enquirers' (2006a: 184) is at least *intelligible* in the natural sciences in a way that it is not in philosophy (and indeed in the whole humanities and social sciences). But against those that conclude from this contrast that more absolute descriptions are 'intrinsically superior to more local conceptions' (2006a: 187), Williams defended the value of engaging with the more local conceptions as part of the philosophical enterprise. Williams' rejection of scientism is thus the first reason that led him to look towards the humanistic disciplines, and particularly history and the interpretive social sciences.

In contrast to scientism, the problem of moralistic distortion receives no mention in Williams' lecture on philosophy as a humanistic discipline.³ But it is clear from his other philosophical writings, especially his most famous book *Ethics and the Limits of Philosophy* (2011: 218), that Williams' second main reason for practising philosophy as a humanistic discipline was to get away from *moralism*, which is a particular style of ethical thought that distorts our practical thinking across the board. While scientism models itself on the aims of the natural sciences, moralism wishes to remain pure from *any* empirical commitments. It draws a stark dichotomy between empirical and normative considerations, and also between *pure* moral and *impure* non-moral normative considerations that may be shaped by historical, social, and psychological contingencies. Apart from the fact that these dichotomies are inadequate to account for the

³ But see Williams 2006b: 155 for an argument that connects political philosophy to the idea of philosophy as a humanistic discipline.

thick normative terms in which we often make sense of the world, moralism sometimes goes so far as to maintain that empirical and non-moral normative considerations may not even inform practical theorising, but merely serve as an input within a moral calculus or formula that is determined through a process of pure abstraction (2011: 58). The closest disciplinary analogue here is mathematics: the normative considerations that seem pertinent to us in everyday life are subjected to an ideal of systematicity that at the limit means that everything can ultimately be derived from one pure moral consideration. While this aspect is often missed in responses to Williams' various critiques of 'moralism',⁴ the aspirations of philosophy in a moralistic style are thus intimately connected to an ideal of ethical *theory*.

Having considered these intellectual distortions generated by scientism and moralism, we are better able to understand the sense in which philosophy as a humanistic discipline is a search for a model of practising philosophy that *lies in between facts and norms*. Whereas scientism aims for a purely descriptive inquiry that is insensitive to more local perspectives, moralism aims for a purely normative inquiry that is insensitive to empirical commitments. Both scientism and moralism thus wish to practise philosophy in a way that lives up to an ideal of *purity from contingency*. To paraphrase Jean-Paul Sartre (1946), moralism is a scientism and vice versa, because both are rooted in the same demand for purity. But if moralism is a scientism and scientism is a moralism, *what is humanism?* Understanding Williams' reasons for rejecting the demand for purity also helps us to develop a positive characterisation of 'philosophy as a humanistic discipline' as a *solution* to the intellectual problems raised by scientism and moralism. This solution draws an analogy between philosophy and the 'humanistic disciplines' instead of the natural sciences and involves a very different ideal of philosophical theory that contrasts with the search for purity.

We can transition to this positive characterisation of philosophy as a humanistic discipline by noting that Williams explicitly starts his lecture by stating that his animating question is: 'what models or ideals or analogies should we look to in thinking about the ways in which philosophy should be done?' But while he subsequently focused on developing the connections between philosophy and history (Williams 2006a: 180),⁵ I will argue that the kind of 'theory' that he ended up doing in most of his work is best illuminated by an analogy to 'theories of the middle range' in sociology.⁶ This analogy helps us to understand that, although Williams always emphasised the limits of *moral* theory, he himself presented

explanatory theories with a distinctive normative upshot in his philosophical work on notions like truthfulness, blame, and voluntariness. In what follows, I will suggest that these contributions are best understood as an exercise in 'humanistic middle-range theory'.⁷

III. Theories of the Middle Range in Sociology

To develop the idea of humanistic middle-range theory, I will now provide the basis for an analogy to theories of the middle range in sociology.⁸ In the words of Robert K. Merton – who introduced the term 'theories of the middle range' in the first edition of *Social Theory and Social Structure* (1949: 5) and then significantly expanded his account in the third edition – such theories 'lie between the minor but necessary working hypotheses that evolve in abundance during day-to-day research and the all-inclusive systematic efforts to develop a unified theory' (Merton 1968: 39). But as Peter Hedström and Lars Udehn note in the most extensive discussion of such theories in sociology, much like Williams, Merton never so much defined the idea of 'theories of the middle range' as he exemplified it in his work (Hedström & Udehn 2011: 25). I will therefore draw on Hedström and Udehn's discussion of the idea of middle-range theory in Merton's work to identify the features of such theories that can then serve as the basis for an analogy.

The most obvious basis for an analogy between Williams' and Merton's middle-range theories is that Merton himself also primarily characterised the idea of middle-range theory in a negative way, namely in contrast to 'minor but necessary working hypotheses' and 'the all-inclusive systematic efforts to develop a unified theory'. Consider first the contrast between theories of the middle range and 'unified' or 'grand' (Merton 1968: 48) theories: examples of the latter that Merton explicitly discussed include Parson's theory of social systems (1968: 68), Marxist social theory (1968: 43), German idealism (1968: 45), the work of the founding fathers of sociology Comte and Spencer (1968: 46), and the historical grand narratives of Sorokin and Toynbee (1957: 107). Insofar as there is a common thread in this contrast between theories of the middle range and grand theories, it seems to be the idea of an *esprit de système*⁹ that pervades

⁴ See especially the various reactions to the posthumously published 'Realism and Moralism in Political Theory' (Williams 2005c), where the relevant sense of 'moralism' cannot be properly understood without reference to Williams' critique of moral *theory* in Williams 2011. See also Owen 2018 on the connection between Williams' political realism and his critique of what he called 'the morality system'.

⁵ See especially Williams 2014b.

⁶ It should be stated at the outset, however, that any positive analogy also presupposes negative analogies, in the terminology of Hesse 1966. My claim is not that Williams' philosophical work should be understood as a kind of sociology.

⁷ What follows elucidates just one way of practising philosophy as a humanistic discipline, and I do not suggest that it captures everything Williams himself meant by this term. For a related discussion that focuses much more on the link to history than I do here, see Queloz 2021a. See also Sagar (2016; 2018: 217–19, 238–40) for an account that is more focused on political theory.

⁸ For an argument that sociology itself should be understood as a humanistic discipline, see Berger 1963.

⁹ While this is the term used by Merton, see Merton 1968: 46, his use is arguably closer to what d'Alembert's *Discours préliminaire* (1751) called the *esprit systématique* in his rejection of the *esprit de système*.

all 'total systems of sociological theory' (Merton 1968: 45–48).¹⁰ But if Merton rejected total system-building, what did he then propose instead in striving for a middle-range theory?

To arrive at a positive understanding of what is meant by theories of the middle range that can then serve as a basis for a more sustained analogy, we can draw on Hedström and Udehn's analytical notions of middle-range generality and middle-range isolation. First, *generality* concerns variation along a dimension of the *explanandum* (Hedström & Udehn 2011: 28). A more general theory explains a wider range of phenomena, whereas a less general theory explains only specific phenomena. This notion of generality allows us to sharpen the contrast between theories of the middle range and grand theories while also clarifying the contrast with 'minor working hypotheses' that we have so far left unexplained. Grand theories in Merton's sense purport to explain all social phenomena, whereas minor working hypotheses only purport to explain specific phenomena or occurrences. For example, whereas a quasi-Hegelian account of the inevitable progression towards more truthfulness in human affairs would be a grand theory, a folk psychological explanation that purports to explain why somebody acted truthfully in a particular instance is a minor working hypothesis in Merton's sense.¹¹ Of any explanatory theory, we can always ask: what is the generality of the explanandum? The first dimension along which theories can lie in the middle range is thus *the middle-range generality of the explanandum*.

The second analytical notion proposed by Hedström and Udehn to offer a more positive characterisation of theories of the middle range concerns variation along a dimension of the explanans. Drawing on work by Uskali Mäki (1992) on the methodology of economics, they introduce the idea of *isolation* as

a certain kind of abstraction, which consists in focusing attention on certain explanatory factors at the expense of others. For example, if the set of possible explanatory factors consists of [a,b,c,d] and we focus exclusively on [a,b] we have performed an isolation (Hedström & Udehn 2011: 28).

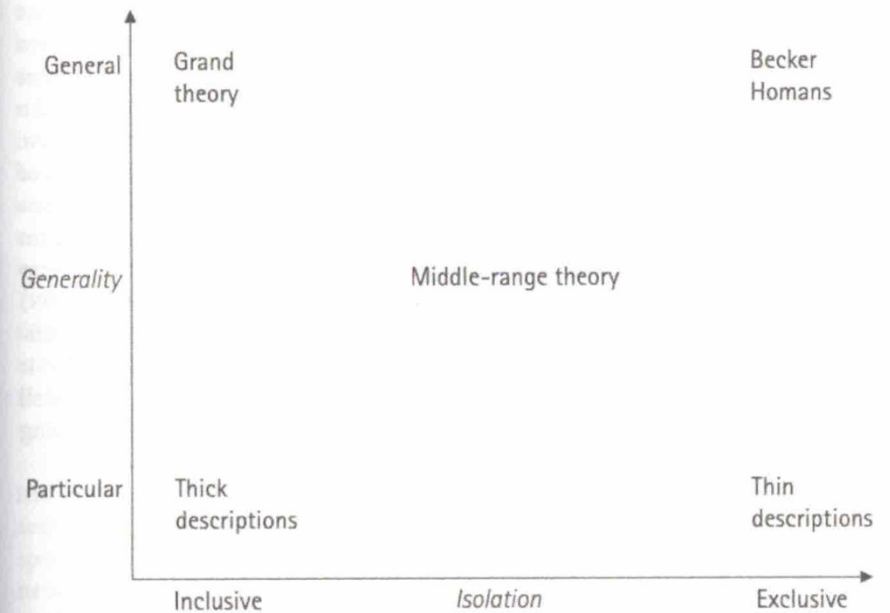
It is not difficult to see that many economic forms of explanation, especially in rational choice theory, are characterised by a very high degree of isolation. To render the sense of degree more precise, Mäki (1992) also introduced further terminology to distinguish between the excluded set [c,d], which he refers to as the *excluded field*, and the included set [a,b], which he refers to as the *isolated field*. Of any explanatory theory, we can always ask: what is the size of the isolated field in relation to the excluded field, and thus the degree of isolation in the explanans? The second dimension along which theories can lie in the middle range is therefore *the middle-range isolation of the explanans*.

¹⁰ Interestingly for present purposes, Merton also argued that this urge to develop a system found its roots in a 'misplaced comparison with the physical sciences' (see 1968: 48).

¹¹ Compare Dennett 1989 on how the 'intentional stance' allows us to construct such hypotheses in our everyday interactions.

Hedström and Udehn then use these notions to derive a graphical illustration of the sense in which a sociological theory can be said to be a theory of the *middle range* along the two axes of generality and isolation.¹²

Fig 10.1 Generality, isolation, and the defining characteristics of middle-range theories



In this Figure, the horizontal axis refers to the degree of isolation and the vertical axis charts the degree of generality. Middle-range theories live up to their name by lying in the *middle range* of both axes. Starting with the degree of generality on the vertical axis, grand theories and rational choice explanations purport to explain virtually all social phenomena and are thus at the top end; whereas at the bottom end are explanations of particular phenomena or events such as the ethnographic descriptions of local practices that Clifford Geertz (2017: Ch 1) called 'thick descriptions' as well as thinner descriptions like a mere chronicle of the 2008 financial crisis. To distinguish between these 'theories' at the top and the bottom end of the vertical axis, we must then bring in the horizontal axis, which charts the degree of isolation. Whereas a grand theory purports to explain all social phenomena by taking into account all explanatory factors and is thus all the way on the top-left, rational choice theories such as the ones proposed by Gary S. Becker (1976, 2009) explicitly *isolate* certain factors at the expense of others and are thus on the top-right.¹³ Similarly, more inclusive thick descriptions are on the

¹² See Fig 2.1 in Hedström and Udehn 2011: 29, which is reproduced as Fig 10.1 above.

¹³ As grand theories like Marx's historical materialism make clear, a low degree of isolation is compatible with a very narrow initial set of possible explanatory factors. In fact, a grand theory probably

bottom-left, whereas mere chronicles, which privilege the events in the chronicle over more structural factors,¹⁴ are on the bottom-right. Through the notions of generality and isolation, we thus have a graphical illustration of theories in the *middle range*.¹⁵

But before we proceed to illustrating how Williams' work can similarly be understood as an exercise in *humanistic middle-range theory*, I want to highlight two other features of middle-range theories in Merton's sense that will provide a further basis for my analogy. First, it is central to Merton's particular development of theories of the middle range that they make the link between the micro and the macro level an explicit part of the theory and thus take a *middle-range perspective*. As Hedström & Udehn (2011: 32–37) explain, this distinguishes Merton's form of 'structural individualism' (Udehn 2002: 318–19) from the more common associations of his work with functionalism (Merton 1968: Ch III) and structuralism (Stinchcombe 1986). Second, Merton's emphasis on the link between the micro and the macro level, together with an emphasis on what John Elster (1989, 1999) has called mechanism-based explanations, gives rise to something that may justifiably be described as a *middle-range general orientation* (Hedström & Udehn 2011: 32).¹⁶ This emphasis on the link between the micro and the macro level as well as the idea of a more general orientation will also be important in understanding Williams' work by way of an analogy to theories of the middle range.

IV. Williams as a Humanistic Middle-Range Theorist

In this section, I will develop the analogy between theories of the middle range in sociology and Williams' philosophical work on truthfulness, blame, and voluntariness by identifying a positive analogy to each of the four factors – (1) *middle-range generality* of the explanandum, (2) *middle-range isolation* of the explanans, (3) *middle-range perspective* in emphasising the link between the micro and the macro level, (4) and *middle-range general orientation* – that I have identified. This will allow me to conclude this section with a discussion of the main negative analogy that Williams had both explanatory and normative aims. The final sense in which Williams is a humanistic middle-range theorist is due to the fact that he offers theories that present us with a (5) *middle-range normativity*. These five factors

explicate the sense in which Williams is a *humanistic middle-range theorist* – and thus embraces the *impurity* of philosophy – that can also be generalised to legal scholarship.

The *first feature* of a humanistic middle-range theory is the *middle-range generality* of the explanandum.¹⁷ Williams highlights this feature when he counters the objection that one can only practise philosophy as a humanistic discipline by 'being an amateur of altogether too much' (Williams 2006a: 197) by insisting that we need not abandon the intellectual division of labour but instead reconsider it. Rather than ask 'what can philosophy tell us about everything?' – which is the style of philosophical grand theory¹⁸ – we can ask 'what can philosophy as a humanistic discipline tell us about X?', where this X is an idea or social phenomenon in the middle-range of generality. Thus, Williams suggests that we might make philosophical progress by focusing on 'one given ethical idea ... and the various considerations that might help one to understand it' (Williams 2006a: 198). This is of course precisely what he did in his account of the virtues of truthfulness (Williams 2002). It is also, more surprisingly, what he did in offering constructive philosophical accounts of blame (Williams 1995) and voluntariness (Williams 1993: 67–68). I will therefore build on these examples to develop the sense in which Williams was a humanistic middle-range theorist.

Yet if humanistic middle-range theories are to exhibit *middle-range generality*, Williams' emphasis on *one* ethical idea requires further clarification. It may seem to suggest that these are not theories of the middle range at all, but highly specific theories in the style 'applied ethics'. But Williams' accounts of truthfulness, blame, and voluntariness are primarily explanatory – they aim to tell us *why* we have these ideas in the first place, not *what follows from them* in particular situations¹⁹ – and he was first and foremost interested in how a general prototype of these ideas relates to their specific elaborations in any actual historical periods and cultures.²⁰ This is most obvious in *Truth and Truthfulness* (Williams 2002), where the general prototypes of accuracy and sincerity are initially depicted as being of purely instrumental value for the effective pooling of information about one's immediate environment. Williams leaves no doubt that this account could not possibly work in any actual society, and the theory is thus fictional up until this point, even though it is based on a general concern that we actually have. What he then tries to show is how accuracy and sincerity could come to be understood as *virtues* that are of intrinsic value, and how they moved beyond their purely functional rationale in the effective pooling of information about one's immediate

could not be offered without narrowing the set of possible explanatory factors in such a way. But what analytically distinguishes highly inclusive grand theories from highly exclusive theories such as rational choice theories is that the latter acknowledge that they isolate certain explanatory factors from a much larger set of possible factors.

¹⁴ On this idea, see also Williams 2002: Ch 10.

¹⁵ Those interested in what a theory of the middle range in sociology amounts to should look at the discussion in Hedström & Udehn 2011: 37–40 of Merton's work on self-fulfilling prophecies and the Matthew effect.

¹⁶ See also Merton 1963: xxiv.

¹⁷ See also the explicit use of the phrase 'middle level of generality' in Williams' introduction to the French edition of *Ethics and the Limits of Philosophy* (Williams 2021: 274), which was first published in French but now made available in the original English.

¹⁸ The paradigmatic example here is Aristotle's *Metaphysics*, where he argues that philosophy is the first and most fundamental science because it studies being under its most general aspect *qua* being.

¹⁹ For the underlying distinction between reasons for concept use and reasons for concept application, see Queloz & Cueni 2021.

²⁰ This is most explicit in his work on liberty, see Williams 2001.

environment. By way of a journey that takes us from Thucydides to Rousseau and Diderot, we finally come to understand how the virtues of truthfulness took the shape that they have for us now and around here.

Though it is less obvious, the same middle-range generality also underlies Williams' work on voluntariness in *Shame and Necessity*. Far from being a specific study of how the Ancient Greeks understood the idea of the voluntary, which is how the book at first glance might be understood, Williams argues that other scholars have only felt compelled to assert that the Ancient Greeks lacked the idea of the voluntary because these scholars identified it with a more specific idea. This more specific idea is *our contemporary notion* of voluntariness, which understands the voluntary as an idea that is meant to justify ascriptions of moral responsibility rather than merely as making reference to 'an intentional aspect of an action done in a normal state of mind'. Williams then goes on to suggest that our modern efforts of 'trying to deepen' the voluntary, while they to some extent serve the purposes of justice, are also the source of many ethical and metaphysical problems that threaten to put the idea of the voluntary 'beyond all recognition' for us (Williams 1993: 66–68).²¹ The very point of the mid-level generality in *Shame and Necessity* is thus to help us recover a notion of the voluntary that we can actually recognise in a world that has been shaken by metaphysical doubts about determinism and free will. This brings us to the next factor that relates to the distinct middle-range sense in which Williams isolated the explanans that is meant to answer the question of why we would come to cultivate these notions in the first place.

The *second feature* of a humanistic middle-range theory is that it relies on an explanans that lies in the *middle-range of isolation*. Much of Matthieu Queloz's work over recent years, and also some of our co-authored work (see Queloz & Cueni 2021), is best read as outlining the sense in which Williams should be understood as a humanistic middle-range theorist along the isolation dimension of the explanans. In his book *The Practical Origins of Ideas* (Queloz 2021a), Queloz highlights the particular manner of isolation that we find in certain of Williams' humanistic middle-range theories that he refers to as 'pragmatic genealogies'. To simplify for present purposes, pragmatic genealogies start out from a basic model that builds on a functional abstraction from highly general human concerns – e.g. the need to effectively pool information about one's immediate environment in the case of truthfulness – and then gradually include more local factors within the isolated field to tailor the explanation to our present-day situation.

I will first focus on the degree of isolation in the *functional abstraction*: Williams' key idea here is to exclude most explanatory factors from the isolated field in order to focus on the most general human concerns that a concept, virtue, or practice serves. In the case of the virtues of truthfulness, this general concern is the need to effectively pool information. But whereas the need to effectively pool information is a human

universal, the *general* concerns that a concept serves – and thus the factors that Williams includes in the isolated field – do not need to be completely universal. In the case of his account of our concept of liberty, for example, Williams relies on *both* the universal concern of individual human agents for doing what they want unimpeded by humanly imposed coercion *and* the more local concern of being able to legitimately object to the actions even of a perfectly just state (Williams 2005b). In other words, while Williams' humanistic middle-range theories are based on functional abstraction, functional abstractions may be *informed* by more historical considerations and thus exhibit a middle-range isolation.

This idea of providing a model that is based on functional abstraction, even historically informed functional abstraction that decreases the degree of isolation, is still different from then *adding real history* to the isolated field. This strategy was also used by Williams to great effect, which can again best be illustrated with the case of truthfulness. If we start out from a functional model based on the general human concern to effectively pool information, from the perspective of the explanans, the question is then what we need to *add* to the isolated field to get to our explanandum, namely to how we understand the virtues of truthfulness now and around here. One answer offered by Williams for the virtue of sincerity is the distinctively Romantic concern with personal authenticity, and thus with *expressing one's true self*, that was elaborated differently by Rousseau and Diderot (Williams 2002: Ch 8). As Queloz (2021a) explains in great detail, Williams often offered dynamic models that vary the degree of isolation even within a single humanistic middle-range theory by sequentially adding more local historical factors and thus enlarging the isolated set. The way in which Williams did this was by first deriving a functional prototype of the relevant notion before then involving himself in real history to account for how the notion actually developed. Williams' more constructive accounts of notions like truthfulness and liberty are thus best understood as based on a form of *functional abstraction* where historical considerations may both *inform* the functional abstraction and then *add* to it.

The *third feature* of a humanistic middle-range theory is that it is articulated from a *middle-range perspective* that takes the perspective of the individual participants of a social practice into account. Whereas in Merton's case the link between the micro and the macro level was emphasised for the purely explanatory purposes of the detached social scientist, in Williams' case the main challenge is to *make sense* of a given practice *from the perspective of the individuals within this practice*. This characteristic middle-range perspective that emphasises the link between the micro and the macro level can best be illustrated with the examples of truthfulness and blame. From a philosophical perspective that draws on broadly functional explanations, one key problem in both the case of truth-telling (i.e. what Williams calls the virtue of sincerity) and blame is how the functional considerations at the macro level relate to the perspective of individual agents at the micro level. With sincerity, the problem is how to get from the *general* concern for a well-functioning system of testimony based on the value of true information to the *claim* that *an individual agent* should tell the truth in

²¹ For a general discussion of this idea of 'deepening' the voluntary, see Queloz 2022.

a particular situation, instead of free-riding based on the contributions by other agents (Williams 2002). But the importance of emphasising the link between the micro and macro level is most obvious in the case of blame. There the problem is how to get from the instrumental value of the general practice of blame to the individual judgment that someone is *blameworthy* in a concrete situation, which requires more than a mere insight into the instrumental value of the practice as such (Williams 1995). In both cases, Williams highlights the self-effacing nature of the functional rationale so that our practices, to function properly, must come to be understood in more than purely functional terms from the perspective of individual participants.²²

The *fourth feature* of Williams' humanistic middle-range theories is that they depend on a general humanistic outlook that we may refer to as a *middle-range general orientation*.²³ This general humanistic outlook primarily concerns the sense in which *humanistic* middle-range theories may not just explain but also *vindicate* our practices that is not part of the more specific theories themselves. For example, *Truth and Truthfulness* lacks an account of why its naturalistic,²⁴ functional explanations that are rooted in general human concerns provide us with genuine reasons for cultivating the virtues of accuracy and sincerity.²⁵ Depending on someone's pre-commitments,²⁶ the idea that our practices of truth-telling could be vindicated by considering their instrumental value may seem absurd; and matters are even worse when that same someone is told that our concern with individual liberty can, at least to some extent, be vindicated by considerations that are specific to the circumstances of modern and pluralistic societies (Williams 2005b). There is thus a need for a defence of the more general philosophical outlook that explains how such functional considerations and local concerns can vindicate a practice for us now and around here. Matthieu Queloz and I have elsewhere tried to offer such a defence under the label of 'Left Wittgensteinianism' (Queloz & Cueni 2021), and I will not reproduce that argument here. But it is important to highlight that the vindicatory claims of humanistic middle-range theories depend on a much more general philosophical outlook that further characterises the humanism that contrasts with both scientism and moralism and their search for purity from contingency.²⁷

The *fifth feature* of Williams' humanistic middle-range theories is their *middle-range normativity*. The main *negative analogy* between *humanistic* middle-range

theories and theories of the middle-range in sociology relates to the sense of philosophical, as opposed to sociological, explanation at issue. Williams always emphasised that he was still doing philosophy when practising 'philosophy as a humanistic discipline' (Williams 2006b: 165–66). Humanistic middle-range theories may draw on other humanistic disciplines, namely history and the interpretive social sciences. But the underlying aim is to answer a distinctively philosophical question: to explain our *concern with truth*, for example (Williams 2002: 7). The starting point is always a philosophical puzzlement about *why* we have a concept, virtue, or practice in the first place; and what we seek from a philosophical explanation is not merely an explanatory account, but a genuine *reason* for going on as we do. This means that certain kinds of explanation that will qualify as a theory of the middle range in the sociological sense will provide the wrong kind of explanation for this philosophical purpose because they provide the wrong kind of reason. By contrast, some more philosophical, sometimes even fictional explanations will make the cut because they help us to resolve the philosophical puzzlement that originally sparked the inquiry.²⁸

But speaking of *middle-range normativity* also makes clear that the sense of normativity at issue is distinct from how that term is typically used in contemporary moral and political theory. As Jorah Dannenberg has recently argued, 'current usages of the term [normativity] are inextricably bound up with a recognizably moralistic style of thought' that Williams opposed. This style of thought searches for 'some transcendental foundation for our moral and political convictions' that contrast with something that is 'merely social, psychological, and historically conditioned' (Dannenberg 2023: 1, 11). As I already explained above when describing the general outlook of humanistic middle-range theories, we should reject this moralistic contrast between transcendental foundations and mere contingency,²⁹ and thus also any sense of the term 'normativity' that is inextricably connected to it. But instead of getting rid of the term 'normativity' altogether, we must rather recognise the *middle-range normativity* of functional accounts of a virtue like tolerance that draw on new social needs under conditions of pluralism (Williams 2005d). Such accounts provide us with genuine reasons, and they are thus genuinely normative (Queloz & Cueni 2021: 763–64).

Based on these *five analogies* between theories of the middle range in sociology and Williams' philosophical work, we can conclude this section by observing that Williams' accounts of truthfulness, blame, and voluntariness are humanistic middle-range theories in the following sense: they (1) provide a philosophical explanation of a set of phenomena in the middle range of generality, (2) based on a combination of general and local concerns as well as real history in the middle-range of isolation, (3) are articulated from a middle-range perspective that always takes the perspective of the individual participants of

²² See generally Queloz 2018 and 2021b.

²³ Compare also Williams 2002: 17–19, 22–23 and 2000: 149–50 on Williams' naturalism and how it relates to issues of reduction and explanation.

²⁴ In the sense outlined in Williams 2000.

²⁵ For a reaction that is baffled about Williams' view on this particular point, see Finnis 2011.

²⁶ See also the discussion of the ascetic ideal in Queloz & Cueni 2019 and especially the conclusion of that article, where we draw the connection between a general outlook based on certain pre-commitments and the idea of *naturalism without subversion*.

²⁷ On this general philosophical outlook in Williams' work, see especially also Fricker 2024 and Fricker 2025.

²⁸ For the fictional nature of pragmatic genealogies, see Queloz 2021a.

²⁹ See also Queloz 2024 for a critique of the underlying moralistic dualisms between morality and prudence as well as between principle and interest.

any given social practice into account, and (4) depend on a more general philosophical outlook that contrasts with the search for purity from contingency in both scientism and moralism. This final point gives rise to a fifth feature of *humanistic* middle-range theories, namely that they (5) exhibit a distinctive middle-range normativity.

V. Humanistic Middle-Range Theories in Legal Scholarship?

My account of Williams as a humanistic middle-range theorist raises the question whether and how we should also practise *law as a humanistic discipline*. The framework for humanistic middle-range theories just offered need not be limited to Williams' philosophical concerns but may also form the basis of a legal methodology that integrates insights from other disciplines but remains guided by legal questions and aims to be doctrinally relevant. Legal scholarship bears many similarities to philosophy, not least in the fact that both disciplines are partly concerned with answering questions about why we go on as we do. Legal scholars are also sometimes puzzled about why we have a doctrinal distinction or procedural practice in the first place. I thus finish this chapter by sketching a humanistic middle-range theory of the doctrinal distinction between 'infringing' and 'violating' a basic right that illustrates that *the idea of humanistic middle-range theory* can be generalised from philosophy to legal scholarship.

To start with the negative characterisation of 'humanistic', both intellectual distortions that preoccupied Williams throughout his work – scientism and moralism – have close analogues in legal scholarship. On the one hand, while the aspiration to model legal scholarship on the natural sciences seems rather far-fetched, we can certainly, especially in the United States (US), see an aspiration to model legal scholarship on those social sciences that most closely try to approximate the natural scientific ideal, namely quantitative social science and rational choice economics.³⁰ On the other hand, the idea that legal scholarship should be modelled on the aims of highly abstract moral theory is also never far from the legal scholar's imagination, although most legal scholars of course try to account for the fact that law is ultimately a local practice.³¹ In the remainder of this chapter, I do not wish to deepen this diagnosis beyond this admittedly stylised sketch, but rather suggest the potential remedy in the idea of humanistic middle-range theories *in legal scholarship*.³² Humanistic middle-range theories

³⁰ See, e.g., Posner 1983.

³¹ Compare the way in which Williams (2014a: 257) describes Dworkin's aspirations: 'Dworkin looks to a timeless moral framework in matters of justice, and ... one of his major preoccupations is to explain how judgments which have to be determined by the traditions of a given body of law can nevertheless be regulated, as he supposes they should be, by the timeless moral framework.'

³² I am not the first person to suggest that we should draw on Merton's idea of theories in the middle range to elucidate theory-building in legal scholarship, see Lepsius 2014.

offer a distinctive answer to the question of 'why the law works or why it does not' (Lepsius 2014: 699) that can be characterised using the five features that I have identified.

To provide a basis for illustrating this claim, I will show how a humanistic middle-range theory may help us think about whether we should have a certain concept within our doctrinal arsenal.³³ The two-step framework of 'scope' and 'justification' that is used in those jurisdictions that recognise basic rights that can routinely be limited – and especially the corresponding doctrinal distinction between 'infringing' and 'violating' a basic right – has puzzled many legal commentators. The way in which this doctrinal distinction is used in legal practice does not fit a philosophical understanding of 'rights', not even if that understanding includes a distinction between 'infringing' and 'violating' a right, which is controversial (Feinberg 1978; Thomson 1976). This has led some to deny the normative significance of the doctrinal notion of a basic rights infringement (Letsas 2013, 2018), whereas others instead suggest that doctrine should adopt a more rigorous philosophical understanding of what constitutes a genuine basic right (Tasioulas 2010, 2019). The situation is thus not unlike the philosophical puzzlement that frames Williams' discussion in *Truth and Truthfulness*, which initially contrasts the truth-deniers and the truth-enthusiasts (Williams 2002: Ch 1). There is a general uneasiness about the doctrinal distinction between 'infringing' and 'violating' a basic right that basic rights theory wishes to resolve by either abandoning the distinction as utterly pointless (akin to the truth-deniers) or by rendering it more philosophically rigorous (akin to the truth-enthusiasts). By contrast, I will now sketch how we might make sense of this doctrinal distinction through a humanistic middle-range theory.

A humanistic middle-range account of liberty as a political value must start out from an explanans in the middle-range of isolation that incorporates the *local need* for a greater presumption in favour of the individual point of view in the circumstances of modern and pluralistic societies.³⁴ In his account of liberty, Williams highlights that the notion of liberty *as a political value* should not be identified with a *rightful claim* to liberty. This is in large part due to the specific circumstances of modern and pluralistic societies: such societies require a concept of liberty as a political value that allows individual subjects to object to even rightful decisions by their public institutions that do not *violate* any rights, and also allows citizens to reach across the aisle and *take up the evaluative perspective* of their political opponents that use different conceptions of political values like equality in forming opinions about what is rightful (Williams 2001, 2005a, 2005b).

These local concerns regarding what liberty needs to be for us now and around here are then also reflected in the doctrinal notion of a basic rights

³³ In what follows, I am drawing on my previous work on the relationship between costs in political value and basic rights in Cueni 2024 and Cueni 2025.

³⁴ See Williams 2005b. On the idea of such local needs, see generally Queloz & Cueni 2021 as well as Queloz 2021a.

infringement, which *mediates* between political and legal discourse by allowing our *legal institutions* to express special acknowledgment and respect for *particularly grievous* costs in liberty. To have a legal concept that discharges this expressive function is important, among other things, to secure the continuing allegiance of those individuals who end up on the losing side of legal decisions that do not violate any rights but nevertheless give rise to a loss in liberty that legal institutions of modern and pluralistic societies should acknowledge and respect. Because it allows legal institutions to express such a special form of respect, the doctrinal notion of a basic rights infringement has distinctive expressive advantages in circumstances where individual liberty must routinely be justifiably restricted, and it should thus not come as a surprise that many liberal democratic orders have come to cultivate it.³⁵

But if the doctrinal notion of a basic rights infringement finds its distinctive normative significance in the characteristically modern need to acknowledge and respect particularly grievous costs in liberty, then a theory with middle-range generality may also help us to understand those modern and pluralistic societies that ostensibly seem to lack the doctrinal distinction between ‘infringing’ and ‘violating’ a basic right.³⁶ For example, US constitutional law does not seem to distinguish between ‘infringing’ and ‘violating’ a basic right in the same way that the jurisdictions that have explicitly adopted a proportionality framework for thinking about restrictions of basic rights do.³⁷ But if the doctrinal notion of a basic rights infringement is pointful for ‘us’ now and around here in a sense that includes not just the citizens of those jurisdictions that actually use the distinction, but also the more inclusive sense of ‘us’ that characterises citizens of modern and pluralistic societies,³⁸ then the distinction would likely also be pointful for them, where ‘them’ are the citizens of the modern-day US.³⁹ In fact, it might be argued that the US already acknowledges the underlying evaluative distinctions,⁴⁰ even though it does not express them in its legal framework for thinking about restrictions of basic rights. Not unlike in the philosophical cases of truthfulness and voluntariness, a central upshot of a theory with middle-range generality may then also be that it leads us to probe how the need for a greater presumption in favour of the individual point of view expresses itself differently in the various legal doctrines and procedures of actual jurisdictions.

While the middle-range perspective and general orientation of humanistic middle-range theories do not require a separate discussion for this doctrinal

illustration, their distinctive middle-range normativity merits further elaboration in relation to legal scholarship. In offering my account of the doctrinal distinction between ‘infringing’ and ‘violating’ a basic right, I have not suggested decisive reasons for why *any* particular jurisdiction – both past and present, liberal democratic or not – *must* use this distinction. Rather, my account of the *practical point* of the doctrinal notion of a basic rights infringement has offered a *pro tanto* reason for using the distinction that is rooted in the need to acknowledge and respect losses in liberty in the circumstances of modern and pluralistic societies.⁴¹ How does such a humanistic middle-range theory compare to other accounts of a notion’s practical point in the legal literature?⁴² Nick Barber has drawn a helpful distinction between sociological accounts of ‘practical point’ that imply causal explanations and moral accounts of ‘practical point’ that imply an overall moral assessment.⁴³ But a humanistic middle-range account of a notion’s practical point implies neither: it purports to be explanatory, but not necessarily in a causal sense;⁴⁴ and it includes a normative assessment, but not in the overall moral sense (which is anyway a mode of evaluation that Williams would have rejected as an outgrowth of the moralism described above). The idea of humanistic middle-range theory thus highlights that we can also offer more piecemeal *vindications* of our present ways of going on that help us to think about whether certain concepts, virtues, and practices do or do not *earn their keep* in both philosophy and law.

VI. Conclusion

In this chapter, I have taken my cue from Williams’ lecture on ‘Philosophy as a Humanistic Discipline’ to explore the question of what models or analogies we should look for in practising philosophy and legal scholarship. As many of the contributions in this volume attest, there is now an increased interest in how Williams’ philosophical work relates to the law. But if my own experience is any guide, the reception of Williams’ work in legal scholarship is currently hampered by the fact that much of it focuses on Williams’ avowed ‘political realism’ (Williams 2005c: 3), which implicates legal scholarship in debates about how exactly this realism should be understood, and how it differs from other forms of normative political theory.⁴⁵ For the prospects of a Williamsian approach in legal scholarship, this focus on the abstract issue of political realism

³⁵ In fact, it would have been very odd if so many jurisdictions around the globe had come to draw a doctrinal distinction that, upon closer inspection, turned out to be utterly pointless. See also Matthieu Queloz’s chapter 13 in this volume, which offers a discussion of Williams’ views on philosophy’s relationship to common sense and ordinary legal experience.

³⁶ See Williams 2006a: 196 on the relevant sense of ‘us’.

³⁷ Compare Greene 2018.

³⁸ On why even this more inclusive sense is still a contrastive sense of ‘us’, see Queloz & Cueni 2021.

³⁹ For suggestions in that direction, see Greene 2018 and 2021.

⁴⁰ See also Yowell 2014.

⁴¹ See also Khaitan & Steel (2022: 339–40) on what they call a ‘pro tanto theory’.

⁴² See also the discussion of ‘point-based explanations’ in Queloz & Cueni 2021.

⁴³ Barber 2020: 68–69.

⁴⁴ Compare Queloz 2021a: 14–16.

⁴⁵ For an overview of this large body of literature, see Rossi & Sleat 2014 as well as Maynard & Worsnip 2018. In addition, this statement is also based on personal conversations with my colleagues at the University of Oxford between 2020 and 2023.

is regrettable, because it leads to insufficient attention being paid to the concrete methodological approach that Williams urged us to practise.⁴⁶ In this chapter, I have attempted to rectify this neglect by outlining this approach in great detail and putting it in terms of a general methodological framework. I have also deliberately tried to coin a new term for it, namely *humanistic middle-range theory*. But little turns on the precise label, or indeed on whether we are comfortable calling it a middle-range *theory* or would rather prefer to call it a middle-range *approach*.⁴⁷ All that matters is that philosophers and legal scholars continue to practise this methodological approach in elucidating concrete ideas and social phenomena in a Williamsian spirit.

Bibliography

- Barber, NW (2020) 'Law and the Point of the State' in E Fisher, J King and AL Young (eds), *The Foundations and Future of Public Law: Essays in Honour of Paul Craig* (Oxford, Oxford University Press).
- Becker, GS (1976) *The Economic Approach to Human Behavior* (Chicago, University of Chicago Press).
- (2009) *Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education* (Chicago, University of Chicago Press).
- Berger, PL (1963) *Invitation to Sociology: A Humanistic Perspective* (New York, Anchor Books).
- Cueni, D (2024) 'Constructing Liberty and Equality – Political, Not Juridical' 15 3 *Jurisprudence* 341.
- (2025) 'Basic Rights and Costs in Political Value: The Expressive Point of the Two-Step Framework' 23 1 *International Journal of Constitutional Law* 87.
- d'Alembert, JLR (1751) *Discours préliminaire de l'Encyclopédie*.
- Dannenberg, J (2023) 'Bernard Williams, Realistic Liberalism, and the Politics of Normativity' 32 2 *European Journal of Philosophy* 489.
- Dennett, D (1989) *The Intentional Stance* (Cambridge, Massachusetts, MIT Press).
- Elster, J (1989) *Nuts and Bolts for the Social Sciences* (Cambridge, Cambridge University Press).
- (1999) *Alchemies of the Mind: Rationality and the Emotions* (Cambridge, Cambridge University Press).
- Feinberg, J (1978) 'Voluntary Euthanasia and the Inalienable Right to Life' 7 *Philosophy & Public Affairs* 93.

⁴⁶ For a similar diagnosis in philosophy, see now also Maynard 2021 and especially Dannenberg 2023. That Williams did not want to settle the realism and moralism debate in the abstract can also be seen from his close engagement with the concrete views of Ronald Dworkin that was based on a joint seminar at the University of Oxford. These writings, especially Williams 2005a and 2005b, probably best illustrate the *constructive* form of realism that Williams can bring to philosophical and legal debates. On the particular methodological approach that is evident in these writings, see also Cueni 2024.

⁴⁷ Here the label 'theory' is partly preferred for the simple reason that it allows me to use the corresponding noun in calling Williams a 'humanistic middle-range theorist'.

- Finnis, J (2011) 'Bernard Williams on Truth's Values' in J Finnis (ed), *Reason in Action: Collected Essays* (Oxford, Oxford University Press).
- Fricker, M (2024) 'A Project of "Impure" Enquiry – Williams' Historical Self-Consciousness' 32 2 *European Journal of Philosophy* 301.
- (2025) 'Williams' 'Philosophical Anthropology': A Humean and Nietzschean Synergy' *European Journal of Philosophy* (online first).
- Geertz, C (2017) *The Interpretation of Cultures* (New York, Basic Books).
- Greene, J (2018) 'Foreword: Rights as Trumps?' 132 *Harvard Law Review* 28.
- (2021) *How Rights Went Wrong: Why Our Obsession with Rights Is Tearing America Apart* (Boston and New York, Houghton Mifflin Harcourt).
- Habermas, J (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, Massachusetts, MIT Press).
- Hedström, P & Udehn, L (2011) 'Analytical Sociology and Theories of the Middle Range' in P Hedström & P Bearman (eds), *The Oxford Handbook of Analytical Sociology* (Oxford, Oxford University Press).
- Hesse, MB (1966) *Models and Analogies in Science* (Notre Dame, University of Notre Dame Press).
- Khaitan, T & Steel, S (2022) 'Theorizing Areas of Law: A Taxonomy of Special Jurisprudence' 28 *Legal Theory* 325.
- Lepsius, O (2014) 'The Quest for Middle-Range Theories in German Public Law' 12 *International Journal of Constitutional Law* 692.
- Letsas, G (2013) 'The Scope and Balancing of Rights: Diagnostic or Constitutive?' in E Brems & G Janneke (eds), *Shaping Rights: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge, Cambridge University Press).
- (2018) 'Proportionality as Fittingness: The Moral Dimension of Proportionality' 71 *Current Legal Problems* 53.
- Mäki, U (1992) 'On the Method of Isolation in Economics' 26 *Poznan Studies in the Philosophy of the Sciences and the Humanities* 317.
- Maynard, JL (2021) 'Political Realism as Methods not Metaethics' *Ethical Theory and Moral Practice* 1–15, available at <https://doi.org/10.1007/s10677-021-10183-7>.
- Maynard, JL & Worsnip, A (2018) 'Is There a Distinctively Political Normativity?' 120 *Ethics* 756.
- Merton, RC (1963) 'Introduction' in AH Barton (ed), *Social Organizations Under Stress* (Washington, DC, National Academy of Sciences – National Research Council).
- Merton, RK (1949) *Social Theory and Social Structure* (Glencoe, Ill, Free Press).
- (1957) 'The Role-Set: Problems in Sociological Theory' 8 *The British Journal of Sociology* 106.
- (1968) *Social Theory and Social Structure*, enlarged edition (New York, Free Press).
- Moran, R (2016) '2015 Mark Sacks Lecture: Williams, History, and "the Impurity of Philosophy"' 24 *European Journal of Philosophy* 315.
- Owen, D (2018) 'Realism in Ethics and Politics: Bernard Williams, Political Theory and the Critique of Morality' in M Sleat (ed), *Politics Recovered: Realist Thought in Theory and Practice* (New York, Columbia University Press).
- Posner, RA (1983) *The Economics of Justice* (Cambridge, Massachusetts, Harvard University Press).
- Queloz, M (2018) 'Williams's Pragmatic Genealogy and Self-Effacing Functionality' 18 *Philosophers' Imprint* 1.

- (2021a) *The Practical Origins of Ideas: Genealogy as Conceptual Reverse-Engineering* (Oxford, Oxford University Press).
- (2021b) 'The Self-Effacing Functionality of Blame' 178 *Philosophical Studies* 1361.
- (2022) 'The Essential Superficiality of the Voluntary and the Moralization of Psychology' 179 *Philosophical Studies* 1591.
- (2024) 'Moralism as a Dualism in Ethics and Politics' 1 2 *Political Philosophy* 432.
- Queloz, M & Cueni, D (2019) 'Nietzsche as a Critic of Genealogical Debunking: Making Room for Naturalism Without Subversion' 102 3 *The Monist: An International Journal of General Philosophical Inquiry* 277.
- (2021) 'Left Wittgensteinianism' 29 *European Journal of Philosophy* 758.
- Rossi, E & Sleat, M (2014) 'Realism in Normative Political Theory' 9 *Philosophy Compass* 689.
- Sagar, P (2016) 'From Scepticism to Liberalism? Bernard Williams, the Foundations of Liberalism and Political Realism' 64 *Political Studies* 368.
- (2018) *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, Princeton University Press).
- Sartre, J-P (1946) *L'existentialisme est un humanisme* (Paris, Les Editions Nagel).
- Stinchcombe, AL (1986) 'Merton's Theory of Social Structure' in AL Stinchcombe (ed), *Stratification and Organization: Selected Papers* (Cambridge, Cambridge University Press).
- Tasioulas, J (2010) 'Taking Rights out of Human Rights' 120 *Ethics* 647.
- (2019) 'Saving Human Rights from Human Rights Law' 52 *Vanderbilt Journal of Transnational Law* 1167.
- Thomson, JJ (1976) 'Self-Defense and Rights' in JJ Thomson (ed), *Rights, Restitution, and Risk* (Cambridge, Massachusetts, Harvard University Press).
- Udehn, L (2002) *Methodological Individualism: Background, History and Meaning* (London and New York, Routledge).
- Williams, B (1993) *Shame and Necessity* (Berkeley, University of California Press).
- (1995) 'How Free Does the Will Need to Be?' in B Williams, *Making Sense of Humanity* (Cambridge, Cambridge University Press).
- (2000) 'Naturalism and Genealogy' in E Harcourt (ed), *Morality, Reflection, and Ideology* (Oxford, Oxford University Press).
- (2001) 'Liberalism and Loss' in M Lilla, R Dworkin & R Silvers (eds), *The Legacy of Isaiah Berlin* (New York, New York Review of Books).
- (2002) *Truth and Truthfulness: An Essay in Genealogy* (Princeton, Princeton University Press).
- (2005a) 'Conflicts of Liberty and Equality' in G Hawthorne (ed), *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton and Oxford, Princeton University Press).
- (2005b) 'From Freedom to Liberty: The Construction of a Political Value' in G Hawthorne (ed), *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton and Oxford, Princeton University Press).
- (2005c) 'Realism and Moralism in Political Theory' in G Hawthorne (ed), *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton and Oxford, Princeton University Press).
- (2005d) 'Toleration, a Political or Moral Question?' in G Hawthorne (ed), *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton and Oxford, Princeton University Press).

- (2006a) 'Philosophy as a Humanistic Discipline' in AW Moore (ed), *Philosophy as a Humanistic Discipline* (Princeton and Oxford, Princeton University Press).
- (2006b) 'Political Philosophy and the Analytical Tradition' in AW Moore (ed), *Philosophy as a Humanistic Discipline* (Princeton and Oxford, Princeton University Press).
- (2011) *Ethics and the Limits of Philosophy* (Abingdon, Routledge).
- (2014a) 'A Matter of Principle, by Ronald Dworkin' in M Woods (ed), *Essays and Reviews 1959–2002* (Princeton, Princeton University Press).
- (2014b) 'Why Philosophy Needs History' in M Woods (ed), *Essays and Reviews 1959–2002* (Princeton, Princeton University Press).
- (2021) 'Ethics, a Matter of Style? Introduction to the French Edition' 9 *Philosophical Inquiries* 269.
- Yowell, P (2014) 'Proportionality in United States Constitutional Law' in L Lazarus, C McCrudden and N Bowles (eds), *Reasoning Rights. Comparative Judicial Engagements* (London, Hart Publishing).