Having the Law both ways

A defense of a quasi-cognitivist picture of internal legal statements

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Abstract

This thesis defends a quasi-cognitivist account of internal legal statements, that is, statements of the form "It is the law that *N*" made from the perspective of someone within the legal discourse – someone endorsing the norm or criticizing deviations from it. In this thesis, I offer a version of legal quasi-cognitivism that explains the content of internal legal statements in terms of the sources of law and interpretive procedures set by a proper method of interpretation. as it grounds the explanation of the cognitive appearances of internal legal statements in external, objective standards. A powerful Humean tradition in the philosophy of mind holds that beliefs and desires are what Hume called "distinct existences." Nonetheless, internal legal statements seem to mix cognitive appearances, typically linked to beliefs, with practical properties, often related to desire-like states. Such duality of internal legal statements creates a tension that is revealed by the following question: Are internal legal statements products of the cognitive capacities of participants in legal discourse, or rather outcomes of their desire-like processes? Quasi-cognitivism confronts this question by emphasizing the primacy of the cognitive dimension of internal legal statements. This primacy is revealed in two respects. Firstly, legal quasi-cognitivism states that the explanation of the content of legal statements necessarily involves the subject matter of the law. Secondly, it diagnoses the practical function of internal legal statements as emerging from post-semantic, pragmatic processes, rather than their semantics. While this thesis develops a complex, quasi-cognitivist account of internal legal statements, it also provides a critical examination of this position by discussing challenges posed by the infinite regress of interpretation, the underdetermination of the properness of interpretive methods, and the incoherence of such methods. In response, it presents several counterarguments that reinforce the viability of the quasi-cognitivist stance. In conclusion, this thesis not only contributes to the ongoing debates in legal philosophy by offering a nuanced quasi-cognitivist account that accommodates the complexity of legal thought and discourse, but also reinforces the authority of legal norms and the capacity of the subject matter of legal domain to guide legal practitioners, policymakers, and scholars in navigating complex legal dilemmas.

CONTENTS

Introduction

What do we do when we talk about the law? For instance, what do participants in the US legal discourse do when they engage in a debate regarding the compatibility of capital punishment with the Eighth Amendment to the US Constitution? Or what do participants in the Polish legal discourse do when they engage in a dispute revolving around the presidential authority to grant pardons before the issuance of a final, non-appealable court judgment?

In disputes like these, participants of legal discourse assert the so-called internal legal statements. In "The Concept of Law," one of the most important books on the philosophy of law in the 20th century, H.L.A. Hart introduced the concept of internal legal statements, distinguished from external ones.[1] In this dissertation, external legal statements are defined as those that provide information or describe a legal rule from the perspective of an external observer. This is particularly obvious for talk about laws of other times and places; e.g., when a contemporary American citizen says "By the Hammurabi Code, it is the law that L" or "In China, it is the law that L." Conversely, internal legal statements are made from the perspective of someone within the legal system – someone endorsing the rule or criticizing deviations from it. For instance, if two individuals are in Scotland and one expresses a wish to drive around, the other might express an internal legal statement by reminding them, "Remember, here in Scotland, it is the law that you should drive on the left side of the road."

Therefore, what do we do when we formulate internal legal statements? Is making such statements a way of stating or describing a portion of objective reality – the legal part of the world? Or do I instead describe an aspect of my subjective worldview? Or, alternatively, do such statements function, not to describe or state anything at all, but rather to express a certain attitude (such as approval or disapproval) of mine? Indeed, the variety of legal statements may suggest that when participants in legal discourse express internal legal statements, they are merely reporting their conative states. For example, when asserting "capital punishment is legally permissible," individuals may simply mean something like "I approve of capital punishment being legally permissible." In this regard, "capital punishment is legally permissible" asserted by Herbert, and

[1] H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994). It is noteworthy that although the concept of internal legal statements is related to other concepts, such as Kelsen's Sollsätze, and although it was already present to some extent in Alf Ross's work, Hart's distinction is the starting point of much of the subsequent literature on legal statements. See Hans Kelsen, *General Theory of Law and State* (Cambridge, MA: Harvard University Press, 1949); Hans Kelsen, *Pure Theory of Law* (Berkeley: University of California Press, 1967); Alf Ross, *On Law and Justice* (Oxford University Press, 2019).

"capital punishment is not legally permissible" asserted by Ronald could both be true since they could each correctly report the attitude of their authors towards capital punishment. Nonetheless, one may argue that internal legal statements do not aim to report anything; rather, they purport to express the underlying political or moral preferences of participants in legal discourse toward a particular matter – in this regard, they have equivalent meanings to applauding and booing.

However, according to what is now a widely accepted view, rational agency is a matter of recognizing reasons and then responding to them appropriately. Being rational, as the slogan goes, is to *recognize and respond* to reasons. In this context, the aforementioned accounts of internal legal statements deprive legal discourse of rationality – they collide with the idea that in complex legal systems, actors should be regarded as forming relevant beliefs in a proper way: that arriving at *working* beliefs about the law cannot be a matter of mere luck but must stay in proper justificatory relations to the subject matter of the law, which is in turn acquired (or should be acquired) through general and legal education.

In response, I propose and defend a perspective that posits when participants in legal discourse formulate internal legal statements, such as "capital punishment is legally permissible," they are not merely reporting or expressing their favorable attitude towards a particular matter. Instead, they seek to determine what the law requires of them – they assume that there are correct and incorrect answers to the question under consideration, and that these answers ought to guide our actions.

At first sight, this picture of internal legal statements may be called *cognitivism* – it states that linguistically, words compose in structures of grammatical syntax to form *sentences*; moreover, it identifies the literal and conventional content of the target sentences with propositions, regarded as representations of the world as being a particular way which are true if and only if the world is so.[2] Such propositions are the contents of ordinary *beliefs*, understood as attitudes with a mind-to-world direction of fit. In this regard, the picture under discussion suggests that internal legal statements are products of the cognitive capacities of participants in legal discourse, that is, mental processes involved in the acquisition of knowledge, manipulation of information, and reasoning. Some people associate this approach with legal positivism, as it aims to separate analytical statements about law from statements constituting justification or evaluation of the existing law.[3]

Legal cognitivism easily accommodates many features of internal legal statements. While legal rules, often taking the form of "all *S*, in circumstances *C*, are prohibited from doing *P*" or,

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[2] Stephen Finlay and David Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory," in *Oxford Studies in Philosophy of Law Volume 3*, ed. John Gardner, Leslie Green, and Brian Leiter (Oxford: Oxford University Press, 2018), 53.

[3] see H. L. A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review* 71, no. 4 (1958): 601.

more commonly in legislation, "every *S* doing *P* in circumstances *C* will be guilty of a felony," are typically evaluated in terms of "validity" rather than "truth', we do not hesitate to characterize legal statements that refer – more or less directly – to them as true or false. Moreover, by assessing whether legal statements are true or false, the participants in the legal discourse appear to assume that there is a right answer to the question at issue and that there are legal properties and facts that make these answers right.[4] Accordingly, the laws of logic are said to apply to internal legal statements, and it seems that participants in legal discourse make inferences involving internal legal statements that do seem to be logically valid.[5] In this regard, internal legal statements, like any ordinary declarative sentence, are capable of being the objects of propositional attitude ascriptions, being significantly embedded in conditionals and other constructions, etc. Moreover, internal legal statements seem to be justification-apt – when S makes an internal legal statement, S becomes accountable for defending their claim with their justification for it if challenged.

However, on the other hand, internal legal statements appear to be the outcomes of conative processes occurring within participants of the legal discourse. In this regard, legal agents often make such statements to structure their deliberations about what to do, or to evaluate their own behavior, or to guide or evaluate the behavior of others.[6] Judging that the law requires citizens to pay taxes to the government may motivate someone to pay her taxes, for example, and her statements of such a law may constitute criticism of others who fail to pay their taxes, or exhortations to them to pay. Judge's judgements on whether a norm *N* is a legally binding norm will commonly guide her in reaching a verdict. Therefore, internal legal statements seem to mix cognitive appearances, typically linked to beliefs, with practical properties, often related to desire-like states.

The problem for legal cognitivism follows from the fact that a powerful Humean tradition in the philosophy of mind holds that beliefs and desires are what Hume called "distinct existences," implying that beliefs as such are motivationally inert – they can never motivate without the help of some independently existing desire. Beliefs just sit there, representing the world in a certain way. Modern philosophers have cashed out this Humean idea in terms of the different and apparently exclusive "directions of fit" of beliefs and desires, the method often attributed to Elizabeth Anscombe.[7] Very roughly, if one believes that p, but p is not the case, then it is one's belief that

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[4] Torben Spaak, "Legal Realism and Legal Reasoning: A Quasi-Realist Approach," in *Vienna Lectures on Legal Philosophy*, ed. Christoph Bezemik, Michael Potacs, and Alexander Somek (Hart Publishing, 2020), 120.

[5] Spaak, 121.

[6] Finlay and Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory," 49.

[7] Gertrude E. M. Anscombe, *Intention* (Oxford: Basil Blackwell, 1957); see Graham Bex-Priestley, "Higher-Order Expressivism: The Dyadic Nature of Moral Judgement" (phd, University of Sheffield, 2018), 7; Michael Ridge, *Impassioned Belief* (Oxford: Oxford University Press, 2014), 2.

needs to change. On the other hand, if one desires that p but p is not the case, it is the world that needs to be changed. One way of cashing out the "direction of fit" metaphor is in terms of the very different functions of belief-like and desire-like states of mind. The former functions to track the way the world is, whereas the latter functions to prompt action in light of how one takes the world to be.

Based on the Humean theory of motivation, the duality of internal legal statements creates a tension that is revealed in the following question: are internal legal statements products of the cognitive capacities of the participants in legal discourse, or rather outcomes of their desire-like processes? Having it both ways is – as the title suggests – a main problem that legal quasi-cognitivism aims to address.[8]

Quasi-cognitivist picture of legal discourse embraces a hybrid approach to explain the content of internal legal statements. This account has three components. First, it introduces a relational semantics of internal legal statements, stating that their content is constituted by a proper method of interpretation in respect of the sources of law.[9] Consequently, it suggests that participants in legal discourse implicitly use rules of interpretation when formulating legal statements. Second, the account explains the cognitivist appearances of internal legal statements by maintaining that they express propositions, which are the content of ordinary beliefs understood as attitudes with a mind-to-world direction of fit. This explanation necessarily involves the subject matter of the law, treating it as an irreducible and ineliminable part of the explanation for how internal legal statements are used. Third, legal quasi-cognitivism provides an explanation of the practical appearances of internal legal statements by stating that, in some sense, these statements express desire-like states of mind. However, it positions these states at the level of pragmatics rather than semantics.

It is noteworthy that this dissertation does not aim to argue that the quasi-cognitivist picture of legal discourse provides the best explanation of the cognitive and practical aspects of internal legal statements. Instead, it pursues a more modest objective. Its seeks to develop a complex, quasi-cognitivist account of internal legal statements, then identify key skeptical

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8 The title of this dissertation is inspired by "Having It Both Ways: Hybrid Theories and Modern Metaethics," edited by Guy Fletcher and Michael Ridge – a book that is an invaluable collection of insights regarding both the cognitivist and practical features of moral statements. It served as a great source of thought for my analysis of internal legal statements. See Guy Fletcher and Michael Ridge, eds., *Having It Both Ways: Hybrid Theories and Modern Metaethics* (Oxford University Press, 2014).

9 It is noteworthy that in this dissertation, the term "method" is employed to describe the tools that participants in legal discourse utilize to identify the legal content of law sources. "Method" is chosen for its neutrality; it conveys a systematic approach without necessarily implying the rigor or comprehensiveness often associated with "theory," nor the political bias frequently linked to "ideology."

challenges to this account, and finally evaluate the ability of the account under discussion to address and refute these challenges.

The considerations included in this thesis are set against a broader intellectual backdrop. As Andrzej Grabowski notes, according to the traditional positivist model of axiologically neutral jurisprudence, the act of resolving the problems of validity is of a cognitive character. This is accompanied by the cognitivist theory of legal interpretation, according to which the interpretation consists in discovering either the objective and proper meaning of the legal text, or the subjective intention of the legislator – depending on the adopted normative method of interpretation. Therefore, the statements on the validity of norms, relativized to the legal system created by the lawmaker, are regarded as having logical value.[10] Nonetheless, in current literature, one may distinguish several approaches to this issue.

The first, the exegetical approach, focuses on analyzing H.L.A. Hart's remarks on internal legal statements. An example of this approach is the paper „Two Views of the Nature of the Theory of Law: A Partial Comparison" by Joseph Raz.[11] In this paper, Raz argues that Hart developed a distinctive view on legal statements that combines cognitivist and non-cognitivist elements. Specifically, Raz argues that Hart's view on internal legal statements derives as much from the attempts by Stevenson, and later R.M. Hare, who made their respectively emotivist and prescriptivist accounts of moral utterances more plausible by allowing that, apart from pure assertions and pure expressions of emotions (in Stevenson's case), or prescriptions (in Hare's case), there are utterances that combine both. Hart, according to Raz, applies this duality to internal legal statements, viewed as stating how things are under the law while endorsing or expressing an endorsement of the law at the same time.[12] Kevin Toh and Scott Shapiro have further explored this exegetical approach. In this regard, Toh[13] criticizes Raz's exegesis on Hart's remarks, stating that Hart seems to be proposing a norm-expressivist analysis of internal legal statements, identifying their meaning not with any properties or facts that they represent, but with a conventional function of expressing the speaker's noncognitive (desire-like) attitudes or prescriptive (command-like) speech acts. Accordingly, Shapiro states that Hart's particular brand of non-cognitivism is a form of norm-expressivism, implying that internal legal statements do not state propositions and, hence, cannot be true or false.[14] In contrary, Matthew Kramer, in his

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10 Andrzej Grabowski, *Juristic Concept of the Validity of Statutory Law: A Critique of Contemporary Legal Nonpositivism* (Springer, 2013), 370.
11 Joseph Raz, "Two Views of the Nature of the Theory of Law: A Partial Comparison," *Legal Theory* 4, no. 3 (1998): 249–82.
12 Raz, 253.
13 Kevin Toh, "Jurisprudential Theories and First-Order Legal Judgments," *Philosophy Compass* 8, no. 5 (2013): 416.
14 Scott Shapiro, "What Is the Internal Point of View?," *Fordham Law Review* 75, no. 3 (January 1, 2006): 1169.

exegesis of Hart's remarks,[15] argues that notwithstanding that Hart's theory of law can aptly be characterized as expressivist, that characterization is appropriate only when expressivism is understood as an account of the pragmatics of legal statements rather than as an account of their semantics.

The second approach – the constructive approach – focuses on providing a novel account of internal legal statements, regardless of whether it goes along with Hart's remarks on this issue. An important development of Hart's theory of internal legal statements was provided, again, by Joseph Raz. Raz[16] has noted that there are two ways of using internal legal statements – the committing way and non-committing way committed statements are formulated by those who accept law (rules of law) as binding, whereas non-committing, detached statements are made by means of adopting the point of view of the people who accept legal rules, yet these statements do not stand for sharing this acceptance.[17] Constructive approach was widely embraced by continental scholars as well. Aulis Aarnio, for example, generally challenged the application of the concept of truth in the context of legal dogmatics, and he proposed replacing it with the concept of acceptability.[18] Accordingly, Jerzy Wróblewski defended the view that the criteria of systemic validity are not applied (except in extremely simple situations) in a descriptive way, and that "they do not determine the only true answer related to the validity of a particular norm," because they require evaluation and they are relativized to the assumed, often "soft" rules (criteria) for recognizing the norms as valid.[19] Tecla Mazzarese argued that norm propositions expressed in the form of the statement "The norm *N* is valid" are, in fact, a function of two sets of variables: a set of different interpretive statements, which a norm formulation can lead to, and a set of different validity statements concerning the same norm formulation. According to Mazzarese, it is very doubtful that both types of statements are descriptive and that they are bearers of logical values. Thus, similar doubts can also arise in relation to the descriptive character of, and the ascription of truth-values to norm propositions that are a disguised conjunction of interpretive and validity statements.[20] Accordingly, Svein Eng argued that lawyers' propositions *de lege lata* constitute the

15 Matthew H. Kramer, "Hart and the Metaphysics and Semantics of Legal Normativity," *Ratio Juris* 31, no. 4 (2018): 396–420.

16 Joseph Raz, "Legal Validity," *Archiv Für Rechts- Und Sozialphilosophie* 63, no. 3 (1977): 339–53; see also Mark McBride, "Detached Statements," *Crítica: Revista Hispanoamericana de Filosofía* 49, no. 147 (2017): 75–90; Mathieu Carpentier, "Legal Statements: Internal, External, Detached," in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer Netherlands, 2023), 1–8.

17 Raz, "Legal Validity," 351–52.

18 Aulis Aarnio, "On Truth and the Acceptability of Interpretative Propositions in Legal Dogmatics," *Rechtstheorie. Beihefte*, no. 2 (n.d.): 46-47,51.

19 Jerzy Wróblewski, "Obowiązywanie Systemowe i Granice Dogmatycznego Podejścia Do Systemu Prawa," *Studia Prawno-Ekonomiczne* 36 (1986): 35.

20 Tecla Mazzarese, "Norm-Proposition: Epistemic and Semantic Queries," *Rechtstheorie* 22 (1991): 39–70.

paradigm case of fused propositions, since their subjective meaning – namely, the meaning adopted by the author or interpreter – cannot be reduced to a purely descriptive or purely normative meaning[21]. The necessity of embracing this approach has been explicitly signaled in Anglo-Saxon world by Matthew X. Etchemendy, who claims that it is time to "move beyond exegesis and to see whether, quite apart from whatever role expressivist ideas may have played in Hart's legal philosophy, expressivism has something to offer us in the search for more illuminating and explanatory accounts of legal discourse and thought."[22] In this regard, the main aim of Etchemendy's paper is to argue that an adequate version of legal expressivism must be able to distinguish the attitudes expressed by the statement that "no one should ever steal," the statement that "stealing is immoral," and the statement that "stealing is unlawful," for the simple reason that these statements rather plainly do not express the same attitude. In consequence, he concludes that any form of legal expressivism must be principally concerned with explaining what is special about legal discourse and thought. Stephen Finlay and David Plunkett's work[23] exemplifies a constructive approach as well. Their primary thesis is to offer a quasi-expressivist theory of internal legal statements as such. Their quasi-expressivist account of internal legal statements agrees with expressivism that a central class of (legal or moral) statements are expressive of noncognitive attitudes or prescriptions. Nonetheless, it diagnoses this as a feature of the pragmatics of these statements, rather than of their (purely descriptive) semantics.

The third approach – the critical approach – focuses on examining existing theories of internal legal statements, identifying their strengths and weaknesses, and discussing their implications. Stephen S. Perry adopts this approach, while stating that Hart was absolutely correct to emphasize the importance of the legal theory of the internal point of view, but he was wrong to characterize the internal point of view as simply a normative attitude.[24] In this regard, Perry argues that those who accept the legitimacy of law have not simply adopted a certain normative attitude, but rather hold a certain belief, which could be either true or false, about the legitimacy of law. Torben Spaak, by highlighting challenges for expressivist accounts of internal legal statements, takes a similar critical stance.[25] In this regard, Spaak notes that legal expressivists face the problem of explaining how legal or moral inferences can be logically valid, given that the laws of logic are said to apply only to entities (such as statements) that are true or false, and that, on the

21 Svein Eng, "Fusion of Descriptive and Normative Propositions. The Concepts of 'Descriptive Proposition' and 'Normative Proposition' as Concepts of Degree," *Ratio Juris* 13, no. 3 (2000): 239.
22 Matthew X. Etchemendy, "New Directions in Legal Expressivism," *Legal Theory* 22, no. 1 (2016): 1–21.
23 Finlay and Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory."
24 Stephen Perry, "Where Have All the Powers Gone? Hartian Rules of Recognition, Noncognitivism, and the Constitutional and Jurisprudential Foundations of Law," in *The Rule of Recognition and the U.S. Constitution*, ed. Matthew Adler and Kenneth Einar Himma (Oxford: Oxford University Press, 2009).
25 Spaak, "Legal Realism and Legal Reasoning: A Quasi-Realist Approach."

expressivist analysis, first-order legal or moral statements cannot be true or false. In this regard, Spaak discusses possible expressivist's response to the so-called Frege-Geach problem, which states that in the expressivist analysis, internal legal statements do not have the same meaning in asserted and unasserted contexts and that therefore, in this analysis, legal inferences involve the fallacy of equivocation.

Nevertheless, a major shortcoming of the existing research is the lack of a comprehensive and critical examination of legal quasi-cognitivism, representing a significant gap that this thesis seeks to address. Through filling this void, the thesis offers a deeper understanding of the nuances and complexities of legal discourse.

This dissertation is divided into seven chapters.

Chapter 1 (*Preliminaries on Internal Legal Statements*) outlines the challenge of distinguishing legal statements formulated within legal discourse from statements in other areas. In this chapter I use thought experiments to explore the boundaries, limitations, potential implications and intuitive acceptability of various uses and characteristics of internal legal statements. On this basis, I develop a complex catalog of surface features, or appearances, of internal legal statements, encompassing both cognitive-like and practical-like usage of internal legal statements. After that, I introduce the Humean puzzle, which poses the challenge of integrating the cognitive and practical dimensions of internal legal statements into a cohesive theoretical framework. Following this, this chapter discusses a variety of theoretical approaches that attempt to accommodate the surface duality of internal legal statements.

Chapter 2 (*Quasi-Cognitivist Account of Internal Legal Statements*) introduces the quasi-cognitivist picture of internal legal statements. It is structured around three primary challenges: 1) providing the semantics of internal legal statements, and explaining their 2) cognitivist and 3) practical appearances. In this regard, this chapter proposes a relational semantics for internal legal statements, aiming to delineate their underlying semantic structure. This endeavor is based on the conceptual analysis, and draws on evidence provided by current analyses of argumentative framework for legal discourse employed by participants in legal practice to show the truth of legal statements. Moreover, this chapter endorses an intra-disciplinary approach aiming to transfer insights from other branches of philosophy, especially metaethics and philosophy of language, to legal philosophy.

Chapter 3 (*Undermining Legal Quasi-Cognitivism*) presents three arguments against the quasi-cognitivist picture of internal legal statements outlined in Chapter 2, suggesting that it leads to legal nihilism. These arguments stem from the insight that quasi-cognitivist explanation of cognitivist appearances of internal legal statements hinges on the capacity of methods of interpretation to

determine, in respect of sources of law *S*, whether norm *N* is a legally binding norm. The first argument, built upon the infinite regress of interpretation, states participants in legal discourse, while formulating internal legal statements, are systematically in error due to the incapacity of methods of interpretation – viewed as systems of interpretive rules – to determine, in respect of sources of law, that norm *N* satisfies the interpretive procedure set by these methods. This follows from the fact that the rules of interpretation constituting such a method are themselves subject to further interpretations, *ad infinitum*. The second argument hinges on the underdetermination of the properness of interpretive methods. It asserts that the norms internal legal statements refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a method. The third argument addresses the incoherence of interpretive methods. It states that for any method of interpretation *M*, if rule of interpretation R_1 belongs to M, then there is another rule R_2 that belongs to *M* but conflicts with R_1, implying that methods of interpretation are not capable of setting any interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm. Consequently, legal actors who formulate legal statements about the law are systematically in error, as the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation due to the absence of such a procedure.

Chapter 4 (*Facing Skepticism*) explores potential reactions to the objections to quasi-cognitivism discussed in Chapter 3. The section begins with an analysis of legal nihilism, a viewpoint that simultaneously embraces quasi-cognitivism and its skeptical challenges. Following this, I explore various alternative perspectives within the legal discourse. These alternatives accept skeptical objections but seek to avoid collapsing into nihilism. Among these alternatives, anti-realism is discussed first. It proposes that the legal content of sources of law is determined by the collective understanding of participants in legal discourse. Therefore, it offers a somewhat subjective nature of legal content, shaped directly by its participants. After that, I examine non-interpretationism, an approach that counters the assumption that accessing legal content always necessitates interpretive processes. Subsequently, I discuss legal expressivism, which holds that both the cognitive and the practical aspects of legal statements should be explained in terms of conative states expressed by participants of legal discourse formulating such statements. Despite the intriguing prospects these viewpoints offer, they also come with their own set of complex, sometimes problematic features. Recognizing these challenges, I investigate whether a strengthened defense of the quasi-cognitivist framework of legal discourse aids in countering the consequences that arise for this account from the aforementioned arguments.

The following three chapters explore the possibility of refuting a triad of arguments discussed in Chapter 3 without the necessity of abandoning any claims to which quasi-cognitivism is committed. In this regard, the main focus is placed on the regress argument, stemming from my belief that it represents the most formidable challenge against the quasi-cognitivist framework. It is noteworthy that this concentrated focus may create a certain disproportion between the responses to individual arguments, as reflected in the varying lengths of the respective chapters. However, this imbalance is not merely a matter of oversight. Rather, it reflects a strategic choice to allocate our intellectual resources where they are most needed, aiming to fortify the weakest points in the argumentative structure of the quasi-cognitivist picture of legal discourse.

Chapter 5 (*Refutation of the Regress Argument*) responds to the regress argument by proposing that the content of rules of interpretation should be explained in terms of their meaning to legal experts. To investigate whether a specific understanding of these rules may be attributed to legal experts, I rely on representative positions in the debate on the rule-following problem. First, I analyze Saul Kripke's skeptical solution, which I interpret as a form of semantic expressivism regarding meaning ascriptions. Next, I discuss Robert Brandom's inferentialism, a theory positing that ascriptions of meaning convey propositions about the deontic status of other agents, which, in turn, are explained in terms of the practical attitudes of speakers. Subsequently, I examine John McDowell's naturalized platonism, which maintains that our perceptual processes are intrinsically conceptual, infusing our experiences with conceptual content. Finally, I examine each of these positions to determine if their explanations of "meaning something" could contribute to refuting the regress argument. Specifically, I analyze whether they offer support for an account of the content of rules of interpretation that can guide the interpretive process and, consequently, help identify the legal content of sources of law – that is, to determine – without the need of further interpretation – whether norm *N* is, in respect of sources of law *S*, a legally binding norm.

In Chapter 6 (*Refutation of the Underdetermination Argument*), I respond to the underdetermination argument. In this regard, discuss three possible answers. First, I argue that identifying the proper method of interpretation, and thereby determining the legal content, is feasible if we accept a specific interpretive method as legally binding – either in virtue of being explicitly stated in legal texts or being a part of unwritten law. However, while this approach offers a theoretical framework for future legal developments, it is seldom reflected in current legal practice. Moving to the second solution, I will explore whether any knock-down arguments make it possible to choose one of many meta-interpretative methods and, on this basis, answer the question of which method of interpretation is the proper one. Finally, I explore a third solution, which posits that even in the absence of a legally binding method of interpretation, and despite

the challenges in determining the proper theory of meta-interpretation, it is still possible to discern the proper method of interpretation. This can be achieved by acknowledging a parity among competing theories of meta-interpretation. Consequently, any method of interpretation that aligns with at least one of these theories should be considered proper. This inclusive approach implies that all interpretive procedures stemming from such methods of interpretation are equally capable of determining – in respect of sources of law – whether particular norm *N* is the law.

Chapter 7 (*Refutation of the Incoherence Argument*) addresses the Incoherence Argument. In this context, two solutions are explored. The first solution posits that the method of interpretation *M* is capable of providing the interpretive procedure determining whether norm *N* is, in respect of sources of law *S,* a legally binding norm if we accept that there are higher-level rules of interpretation to resolve any conflicts between specific rules of interpretation. The second solution, in turn, suggests that recognizing the parity relation between conflicting rules of interpretation unfolds the possibility of deriving from a given method of interpretation *M* more than one interpretive procedure, with each of these procedures being on a par with the others.

1. Preliminaries on Internal Legal Statements

What is it that participants of legal discourse are doing when they make legal statements, such as "it is the law that capital punishment is permissible"? Is making such statements a way of stating or describing a portion of objective reality – the legal part of the world? Or do they instead describe an aspect of their subjective worldview, such as the fact that *they approve* of capital punishment? Or, alternatively, does such a statement function, not to describe or state anything at all, but rather to express a certain attitude (such as approval or disapproval) of participants in legal discourse? In response, this dissertation engages with one of the core topics in legal philosophy over the past century, concerning the explanation of the way participants in legal discourse use legal statements. It proposes and defends a novel account of legal thought and discourse, according to which 1) participants in legal discourse implicitly use rules of interpretation when formulating legal statements; 2) these statements express propositions, which are the content of ordinary beliefs understood as attitudes with a mind-to-world direction of fit; 3) these statements express, via implicature, desire-like states of mind.

The objective of this chapter is to explore the complex terrain of legal discourse, analyzing the diverse aspects of legal statements produced by participants in this discourse. At the beginning, I will outline the challenge of distinguishing legal statements formulated within legal discourse from claims and judgments in other areas. In this context, I delineate a "bottom-up" approach, which aims to base the individuation of the legal domain on the substantive properties it involves, and a "top-down" approach, which emphasizes the functional role of legal discourse. Following this, I will identify two types of appearances of internal legal statements – appearances which an adequate metalegal theory should either explain or explain away as merely apparent. Initially, I explore cognitivist appearances suggesting that internal legal statements are the product of the cognitive capacities of participants in legal discourse: truth-aptness, embeddability, belief-expression, justification-aptness, and objectivity. Subsequently, I highlight practical appearances of internal legal statements – motivationality and prescriptivity – indicating that internal legal statements emerge from conative processes of participants in legal discourse. Next, I will introduce the philosophical issue presented by the Humean puzzle, which poses the challenge of integrating the cognitive and practical dimensions of internal legal statements into a cohesive theoretical framework. Following this, I will examine a variety of theoretical approaches that attempt to accommodate the surface duality of internal legal statements.

1.1. Individuation of Internal Legal Statements

As I have already mentioned in the Introduction, in "The Concept of Law," H.L.A. Hart introduced the notion of internal legal statements, distinguished from external ones[26]: external statements provide information or describe a rule from the point of view of an external observer, while internal statements are made from the perspective of someone within the legal system – someone who endorses the rule or criticizes deviations from it.[27]

The stated goal of this dissertation is to provide and defend a theory of internal legal statements, hereafter also referred to as legal statements formulated by participants in legal discourse. In order to accomplish this goal, we must first characterize the target phenomenon to be explained. A preliminary question about how to individuate domains of thought and discourse therefore arises. A starting point will be to examine the statements we are pre-theoretically inclined to categorize as belonging to the legal domain and identify any features they appear to share or differ with in comparison to statements formulated in other domains. This provides a criterion for assessing the plausibility of legal theories: It is a mark in favor of a theory if it accommodates and explains the surface features of internal legal statements, and it is a mark against a theory if it does not.[28]

One way in which we might individuate different areas of thought and discourse is according to their subject matter. What makes a judgment a *scientific* one, rather than an aesthetic one, is what the judgment is *about*. In turn, what makes a judgment about a scientific matter, say, chemistry, the thought continues, is that it centrally employs concepts of chemical kinds; that is, concepts that refer to properties that are metaphysically alike in respects of interest to chemists. I will call this a "bottom-up" approach to domain individuation, because ultimately it is the natural contours of the ontology of the world that constrain domain membership for our judgments. In this regard, the sorts of properties studied by chemists may be seen as metaphysically similar to each other in a number of respects and dissimilar to the sorts of properties studied by, for example, sociologists, and understanding these natural divisions is perspicuously accomplished by grouping our concepts into different domains.[29] When applied to legal analysis, this approach helps us

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[26] Hart, *The Concept of Law*, 102–3.

[27] Hart, 102–3.

[28] In this respect, my methodological approach is the standard one used in metaethics. For some recent examples, se See David Enoch, *Taking Morality Seriously* (Oxford: Oxford University Press, 2011); Matthew Chrisman, *What Is This Thing Called Metaethics?* (New York: Routledge, 2017). Enoch construes metaethics as proceeding by tallying up the "plausibility points" of various theories. Chrisman describes the discipline as proceeding by comparing the plausibility of the various commitments of each theory.

[29] This general approach to domain individuation is adapted from Michael Lynch. See Michael P. Lynch, *Truth as One and Many* (Oxford University Press, 2009), 78–82. (2009, pp. 78-82).

identify the category of legal statements by a criterion admitting any judgment that substantially employs a legal concept, where legal concepts are such in virtue of picking out legal properties.

There are two concerns for such an approach relevant here. The first concern is that the approach is especially contentious when we consider the legal domain, for it is a challenge to explain how legal facts and properties could exist from a naturalist philosophical perspective. If, as some have thought, there are no genuinely legal facts as part of the natural world, the legal domain would seem to lack a subject matter, frustrating the very attempt to delineate legal thought and discourse from other domains. However, I set this concern aside for now. First, many important theories on legal properties have arisen recently.[30] Second, more significantly to present purposes, even if we could identify a subject matter for legal discourse as sketched above, there is a worry that this would not be sufficient to characterize what is distinctive of the legal domain, for what distinguishes internal legal statements from statements formulated within other areas is not – or not just – what such statements are about. In response, I do not claim that we should reject the bottom-up approach to domain-individuation altogether. Rather, we should focus on a dimension that delineates particular domains in terms of the *function* that our thought and talk in each domain serves for us. This latter functional principle for domain individuation can be considered a "top-down" approach. It individuates domains according to their functional profile, what they do for us who engage in thought and talk in those domains, rather than according to the fundamental features of the world we inhabit. Of course, it may be that the statements in a given domain accomplish their function by enabling us to track the contours of a particular bit of the world – they express propositions that constitute the contents of ordinary beliefs, understood as attitudes with a mind-to-world direction of fit. But we should not assume that all domains will have such a tracking function. It may be that in some domains, the central statements do not denote properties at all, but rather serve some other purpose, such as expressing attitudes.

However, some people may be skeptical of such psychologically based explanations for internal legal statements. To offer an alternative top-down approach to domain individuation, we can draw on the insights of inferentialism, which emphasize the role of inferential relations in understanding and classifying statements. According to Michael Williams, within the inferentialist framework, certain sentences, such as those containing color terms, function as "language entry transitions," and hence essentially involve world-word relations. Observational terms of this kind possess a specific epistemological component: any use of an observational term, such as "green,"

[30] Luka Burazin, "Can There Be an Artifact Theory of Law?," *Ratio Juris* 29, no. 3 (2016): 385–401; Luka Burazin et al., eds., *Law as an Artifact* (Oxford, New York: Oxford University Press, 2018).

is allowed when there is a thing possessing the observable quality – such as a green grass.[31] However, there exist other segments of vocabulary – moral discourse being the best example – that serve rather as language exit transitions, as justifying action, rather than merely describing the world. A correct description of such expressive sentences does not take the form of "one is licensed to use the moral predicate M whenever the moral property m is present" – they do not have a simple epistemology of that sort, because they are somehow disconnected from the simple entry transactions.[32] In this context, inferentialism offers non-psychological criteria for distinguishing between specific domains. It characterizes statements within these domains by their inferential properties, rather than the mental states typically associated with them.

In this regard, I follow Drew Johnson[33], and assign theoretical priority to the top-down principle for domain individuation. In this regard, I admit that while domains can be individuated according to their subject matter, this is *because* of the function of those domains; the bottom-up approach is better understood as a diagnostic tool, providing initial insights, rather than offering a comprehensive explanation. In the next part, I will commence with a characterization of the surface features of internal legal statements to be explained. I divide these into two categories: cognitivist and practical appearances.

1.2. Cognitivist Appearances of Internal Legal Statements

Legal statements formulated by participants in legal discourse, like other ordinary indicative sentences, reveal a number of cognitivist appearances, usually associated with beliefs or language entry transitions. First, they seem to be truth-apt:

(truth-aptness). Internal legal statements are capable of being assessed as either true or false.

Consider the following sentences:

(1) "It is the law that consuming animal products is prohibited."

(2) "It is the law that no vehicles are permitted in the park."

(3) "It is the law that individuals must pay taxes."

As far as the surface-level features of legal discourse are concerned, note how naturally the truth-predicate applies to (1)-(3) in ordinary English. For instance, "It is true that it is the law that consuming animal products is prohibited" or "It is false that it is the law that no vehicles are

31 Michael Williams, "How Pragmatists Can Be Local Expressivists," in *Expressivism, Pragmatism and Representationalism*, ed. Huw Price et al. (Cambridge: Cambridge University Press, 2013), 140–41.
32 Williams, 142–43.
33 Drew Johnson, "A Hybrid Theory of Ethical Thought and Discourse" (PhD Thesis, University of Connecticut, 2022), 4–6.

permitted in the park" are perfectly grammatical pieces of language.

Of course, merely admitting that internal legal statements are truth-apt does not immediately lead to any more substantive metaethical commitments, because admitting a certain domain is truth-apt does not require any particular (substantive) theory of truth for that domain, nor does it say anything about what the truthmakers of (1)-(3) might be if any of them are true. We are, recall, only articulating the surface appearances of the legal domain. Related to the feature of truth-aptness, we have:

> (embeddability). Legal sentences, like any ordinary declarative sentences, can be objects of propositional attitude ascriptions, can be significantly embedded in conditionals and other constructions, etc.

Again, I take it to be platitudinous that legal statements exhibit embeddability. Embedding (1)-(3) in conditionals and other constructions is clearly linguistically meaningful, as in: "if it is the law that the capital punishment is prohibited, then it is the law that the judge cannot sentence Charles Manson to die."

In addition, attributing legal beliefs to others seems unproblematic. At first glance, the content of internal legal statements appears to be a suitable subject of beliefs. Furthermore, when an individual makes an internal legal statement, it is natural to assert that, in doing so, they express a legal belief in the content of the claim. Call this:

> (belief-expression). When participants of legal discourse make sincere legal statements, they express their beliefs in the content of these claims.

Belief-expression highlights one of the ways in which internal legal statements appear to be continuous with ordinary claims about the world.

Along these lines, note that it is also unremarkable for us to talk of legal *knowledge*. Given a justified-true-belief model for knowledge, this leads us to suppose (as also seems *prima facie* to be the case) that legal beliefs can enjoy epistemic justification, and that we can exchange such justifications in joint legal deliberation. This leads us to:

> (justification-aptness*)*. Internal legal statements can be (or fail to be) epistemically justified.

When participants in legal discourse make internal legal statements, they become accountable for defending their claims and providing justification when challenged.

Internal legal statements, like many ordinary claims, enter the game of giving and asking for reasons. We often do offer and request reasons for accepting certain legal claims, and we do

assess some reasons as better or worse, as supporting a legal position or not. If one were to make a legal claim in uttering "it is the law that abortion is prohibited," then, *ceteris paribus,* one is appropriately subject to requests for reasons for thinking that abortion is prohibited by the law. This feature significantly distinguishes legal discourse from other domains that also exhibit truth-aptness and embeddability. For instance, thought and discourse about matters of taste, though arguably satisfying truth-aptness, embeddability, and belief-expression, does not generally exhibit justification-aptness (at least, not to the same degree as legal discourse) – there is not the same expectation in taste discourse that one be able to supply reasons for one's interlocutor to adopt one's own attitude. An even more substantive feature of legal discourse is *objectivity*.

> (objectivity). Whether an internal legal statement I is true does not vary depending on what individuals or groups happen to think about I. And if I is true, it is true for anyone in relevantly similar circumstances.

Part of the explanation of why it is that internal legal statements are subject to requests for reasons, I think, is that legal talk is at least implicitly taken to be an objective matter. We expect each other to provide reasons for the claims we put forward in legal discourse because we take legal matters to be ones about which our beliefs can be correct or incorrect, and the exchange of reasons is how we seek to get things right. I think objectivity also contributes to explaining legal disagreement: When it comes to legal disagreement, it seems that there is a commitment on the part of the disputants to having a correct position on the matter. This requires both disputants to settle on what that correct position is for a satisfactory resolution of the disagreement.[34] Note, again, that this is a way in which legal disagreement is different from faultless disagreement about taste. Nevertheless, the notion of objectivity offered here, , represents a rather minimal condition. At this juncture, it does not imply any substantial realism regarding legal matters. Rather, it is understood in terms of minimal mind- independence, in the sense that the correct legal position to take in a given case does not vary depending on what anyone happens to think. This notion of objectivity is neutral on whether legal truths are mind-independent in the sense that they would obtain even in a universe lacking any legal agents. Though the view I go on to defend is compatible with robust account of legal objectivity, we should not build robust objectivity into the very data to be explained by an adequate theory of internal legal statements.

The features discussed so far – truth-aptness, embeddability, belief-expression, justification-aptness, and objectivity – are all characteristic features of genuinely cognitivist thought and discourse. Cognitivism about an area of thought and discourse is, roughly, the idea that area

[34] Johnson, 4.

of thought and discourse aims at representing and describing objective features of the world. Thus, taking scientific inquiry as a paradigmatic instance of cognitivist thought and discourse, we can say that scientific claims aim to represent the world as it actually is. Such claims then are (i) capable of being true or false, depending on whether they succeed in representing the world as it is or not; (ii) sentences of that domain (e.g. "water freezes at 0 degrees Celsius under standard atmospheric pressure") clearly have propositional content that is embeddable in other constructions ("If water freezes at 0 degrees Celsius under standard atmospheric pressure, then water is capable of solidifying into ice"), and (iii) that can be used to express beliefs, where those beliefs aim to represent the world, and (iv) that are subject to requests for reasons, and (v) whose truth depends only on the world being as it is represented rather than on features of the minds doing the representing. We have seen that legal discourse appears to be like scientific thought and discourse in many of these respects.

I turn now to explore some further features of internal legal statements, features which distinguish legal discourse from other clearly cognitivist domains.

1.3. Practical Appearances of Internal Legal Statements

Nonetheless, internal legal statements serve various practical functions in legal discourse and thought, contributing to the explanation of our actions. In this regard, they may be associated with desires, or language-exit transitions. Let us start with practical features that are *speaker-centric*. As Finlay and Plunkett note, the speaker tends to be reliably motivated to comply with what she asserts to be the law, and thereby to express pro- or con attitudes towards the relevant conduct. Consider the following case: suppose I were to make an internal legal statement by uttering: "It is the law that individuals must pay taxes." At the very next moment, a tax collector walks through the door, seeking taxpayers. I turn to her and say, "Yes, I judge that it is the law that individuals must pay taxes, but I am not at all motivated to do so; I couldn't care less whether I pay taxes or not." It would be quite strange for me to say this, as we usually assume a connection between internal legal statements and motivation.

> (motivationality). If an individual makes a sincere internal legal statement, there is an expectation that they will be at least somewhat motivated to act in accordance with that statement.

This feature of legal thought and discourse sets it apart from other paradigmatically cognitivist domains. For example, if I were to claim "it is raining outside," there is no expectation that I am motivated to act in any particular way, unless one also assumes that I have some other

desires (such as a desire to walk outside without getting wet). While legal theorists generally agree that there is *some* sort of connection between sincere internal legal statement and motivation, the character of this connection is subject to intense debate in the literature.

The 8th Amendment of e explanation of the connection to motivation will be one of the main focuses of this dissertation. The challenge will be to propose an account that captures the special closeness there intuitively seems to be between sincere internal legal statement and motivation, while also accounting for everyday (and more radical) failures of motivation, wherein it seems intuitive that one has made an internal legal statement yet lacks the relevant motivation.

There is, however, also an *audience*-centric function of internal legal statements. It seems uncontroversial that discourse about legal topics matters to us in part because it matters for what we do and what we expect each other to do. At any rate, a surface feature of internal legal statements is that they are supposed to have some sort of bearing on the actions of others:

> (prescriptivity). Internal legal statements are supposed to have direct bearing on the actions of others.

However, here a central challenge is to explain the special connection between legal statements and motivational attitudes in the audience. In this regard, it is noteworthy that legal statements often serve the function of commanding something to the particular addressee. For example, a statement that Ronald is guilty of trespassing can be considered a speech act of *recommendation*, as Ronald is recommended to, for example, pay a fine, and legal officials are recommended to install an electronic tag on Ronald's ankle. Accordingly, the statement "The 8th Amendment of the US Constitution prohibits capital punishment" may be considered a speech act of *recommendation*, suggesting that others should not engage in capital punishment by, for example, imposing death penalty on defendants.

1.4. Humean Puzzle

There are two kinds of appearances of internal legal statements: cognitivist, suggesting that what is expressed by internal legal statements is a content of beliefs (or, based on inferentialist principle of domain individuation, that internal legal statements function as language-entry transitions), and practical, suggesting that what is expressed by internal legal statements is a desire-like state of the speaker (or that internal legal statements function as language-exit transitions). Nonetheless, a powerful Humean tradition in the philosophy of mind holds that beliefs and desires are what Hume called "distinct existences," implying that beliefs as such are motivationally inert – they can never motivate without the help of some independently existing desire. Beliefs just sit there,

representing the world in a certain way. Modern philosophers have cashed out this Humean idea in terms of the different and apparently exclusive "directions of fit" of beliefs and desires, the method often attributed to Elizabeth Anscombe.[35] Very roughly, if one believes that p, but p is not the case, then it is one's belief that needs to change. On the other hand, if one desires that p but p is not the case, it is the world that needs to be changed. One way of cashing out the "direction of fit" metaphor is in terms of the very different functions of belief-like and desire-like states of mind. The former functions to track the way the world is, whereas the latter functions to prompt action in light of how one takes the world to be. For example, if I *believe* it is raining and it becomes apparent that it is not, I normally change my mind. If I *desire* coffee and I notice I don't have any, I normally retain that mental state and change the world by getting coffee. Of course, that is only what *normally* happens. Sometimes things go wrong; I see it but don't believe it, or I want it but don't go and get it.

It is noteworthy that, like beliefs, and unlike mere sensations or moods, conative attitudes like desire are about more or less specific objects and situations: I desire, fear, hope for, and plan to bring about certain states of affairs. And like beliefs, they are related in at least somewhat systematic patterns of compatibility and inconsistency: if I fear that I will lose my job, there is at least prima facie something problematic about simultaneously planning to insult my boss to her face. But unlike beliefs, the function of such non-cognitive states is not to describe how the world is, but to show how the world should be, and to lead the agent to act accordingly.[36] Consequently, if you *believe* a mouse is in front of you, this will have no bearing on your actions unless you have a relevant *desire*. The latter category is broad: it includes a fear of mice, dislike of them, wishing that they be killed, the intention to squish them, and so on.

To capture what constitutively distinguishes the cognitive states and conative states, descriptive theories speak of the *tendencies* or *dispositions* – not guarantees – of mental states to change or move us whereas normative theories cite *reasons* to change or move us. Here is a rough characterization of Michael Smith's descriptive view: A mental state that *p* is a *belief* if and only if the apprehension that not *p* tends to cause the extinction of that state. In turn, a mental state that *p* is a *desire* if and only if it yields a disposition to make or keep *p* the case.[37] Here is Alex Gregory's normative view: For a mental state that *p* to be a *belief* that *p* is for it to be the case that if not-*p*, the fact that not-*p* gives you an objective reason to abandon the state. In turn, for a mental state that

35 Anscombe, *Intention*; see also Bex-Priestley, "Higher-Order Expressivism," 7; Ridge, *Impassioned Belief*, 2.
36 Elisabeth Camp, "Metaethical Expressivism," in *The Routledge Handbook of Metaethics* (Routledge, 2017), 88.
37 Michael Smith, "The Humean Theory of Motivation," *Mind* 96, no. 381 (1987): 52.

p to be a *desire* that *p* is for it to be the case that if not-*p*, the mental state gives you a subjective reason to make *p* the case.[38]

Therefore, according to the Humean theory of motivation, internal legal statements pose a significant challenge for legal cognitivists due to the tension they create. This tension generates the following puzzle: If internal legal statements express beliefs, or if they are propositions that constitute the content of beliefs, then how do we explain the practical appearances of these statements? Conversely, if internal legal statements are expressions of desires, how do we explain the cognitivist appearances of these statements? It is noteworthy that this dilemma may be reinstated within the inferentialist principle of domain individuation: If internal legal statements function as language-entry transitions, then the practical appearances of these statements remain unexplained. However, if internal legal statements function as language-exit transitions, then the cognitivist appearances of these statements remain unexplained. This indicates that the issue addressed in this dissertation extends beyond the scope of the Humean theory of motivation. However, for simplicity, subsequent discussions in this dissertation will be conducted within the Humean framework of beliefs and desires.

1.5. An Overview of Theoretical Approaches

An adequate theory of internal legal statements should account for the full range of both cognitive and practical usage of internal legal statements. However, due to the Humean puzzle, finding such a theory is challenging. Nonetheless, a similar puzzle arises in metaethics. In metaethics, four general strategies to solving this puzzle are often distinguished: 1) pure cognitivism, 2) pure expressivism, 3) quasi-cognitivism, and 4) quasi-expressivism.[39] Pure cognitivism – a position represented in metaethics, for example, by Jonathan Dancy[40] – suggests that the meaning of moral statements, as well as the nature of moral thought, is to be explained by what they are about, or in terms of their representational content – with reference to the moral properties and facts. However, pure cognitivism struggles with an explanation of practical uses of moral judgements. Accordingly, due to the fact that it regards the content of internal legal statements as descriptive, it would struggle with explaining the practical uses of moral statements. By assuming that internal legal statements express descriptive content, cognitivism faces the following dilemma: 1) denying that internal legal statements have any practical features, or 2) accepting that descriptive content

38 Alex Gregory, "Changing Direction on Direction of Fit," *Ethical Theory and Moral Practice* 15, no. 5 (2012): 607.
39 Teemu Toppinen, "Hybrid Accounts of Ethical Thought and Talk," in *The Routledge Handbook of Metaethics* (Routledge, 2017).
40 Jonathan Dancy, *Ethics Without Principles* (Oxford: Oxford University Press, 2004).

may explain these practical features. The first option is not plausible, as these features are widely recognized. The second option is controversial, as it states that at least some legal beliefs are correctly described as both *beliefs* and *desires*, and are called "besires." The belief that abortions are bad, for instance, could be simultaneously a *belief* that abortions are bad and a *desire* that, say, fewer abortions occur. Nonetheless, it is noteworthy that accepting such a stance is tantamount to embracing the anti-Humean account, despite the Humean theory of motivation being a common assumption in many metaethical debates.[41]

Pure Expressivism, associated with philosophers such as Simon Blackburn[42] or Allan Gibbard,[43] offers an alternative explanation of features of internal legal statements. Legal expressivists maintain that normative utterances function to communicate non-cognitive psychological states rather than to describe legal states of affairs. However, it is not enough for those utterances to communicate those non-cognitive states in just any way. In particular, the expressivist denies that legal statements communicate those states by *reporting* that the speaker has them, as "I disapprove of murder" does. In turn, they *show*, or *express* those states.[44] It is noteworthy that legal expressivism is tailor-made for explaining the practical uses of legal statements. But it has a hard time explaining why legal statements seem to describe something that strikes many as an objective matter of fact and a legitimate object of purely descriptive inquiry in the social sciences. In this regard, legal expressivists may try to accommodate the belief-like features of legal statements. For instance, they may have to this end pursued what Simon Blackburn famously called the "quasi-realist" project of accommodating the "realist" sounding things that ordinary people say within a broadly expressivist framework. In this regard, when other people claim that some act is wrong, we might say "That's true." But this use of "true," these writers suggest, is merely another way of expressing the same attitude.[45]

Despite the impressive ingenuity displayed in each of the cognitivist and expressivist approaches, one may get the sense that both sides are trying to fit a square peg in a round hole. In order to answer the problematic issue, one may embrace the idea that cognitivism and non-cognitivism as traditionally defined present a false dichotomy. In response, recent years have given rise to the so-called hybrid theories that emerge as a middle ground, proposing that moral statements and thoughts are constituted by both representational beliefs and desire-like states.

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41 Bex-Priestley, "Higher-Order Expressivism," 10.
42 Simon Blackburn, *Essays in Quasi-Realism* (New York: Oxford University Press, 1993).
43 Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Cambridge, Mass.: Harvard University Press, 1990).
44 Frank Jackson and Philip Pettit, "A Problem for Expressivism," *Analysis* 58, no. 4 (1998): 239.
45 Blackburn, *Essays in Quasi-Realism*, 184–86; Derek Parfit, *On What Matters: Volume II* (Oxford: Oxford University Press, 2011), 380.

Such hybrid positions state that ethical thought has both belief- and desire-like features. On one hand, our ethical views (about the wrongness of eating factory-farmed meat or catcalling, for example) are naturally characterized as beliefs, and occasionally also as correct or true; they figure in (sometimes valid) inferences that we draw, and so on. On the other hand, our ethical views are intimately tied to motivation and action: it is hard to make good sense of someone both thinking that catcalling is wrong and at the same time engaging in catcalling. In this regard, one may distinguish between hybrid cognitivism and hybrid expressivism. Hybrid Cognitivism, associated with philosophers such as Stephen J. Barker,[46] David Copp,[47] Stephen Finlay[48] and Jon Tresan,[49] posits that moral statements express propositions that may be content of ordinary beliefs and desire-like attitudes. However, they place these desire-like attitudes at the level of pragmatics, regarding them as conversational or conventional implicatures. In turn, Hybrid Expressivism, represented, among others, by Michael Ridge,[50] cast their position as a view in metasemantics, i.e., as a view that moral statements have the semantic contents they have in virtue of certain conative states.

1.6. Conclusion

In this chapter, I have ventured into the intricate landscape of legal discourse, carefully dissecting the multifaceted nature of legal statements formulated by participants in legal discourse. This analysis has revealed that the function of legal discourse is not monolithic; rather, it embodies a delicate equilibrium between describing the world as it is and expressing normative states about how it ought to be. The examination commenced with a delineation of the core appearances of internal legal statements, juxtaposed against the backdrop of other domains of thought and discourse. In this regard, I distinguish a "bottom-up" approach, which seeks to ground the individuation of the legal domain in the substantive properties it concerns, and a "top-down" approach, which highlights the functional role that legal discourse plays in the lives of its participants. Subsequently, the discussion advanced to scrutinize the cognitivist appearances of internal legal statements – truth-aptness, embeddability, belief-expression, justification-aptness, and objectivity. These attributes underscore the affinity of legal discourse with other domains that

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46 Stephen J. Barker, "Is Value Content a Component of Conventional Implicature?," *Analysis* 60, no. 3 (2000): 268–79.

47 David Copp, "Realist-Expressivism and Conventional Implicature," in *Oxford Studies in Metaethics*, ed. Russ Shafer-Landau (Oxford University Press, 2009).

48 Stephen Finlay, *Confusion of Tongues: A Theory of Normative Language*, Oxford Moral Theory (Oxford, New York: Oxford University Press, 2014).

49 Jon Tresan, "De Dicto Internalist Cognitivism," *Noûs* 40, no. 1 (2006): 143–65.

50 Ridge, *Impassioned Belief*.

are primarily concerned with accurately describing and representing the world. However, this cognitivist dimension is counterbalanced by the practical appearances of internal legal statements, which pivot around motivationality and prescriptivity. This reveals a domain uniquely situated to influence behavior and express normative attitudes, thus imbuing it with a practical efficacy that transcends mere descriptive endeavor. The exploration then navigated through the philosophical problem posed by the Humean puzzle, which articulates the challenge of reconciling the cognitive and practical dimensions of legal statements within a unified theoretical framework. This puzzle is built upon the underlying tension between beliefs, with their mind-to-world direction of fit, and desires, with their world-to-mind direction of fit. In response to this challenge, the chapter surveyed a range of theoretical approaches, including pure cognitivism, expressivism, and their respective hybrid variants, each offering a distinctive lens through which to view the complex dynamics of internal legal statements. These discussions illuminate the intellectual landscape within which legal theorists navigate, striving to construct a coherent account that accommodates the dual aspects of legal statements.

2. Quasi-Cognitivist Account of Internal Legal Statements

In the preceding chapter, I have identified the surface features of internal legal statements, which an adequate metalegal theory should either explain or dismiss as merely apparent. Moreover, I have introduced a challenge posed by the Humean puzzle, which questions how the cognitive and practical aspects of internal legal statements can coexist within a cohesive theoretical model. This chapter advances a quasi-cognitivist perspective aimed at reconciling these aspects. This account is structured around three primary challenges: 1) providing the semantics of internal legal statements, and explaining their 2) cognitivist and 3) practical appearances.

The first challenge a quasi-cognitivist needs to face is, therefore, how to assign semantic values to internal legal statements. The challenge, therefore, lies in identifying the properties, relations, states of affairs, etc., that legal statements are about. In this regard, I argue that the content of internal legal statements is constituted by the interpretive procedure set by the method of interpretation M and sources of law S, with both M and S being contextually determined.

Subsequently, I attempt to explain how legal quasi-cognitivism accounts for the cognitivist appearances of internal legal statements. In response, I argue that propositions expressed by internal legal statements can be seen as the content of ordinary beliefs, understood as attitudes with a mind-to-world direction of fit.

Lastly, I discuss how legal quasi-cognitivists might explain the practical appearances of internal legal statements. I propose that these statements can be interpreted as conveying desire-like mental states, albeit at a pragmatic level rather than a semantic one.

The quasi-cognitivist nature of this approach is therefore revealed in the fact that the cognitive aspect of legal statements is primary, in two senses: firstly, it argues that the explanation of the content of legal statements necessarily involves the subject matter of the law. Second, it diagnoses their practical function as a result of post-semantic, pragmatic processes, rather than of their semantics.

Through addressing these challenges, this chapter aims to enhance our understanding of internal legal statements from a quasi-cognitivist viewpoint.

2.1. Semantics of Internal Legal Statements

In this section, I will outline a descriptivist semantics for a quasi-cognitivist picture of internal legal statements. Following Finlay and Plunkett's explanation, a semantic theory is "descriptivist" if it identifies the literal and conventional content of the target sentences with some proposition.[51] In this regard, quasi-cognitivism goes along with a thesis that Dworkin attributed to legal positivism, that propositions of law are wholly descriptive – they are about how things are in the law, not about how they should be.[52] Nonetheless, to develop a descriptivist theory of internal legal statements, one must identify which propositions are the semantic contents of sentences of the form "It is the law that L," that is, what properties, relations, states of affairs, etc. are statements of law *about*.

Stephen Finlay and David Plunkett provide such a descriptivist semantics in an explicitly Hartian direction. They state that legal statements about legal rules refer to a rule of recognition that specifies the criteria for a rule to be a part of a given system of rules, or, in Hartian terminology, the conditions of legal validity within the system. In consequence, they argue that a statement of the form "It is the law that L" semantically expresses the proposition that L is a rule (requiring, permitting, or empowering some kind of behavior) satisfying the criteria of the rule of recognition *R* of legal system X.[53] Based on this, they suggest that internal legal statements hold logical incompleteness, as illustrated by the adjectives "old," "tall," "fast," "cold," and "eager." These logically incomplete predicates are used to refer to relational properties of standing in some relation *R* to some other thing. Unlike complete relational predicates, involving a relation to one particular thing (as being "terrestrial" consists of a relation to Earth), these have one or more open argument-places in their logical form. Nothing can be old, tall, fast, cold, or eager simpliciter, but only in particular ways or relative to particular classes of objects. A 20-year-old Daewoo Lanos might appropriately be deemed old for a car still on the road, for example, but not old for a classic car, and fast for a car of its age but not fast for a sports coupe. You might be eager to drive it, but not eager to buy it. By this hypothesis, asserting a statement "It is the law that..." that does not explicitly refer to a rule of recognition can only communicate a complete proposition because it implicitly relies on the salience of such a rule in the context.[54] In such cases, the relata can be left unstated, as the audience is able to identify it without assistance.

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51 Finlay and Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory," 53.
52 Ronald Dworkin, "Law as Interpretation," *Critical Inquiry* 9, no. 1 (1982): 180.
53 Finlay and Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory," 54–55.
54 Finlay and Plunkett, 55.

Nevertheless, I do not fully align with Finlay and Plunkett's perspective. In my view, their account bears an unnecessary theoretical cost, as it is committed to a claim that there is a conventional rule determining that 1) an act *A* is a source of the law and 2) A expresses norm(s) *N*.

As an alternative, I propose a closer examination of the "grammar" of internal legal statements, recognizing their role within the argumentative framework employed by participants in legal practice to show the truth of legal propositions. [55] This includes considering Wróblewski's analysis of the justification of judicial decisions. Wróblewski's insights into judicial decision justification may serve here as a starting point. According to Wróblewski Judicial decision, taken as the paradigm of legal decision, can be treated as a result of more or less complicated reasonings and is justified by various techniques.[56] While discussing the elements of justification of legal decision in a theoretical model, Wróblewski singled out three kinds of judicial decisions. "Final decision" determines the consequences of the proved facts of the case according to the dispositions of the applied legal norm. However, the final decision is preceded by two further decisions: "interpretative decision", that determines the meaning of the applied legal norm, and "decision of evidence" stating that the fact of a case has taken place. Regarding interpretative decisions, Wróblewski argues that the determination of the meaning of the norm hinges on interpretative directives as rules regulating how one has to seek the "true" meaning of a norm.[57] Accordingly, Neil MacCormick states that participants in legal discourse invoke legal text as a basis for a specific claim, however disputes often arise concerning the proper meaning to be ascribed to the text, both in general terms and with particular regard to a particular situation. In this regard, he notes that the doubt for resolution is framed in terms of two (or sometimes more) rival possible meanings to be ascribed to a word or words in a legal text, where the determination of the meaning one way or the other affects the legal position of the disputants—that is, their rights or duties or powers or liabilities or the like. Arguments are presented to the court why one reading should be

55 Aulis Aarnio, *The Rational as Reasonable*, vol. 4, Law and Philosophy Library (Dordrecht: Springer Netherlands, 1986); Robert Alexy et al., *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification* (Oxford, New York: Oxford University Press, 2009); Luís Duarte d'Almeida, "On the Legal Syllogism," in *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence*, ed. David Plunkett, Scott J. Shapiro, and Kevin Toh (Oxford: Oxford University Press, 2019); Luís Duarte d'Almeida, "What Is It to Apply the Law?," *Law and Philosophy* 40, no. 4 (August 1, 2021): 361–86; Neil MacCormick, *Rhetoric and the Rule of Law: A Theory of Legal Reasoning* (Oxford: Oxford University Press, 2005); Dennis Patterson, "Normativity and Objectivity in Law," *William & Mary Law Review* 43, no. 1 (2001): 325–63; Joseph Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (Oxford, New York: Oxford University Press, 2009); Jerzy Stelmach, *Methods of Legal Reasoning*, 2006th edition (Dordrecht: Springer, 2006); Jerzy Wróblewski, "Legal Decision and Its Justification," *Logique et Analyse* 14, no. 53/54 (1971): 409–19; Jerzy Wróblewski, "Justification of Legal Decisions," *Revue Internationale de Philosophie* 33, no. 127/128 (1979): 277–93.

56 Wróblewski, "Legal Decision and Its Justification," 412.

57 Wróblewski, 412–13.

preferred to another or others.[58] Moreover, we may draw upon Dennis Patterson's argumentative framework for legal discourse.[59] Patterson treats the word "claim" as a term of art. Consider the claim "Smith's will is invalid." According to Patterson, this claim asserts that, as a matter of law, Smith's will cannot be an instrument for the probate transfer of her property.[60] Nonetheless, to maintain the claim of invalidity, more is required than a mere assertion of the Claim. There has to be a reason supporting the claim of legal invalidity. Suppose that Smith's will is witnessed by only one person. This is the Ground of the Claim that Smith's will is invalid. In this case, the Ground is a fact (i.e., that Smith's will has only one witness). Nevertheless, as Patterson notes, to show the truth of the Claim more than the Ground is required. What is it that makes that fact significant? The answer is a Warrant. A Warrant connects a Ground with a Claim. The Warrant makes the Ground significant vis-A-vis the Claim. In this case, the Warrant is the Statute of Wills, for in that statute one will find the appropriate Warrant, specifically the provision requiring two witnesses to a will. In this regard, the argumentative framework corresponds to a syllogistic model of legal reasoning that consists of a major, normative premise (a general legal norm, such as an interpreted statute), a minor descriptive premise (which states the facts), and a normative conclusion (the judgment). However, people often assume, usually without realizing it, that a judge's job is to read the text and do what it says. The law the text enacts just is whatever the text says it is. But nowadays, a more nuanced view of interpretation seems to be the dominant one. As Dworkin notes, "Even when lawyers agree about what we might call the ordinary historical facts of the matter – even when lawyers agree about what happened on some occasion, about who did what to whom, and even when they agree about what words are written in the statute books and other books of law, and about what judges in past cases have written and said- they may still disagree about what the law is."[61] A similar stance was embodied in recent papers by Cass Sunstein[62] and Richard Fallon,[63] who hold that there's nothing that legal interpretation "just is." Instead, there are many ways to read a legal text. Nonetheless, all texts, especially legal texts, must be properly construed. The way we give meaning to legal rules is with Backings. Backings are the ways in which we attribute

58 MacCormick, *Rhetoric and the Rule of Law*, 122–23.
59 Patterson, "Normativity and Objectivity in Law."
60 Patterson.
61 Ronald Dworkin, "Law, Philosophy and Interpretation," *Archiv Für Rechts- Und Sozialphilosophie* 80, no. 4 (1994): 464.
62 Cass Sunstein, "There Is Nothing That Interpretation Just Is," *Constitutional Commentary* 30 (2015): 193–212.
63 Richard Fallon, "The Meaning of Legal 'Meaning' and Its Implications for Theories of Legal Interpretation," *University of Chicago Law Review* 82, no. 3 (2015).

meaning to sources of law. Therefore, an agent, in deciding what is true as a matter of law, needs to identify valid sources of law and must know how to construe those sources.[64]

Here, the key to identifying the proposition expressed by internal legal statements is to realize that the answer to what is true as a matter of law is provided by sources of law and proper techniques that aim to elucidate their understanding – techniques that are recognized in contemporary legal culture as methods of interpretation.[65] Notably, these methods often provide systems of more or less explicit rules or principles intended to guide the interpretive process of participants in legal discourse. Widely present across many legal cultures, these methods rank the interpretive arguments, providing the intellectual frameworks that set the boundaries for interpretive freedom.[66] Thus, these methods enhance both the stability and efficiency of legal interpretation practices and, at times, the moral justification of decisions by legal professionals.[67] While acknowledging that methods of interpretation do not always rely on explicit rules – for example, they may refer to paradigm examples – I adhere to rules of interpretation as the most sophisticated tool. In this regard, it is worth mentioning that many of these rules have a long tradition, although most of them have never been written down in any legal act. An example of such a rule is one that states, "When the clear linguistic meaning of a legal expression is radically inconsistent with the essential values ascribed to the legislator, it should be adjusted to achieve axiological consistency".[68] To systematize legal domain, some legal theorists have attempted to catalog these rules. Antonin Scalia,[69] Sunstein,[70] William Eskridge Jr.,[71] and others were striving to achieve this goal in the United States, while Wróblewski[72] and Maciej Zieliński,[73] among others, were aiming for the same in Poland.

Based on the above remarks, I maintain that internal legal statements implicitly rely on the sources of law and interpretive procedures set by a particular method of interpretation. For instance, I argue that the statement "It is the law that capital punishment is prohibited" refers to

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64 Spaak, also observed that justifying the choice of the major premise of the practical syllogism is a major problem in the theory of legal reasoning, and it involves finding and interpreting, or, sometimes, constructing a legal norm. see Torben Spaak, "Legal Positivism, Anti-Realism, and the Interpretation of Statutes," in *Logic, Law, Morality: Thirteeen Essays in Practical Philosophy in Honour of Lennart Åqvist*, ed. Krister Segerberg and Rysiek Sliwinski (Uppsala: Uppsala University, 2003), 128.

65 Wróblewski, "Justification of Legal Decisions," 275.

66 Aharon Barak, *Purposive Interpretation in Law* (Princeton: Princeton University Press, 2007), 21.

67 see Barak, 40.

68 Maciej Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki* (Wolters Kluwer, 2008), 349–50.

69 Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: West Thomson, 2012).

70 Cass R. Sunstein, "Interpreting Statutes in the Regulatory State," *Harvard Law Review*, no. 2 (1989): 405–508.

71 William N. Eskridge Jr., *Interpreting Law: A Primer on How to Read Statutes and the Constitution* (St. Paul: Foundation Press, 2016).

72 Jerzy Wróblewski, *Zagadnienia teorii wykładni prawa ludowego* (Warszawa: Wydawnictwo Prawnicze, 1959).

73 Maciej Zieliński, *Interpretacja Jako Proces Dekodowania Tekstu Prawnego* (Poznań: Wydawnictwo Naukowe UAM, 1972); Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki.*

the proper source of law – for example, the 8th Amendment of the US Constitution – and the interpretive procedure established by the proper method of interpretation. Therefore, an internal legal statement "It is the law that N" should be explained in terms of *N* satisfying, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M*, with both M and *S* contextually determined. For instance, the propositional scheme for a legal statement "It is the law that capital punishment is prohibited" would be that the rule that prohibits capital punishment is a rule that satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*.

In this regard, the proposed version of quasi-cognitivism undertakes three commitments concerning legal interpretation. The first commitment is called epistemic "interpretivism" which states that the legal content of sources of law is accessed indirectly, via specific inference, which, in legal theory, is called "legal interpretation." This account is based on a distinction between *sources of law* and *the law*. J.C. Gray, an American legal theorist points out in this regard that the law consists of "the general rules which are followed by its judicial department in establishing legal rights and duties",[74] while the sources of law consist of acts of its legislative organ, judicial precedents, opinions of experts, customs, and principles of morality.[75] In this regard, I will call the positions claiming that the inferential transition from sources of law to the law as "interpretational" and denying it as "non-interpretational." In this dissertation, I endorse a view that may be called "local interpretivism" when it comes to the law, that is a view, that the necessity of interpretation to grasp a particular content is not global, but is limited to a particular domain (here – legal domain), as it follows from characteristic features of this domain.

The second commitment is rationalist interpretivism, which states that the inference from sources of law to legal content should be explained in terms of rational capacities involving a response to reasons. In this regard, I argue that the inference from sources of law to legal content responds to the interpretive procedure offered by the proper method of interpretation, that is, it may be assessed as correct and incorrect relative to its alignment with this procedure. Therefore, access to legal content requires going through the interpretation process governed by these rules. In this regard, I argue that while legal sources might be unclear to a layperson, they are crafted in a way that legal professionals can interpret and understand them through their knowledge of legal techniques.[76]

The third commitment one may attribute to my account is ontological "interpretivism." It states that the role of the interpretive procedure determined by a proper method of interpretation

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74 John Chipman Gray, *The Nature and Sources of the Law* (Macmillan, 1921), 1.
75 Gray, 124.
76 Karl N. Llewellyn, *The Theory of Rules*, ed. Frederick Schauer (Chicago: University of Chicago Press, 2011), 41.

is not only to provide access to legal content; it is also to constitute the content in question. In this regard, I endorse the view that *N* is the law if and only if *N* results from an interpretive procedure set by the proper method of interpretation in respect of the sources of law *S*. In this regard, it is worth noting that it seems to be quite a common view that we first determine the content of the law, and then we elaborate on its relation to the result of an interpretive procedure. Contrary to this view, the account under discussion suggests starting with the proper interpretive procedure and, based on this, end by explicating the content of the law.

However, these commitments may raise at least two worries. First, one may argue that legal statements concerning legal content do not refer to methods of interpretation, as their relation to legal content is only contingent – such theories sometimes may provide a correct identification of legal content, that is, determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm, sometimes not. I view this differently. In this dissertation, I endorse the view that we should not question whether a given method accurately captures the law; instead, we should posit that any outcome derived from this method is, by definition, the law. Therefore, given the terminology of Crispin Wright, when it comes to legal content, a proper method of interpretation is not about fact-tracking; rather, it is fact-constituting – the interpretive procedure that follows from it *determines* the legal status of a particular norm, rather than merely reflects or tracks it. Such a theory not so much justifies individual interpretative decisions as accurately reflecting the pre-existing content of the law but rather creates the subject of interpretative inquiries. It is noteworthy that many scholars echo this position. For example, Zieliński states that the interpreter norm should not be evaluated for conformity with the norm that legislator embedded in the sources of law. Instead, we should assume that a norm resulting from an interpretation of the sources of law based on such-and-such rules of interpretation accepted in a given legal culture is, by definition, the norm intended by the legislator.[77] Accordingly, Wróblewski notes that "it would be simplest if it were possible to establish the "real meaning of norms," and then, to neutralize any possibility of arbitrariness in the [interpretive] process, one would direct the interpreter towards a clear goal and provide criteria by which they can determine whether this goal has been achieved".[78] However, Wróblewski points out that "the issue of the existence of the "real meaning of norms" is not so straightforward. One cannot seek a solution in the 'will of the legislator' or the "will of the ruling class," as this is a superficial resolution of the problem since it is precisely this "will" that needs to be determined, and one cannot mix the means of determination with what is to be determined".[79] In response, Wróblewski argues that it must be acknowledged that "the 'real meaning' [of a legal

77 Zieliński, *Interpretacja Jako Proces Dekodowania Tekstu Prawnego*, 31.
78 Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, 419.
79 Wróblewski, 419.

text] is defined in terms of the conformity of the interpretation process and findings with the assumed [interpretive] rules".[80] In this way, Wróblewski directly expresses the conviction that the meaning of a legal text is necessarily relativized to the relevant interpretative rules. Accordingly, in the United States, Sunstein asserts that statutes do not have pre-interpretive meanings, and the process of interpretation requires courts to draw on background norms.[81] Thus, he argues that legal interpretation is a function of background norms and cannot proceed without them.[82]

Second, one may raise a question of whether the account of the semantics of internal legal statements I propose does not entail a kind of interpretive subjectivism. This concerns suggests that the same set of legal sources could lead to multiple binding legal systems, depending on the interpretive method chosen by the speaker. To address this concern, I argue that internal legal statements do not refer to any method of interpretation the speaker has in mind, but the proper one. This proper method is identified by the criteria responsible for solving conflicts between methods of interpretation. Therefore, the content of the "method of interpretation *M*" is not a method the speaker has in mind, but a method grounded in overarching criteria.

2.2. Explanation of Cognitivist Appearances of Internal Legal Statements

A semantic theory offered in a previous section is a formal model that tells us how to assign semantic values to linguistic items, and how these values combine to give rise to semantic contents for entire sentences. This is an inevitable part of the explanation of cognitive features of internal legal statements. Nonetheless, the following question remains: What, then, provides the ultimate explanation of the content of internal legal statements? In response, quasi-cognitivism embraces a descriptivist interpretation of the semantics of internal legal statements, identifying the literal and conventional content of the target sentences with an ordinary proposition. This proposition represents the world as being a particular way and is true if and only if the world is indeed that way. Such propositions are the contents of ordinary *beliefs*, understood as attitudes with a mind-to-world direction of fit. This idea may be further explored by considering the explanation of the so-called "protected" internal legal statements,[83] such as:

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80 Wróblewski, 419.

81 Sunstein, "Interpreting Statutes in the Regulatory State," 411.

82 Sunstein, 412.

83 I. L. Humberstone, "Two Types of Circularity," *Philosophy and Phenomenological Research* 57, no. 2 (1997): 249–80; James Dreier, "Meta-Ethics and The Problem of Creeping Minimalism," *Philosophical Perspectives* 18, no. 1 (2004): 23–44.

(E) Elisabeth said that it is the law that capital punishment is prohibited.

The question now is how legal quasi-cognitivism fills in the blank in statements like:

(G) Its being the case that (E) consists of nothing more than ———.

Here (G) is supposed to be what Fine calls a statement of ground. As Dreier notes, we want here the most fundamental, the most illuminating explanation available.[84] In response, legal quasi-cognitivism diverges from its expressivist rivals by stating that filling in the blank in (G) must involve some legal subject matters of law, such as (representations of) interpretive procedure set by the proper method of interpretation, sources of law, the fact that *N* satisfies, in respect of sources of law *S*, the aforementioned procedure, etc.[85] Accordingly, legal quasi-cognitivism explains the success in action consisting of asserting internal legal statements in terms of "getting things right about the world".[86] Cognitivist appearances of internal legal statements, including truth-aptness, embeddability, expression of belief, justification-aptness and objectivity are also explained by legal quasi-cognitivists in terms of the law's subject matter. In this regard, legal quasi-cognitivism emphasizes the role of internal legal statements in language-entry transitions.

2.2.1. Truth-aptness

Internal legal statements seem truth-apt, and some of them seem true by virtue of having true contents. Quasi-cognitivism explains this platitude by stating that internal legal statements purport to represent objective facts and properties. Consequently, it views the assertoric content of internal legal statements as related in some way to propositions representing the world. And those types of contents are paradigmatically assessable for truth or falsity.

Quasi-cognitivist interpretation of semantics of internal legal statements goes along with a descriptivist approach. Descriptivists argue that

(1) Grass is green

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84 Kit Fine, "The Question of Realism," *Philosophers' Imprint* 1 (2001): 1–30; Dreier, "Meta-Ethics and The Problem of Creeping Minimalism"; James Dreier, "The Real and the Quasi-Real: Problems of Distinction," *Canadian Journal of Philosophy* 48, no. 3–4 (2018): 532–47; Matthew Simpson, "Creeping Minimalism and Subject Matter," *Canadian Journal of Philosophy* 50, no. 6 (August 2020): 750–66; Camil Golub, "Representation, Deflationism, and the Question of Realism," *Ergo an Open Access Journal of Philosophy*, no. 7 (2021).

85 Dreier, "Meta-Ethics and The Problem of Creeping Minimalism"; Dreier, "The Real and the Quasi-Real: Problems of Distinction"; Simpson, "Creeping Minimalism and Subject Matter," 758.

86 Simon Blackburn, "Success Semantics," in *Practical Tortoise Raising: And Other Philosophical Essays*, ed. Simon Blackburn (Oxford University Press, 2010), 181.

expresses the proposition that the grass is green. This proposition is true or false based on whether the grass possesses the property of being green, aligning with how the world is described. This, they think, is an articulation of the truth condition of that sentence. By analogy, legal quasi-cognitivism holds internal legal statements also express a proposition that is true or false depending on whether the world is the way it describes it as being. For example, they will say that the sentence

(2) It is the law that capital punishment should not be performed

expresses the proposition that *the rule that prohibits capital punishment is a rule that satisfies, in respect of sources of law S, the interpretive procedure set by the method of interpretation M*, which is said to be true or false depending on whether the world is the way it describes it as being; for example, depending on whether the interpretive procedure under discussion, as applied to sources of law, determines a result in a form of the rule under discussion.

2.2.2. Embeddability

Internal legal statements, like any ordinary declarative sentence, are capable of being the objects of propositional attitude ascriptions, can be significantly embedded in conditionals and other constructions, can be meaningfully translated, etc. This feature of internal legal statements is strictly connected with the so-called "Frege point": "A thought may have just the same content whether you assent to its truth or not; a proposition may appear in a discourse now asserted, now unasserted, and yet be recognizably the same proposition."[87] In other words, the content of target sentence remains the same across simple and embedded contexts, such as conditionals, negations, disjunctions, and conjunctions as well as constructions involving existential and universal quantification.[88] In this regard, Geach associated the embeddability of target sentences with a principle of compositionality, stating that semantic content for a sentence is determined by its syntactic structure and lexical content: the meaning of a sentence should be exhausted by the meaning of its parts and their mode of composition.[89]

However, why is compositionality relevant for embeddability? In this regard, we may consider two requirements: *Contribution Requirement and Logical Preservation Requirement.*

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87 Peter Geach, "Assertion," *Philosophical Review* 74, no. 4 (1965): 449.

88 Ryan Hay, "Attitudinal Requirements for Moral Thought and Language: Noncognitive Type-Generality," in *Having It Both Ways: Hybrid Theories and Modern Metaethics*, ed. Guy Fletcher and Michael Ridge (Oxford University Press, 2014), 81; Matthew Chrisman, *The Meaning of "Ought": Beyond Descriptivism and Expressivism in Metaethics*, Oxford Moral Theory (Oxford, New York: Oxford University Press, 2015), 5.

89 Emma Borg, *Pursuing Meaning* (Oxford,: Oxford University Press, 2012), 4.

Contribution Requirement states that an adequate meaning theory for a language must specify, for any sentence of that language, the contribution that sentence makes to our understanding of more complex sentences into which it may embed. In other words, it must align with the compositionality principle. In this regard, compositionality principle suggests that we cannot hope to provide a formal theory of meaning which simply pairs sentences of the object-language (the language under study) with their meanings, in the form of instances of the schema: *"s" in L means that p.* This sort of move, which treats meanings as entities to which natural language sentences can attach or refer, is unable to accommodate certain features of our linguistic comprehension, namely that it is productive and systematic. Linguistic understanding is productive in that elements within a sentence can be iterated time and time again, to produce more and more complex sentences, but the agent who is capable of understanding or producing the initial sentence will *also* be in a position to understand or produce the more complicated linguistic item.[7] So, the agent who understands the sentence "The father of Aristotle was Greek" will also understand the sentence "The father of the father of Aristotle was Greek," and the sentence "The father of the father of the father of Aristotle was Greek." Yet it seems that no simple list-like theory pairing sentences with meanings could explain this (for the meaning of the first sentence would be given by one entity, m_1, while the meaning of the second and third would be given by different entities, say m_2 and m_3, and there would be no reason to suppose that an agent grasping one of these meaning entities should also grasp any of the others).

Furthermore, our linguistic understanding is systematic: the grasp of the meaning of a whole sentence seems to be systematically related to the grasp of the meaning of its parts. Thus, among agents with a normal linguistic competence, if someone understands the sentence "Bill loves Jill" they will also understand the sentence "Jill loves Bil'". Yet again no theory which simply pairs sentences with their meanings will be able to predict or explain this systematicity of linguistic understanding. These properties of systematicity and productivity seem to point to a key fact about linguistic meaning, namely that it is *compositional.* That is to say, the meanings of complex linguistic items, like sentences, are a function of the meanings of their parts together with the mode of composition of those parts. In this regard, compositionality explains why our understanding of meaning is productive and systematic. We can understand any novel sentence we come across, just so long as we are familiar with the elements which go together to make up that sentence, and those elements are put together in a way we understand, since every sentence in natural language has a meaning which is exhausted by the meanings of its parts and their mode of composition.[8] To respect the constraints of compositionality, then, it seems that what we want is not a simple, indefinitely long list pairing sentences and meanings, but rather a finitely axiomatized and

recursively specified semantic theory. That is to say, what we want is a theory which, from some basic rules and a finite set of data reveals how an agent is able to produce and understand an indefinite range of linguistic items. The theoretical background for this idea is Tarski's groundbreaking work on the notion of truth. Very roughly, Tarski showed us how, by taking the notion of meaning (translation) as primitive, one could deliver a formal axiomatization of the truth predicate for any natural language. In a reversal of matters, then, Davidson suggested that, while taking the notion of truth as primitive, one might deliver a formal theory capable of giving the meaning of every sentence of a natural language.

Consider (1)–(6):

(1) The light is green.
(2) The light is not green.
(3) The light is green, or I am color blind.
(4) If the light is green, you may proceed.
(5) Jill believes that the light is green.
(6) It is possible that the light is green.

Sentences (2)–(6) embed (1). We understand (2)–(6) by understanding their parts and the way those parts are combined. And we understand the same thing by (1) when it occurs in any of (2)–(6). Since we understand (2)–(6) by understanding their parts, and since we understand the same thing by (1) as it occurs in (2)–(6), an adequate meaning theory must tell us what we understand when we understand "The light is green" – and what we so understand is therefore what is contributed to our understanding of (2)–(6) and, for that matter, to our understanding of any complex sentence into which (1) can embed. In this regard, Geach suggests that we may understand (2)-(6) in virtue of (1) due to the fact that the content of (1) remains the same across simple and embedded contexts.

A second requirement on an adequate meaning theory is what I will call the Logical Preservation requirement. Logical Preservation states that an adequate meaning theory for a language must respect the intuitive logical relations among which the sentences of that language stand. Consider (7)–(10):

(7) The light is green.
(8) The light is not green.
(9) If the light is green, you may proceed.
(10) You may proceed.

Intuitively, sentences (7) and (8) are inconsistent; an argument from (7) and (9) to (10) is valid; an argument from (8) and (9) to (10) is invalid. Importantly, an adequate meaning theory must respect these logical relations. At the very least, it must accomplish this explanatory task without collapsing such inferences of simple equivocation. In this regard, Geach suggests that logical relations between (7)-(10) stands in virtue of the fact that the content of (7) remains the same across simple and embedded contexts.

Consequently, we see that an adequate theory of meaning, in order to provide a satisfactory explanation of embeddability, must ensure that the content of the target sentence remains stable across both simple and embedded contexts, including conditionals, negations, disjunctions, conjunctions, and quantifications. The question then arises: how to explain this stability? In response to this question, descriptivism associates sentences with propositions, understood as representations, that is, information which represents the world as being a particular way, where this information is capable of being true or false depending simply on how the world in fact is. The representation associated with a target sentence does not change when it is used in embedded contexts, implying that the content of the sentence remains invariant across different linguistic uses. This is exactly the strategy embraced by legal quasi-cognitivism. Consider the following sentences:

(11) It is the law that torture is prohibited.
(12) If it is the law that torture is prohibited, then what Bill did was illegal.
(13) What Bill did was illegal.

Based on the previous remarks, we may conclude that an adequate theory of the meaning of internal legal statements needs to accommodate two things: what we understand by (11) contributes to our understanding of (12), and the argument from (11) and (12) to (13) is valid. Legal quasi-cognitivism explains the above in terms of internal legal statements having a constant meaning regardless of being asserted or not asserted. Moreover, legal quasi-cognitivism explains this stability in terms of internal legal statements representing the world. In other words, (11) conveys the same information about the world both in (11) and in (12).

In this regard, the proposed version of legal quasi-cognitivism states that (11) conveys an information that a rule prohibiting torture satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*, with both M and *S* contextually determined.

Consequently, it is capable of maintaining the stability of content of (11) by stating that (12) conveys an information that *if* a rule prohibiting torture satisfies, in respect of sources of law

S, the interpretive procedure set by the method of interpretation *M* (where *M* and *S* are determined by the institutional context), *then* what Bill did was illegal.

In this regard, legal quasi-cognitivist analysis of internal legal statements explains that we understand the same thing by (11) as it occurs in (12), as (11) conveys the same information – that is, an information that a rule prohibiting torture satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*, in both simple and embedded contexts. On this basis, legal quasi-cognitivists are entitled to state that our understanding of (11) contributes to our understanding of (12). For the same reason, they are entitled to state that an argument from (11) and (12) to (13) is valid, as the content of (11) does not vary when embedded in (12).

2.2.3. Belief-expression

Based on Humean theory of motivation, beliefs are representational, that is, they are *attitudes with a mind-to-world direction of fit.* One reason to think it is representational is that the folk concept of belief figures into folk psychological explanations of action, according to which beliefs about how the world is combine with desires that the world be a certain way to generate action. (For instance, my act of putting the kettle on is explained by my desire to have tea, together with my belief that the best means for me to have tea involves putting on the kettle). In support of the belief-expression feature, I pointed out in Chapter 1 that it is quite natural to attribute legal beliefs to others; if Kate says "This is the law that torture is prohibited," and appears sincere, we would typically recognize that Kate holds a legal belief. Legal quasi-cognitivism explains this intuition by stating that Kate, in fact, have an attitude with a mind-to-world direction of fit, as she believes *that a rule prohibiting torture satisfies, in respect of sources of law S, the interpretive procedure set by the method of interpretation M.* The content of this belief is a proposition representing the world, it is an information about how the world is.

2.2.4. Justification-aptness

Another appearance suggesting that internal legal statements results from cognitive capacities of participants in legal discourse is justification-aptness. When participants in legal discourse make internal legal statements, they become accountable for defending their claims and providing justification when challenged. In this regard, internal legal statements, like many ordinary claims, enter the game of giving and asking for reasons. We often do offer and request reasons for accepting certain legal claims, and we do assess some reasons as better or worse, as supporting a legal position or not. There is an expectation in legal discourse that one be able to supply reasons

for one's interlocutor to adopt one's own attitude. In this regard, legal quasi-cognitivism explains the justification-aptness of internal legal statements in terms of facts supporting these statements. If I state "It is the law that capital punishment is prohibited" and I am asked for reasons for this claim, I may refer to the fact that norm prohibiting capital punishment satisfies the interpretive procedure settled by the proper method of interpretation applied to, for example, 8th Amendment. It is noteworthy that legal quasi-cognitivism explains the satisfaction of the interpretive procedure settled by the proper method of interpretation, with respect to sources of law, in factual terms – a claim that this satisfaction occurs is not just an expression of desire-like states of the speaker, but aims to report a relevant state of affairs. Thus, legal quasi-cognitivism views the law as fundamentally knowable, suggesting that competent observers, under suitable conditions, can determine which behaviors the law commands or forbids in specific circumstances.[90]

2.2.5. Objectivity

Finally, internal legal statements seem to be metaphysically objective. Whether an internal legal statement *I* is true does not vary depending on what individuals or groups happen to think about *I*. In this regard, legal quasi-cognitivism provides a sophisticated explanation of the objectivity of internal legal statements in terms of objectivity of law. Primarily, the law can be considered metaphysically objective in the sense that it is mind-independent. However, discussions arise regarding the nature and strength of this mind-independence. In this context, Matthew Kramer makes a distinction between two types of mind-independence: existential and observational.

Something is existentially mind-independent if and only if its occurrence or continued existence does not presuppose the existence of some mind(s) and the occurrence of mental activity. Not only are all natural objects mind-independent in this sense, but so too are countless artifacts such as pens and houses. Although such artifacts would not exist without minds and mental activity initially making them existentially mind-dependent – their continued existence does not require ongoing mental activity or the presence of minds. A house would persist for a certain time as the material object that it is, even if every being with a mind were somehow straightaway whisked out of existence.

Something is observationally mind-independent if and only if its nature (comprising its form and substance and its very existence) does not depend on how any observer takes that nature to be. Whereas everything that is existentially mind-independent is also observationally mind-independent, not everything that is observationally mind-independent is existentially mind-

90 Brian Leiter, "Legal Indeterminacy," *Legal Theory* 1, no. 4 (1995): 486 n. 17; Matthew Kramer, *Objectivity and the Rule of Law*, Cambridge Introductions to Philosophy and Law (Cambridge: Cambridge University Press, 2007), 47.

independent. For instance, take the case of an intentional action. The occurrence of any such action presupposes the existence of a mind in which there arises the intention that animates the occurrence, yet the nature of the action does not hinge on what any observer(s) – including the person who has performed the action – might believe it to be. Thus, even if all observers think that the action is of some type *X*, it may in fact be of some contrary type *Y*.

Furthermore, Kramer distinguishes between weak and strong versions of these types.[91] Advocates of weak existential objectivity state that the occurrence or continued existence of the law is not dependent on the mental activity of any particular individual. In turn, advocates of strong existential objectivity state that the occurrence or continued existence of law is not dependent on the mental functioning of any member of any group individually or collectively. On the other hand, proponents of the weak observational objectivity of law state that the nature of the law is not dependent on what it is taken to be by any particular individual. In turn, strong observational objectivity maintains that the nature of the law is not dependent on what it is taken to be by the members of any group individually or collectively.[92]

Viewed through this lens, Kramer's distinctions between existential and observational objectivity highlight the critical role of law's metaphysical objectivity. The quasi-cognitivist account leans towards an understanding of law that emphasizes its observational mind-independence. It follows from the fact that legal quasi-cognitivism provides a justification for a claim that legal content is independent of any individual's or group's perceptions or beliefs. Consequently, it allows for a possibility that legal agents are mistaken when it comes to what the law says. In this regard, the quasi-cognitivist picture states that legal content is determined by legal artifacts, and once legal artifacts are established, their consequences stand independently of these subjective views. Consequently, legal agents that know legal sources, and know the proper method of interpretation, may still, due to common delusion, external pressure, etc. fail to get the content of legal sources that is prescribed by the discussed method of interpretation. In this regard, legal quasi-cognitivism provides an explanation how the law may be observationally mind-independent in strong sense.

It is noteworthy that this alignment does not deny that the existence and application of legal norms depend on collective human activities and interpretations. In this regard, legal quasi-cognitivism accepts a weak existential mind-independence of the law, as it is grounded on legal artifacts, which occurrence and continued existence depends on mental functioning of participants in legal discourse.

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91 Kramer, *Objectivity and the Rule of Law*, 6.
92 Kramer, 6.

2.3. Explanation of Practical Appearances of Internal Legal Statements

In the previous part, I focused on a quasi-cognitivist explanation of the cognitive aspect of legal statements in terms of internal legal statements expressing propositions that are contents of ordinary beliefs. In this part, I will address how internal legal statements, taken as expressing propositions that are contents of ordinary beliefs, could possess any practical features? Legal quasi-cognitivists encounter a challenge here, as the prevailing Humean theory of motivation explains practical appearances of target sentences in virtue of desire-like states associated with these sentences, while taking beliefs and desires as "distinct existences." To answer this kind of challenge, legal quasi-cognitivism relies on a set of pragmatic resources.

2.3.1. Implicatures and internal legal statements

The crucial pragmatic notion legal quasi-cognitivism relies on is the notion of implicature. Implicatures are what someone can in certain distinctive ways convey without literally saying.[93] On a fairly standard view, there are (at least) two forms of implicature – conversational and conventional. Conversational implicature depends on a certain sort of contextual stage-setting or "back story".[94] Suppose I say "There is a petrol station one mile down the road" in reply to a weary traveler in need of petrol I conversationally implicate but do not literally say, that he can get petrol there. Conversational implicature can also be canceled. A more helpful local could, without infelicity, have replied, "The nearest petrol station is one mile down the road, but it has been out of business for years so you cannot buy petrol there. The nearest petrol station actually open today is two miles down the next road on your right." Conversational implicature, so understood, is contrasted with conventional implicatures in two ways. First, conventional implicature does not depend on any special stage-setting in the context of utterance. Instead, conventional implicatures are a function of robust linguistic conventions and apply across a wide range of contexts without any special back story. Second, conventional implicatures cannot be canceled without linguistic infelicity. Words like "but" and "even" introduce conventional implicatures. Someone who says, as in the modified example, " . . . but it has been out of business for years" thereby implicates, but does not assert, some contextually salient contrast between what follows the "but" and what came before it. Thus, the key difference between conversational and conventional implicatures is that

93 Paul Grice, *Studies in the Way of Words* (Cambridge, Mass.: Harvard University Press, 1991).
94 Grice.

the former are *cancelable*.[95] Consequently, legal quasi-cognitivism may explain practical appearances of internal legal statements while maintaining its explanation of cognitive appearances of internal legal statements by stating that desires are expressed via *implicature*.

It is noteworthy that many works have been written on the role of implicatures within the law.[96] However, these works have primarily focused on the implicatures expressed by the legislative speaker. In contrast, this dissertation shifts focus to implicatures expressed by participants in legal discourse, such as attorneys and judges.

In this regard, it is noteworthy that many works were written on the role of implicatures within the law. However, these works focused mainly on the implicatures expressed by the legislative speaker. In contrast, this dissertation focuses on implicatures expressed by participants in legal discourse, such as attorneys, judges, etc.

Therefore, the challenge is to explain how mere statements about the relations in which norms stand to sources of law and methods of interpretation could function in practical ways. To meet this challenge, it is worth noting that if the semantics of internal legal statements is indeed relational, then asserting an unrelativized sentence such as "It is the law that capital punishment is prohibited," can only communicate a complete proposition if the sources of law and the method of interpretation are salient in the context. In that case, one may argue that the sources of law and the method of interpretation can be left unstated, since participants in legal discourse are able to identify them without explicit mention. Importantly, Stephen Finlay argues that the normal (though by no means only) circumstances in which the relata can be assumed are where it is salient in virtue of being of shared concern to both speaker and audience. Consequently, by uttering an unrelativized sentence, speakers communicate the additional information that they have a favorable attitude toward the unstated matters. Thus, one may argue that the proposition expressed by unrelativized internal legal statements, such as "It is the law that capital punishment is prohibited," contains the unstated subject matter (a particular method of interpretation and a relevant source of the law), but this subject matter is salient because it is of shared concern to participants in legal discourse. Under these circumstances, there is a tight, obvious connection to the practical appearances of internal legal statements: any agent with a desire or concern for a

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[95] Grice.

[96] Francesca Poggi, "Law and Conversational Implicatures," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 24, no. 1 (2011): 21–40; Andrei Marmor, *The Language of Law* (Oxford, New York: Oxford University Press, 2014); Alessandro Capone and Francesca Poggi, eds., *Pragmatics and Law: Philosophical Perspectives* (Cham: Springer, 2016); Alessandro Capone and Francesca Poggi, eds., *Pragmatics and Law: Practical and Theoretical Perspectives* (Cham: Springer, 2017); Izabela Skoczeń, *Implicatures within Legal Language* (Cham: Springer, 2019).

particular method of interpretation and a relevant source of law should have a derivative attitude towards norms that follow from the interaction of these matters.

2.3.2. Motivationality of internal legal statements

The first appearance of legal discourse that sets it apart from other paradigmatically cognitivist domains is *speaker-centric motivationality*. As Finlay and Plunkett note, the speaker tends to be reliably motivated to comply with what she asserts to be the law, thereby expressing positive or negative attitudes towards the relevant conduct. Legal quasi-cognitivism explains the connection between internal legal statements and motivation in terms of conversational implicatures. A speaker making an internal legal statement often implies a motivation to act accordingly. For instance, a judge's statement in court "it is the law that capital punishment is prohibited" might carry the implicature that the judge possesses a positive attitude toward a norm prohibiting capital punishment. Based on this, legal quasi-cognitivism suggests a weak interpretation of how internal legal statements relate to motivation. It views the motivationality of internal legal statements as a matter of contingent psychological fact: those who sincerely judge that *M* are statistically typically at least somewhat motivated to act in accordance with *M*. Accordingly, if one sincerely uses an internal legal statement, yet lacks any motivation to act in accordance with this statement, one violates certain default presumption, but one's act of utterance remains successful. This aligns with motivational externalism, which accepts that internal legal statements might not inherently motivate but recognizes a frequent correlation between judgment and motivation.

It is noteworthy that weak motivationality goes along with Joseph Raz's observation that sometimes legal actors express *detached* legal statements, that is, statements formulated in detachment from any particular commitment to a given norm.[97] Consider a scenario in which activists get arrested for occupying a government building to protest against a controversial environmental policy. The law clearly deems such an occupation illegal, prescribing imprisonment for such offenses, a fact of which the judge is fully aware. The judge, in this case, may state "Occupying government buildings is illegal" and, on this basis, recognize the illegality of the activists' actions. However, the judge may make this legal statement detached from their personal beliefs or commitments. For example, the judge might personally sympathize with the activists' cause and even share their concerns about environmental policy – she may even do the same while being in their position. Nonetheless, in the situation under discussion, the judge's personal conative states (desires, beliefs, commitments) are set aside in favor of upholding the law as it stands. In this regard, legal quasi-cognitivism provides an explanation on how legal statements can motivate

[97] Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 1990), 172–77.

actions, even when such motivation is not inherently contained within the cognitive content of the statement itself.

2.3.3. Prescriptivity of internal legal statements

Now, we may turn to consider *audience*-centric practical features of legal statements. Here a central challenge is to explain the special connection between legal statements and motivational attitudes in the audience. In this regard, internal legal statements seem to have direct bearing on the actions of others. Consider, for instance, two friends – Ronald and Kate – at a pedestrian crossing with a red signal. Ronald's statement that jaywalking is prohibited by law can serve as a speech act of recommendation to Kate, essentially advising her against jaywalking. Legal quasi-cognitivism, by explaining the prescriptive nature of internal legal statements in terms of conversational implicatures, can elucidate how such statements influence individuals to act in certain ways, grounded in the recognized expectations inherent in the relationships between participants in legal discourse. It is noteworthy that the strength of this explanation of prescriptivity lies in its ability to accommodate the fact that recommendations conveyed by internal legal statements are cancellable. For example, a morally flexible lawyer advising a client who manufactures methamphetamine might say "It is against the law to produce meth" not to deter the client from the illegal activity, but to hint at a desire for additional payment for legal assistance, perhaps with money laundering. In this context, the lawyer's statement could be misleading (as it lacks the typical advisory nature of internal legal statements), yet it remains linguistically flawless.

Based on the above considerations, quasi-cognitivism may accommodate practical features of internal legal statements, and their role in language-exit transitions, by agreeing with expressivism that internal legal statements are expressive of noncognitive attitudes, but unlike expressivism, holding this to be an entirely pragmatic feature of these statements, rather than of their semantics. In doing so, it not only offers a robust, descriptivist account of the cognitivist appearances of internal legal statements but also captures the nuanced aspects of their practical uses.

2.4. Conclusion

In this chapter, I have laid out the key features of a quasi-cognitivist approach to internal legal statements. I began with an analysis of the semantics of internal legal statements, arguing that these statements describe relations between norms and the subject matter of the law. This assumption is based on the claim that the content of internal legal statements is contingent upon the argumentative framework employed by participants in legal practice to show the truth of these

statements. Then, I have argued that internal legal statements may be regarded as expressing propositions constituted, inter alia, by the interpretive procedure set by a proper method of interpretation, implying that participants in legal discourse implicitly use rules of interpretation when formulating legal statements. In discussing the cognitivist appearances of internal legal statements, I have argued that explaining them necessitates mentioning the subject matter of law, such as sources of law, methods of interpretation, and other kinds of legal artifacts. Regarding the practical appearances of internal legal statements, I stated that they may be explained by quasi-cognitivists in terms of Gricean conversational implicatures that convey the particular conative state of the speaker. Here, I have distinguished between practical appearances of internal legal statements that are speaker-centric and those that are audience-centric, stating that both may be explained in virtue of the speaker's favorable attitude towards particular elements of subject matter of the law (and, derivatively, towards norms that follow from the interaction of these elements) expressed via conversational implicatures.

3. Undermining Legal Quasi-Cognitivism

In Chapter 1, I have identified the surface features of internal legal statements, which an adequate metalegal theory should either explain or dismiss as merely apparent. Moreover, I have introduced a challenge posed by the Humean puzzle, which questions how the cognitive and practical aspects of internal legal statements can coexist within a cohesive theoretical model. In Chapter 2, I have discussed the key elements of the quasi-cognitivist perspective on legal discourse. First, I have provided an analysis of the semantics of internal legal statements. Second, I have argued that explaining these statements necessitates mentioning the subject matter of law, such as sources of law, methods of interpretation, and other kinds of legal artifacts. Third, I stated that practical appearances of internal legal statements may be explained by quasi-cognitivists in terms of Gricean conversational implicatures that convey the particular conative state of the speaker. In this chapter, I will present three objections that challenge the quasi-cognitivist picture of internal legal statements, as introduced in Chapter 2. These objections contend that it is impossible to uphold all the claims to which legal quasi-cognitivism is committed. The first argument, built upon the infinite regress of interpretation, states that participants in legal discourse, while formulating legal statements, are systematically in error due to the incapacity of methods of interpretation, viewed as systems of interpretive rules, to determine that norm *N* satisfies the interpretive procedure set by these methods. This follows from the fact that the rules of interpretation constituting such a method are themselves subject to further interpretations, *ad infinitum*. The second argument hinges on the underdetermination of the properness of interpretive methods. It asserts that internal legal statements are systematically false, as the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a method. The third argument addresses the incoherence of interpretive methods. It states that for any method of interpretation *M*, if rule of interpretation R_1 belongs to M, then there is another rule R_2 that belongs to *M* but conflicts with R_1. Based on this, it is implied that methods of interpretation are not capable of setting any interpretive procedure determining whether norm *N* is, in respect of sources of law *S,* a legally binding norm. Consequently, legal actors who formulate legal statements are systematically in error, as the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a procedure.

3.1. Infinite Regress of Interpretation

According to the regress of the interpretation argument, methods of legal interpretation are incapable of definitively identifying legal content (that is, determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm), because the interpretive rules they endorse do not provide conclusive results for interpreting legal texts. This is because interpretive rules require further interpretation for their application, and these subsequent interpretations necessitate even more interpretation, creating an indefinite chain that leads to an infinite regress. This regress shows that we cannot attribute particular meaning to rules of interpretation, implying that participants in legal discourse, while formulating internal legal statements, are systematically in error. I will refer to this objection as the "regress argument."

Regress arguments are widely used in philosophy. Its primary form was associated with Agrippa's trilemma. Let us assume that in the course of the conversation, *S* claims that *q*. Given the acknowledged and crucial epistemological distinction between knowing (or being justified in believing) that *q* and merely assuming (or being of the opinion) that *q*, it seems reasonable to ask *S* what justifies her in thinking that hers is a case of one rather than the other. Suppose that *S* now offers some evidence *r*1 for her original claim; given the same acknowledged distinction, it seems reasonable to ask if *r*1 is itself something that she knows or whether she is merely assuming its truth. If this elicits a further source of evidence, *r*2, the same question can be repeated (for the same reason). In this way, the demand for justification gets passed down along a line of justifying reasons ($q \Rightarrow r1 \Rightarrow r2 \Rightarrow r3 \Rightarrow r4 \Rightarrow r5 \Rightarrow r6 \Rightarrow \ldots$) that threatens to regress endlessly. On this basis, the skeptic states that knowing that q is impossible. Here are the three options that make up the trilemma:

i. Offer an infinite chain of reasons (*infinite regress*).
ii. Offer a reason in support of itself (*circularity*).
iii. Offer no reasons at all (*groundlessness*).[98]

Importantly, an infinite-regress argument has two parts. The first shows that certain premises lead to an infinite regress. The second attempts to show that this regress is "vicious." I shall refer to the second part of an infinite regress argument as the "viciousness part." George Schlesinger, in discussing the question of when a regress is objectionable, observes that "there is

[98] Annalisa Coliva and Duncan Pritchard, *Skepticism* (Routledge, 2022).

nothing wrong with an infinite chain of something as such. No problem arises unless it is shown that to admit such a chain leads to some specifiable trouble."[99]

These kinds of arguments may be used by the skeptic to undermine the possibility of knowledge. In a similar manner, Wittgenstein discussed the infinite regress-of-rules argument that goes as follows. If understanding the content of an expression requires grasping the rule for its use (let us call it R_1), we can always wonder what the understanding of the ***rule*** consists of. Now we can say that understanding this rule requires grasping another rule (let us call it R_2) for its use as well. But now, it seems that I need a further rule for understanding R_2. And so on, to infinity.

Nonetheless, a similar regress argument may be raised against the cognitivist picture of legal discourse. Indeed, such an argument has already been formulated against the idea of the guiding role of rules of interpretations. One of the early formulations of such an argument was outlined by H.L.A. Hart. Hart stated that canons of interpretation cannot eliminate, though they can diminish, uncertainties that arise in legal interpretation. He argues that "canons are themselves general rules for the use of language, and make use of general terms which themselves require interpretation. They cannot, any more than other rules, provide for their own interpretation".[100] Hart supports his skepticism toward rules of interpretation by stating that "The plain case, where the general terms seem to need no interpretation and where the recognition of instances seems unproblematic or "automatic," are only the familiar ones, constantly recurring in similar contexts, where there is a general agreement in judgments as to the applicability of the classifying terms".[101] In addition to these cases, however, there is a whole class of unfamiliar cases, or those in which certain familiar elements appear in contexts different from those we have seen so far. In such cases, Hart notes, "there are reasons both for and against our use of a general term, and no firm convention or general agreement dictates its use, or, on the other hand, its rejection by the person concerned to classify. If in such cases doubts are to be resolved, something in the nature of a choice between open alternatives must be made by whoever is to resolve them".[102] Thus, Hart undermines the capacity of methods of interpretation to identify legal content (that is, to determine whether norm *N* is, in respect of sources of law *S*, a legally binding norm) by arguing that rules of interpretation cannot eliminate interpretive uncertainties, because they themselves require interpretation as well, and cases of their application that may seem straightforward and not in need of their interpretation are only some narrow slice of the reality with which judges must grapple.

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[99] George N. Schlesinger, *Metaphysics: Methods and Problems*, Illustrated edition (Oxford Oxfordshire: Basil Blackwell, 1983), 219.
[100] Hart, *The Concept of Law*, 126.
[101] Hart, *The Concept of Law*.
[102] Hart.

Hart's intuitions about the canons of interpretation were developed and undoubtedly radicalized by Stanley Fish. Stanley Fish builds on this point by emphasizing that interpretive rules, intended to "constrain the interpreter," must be available or readable independently of interpretation. Consequently, they must directly declare their own significance to any observer, regardless of his perspective. However, since rules themselves are formulated in textual form, they inherently require interpretation and cannot serve as constraints on interpretation.[103] This means that the rules endorsed by methods of interpretation do not offer a fixed or definitive meaning of legal text, and, consequently, are not capable of identifying the content of legal norms (that is, determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm). According to Fish, the regress argument extends to both specific and general rules of interpretation. Specific rules, which outline how to interpret particular elements, would presumably take a form like: "If someone takes the property of another without his consent, count that as larceny".[104] Fish notes that such rules often give rise to disputes and disagreements regarding their application or understanding, as there will always be disputes about whether the act is indeed a "taking" or even about what a "taking" is. And even where the fact of taking has been established to everyone's satisfaction, one can still argue that the result should be embezzlement or fraud rather than larceny. Similarly, general rules that define basic concepts and procedural circumstances under which the interpretation must occur, such as the instruction to consult history, can lead to conflicting interpretations about what qualifies as history, how historical information should be assessed, or what its factual configurations are.[105] This vulnerability of the interpretive rules to further interpretation makes them incapable of constituting constraints on the interpretive process, and consequently – incapable of identifying the content of the law.

In a similar vein to Fish was Anthony D'Amato, who noted that relative to any method of interpretation, one can ask the question of how to interpret its rules.[106] D'Amato asks the following question here: "Must we look to the biographies of the scholars who came up with these rules or formulae or books to resolve questions concerning what they mean in specific cases? Or is it impermissible to look to their biographies? Should we interpret their words according to definitions in Black's Law Dictionary or any other legal source?".[107] According to D'Amato, these questions highlight the need for a theory of meta-interpretation. But he notes that such theory, being a text, would need interpretation, necessitating a meta-meta-method of interpretation in

103 Stanley Fish, "Fish v. Fiss," *Stanford Law Review* 36, no. 6 (1984): 1325–47.
104 Fish, 1326.
105 Fish, 1327.
106 Anthony D'Amato, "Can Legislatures Constrain Judicial Interpretation of Statutes?," *Virginia Law Review* 75, no. 3 (1989): 562.
107 D'Amato, "Can Legislatures Constrain Judicial Interpretation of Statutes?"

order to be interpreted. We thus proceed into infinite regress, which demonstrates the impossibility of any general method of interpretation to establish determinate conclusions about the meaning of legal text, and – consequently, to identify legal content.

Sebastián Reyes Molina adopts a similar line of thinking when he emphasizes the indeterminacy of interpretive directives.[108] He observes that creating rules of interpretation to address legal rules' indeterminacy is ineffective, as these rules are indeterminate since they are formulated in a natural language, and, consequently also need to be interpreted. The introduction of new meta-interpretative rules only perpetuates the problem of indeterminacy, resulting in an infinite regress. David Charny makes a similar argument regarding contract interpretation, noting that no text can fully define its means of interpretation. He notes that "a contractual statement that purported to be such a complete specification would itself have to be interpreted by some set of rules of interpretation," and even if the text purported to supply those rules, those rules would have to be interpreted as well, which leads to an infinite regress.[109]

Navigating through the argument from the regress of interpretation, one might conclude that the rules of interpretation are normatively inert. Such rules, for fulfilling the guidance role toward the interpretive process, need to have determinate content. Nonetheless, the regress argument shows that attributing determinate content to rules of interpretation is a seemingly unjustifiable task since attributing particular content to such rules requires further grounds that explain the content of these rules, *ad infinitum*. Given the quasi-cognitivist commitments, this argument may be illustrated as follows:

(1) Norm *N* has to satisfy, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*.

(2) For any norm *N*, if *N* has to satisfy, in respect of *S,* the interpretive procedure set by the method of interpretation *M*, then *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*.

(3) For any norm *N*, if *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S,* the interpretive procedure set by the method of interpretation *M*, then *N* satisfies, in respect of *S,* the interpretive procedure set by the method of

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[108] Sebastián Reyes Molina, "On Legal Interpretation and Second-Order Proof Rules," *Analisi E Diritto*, no. 1 (2018): 165–84; Sebastián Reyes Molina, "Judicial Discretion as a Result of Systemic Indeterminacy," *Canadian Journal of Law & Jurisprudence* 33, no. 2 (2020): 369–95.

[109] David Charny, "Hypothetical Bargains: The Normative Structure of Contract Interpretation," *Michigan Law Review* 89, no. 7 (1991): 1815–79.

interpretation *M* only if there are further rule of interpretation R' that determine the content of *R*.

(4) For any norm *N*, the content of further rules of interpretation has to be determined first to determine that *N* satisfies, in respect of *S,* the interpretive procedure set by the method of interpretation *M*.

(C) If *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M*, then *N* never actually satisfies, in respect of *S,* the interpretive procedure set by the method of interpretation *M*.

It is noteworthy that this argument entails significant consequences for the cognitivist picture of legal discourse. As I mentioned in Chapter 1, legal statements are about satisfying the interpretive procedure set by the method of interpretation *M* applied to sources of law *S* by norm *N*. However, if the rules of interpretation cannot determine the satisfaction of the interpretive procedure set by the method of interpretation *M* applied to sources of law *S* by *N*, then *N* never actually satisfies the interpretive procedure set by the method of interpretation *M* applied to sources of law *S*. Therefore, all legal statements stating that norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M,* are systematically false. To clarify, this argument can be broken down as follows:

(1) Legal statements are about satisfying, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M* by norm *N*.
(2) If legal statements are about satisfying, in respect of *S,* the interpretive procedure set by the method of interpretation *M* by norm *N*, then (if legal statement x is to be true, then *N* has to satisfy, in respect of *S,* the interpretive procedure set by the method of interpretation *M*).

(3) For any norm *N*, if *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*, then *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M*.

(4) For any norm *N*, if *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M,* then *N* satisfies, in respect of *S*, the interpretive procedure set by the method of

interpretation *M* only if there are further rule of interpretation *R′* that determine the content of *R*.

(5) For any norm *N*, the content of further rules of interpretation has to be determined first to determine that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M*.

(6) if *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M,* then *N* never actually satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M*.

(C) Legal statements are systematically false

Therefore, the regress argument effectively challenges the claim that methods of interpretation – viewed as systems of interpretive rules – are capable of determining that *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M*. Simply put, the interpretive regress argument demonstrates that interpretive rules are insufficient for identifying the legal content of sources of law. This, in light of the commitments of legal quasi-cognitivism, implies that legal statements are systematically false. Thus, the interpretive regress argument demonstrates that it is impossible to maintain all the claims to which quasi-cognitivism is committed.

3.2. Underdetermination of the Properness of Interpretive Methods

The considerations presented in the previous chapter lead to the conclusion that the defender of the cognitivist image of legal discourse may try to defend his position by appealing to the proper method of interpretation, which allows one to identify the content of the law (that is, to determine whether norm *N* is, in respect of sources of law *S*, a legally binding norm) and on this basis determine which interpretation is correct and which cannot be considered correct. The problem is, then, which method of interpretation is the proper one?

Textualism is one of the most popular methods of interpretation.[110] Textualists proclaim that the interpretation of legal text should assign meanings to the expressions contained in this

[110] Antonin Scalia, "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws," in *A Matter of Interpretation: Federal Courts and the Law*, by Antonin Scalia, ed. Amy Gutmann, The University Center for Human Values Series (Princeton: Princeton University Press, 1997), 3–48; Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*.

text in accordance with dictionary definitions of these expressions. However, Manning notes that contemporary textualists believe determining the meaning of a given expression of an expression requires more than looking at the relevant section of the statute; it is necessary to take a broader view of the entire corpus of law and to consider relevant contextual factors.[111] Contemporary textualists thus accept the fact that words are merely signs on a page that must be enlivened through context. Therefore, they do not exclude interpretive techniques that go beyond a simple linguistic analysis of the text. Nevertheless, it should be noted that the boundaries within which textualism allows the influence of context on the meaning of expressions contained in legal text are strictly defined. In this regard, the influence of context, according to textualists, is limited to determining how a given expression was commonly understood at the time of the creation of the legal text in which that expression is contained.

Textualism's basic interpretive rules include: 1) the Ordinary-Meaning Canon, which states that words should be understood in their usual, everyday meaning – unless the context indicates that they have a different, technical meaning; 2) the Fixed-Meaning Canon, which states that words should be given the meaning they had at the time the legal text was enacted, as well as 3) the Omitted-Case Canon, which states that nothing should be added to what the text explicitly states or clearly suggests (*casus omissus pro omisso habendus est*).[112]

Intentionalism represents another widely accepted method of interpretation. Unlike textualism, intentionalism mandates interpreting legal texts based on the intent of the legislator when formulating them. Consequently, the interpreter must determine what interpretations of a given expression contained in the legal text the legislator intended to adopt or would have liked to adopt, had they been approached with a given issue.[113] Intentionalists argue that determining this "legislative intent" requires not only analyzing the text of the statute but also taking into account the "legislative history" behind it. Intentionalists justify this stance by asserting that sometimes the legislator, like individuals, uses words that do not reflect their intention in the best possible way. Thus, if the interpreter concludes that "the text of the statute cannot reflect the real intention of the legislator," for example, due to a typographical error, they are guided more by the legislator's intention than by the text itself.[114] Intentionalists pay considerable attention to what constitutes the aforementioned legislative history. They point out that it primarily consists of all legislative documents – mainly reports of parliamentary committees and records of parliamentary debates.[115]

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111 John F. Manning, "What Divides Textualists from Purposivists?," *Columbia Law Review* 106, no. 1 (2006): 70–111.
112 Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*, 70–111.
113 see Bernard W. Bell, "Legislative History without Legislative Intent: The Public Justification Approach to Statutory Interpretation," *Ohio State Law Journal* 60 (1999): 62.
114 Bell, 67.
115 Bell, 69.

However, considering that these documents can present an inconsistent picture of the legislator's intention, courts – according to intentionalists – have developed appropriate guidelines to determine the reliability of individual sources of legislative intent, thereby turning legislative history into a hierarchical system of sources of legislative intent.[116] In other words, intentionalism asserts that the interpreter should determine the meaning of a given expression contained in the legal text based on and within the limits of the original intent of the legislator, which in turn is determined based on the legislative history in the form of committee reports, records of parliamentary debates, etc.

Purposivism represents another method of interpretation within the legal theoretical framework.[117] According to proponents of this theory, the interpreter should assign a meaning to the legal text that aligns with the purpose of the regulation. Unlike intentionalism, purposivism does not refer in this context to the actual intent of the legislator, but rather to an idealized, hypothetical legislator – who serves as the ultimate point of reference for the meaning of the legal text.[118] In other words, under purposivism, the interpreter does not seek to answer what the legislator actually had in mind, but rather – what they would have in mind if they thought rationally.[119] It should be noted that purposivism does not abstract from the linguistic analysis of the legal text. According to purposivists, language shapes the range of semantic possibilities that form the starting point in the process of determining the content of the legal text. However, the key moment of this process is identifying the appropriate purpose of the legal text. Within purposivism, two types of the purpose of the legal text are distinguished: subjective and objective purposes. The subjective purpose is constituted by the values, intentions, interests, and policies of the actual legislator. This purpose is thus based on the intention understood as a psychological-biological construct, the content of which is reconstructed based on the legal text and legislative history.[120] On the other hand, the objective purpose is constituted by the values, intentions, interests, policies, etc., that the text should realize in a democratic state. This purpose is determined based on considerations of what the author of the legal text would have intended if they were rational. It is this objective purpose, defined in terms of a rational legislator, that is identified in purposivism with the "intention" of the legal system.[121] Therefore, within purposivism, the purpose of the text is a normative concept. It is a legal construction based on the division of roles

116 see Frank B. Cross, *The Theory and Practice of Statutory Interpretation* (Stanford: Stanford University Press, 2009), 64.
117 see Barak, *Purposive Interpretation in Law*; Marek Smolak, *Wykładnia celowościowa z perspektywy pragmatycznej* (Warszawa: Wolters Kluwer, 2012).
118 see William N. Eskridge and Philip P. Frickey, "Statutory Interpretation as Practical Reasoning," *Stanford Law Review* 42, no. 2 (1990): 332–33; Manning, "What Divides Textualists from Purposivists?," 85–86.
119 Barak, *Purposive Interpretation in Law*, 87.
120 Barak, 89.
121 Barak, 88.

between the author of the legal text and its interpreter. The author of the text formulates the text. The interpreter of the text, in turn, formulates its purpose. One of the basic principles of interpretation supported by purposivism is the doctrine of absurdity, which states that in interpreting a legal text, a court should avoid absurd or nonsensical results that the legislator could not have intended.

The integral theory of law constitutes another interpretative theory. This theory is based on the idea of constructive interpretation, understood as the process of attributing to a given object or practice a specific purpose so as to make it the best possible example of its kind.[122] The author of this approach, Ronald Dworkin, indicates that within the realm of constructive interpretation, statements about the law are true if they are supported by principles of justice, fairness, etc., that provide the best constructive interpretation of the legal practice of a given community.[123] A key element of this concept is the rejection of the thesis about the separateness of law and morality, requiring the interpreter to conduct appropriate moral considerations in order to identify the content of the law (that is, to determine whether norm *N* is, in respect of sources of law *S*, a legally binding norm.)[124] Dworkin points out that a set of principles puts legal practice in the best possible light when it both "fits" and "justifies" it better than any competing interpretation. In this regard, we may state that an interpretation "fits" an object to the extent that it accepts the existence of that object or its properties.[125] For example, in the case of legal practice, a given political or moral principle fits better than another when it recommends behavior that is closer to the actual behavior of participants in legal practice than the behavior recommended by a competing principle or value. The justification of a given object or practice, on the other hand, involves recognizing them as desirable. A proponent of this theory, seeking the optimal interpretation of legal practice, must therefore balance these two factors. This is certainly not an easy task. A given interpretation may evaluate legal practice higher than other interpretations, but at the same time, it may fit less because the number of judicial decisions recognized by it as wrong is significantly higher than in competing interpretations. On the other hand, an alternative interpretation may better "fit" legal practice if it recognizes a larger number of judicial decisions as falling within the "norm," yet, as a result, it may rate the moral quality of this practice lower because the decisions recognized by it as correct will only minimally realize important moral values. Thus, as Dworkin indicates, the goal of constructive interpretation is achieved through achieving a balance, where the increasing value of a given

122 Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), 52.
123 Dworkin, 225.
124 Dworkin, 65–66.
125 see Scott J. Shapiro, *Legality* (Cambridge, MA: Belknap Press, 2013), 295.

practice often leads to the opposite trend in terms of fitting this interpretation.[126] To explain this approach, Dworkin offers the arresting analogy of a chain novel. Suppose that you are the fifth writer in a chain and that your task is to write the fifth chapter. Four writers have written four chapters before you. In writing the fifth chapter, you must write the novel that others have started, and not another. You cannot make up a whole new novel. Nor can you depart from what has come before, in the sense of producing a narrative that ignores it or makes it unintelligible or random. But you might well think that you have an obligation to make the novel good rather than terrible, and your authorship of the next chapter will be undertaken with that obligation in mind.

It is important to note that these theories do not represent all available options; others include dynamic interpretation,[127] derivational theory,[128] or approaches that refer to feminist jurisprudence[129] or the economic analysis of law.[130]

Significantly, the content of law as identified by various methods of interpretation can vary greatly. A method of interpretation based on the author's intentions may thus give a legal text a different meaning than a theory referring to the common understanding of this text. To capture the differences between these theories, one can refer to the distinction proposed by Lawrence Solum between interpretation and construction of a legal text. Solum suggests that the aim of interpretation is to determine the linguistic or semantic meaning of the legal text, while the aim of construction is to give this meaning an appropriate legal effect.[131] Solum thus indicates that interpretation is based on certain linguistic facts, such as common patterns of usage of particular expressions, and for this reason, it is essentially free from moral and political considerations, hence having little normative coloring. On the other hand, construction has a strong normative coloring in the sense that the assessment of the correctness of a given construction is based on premises that go beyond linguistic facts. Based on this distinction, we can indicate that methods of interpretation (which, in light of Solum's distinction, should rather be termed methods of interpretation and construction) may differ from each other on two levels: the level of interpretation and the level of construction. Individual methods of interpretation will differ from

126 Dworkin, *Law's Empire*, 90.

127 William N. Eskridge, "Dynamic Statutory Interpretation," *University of Pennsylvania Law Review* 135, no. 6 (1987): 1479–1555.

128 Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki.*

129 Katharine T. Bartlett, "Feminist Legal Methods," *Harvard Law Review* 103, no. 4 (1990): 829–88; Qudsia Mirza, "Islamic Feminism and the Exemplary Past," in *Feminist Perspectives on Law and Theory*, ed. Janice Richardson and Ralph Sandland (Londyn: Routledge, 2000), 187—208; Daphne Barak-Erez, "Her-Meneutics: Feminism and Interpretation," in *Feminist Constitutionalism: Global Perspectives*, ed. Beverley Baines, Daphne Barak-Erez, and Tsvi Kahana (Cambridge: Cambridge University Press, 2012), 85–97.

130 Mario J. Rizzo and Frank S. Arnold, "An Economic Framework for Statutory Interpretation," *Law and Contemporary Problems* 50, no. 4 (1987): 165–80.

131 Lawrence B. Solum, "The Interpretation-Construction Distinction," *Constitutional Commentary* 27, no. 1 (2010): 95–118.

each other at the level of interpretation if they adopt different rules for determining the linguistic meaning of a legal text. It seems that such a difference occurs between textualism and, for example, dynamic interpretation, where the former assumes that the semantic meaning of the legal text is determined by the way it was understood at the time of its enactment, while dynamic interpretation assumes that the semantic meaning of individual expressions of this text is determined by how these expressions are understood at the time they are interpreted. However, the most significant difference between methods of interpretation occurs at the level of construction. Individual theories may adopt different rules regarding how moral, political, etc., considerations should influence the final content of legal norms or prioritize these rules in a different way. In consequence, particular methods of interpretation may agree in terms of the accepted rules of interpretation but differ when it comes to the rules of construction.

Given the variations among methods of interpretation, legal quasi-cognitivists need to confront the following issue: If the interpretation of legal sources is correct in virtue of the proper method of interpretation, and there are many methods of interpretation, which one is the proper one? It seems that there should be some legally relevant facts that determining the answer to this question. Nonetheless, Hart and Sachs, while describing the practice of legal interpretation in the United States, observed that "American courts have no intelligible, generally accepted, and consistently applied theory of statutory interpretation".[132] They note that this practice is particularly complicated in the field of constitutional law. The United States Supreme Court is divided between those who believe that the original intention of the framers of the Constitution is the basis for its interpretation and those who try to interpret it in accordance with the contemporary needs of society. In this context, Manning argues that since most methods of interpretation hold basic credibility, choosing among them inevitably involves considerations of political theory.[133]

These observations may suggest that there is no legally relevant support that favors the method of interpretation M_1 over the methods of interpretation $M_2 \ldots M_n$. However, for a method of interpretation M_1 to be considered proper, there must be legally relevant support favoring M_1 over alternative theories $M_2 \ldots M_n$, which leads to the conclusion that there is no proper method of interpretation. This argument may be illustrated as follows:

(1) For a method of interpretation M_1 to be considered proper, there must be legally relevant support favoring M_1 over alternative theories $M_2 \ldots M_n$.

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132 Henry M. Hart and Albert Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, ed. William Eskridge Jr and Philip Frickey, 1st edition (Westbury, New York: Foundation Press, 1995).
133 Manning, "What Divides Textualists from Purposivists?," 96.

(2) There is no legally relevant support that favors the method of interpretation M_1 over methods of interpretation $M_2 \ldots M_n$.

(C) There is no proper method of interpretation.

This implies that internal legal statements – that is, statements expressing a proposition that norm *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M* – are systematically false. This is because the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a theory.

Therefore, it seems that legal quasi-cognitivists, in order to avoid legal nihilism, must demonstrate there is legally relevant support that favors a particular *method of interpretation* M_1 over alternative theories. In this context, they can refer to the proper theory of meta-interpretation. In the literature, the following methods of meta-interpretation are most commonly discussed: conventionalism, the integral theory of law, and planning theory.

In the context of the conventionalist theory of meta-interpretation, to demonstrate that a particular method of interpretation is correct, one must establish which social facts support it, for example, by indicating that courts are accustomed to applying this particular method of interpretation rather than another.[134] Thus, choosing the right method of interpretation requires that: 1) a given method of interpretation is explicitly recognized as the proper tool for identifying the content of law (that is, for determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm) by a significant majority of judges; or 2) a given legal interpretation theory fulfills the criteria established for interpretive methods by an appropriate legal convention to no lesser extent than competing theories.[135]

Let us first analyze the first possibility. It states that given method of interpretation is explicitly recognized by the convention as the proper one. Consequently, it states that there is a consensus among the participants of the practice that it is this, and not another method of interpretation, that allows for the proper identification of the content of law. Nonetheless, few scholars support this position, as disputes between supporters of various methods of interpretation testify that there is no convention allowing for a given method of interpretation to be considered the proper one.[136] However, William Baude and Stephen E. Sachs seemed to argue in favor of this position, trying to demonstrate that judicial practice in the United States actually distinguishes a certain specific way of interpreting legal text.[137]

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134 Shapiro, *Legality*.
135 Dworkin, *Law's Empire*, 124–26.
136 Dworkin, 124–25; Shapiro, *Legality*, 283.
137 William Baude and Stephen E. Sachs, "The Law of Interpretation," *Harvard Law Review*, no. 4 (130) (2017).

A proponent of conventionalism, however, may argue that even if the convention does not directly determine which method of interpretation is appropriate, it does so indirectly, by establishing the appropriate criterion to identify the correct method of interpretation.[138] This position thus assumes that the convention resolves the issue of the appropriateness of the method of interpretation even when there is no consensus among legal practitioners as to which method of interpretation should be applied since it is still possible to refer to the fact that there is a consensus among the participants of this practice regarding, for example, certain values and that it is precisely conformity with these values that should decide which method of interpretation is appropriate. Any disputes between supporters of various theories would in this context have only an empirical character – the parties to this dispute would agree as to what criterion resolves their dispute, but would not be able to accurately assess at a given moment which method of interpretation is appropriate in light of this criterion.[139] A significant advantage of the conventionalist theory of meta-interpretation is that it allows for resolving the issue of which method of interpretation is appropriate in a way that does not require complicated intellectual operations involving, for example, moral reasoning. This makes the discussed theory attractive from a practical point of view.

In turn, Dworkin proposes an integralist theory of meta-interpretation which is an element of Dworkin's proposed integral theory of law and, like the integral method of interpretation, is based on the idea of constructive interpretation. Within the scope of this theory, a given interpretative theory is appropriate if it finds the best justification in the principles, values, etc., that provide the best constructive interpretation of the legal practice of the community, that is, those that present the system in the best possible light.[140] Political principles, moral values, etc., that put a given legal system in the best possible light, are therefore used as criteria for resolving disputes about the appropriateness of methods of interpretation. However, it should be noted that the interpretive and meta-interpretative levels of this theory remain distinct from each other, as the integral theory of meta-interpretation does not predetermine that the integral method of interpretation is the appropriate approach when it comes to legal interpretation. Essentially, a proponent of textualism could also argue that the integral theory of meta-interpretation favors textualism as the appropriate method of interpretation, as it finds the best justification in values and principles that put legal practice in the best possible light. An undeniable advantage of the integral method of interpretation is its ability to resolve disputes regarding which method of

138 see Dworkin, *Law's Empire*, 126–27.
139 Dworkin, 5.
140 Dworkin, 90–91; see Shapiro, *Legality*, 305.

interpretation is appropriate, even in situations where there is no convention that resolves this issue.

The planning theory of meta-interpretation is based on the assumption that the complexity and diversity of social life generate moral diversity, which significantly hinders the achievement of goals such as maintaining order, preventing undesirable and improper behavior, promoting justice, etc.[141] The planning theory attempts to address this issue by referring to the concept of a "plan" that determines which method of interpretation is appropriate. In this context, Shapiro points out that the content of the plan is grounded solely in social facts. Since the law is meant to respond to problems arising from the moral diversity of members of a given community, determining the content of the law cannot at any stage be based on moral considerations. On this basis, Shapiro formulates the principle of SLOP (Simple Logic of Planning), which states that the existence and content of a plan cannot be determined by facts that the plan is yet to regulate.[142]

So, how does Shapiro explain the content of the plan? In this context, Shapiro points out that every plan is based on a certain system of trust management: if a given plan (or rather its creators) demonstrates a significant amount of trust towards a particular entity in a specific situation, then this entity will be authorized to refine the plan. Conversely, if the plan assumes that a given entity in a particular situation is not sufficiently trustworthy, it then assigns them a more limited role of blindly implementing the presented plan[143]. In the context of this theory, it is precisely such an economy of trust that resolves the dispute about the properness of the method of interpretation.[144] For entities endowed with greater trust, the proper method of interpretation will be one that gives them more interpretive freedom, such as purposivism. Conversely, for entities endowed with less trust, appropriate methods of interpretation will be those that limit their freedom, such as textualism.

Taking into account the considerations mentioned above, the planning theory of meta-interpretation needs to address how to determine the economy of trust within a specific system. Shapiro notes in this context that "a meta-interpreter should not assess her own trustworthiness, but rather defer to the views of the system's planners regarding her competence and character. Her task is to extract the planners' attitudes of trust as they are embodied by the plans of the legal system, and then to use these attitudes to determine how much discretion to accord herself".[145]

141 Shapiro, *Legality*, 309.
142 Shapiro, 275.
143 Shapiro, 353.
144 Shapiro, 311.
145 Shapiro, 275.

Therefore, the planning theory assumes that an entity should determine its trustworthiness, and, derivatively, the proper method of interpretation, based on the opinion of entities responsible for the plan. However, the planning theory needs to clarify indicate who these "planners" are. Shapiro distinguishes between two types of legal systems in this context: authority systems, where participants of a practice implement plans and follow their rules because the plans were designed by those having superior moral authority or judgment, and opportunistic systems, where the origins of most of these rules are deemed morally irrelevant, as officials accept these rules because they recognize, or purport to recognize, that they are morally good and therefore serve the fundamental purpose of law.[146] Consequently, in an authority system, the economy of trust is essentially established by the legislator, while in an opportunistic system, it is established by all participants in legal practice.

However, Shapiro acknowledges that while different methods of interpretation may offer similar degrees of freedom, they can lead to varying outcomes. This means that the economy of trust is insufficient to determine the appropriateness of an interpretation theory. In response to this problem, Shapiro suggests that the choice of an interpretation theory by an entity in a specific situation is determined not only by the economy of trust but also by the role an agent plays within a particular plan.[147] According to this principle, an interpretive methodology is proper for an interpreter in a given legal system just in case it best furthers the objectives actors are entrusted with advancing, on the supposition that the actors have the competence and character imputed to them by the designers of their system.[148]

Thus, within the Planning Theory framework, the meta-interpreter must complete three tasks. First, she must ascertain the basic properties of various interpretive methodologies. She must attempt to discover, for example, whether certain methodologies require a great deal of expertise to implement or comparatively little, and whether they are easy to abuse or hard to manipulate. Second, the meta-interpreter must attempt to extract certain information from the institutional structure of the legal system in question: the planners' attitudes regarding the competence and character of certain actors, as well as the objectives that they are entrusted to promote. Finally, the meta-interpreter should apply the information culled from the first two tasks in order to determine the proper interpretive methodology. She must ascertain which interpretive methodologies best further the extracted objectives in light of the extracted attitudes of trust.[149] These three tasks are associated with three basic stages of meta-interpretation, which Shapiro calls "specification,"

146 Shapiro, 350.
147 Shapiro, 359.
148 Shapiro, 359.
149 Shapiro, 359.

"extraction," and "evaluation." In the specification stage, the actor determines what competence and character are needed to implement different sorts of interpretive procedures.[150] During the extraction stage, the actor identifies what competence and character that the planners believed actors possess led them to entrust actors with the task that they did, and which systemic objectives did the planners intend various actors to further and realize.[151] In the final stage – the evaluation stage – the agent assesses which interpretative procedure best furthers and realizes the systemic objectives that the actors were intended to further and realize, assuming that they have the extracted competence and character.[152] In this way, the meta-interpreter resolves the appropriateness of an interpretation theory for their situation.

The question then arises: is there any legally relevant support favoring T_1 over alternative theories of meta-interpretation $T_2 \ldots T_n$? In this regard, many scholars tend to accept a theoretical isosthenia thesis – a claim that there are many different, yet equally adequate theories of meta-interpretation, and there is no fact (neither natural, nor conventional or intentional, anchored in the collective consciousness of society), determining that one of them is more accurate than the other ones.[153] Nonetheless, for a theory of meta-interpretation T_1 to be considered proper, there must be legally relevant support favoring T_1 over alternative theories $T_2 \ldots T_n$. Consequently, if there is no legally relevant support that favors T_1 over T_2, then there is no proper theory of meta-interpretation. The structure of this argument can be outlined as follows:

(1) For a method of interpretation M_1 to be considered proper, there must be a proper theory of meta-interpretation T favoring M_1 over alternative methods $M_2 \ldots M_n$.
(2) For a theory of meta-interpretation T_1 to be considered proper, there must be legally relevant support favoring T_1 over alternative meta-theories $T_2 \ldots T_n$.
(3) There is no legally relevant support that favors the meta-method of interpretation T_1 over theories of meta-interpretation $T_2 \ldots T_n$.
(C) There is no proper theory of meta-interpretation.

Nonetheless, if there is no proper theory of meta-interpretation, then there is no fact determining that the method of interpretation M is the proper one. Consequently, no method of interpretation can be considered the proper one. This argument may be illustrated as follows:

150 Shapiro, 360.
151 Shapiro, 361–63.
152 Shapiro, 370.
153 Adam Dyrda, *Spory teoretyczne w prawoznawstwie* (Warszawa: Scholar, 2018), 482.

(1) For a method of interpretation M_1 to be considered proper, there must be a proper theory of meta-interpretation T favoring M_1 over alternative methods $M_2 \ldots M_n$.
(2) For a theory of meta-interpretation T_1 to be considered proper, there must be legally relevant support favoring T_1 over alternative theories $T_2 \ldots T_n$.
(3) There is no legally relevant support that favors the theory of meta-interpretation T_1 over theories of meta-interpretation $T_2 \ldots T_n$.
(4) There is no proper theory of meta-interpretation favoring M_1 over alternative methods $M_2 \ldots M_n$.
(C) There is no proper method of interpretation.

Consequently, if internal legal statements express propositions *that norm N satisfies, in respect of sources of law S, the interpretive procedure set by the method of interpretation M,* then these statements are systematically false. This is because the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a theory:

(1) Internal legal statements are about satisfying, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M*.
(2) If internal legal statements are about satisfying, in respect of *S*, the interpretive procedure set by the method of interpretation *M* by norm *N*, then (if legal statement x is to be true, then *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*).
(3) For any norm *N*, if *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*, then *N* needs a proper method of interpretation.
(4) For a method of interpretation M_1 to be considered proper, there must be a proper theory of meta-interpretation T favoring M_1 over alternative theories $M_2 \ldots M_n$.
(5) For a theory of meta-interpretation T_1 to be considered proper, there must be legally relevant support favoring T_1 over alternative theories $T_2 \ldots T_n$.
(6) There is no legally relevant support that favors the theory of meta-interpretation T_1 over theories of meta-interpretation $T_2 \ldots T_n$.
(7) There is no proper theory of meta-interpretation favoring M_1 over alternative methods $M_2 \ldots M_n$.
(8) There is no proper method of interpretation.
(C) Internal legal statements are systematically false.

3.3. Incoherence of Interpretive Methods

Another argument against the cognitivist picture of legal discourse relating to the rules of interpretation is an argument concerning the incoherence of methods of interpretation. It may be stated that the cognitivist picture of legal discourse is committed to a claim that there is a single correct way of identifying legal content, purportedly provided by the proper method of interpretation. Nonetheless, according to the discussed argument, methods of interpretation are not capable of identifying legal content, because particular rules of interpretation included in such theories may provide conflicting results of interpretation of the same provision. The roots of this argument reach Karl N. Llewellyn's critique of canons of construction.[154] Llewellyn observes that canons of construction fail to limit judges' interpretive freedom, because, as every rule suggesting one interpretation of legal sources is countered by another rule suggesting a different interpretation. This suggests that methods of interpretation are not capable of attributing unequivocal content to sources of law.[155] Llewellyn justifies his claim about the contradiction of canons of interpretation by formulating a list of twenty-eight pairs of such canons, each of which has opposite interpretative consequences.[156] For instance, he points out one canon stating a statute cannot go beyond its text, yet another suggests a statute may be applied beyond its text to fulfill its purpose. Accordingly, there is a canon that states that if the statute is plain and unambiguous it must be given effect, but there is also a canon that states that when literal interpretation of the statute would lead to absurd or mischievous consequences or thwart manifest purpose, we should go beyond it. Or, there is a canon that states that words are to be interpreted according to the proper grammatical effect of their arrangement within the statute, but there is also a canon that states that Rules of grammar will be disregarded where strict adherence would defeat the purpose.[157] The above considerations lead Llewellyn to the conclusion that canons of interpretation could be manipulated to justify any desired outcome, rendering them unreliable as tools for objective legal analysis.

The argument formulated by Llewellyn could potentially be expanded to any method of interpretation. In this regard, Sunstein notes that the interpretive principles he has proposed will sometimes conflict with one another. For example, the principle favoring state authority might collide with the principle favoring disadvantaged groups, and the presumption against amendment through the appropriations process might contradict the principle in favor of generous

154 Karl Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed," *Vanderbilt Law Review* 3, no. 3 (1950): 395.
155 Llewellyn, 397.
156 Llewellyn, 401–6.
157 Llewellyn, 401–6.

construction of statutes protecting nonmarket values. Such examples are numerous. In this regard, he notes that the possibility of conflict renders the basic approach vulnerable to a neo-realist objection that, in practice, the interpretive norms will provide contradictory guidance for the judiciary.[158]

Similarly, Neil MacCormick argues that solving our problems of legal interpretation through rules of interpretation is troublesome, as such rules tend to 'hunt in pairs'; for almost any one of them, another can be found which, in an appropriate context, will point to a different result from that which it itself indicates.[159]

One may formulate a similar argument against the derivational theory of legal interpretation. In this context, it can be argued that the rule indicating that – as a principle – the meaning of a given phrase should be determined based on the general (common) language, concerning general Polish language dictionaries,[160] conflicts with the rule indicating that the interpreted expression should be assigned a meaning that most adequately ensures the realization of values expressed in the Constitution's provisions, in the preamble, or in commonly accepted moral, customary, and other norms.[161]

There is no doubt that examples of such conflicts between interpretive rules can be easily multiplied, as legal practice is an inexhaustible source of them. Recognizing these conflicts forces us to concede that methods of interpretation are vulnerable to the neorealist critique of failing to provide a definitive answer to how a legal text should be interpreted, that is, of failing to determine whether particular norm is, in respect of sources of law *S*, a legally binding norm.

The argument may be constructed as follows:

(1) For any interpretive procedure set by the method of interpretation *M* determining whether norm *N,* in respect of sources of law *S*, is a legally binding norm if such interpretive procedure is to be set by method of interpretation *M*, then *M* should contain no conflicting rules of interpretation.

(2) For any method of interpretation *M*, if the rule of interpretation R_1 belongs to *M*, then there is another rule R_2 that belongs to *M* but conflicts with R_1.

(C) Method of interpretation *M* does not set any interpretive procedure determining whether norm *N* is, in respect of *S*, a legally binding norm.

158 Sunstein, "Interpreting Statutes in the Regulatory State," 497.
159 Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford, 1978), 207.
160 Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki*, 341.
161 Zieliński, 347.

The argument above starts by asserting that if an interpretive procedure that norm *N* must satisfy in order to attain the status of a legal norm is to be set by the method of interpretation *M*, then *M* should contain no conflicting rules of interpretation. However, the argument proceeds to claim that methods of interpretation are inherently incoherent because, for any given rule of interpretation R_1 within theory *M*, there exists another rule R_2 within the same theory that conflicts with R_1. Consequently, legal actors who formulate legal statements about the law, that is, statements expressing a proposition that norm *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M,* are systematically in error. This is because the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a procedure. This argument may be illustrated as follows:

(1) Legal statements are about satisfying, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M* by norm *N*.
(2) If legal statements are about satisfying, in respect of *S*, the interpretive procedure set by the method of interpretation *M* by norm *N*, then (if legal statement x is to be true, then *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*).
(3) For any norm *N*, if *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*, then *N* needs the interpretive procedure set by the method of interpretation *T*.
(4) For any interpretive procedure set by the method of interpretation *M* determining whether norm *N* is, in respect of *S*, a legally binding norm*,* if such interpretive procedure is to be set by method of interpretation *M*, then *M* should contain no conflicting rules of interpretation.
(5) For any method of interpretation *M*, if the rule of interpretation R_1 belongs to *M*, then there is another rule R_2 that belongs to *M* but conflicts with R_1.
(6) Method of interpretation *M* does not set any interpretive procedure determining whether norm *N* is, in respect of *S*, a legally binding norm.
(C) Legal statements are systematically false.

3.4. Conclusion

In this chapter, I have explored three objections that aim to challenge the quasi-cognitivist view of legal discourse, demonstrating that it is untenable to maintain all the claims to which quasi-cognitivism is committed. The first argument I have discussed is built upon the infinite regress of

interpretation. This argument suggests that participants in legal discourse, while formulating legal statements, are systematically in error due to the failure of methods of interpretation – viewed as systems of interpretive rules – to determine whether a particular norm *N* satisfies the interpretive procedures set by these theories. This failure stems from the fact that rules of interpretation constituting such theories are themselves subject to further interpretations, *ad infinitum*. The second argument focuses on the underdetermination of the properness of interpretive methods. It posits that internal legal statements – that is, statements expressing a proposition that norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M* – are systematically false, as norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a theory. This conclusion is built upon a premise that for any method of interpretation *M*, M_1 is a proper method of interpretation if there is a corresponding proper theory of meta-interpretation T_1 favoring M_1 over alternative theories $T_2 \ldots T_n$. However, it was suggested that if a theory of meta-interpretation T_1 is the proper one, then there must be legally relevant support favoring T_1 over alternative theories $T_2 \ldots T_n$. Nonetheless, as the argument unfolds, there is no legally relevant support that favors T_1 over T_2. This claim leads to the conclusion that there is no proper theory of meta-interpretation, implying that there is no legally relevant support favoring M_1 over alternative methods of interpretation $M_2 \ldots M_n$, which leads to the conclusion that there is no proper method of interpretation. Lastly, I have examined an argument against the quasi-cognitivist perspective, which concerns the incoherence of interpretive methods. The initial premise of this argument is a claim that if there is an interpretive procedure set by the method of interpretation *M* that norm *N* must satisfy in order to attain the status of a legal norm, then *M* should contain no conflicting rules of interpretation. The crucial premise of this argument is that for any given rule of interpretation R_1 within theory *M*, there exists another rule R_2 within the same theory that conflicts with R_1. Consequently, participants in legal discourse, while formulating legal statements, are systematically in error, as the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation due to the absence of such a procedure.

4. Facing Skepticism

In Chapter 1, I identified the cognitivist and practical appearances of internal legal statements. Moreover, I have introduced a challenge posed by the Humean puzzle, which questions how these appearances can coexist within a cohesive theoretical model. In Chapter 2, I have discussed the key elements of the quasi-cognitivist perspective on legal discourse. First, I have provided an analysis of semantics of internal legal statements. Based on this, I have argued that participants in legal discourse implicitly utilize rules of interpretation when formulating legal statements. The quasi-cognitivist nature of this approach has been revealed in the fact that the cognitive aspect of legal statements is primary, in two senses: firstly, it argues that the explanation of the content of legal statements necessarily involves the subject matter of the law. Second, it diagnoses their practical function as a result of post-semantic, pragmatic processes, rather than of their semantics. In Chapter 3, I explored three objections that aim to challenge the quasi-cognitivist view of legal discourse, demonstrating that it is untenable to maintain all the claims to which quasi-cognitivism is committed. In this chapter, I will discuss possible reactions to these arguments. I will begin my considerations by examining legal nihilism. Legal nihilism results from maintaining both the quasi-cognitivist picture of legal discourse outlined in Chapter 2 and the skeptical arguments discussed in Chapter 3. Legal nihilism holds that legal statements about the law are systematically false, and legal agents who formulate these statements are systematically in error. Following this, I will discuss several positions rejecting legal nihilism and suggesting that we should abandon indefensible commitments of the account discussed in Chapter 2. The initial focus will be directed towards legal anti-realism, positing that the legal status of a given norm is judgment-dependent, that is, it is constituted by judgments performed by legal actors in cognitively ideal conditions. Subsequently, attention will shift towards non-interpretationism – a claim that we have non-inferential access to legal content and that legal content is not constituted by any inferential procedure settled by some method of interpretation. This will be followed by an examination of legal expressivism, which holds that both the cognitive and the practical aspects of legal statements should be explained in virtue of conative states expressed by participants of legal discourse formulating such statements. Despite the intriguing prospects these viewpoints offer, they also come with their own set of complex, sometimes problematic features. Recognizing these challenges, I will investigate whether a strengthened defense of the quasi-cognitivist framework of legal discourse aids in countering the consequences that arise for this account from the skeptical arguments outlined in Chapter 3.

4.1. Legal Nihilism

The objections raised in the previous section aim to argue against the challenges to the idea that internal legal statements covertly refer to a proper method of interpretation and sources of law. For some individuals, a natural response to these criticisms might be the adoption of a skeptical stance. These skeptics accept that the entities or properties constituting propositions, as expressed by internal legal statements, either do not exist or are not instantiated. Based on this, they concede that legal statements about the law are systematically false and that the participants in legal discourse are systematically in error while formulating these statements. In other words, this position aligns with quasi-cognitivism in attributing a crucial role to rules of interpretation in explaining the cognitive aspect of legal statements, but it acknowledges that these rules fall short in fulfilling this role.

However, while legal nihilism raises important questions about the nature and function of law, it ultimately remains unsatisfactory because it struggles to explain how actions consisting of formulating internal legal statements can be successful. Yet, if this is the case, it becomes difficult to understand the persistence of legal discourse.

4.2. Legal Anti-Realism

Having considered the arguments discussed in the previous chapter, one may avoid legal nihilism by stating that legal statements are judgment-dependent. Crispin Wright's distinction between extension-reflecting and extension-determining judgments is instructive here.[162] Let's consider the "best opinions," i.e. the opinions formed by those within the discourse in question under cognitively ideal conditions. If best opinions, so understood, covary with instantiations of predicates central to that discourse, there are two ways to explain such a phenomenon. Either best opinions play a tracking role, i.e. they reflect the extension of the independently constituted extension, or they do not just track the extension of the predicate, but they actually determine it. In the former case we can speak of judgment-independent and in the latter one – judgment-dependent, predicates of discourse in question. In this regard, one may argue that legal content is judgment-dependent, that is, its extension is determined by judgments performed by legal actors under cognitively ideal conditions. Therefore, capital punishment is prohibited, because it is regarded as prohibited by legal actors under cognitively ideal conditions. The Supreme Court decision in Brown v. Board of Education of Topeka is legally justifiable because it is regarded as

162 Crispin Wright, *Rails to Infinity: Essays on Themes from Wittgenstein's Philosophical Investigations* (Cambridge, Mass: Harvard University Press, 2001), 192.

legally justifiable by legal actors under cognitively ideal conditions. Legal anti-realism, viewed in such a way, aligns with the views of some legal realists, who emphasize the significant role courts have played in the development and creation of modern law.[163] In this manner, Jerome Frank refers to Albert Venn Dicey, a distinguished British constitutionalist, according to whom "nine-tenths, at least, of the law of contract, and the whole, or nearly the whole, of the law of torts, are not to be discovered in any volume of the statutes (…); whole branches, not of ancient but of very modern law, have been built up, developed or created by the action of the courts".[164] Dicey acknowledges that this judicial law-making is usually "made under the form of, and often described by judges no less than jurists, as the mere interpretation of the law".[165]

Therefore, based on legal anti-realism, methods of interpretation and their interpretative rules do not play a distinct role in constituting the legal content of sources of law, and, consequently, in explaining the cognitive aspect of legal statements. Instead, these roles are directly attributed to the judgments made by participants in legal discourse. Therefore, the limitations of interpretative rules in identifying legal content, the underdetermination of the properness of method of interpretation, and the incoherence of methods of interpretation – all of these do not entail any negative consequences for the anti-realist picture of legal discourse.

However, while this position mitigates the extreme skepticism of legal nihilism, it raises several concerns. If the law is determined by the judgments of legal actors in "cognitively optimal conditions," then a high degree of uniformity of judgments in such conditions would be required to avoid legal nihilism. However, it is challenging to demonstrate whether the judgments of participants in legal discourse, formed under such conditions, would indeed demonstrate such uniformity. Furthermore, even if such uniformity were granted, antirealists would still need to address the objection that their position blurs the line between applying and creating the law due to their claim that legal content is constituted by judgments formulated by participants in legal discourse.

4.3. Non-Interpretivism

Another possible reaction to the skeptical arguments presented in Chapter 3 is non-interpretivism. This is the claim that we have non-inferential access to legal content, and that legal content is not constituted by an inferential procedure settled by some method of interpretation. This position contradicts a consensus on interpretation that emerged decades ago, which states that

163 Jerome Frank, *Law and the Modern Mind* (New Brunswick: Routledge, 2009), 36.
164 see Frank, 36.
165 see Frank, *Law and the Modern Mind.*

understanding the law's content requires interpretation, meaning that access to legal content necessarily depends on inferential processes. In this regard, Ronald Dworkin, a prominent figure in interpretivism, has consistently maintained that what the law is, is always mediated by some interpretation or other, which in turn, relies on moral judgments.[166] However, Stanley Fish, despite being one of Dworkin's opponents, holds a similar view in this regard. Fish argues that *everything* people do with other people's utterances involves interpretation: "Communications of every kind are characterized by exactly the same conditions – the necessity of interpretive work, the unavoidability of perspective, and the construction by acts of interpretation of that which supposedly grounds interpretation, intentions, characteristics, and pieces of the world".[167] Numerous arguments support this point of view. For instance, Aharon Barak contends that "The plainness of a text does not obviate the need for interpretation, because such plainness is itself a result of interpretation. Even a text whose meaning is undisputed requires interpretation, for the absence of dispute is a product of interpretation".[168] In a similar vein, MacCormick addresses interpretive challenges in judicial decision-making. He notes that for each concept, each universal like consumer, producer, "product," "injury," "cause," we have to supply a particular instantiation in the case we put forward. But each such term is subject to interpretation, and this is interpretation in the light of an understanding of the point of the law, its fit with the surrounding law, and a sense of justice appropriate to the legal domain in question.[169] Notably, a diverse range of theorists share similar views on interpretation in law, including Stanley Fiss,[170] Kent Greenawalt,[171] Zieliński[172] and Joseph Raz.[173]

However, interpretivism is not without its detractors. Timothy Endicott raises the following critical point: If every rule needs an interpretation to be followed, the interpretation also needs an interpretation, and we will never get as far as following the rule, which generates the absurd regress.[174] Similarly, Joseph Raz highlights a fundamental aspect of our understanding of law: It is intended to set common standards for guiding the members of a political society; these standards are meant to be available to those they govern, enabling them to be guided by them. However, Raz argues that interpretation is possible only when the meaning of what is interpreted

166 Dworkin, *Law's Empire*, chaps. 1–3.
167 Stanley Fish, "With the Compliments of the Author: Reflections on Austin and Derrida," *Critical Inquiry* 8, no. 4 (1982): 700.
168 Barak, *Purposive Interpretation in Law*, 4.
169 MacCormick, *Rhetoric and the Rule of Law*, 39–40.
170 Owen M. Fiss, "Objectivity and Interpretation," *Stanford Law Review* 34, no. 4 (1982): 739–63.
171 Kent Greenawalt, *Law and Objectivity* (Oxford, New York: Oxford University Press, 1992).
172 Zieliński, *Interpretacja Jako Proces Dekodowania Tekstu Prawnego*; Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki.*
173 Raz, *Between Authority and Interpretation*.
174 Timothy A. O. Endicott, *Vagueness in Law*, 1st edition (Oxford: Oxford University Press, 2000), 174.

is not obvious. Therefore, if interpretation is central to the law it must be doubtful whether the law can be available to its subjects.[175] Kent Greenawalt raises another compelling objection. He posits that if the application of the law hinges on interpretation, which in itself is a subjective process, then the personal biases and perspectives of the interpreter invariably influence legal interpretation. Consequently, no interpretive question concerning the law can have an objectively correct answer.[176]

In reaction to these arguments, some theorists argue that there must be a way to comprehend the meaning of a legal rule that does not require interpretation. The non-interpretivist perspective, which argues for direct access to legal content without the need for interpretation, is gaining traction in contemporary legal theory and is supported by scholars like Andrei Marmor,[177] Martin Stone,[178] and Frederick Schauer.[179] One of the key figures here is Andrei Marmor, who states that in explaining the meaning of a given expression, we typically refer to the rules of the pertinent language; but such rules are normally unavailable as reasons or justifications for an interpretation. Therefore, one does not interpret that which is *determined* by rules or conventions. Consequently, he regards interpretation as an *exception* to the standard instances of understanding expressions, as it requires the existence of a language in which, and about which, the interpretation is stated.[180] Therefore, Marmor suggests that interpretation is not a prerequisite for understanding; rather, understanding *is* a prerequisite for interpretation. On this basis, Marmor states that law, like any other form of communication, can simply be understood, and then applied. Interpretation is the exceptional, not the standard mode of understanding law.[181] Consequently, **o**n the basis of this position, methods of interpretation, along with their rules of interpretation, play no distinctive role when it comes to the explanation of the cognitive aspect of legal statements.

On the basis of non-interpretivism, methods of interpretation and their interpretative rules do not play a distinct role in constituting the legal content of sources of law, and, consequently, in explaining the cognitive aspect of legal statements. Therefore, the limitations of interpretative rules in identifying legal content, the underdetermination of the properness of method of interpretation,

175 Raz, *Between Authority and Interpretation*, 224.
176 Greenawalt, *Law and Objectivity*, 69.
177 Andrei Marmor, *Interpretation and Legal Theory*, 2nd edition (Oxford: Hart Publishing, 2005); Marmor, *The Language of Law*.
178 Martin Stone, "Focusing the Law: What Legal Interpretation Is Not," in *Law and Interpretation: Essays in Legal Philosophy*, ed. Andrei Marmor (Oxford: Clarendon Press, 1995), 31-96.
179 Frederick F. Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* (Oxford: Oxford University Press, 2002).
180 Marmor, *Interpretation and Legal Theory*, 15–16.
181 Marmor, 93; see Marmor, *The Language of Law*, 108–9.

and the incoherence of methods of interpretation – all of these do not entail any negative consequences for our picture of legal discourse.

Nevertheless, in my view, the non-interpretivist stance is flawed, for several reasons. First, I acknowledge that sometimes we have non-inferential access to the content of legal sources. Nonetheless, the issue is that even in such cases, legal agents seek more in the sources of law than just the non-inferential meaning of legal provisions. They aim to find the basis for resolving disputes brought before courts or other adjudicatory bodies. And the content to which we have non-inferential access does not fulfill this role. This is because many expressions are used differently in legal contexts than in their common usage. In this regard, Oliver Wendell Holmes Jr. pointed out a common "mistake" in assuming that words commonly used in everyday language, such as "rights," "duties," "malice," "intent," and "negligence," have the same meaning when used in legal contexts.[182] Sunstein expands on this idea, noting that a mere linguistic analysis of legal texts often fails to provide satisfactory outcomes. Sunstein argues that words sometimes carry meanings vastly different from their dictionary definitions. The meaning of a text is not merely a function of the words themselves; it is also shaped by the context and culture in which those words are used. Hence, equating the *legal* content with the immediate impression a legal text makes upon reading is misleading. If these considerations hold, the initial interpretation that comes to mind does not necessarily mirror the true content of a legal text.[183] Similarly, Baude and Sachs note that the crucial question for legal interpreters is not "What do these words mean," but something broader: What law did this instrument make? How does it fit into the rest of the corpus juris? What do "the legal sources and authorities, taken all together, establish"?[184] Although language serves as an input in answering these questions, it should not be regarded as an instrument that ends the inquiry. This suggests that our access to the *legal* content of the sources of law is, at best, indirect and inferential. Second, as Joseph Raz notes, laws are written within specific historical, social, and political contexts. It is commonly agreed that considering factors like legislative history, societal norms, and judicial precedents may have an impact on the content of legal norms. In this regard, grasping legal content requires an inferential process that goes beyond the literal text. Third, the non-interpretivist struggles to explain the fact of disagreements in legal discourse. A claim that we have non-inferential access to legal content implies a clear, unequivocal understanding of the law, similar to how we understand basic, indisputable facts like the color of frogs being green. In such cases, there is a universal agreement because the understanding is direct and unmediated by interpretative processes. However, the reality of legal practice contradicts this scenario. Legal

182 Oliver Wendell Jr. Holmes, "The Path of the Law," *Harvard Law Review* 10, no. 8 (1897): 457–78.
183 Sunstein, "Interpreting Statutes in the Regulatory State," 416–17.
184 Baude and Sachs, "The Law of Interpretation," 1083.

disputes, such as the debate on whether capital punishment violates the 8th Amendment of the US Constitution, are commonplace and often highly contentious. This widespread prevalence of disagreements in legal interpretation strongly suggests that if we have access to legal content, it is inferential at best. In this context, referring to the non-interpretivist position appears to be an ad hoc solution intended to avoid the problematic consequences associated with the interpretivist account.

4.4. Legal Expressivism

A promising strategy to counter legal nihilism involves adopting legal expressivism. Ethical expressivism conjoins the denial of genuine ethical facts and relations with an insistence on the legitimacy of speaking of them in ethical practice. Similarly, legal expressivism conjoins the denial of genuine legal facts and relations with an insistence on the legitimacy of speaking of them in legal practice.

Initially, expressivism was regarded as a semantic theory. Based on this, it would reject the identification of the content of legal statements with an ordinary proposition, which represents the world as being a particular way. In turn, according to expressivists, the primary job of the semantics is to assign to each atomic sentence a mental state – the state that you have to be in, in order for it to be permissible for you to assert that sentence. So "grass is green" gets assigned directly to the belief that grass is green, and similarly for "snow is white."

Typically, semantic expressivists stated that statements within a particular domain do not express any genuine propositions, but are akin to expressions of approval or disapproval, similar to applauding or booing. For example, they claimed that moral sentences merely express non-cognitive attitudes, and, as a result, are not truth-apt. In this regard, semantic expressivism holds that these noncognitive attitudes explain those words' meanings rather than just happening to be frequently correlated with their use. And it holds that the meaning and function of these words differ in a fundamental way from ordinary description.[185]

So according to the semantic version of legal expressivism, when I say "capital punishment is prohibited!," I don't describe a state of affairs, but avow or display or advocate a negative attitude toward capital punishment. In this regard, legal expressivists would state that legal statements aren't true or false, they don't purport to represent reality, they aren't used to make assertions about matters of fact, and they don't correspond to the world. The legal expressivist told us what legal statements do instead of these things. So, according to Michael Moore, Herbert Hart is the

[185] Camp, "Metaethical Expressivism," 87.

most famous proponent of non-cognitivist analysis of legal discourse. Hart held, for example, that our usage of action language in law was not to describe some class of events; rather, expressions like, "A did it," have an ascriptive function: they are used to ascribe responsibility to A. In his inaugural lecture at Oxford Hart broadened his analysis. Like the umpire saying, "You are out" in baseball, the judge saying, "Sheriff Kirby is not guilty of obstructing or retarding the passage of the US. Mails," is to affix liability (or immunity to liability) to the persons referred to. In such cases, the speakers make it true by their pronouncements that an actor is responsible, a batter is out, or a litigant is not guilty. There is no truth of the matter antecedent to such pronouncements and one thus does not want or need a theory about the nature of responsibility (in terms of action), of outs, or of legal rights or duties. Similarly, the Scandinavian realists involved some mixture of non-cognitivism about the semantics of normative legal judgment. On the semantic side, judgments about legal obligations and duties were interpreted as expressing certain non-cognitive attitudes or feelings. Therefore, the skepticism of Scandinavians was directed at the idea that an abstract object like a legal norm or doctrine can figure in an explanation of behavior.[186] Consequently, according to this view, legal statements do not convey factual information; that is, they are not scientific statements but only (subjective) evaluations.

Therefore, semantic legal expressivism denies that there is any cognitive aspect of legal statements. In consequence, the limitations of interpretative rules in identifying legal content, the underdetermination of the properness of method of interpretation, and the incoherence of methods of interpretation – all of these do not entail any negative consequences for the semantic expressivist picture of legal discourse.

However, it is worth mentioning that semantic version of legal expressivism is specifically designed to explain the practical uses of legal statements. However, semantic legal expressivism struggles to explain the cognitive aspect of legal statements. For example, participants typically assess legal statements as correct or incorrect, and the justification for such assessments usually refers to the subject matter of the law. Nevertheless, according to semantic legal expressivism, it is an error to assess legal statements in virtue of the subject matter of the law, as these statements are not about any such matters. In fact, there is nothing they are *about*, as they merely express desire-like states of the speaker.

Nonetheless, many contemporary expressivists pursue what Simon Blackburn famously called the "quasi-realist" project of accommodating the "realist" sounding things that ordinary people say within a broadly expressivist framework. In order to accommodate the belief-like features of normative statements, later expressivists have aimed to accommodate the idea that

186 Brian Leiter, "Legal Realisms, Old and New," *Valparaiso University Law Review* 47, no. 4 (2013): 949–63.

normative claims are truth-apt by holding that the truth-aptness of moral discourse was trivial in that truth-aptness was a purely syntactic matter. Accordingly, they embraced a deflationist view of the truth predicate, according to which it is primarily a grammatical device that enables us to endorse or reject whole sets of propositions efficiently by quantifying over them. More contemporary expressivists go further in the service of accommodating ordinary thought and talk. They typically try to "earn the right" to talk not only of truth but other realist-sounding ideas as these are found in common thought and discourse, including normative knowledge and the idea that the normative facts are in some interesting sense "mind-independent." In order to achieve these goals, some authors restate expressivism as a *metasemantic* view.[187] For clarity, it is useful to outline a difference between the semantic and metasemantic level of statements. Very roughly, semantics assigns literal meanings ("semantic contents") to meaningful units of language. Metasemantics, by contrast, explains that in virtue of which a given word, morpheme, or sentence has the meaning it does. In this regard, metasemantic expressivism is an account of *why* normative expressions have the meanings that they do, rather than as a theory of *what* those meanings are. Therefore, understanding expressivism as a metasemantic claim has the benefit of making expressivism to some extent *semantically neutral*. In particular, it allows expressivists to concede the legitimacy of orthodox semantic approaches and to incur no burden of developing alternative semantics.[188] As Sebastian Köhler notes, metasemantic expressivists still need interpretations of core semantic terms like "truth," "reference," "proposition," etc. on which their employment in semantics is compatible with expressivism. But this can be achieved, for example, by establishing that expressivism's commitments are compatible with, for example, deflationary (or otherwise expressivist-friendly) readings of these terms, which are themselves compatible with orthodox semantic approaches.[189]

On this basis, the metasemantic version of legal expressivism may be regarded as a position that legal statements have the meanings they do in virtue of their expressing a particular type of conative states of speakers. In this regard, the legal statement „ capital punishment is prohibited" expresses a proposition that capital punishment is prohibited, but it does so in virtue of expressing a negative attitude of the speaker toward capital punishment. It is noteworthy that the core of metasemantic expressivists, such as Blackburn and Gibbard, is to offer a formal model that generates the inferential structure characteristic of declarative contents, without making

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187 see Ridge, *Impassioned Belief*; Chrisman, *The Meaning of "Ought."*

188 Sebastian Köhler, "Expressivism, but at a Whole Other Level," *Erkenntnis*, June 18, 2023, 14.

189 see Alexis Burgess, "Mainstream Semantics + Deflationary Truth," *Linguistics and Philosophy* 34, no. 5 (2011): 397–410; Hartry Field, "Deflationist Views of Meaning and Content," *Mind* 103, no. 411 (1994): 249–85; Sebastian Köhler, "Expressivism, Belief, and All That," *The Journal of Philosophy* 114, no. 4 (2017): 189–207.

commitments that require the model components to be robustly representational.[190] They do this, by taking inferential relations between mental states as explanatorily basic.

It seems that this is a position Kevin Toh meant while attributing to Hart an expressivist view on legal statements.[191] According to Toh, Hart holds that legal statements express the acceptance of a particular norm that is valid according to some other norm *R*, and presuppose that *R* is accepted and employed as the fundamental legal norm or rule of recognition by the officials of the speaker's community. Nonetheless, Toh goes on to clarify that the factual presupposition component is "the usual but not an invariable accompaniment of the more primary normative component".

What is interesting, metasemantic legal expressivism has no hesitation in attributing a constitutive role to rules of interpretation when it comes to determining the legal status of norms, and, consequently, a proper explanatory role when it comes to the cognitive aspect of legal statements. Nonetheless, it is noteworthy that such maneuvers aim to imitate the maneuvers of genuinely cognitivist approaches without undertaking their commitments. Therefore, metasemantic expressivists may state that the legal statement "it is the law that N" expresses a proposition that norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M*; however, they will explain the fact that *N* satisfies the aforementioned procedure in virtue of some desire-like states of mind we express in language, while genuinely cognitivist explanation of this fact necessarily involves the content of rules of interpretation. Therefore, even if metasemantic legal expressivists mention the method of interpretation *M* in their explanation of the content of internal legal statements, *M* does not perform any genuine work here – it is only a label covering the conative attitude of the speaker toward a particular issue. Consequently, the limitations of interpretative rules in identifying legal content, the underdetermination of the properness of method of interpretation, and the incoherence of methods of interpretation – all of these do not entail any negative consequences for the metasemantic expressivist picture of legal discourse, even if this picture mentions a method of interpretation in its explanations.

Nonetheless, some main problems of metasemantic expressivism should be outlined. First, there is a question of whether this approach is capable of explaining the cognitive aspects of legal statements, and maintaining the rationality of legal discourse. In this regard, one need to have in mind that the motto of metasemantic expressivism may be formulated as follows: "Show me how

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190 Köhler, "Expressivism, but at a Whole Other Level," 15.
191 Kevin Toh, "Hart's Expressivism and His Benthamite Project," *Legal Theory* 11, no. 2 (2005): 75–123.

to do it in the factual realm, and I'll mimic you in the normative realm".[192] However, as Blackburn states, "at the bottom are simple preferences, likes, and dislikes,"[193] explained in virtue of desire-like states of the speakers. In this regard, metasemantic legal expressivists go fully in for descriptivism at the level of first-order semantics, and back it up with a metasemantic theory on which legal notions like "satisfying the interpretive procedure set by the proper method of interpretation" are not representational. Therefore, on the surface, metasemantic legal expressivist admits that internal legal statements, such as "capital punishment is prohibited by the 8th Amendment to the US Constitution" are about the relation between capital punishment, sources of law and proper method of interpretation, but in fact, they are just a fancy way to express approval or disapproval toward particular issue. In this regard, metasemantic version of legal expressivism accommodates the idea that our internal legal statements are about "the law" or "proper method of interpretation," but the cost is that these entities, based on this account, lose their genuine normative force – they cannot be regarded as something that guides legal practice, as something that *really* provides the correct answers to legal questions, etc. In this regard, one may raise certain doubts regarding, for instance, the rationality of legal discourse – whether expressivist imitation of the notion of rationality does the job, whether it provides an adequate explanation of notions such as the rule of law, separation of powers, etc.

Summing up, legal expressivism argues that the success of actions based on asserting internal legal statements does not depend on the existence of entities that instantiate the reference of these statements. In this regard, it may accommodate the idea of relational semantics of internal legal statements based on sources of law and proper method of interpretation, along with a claim that actions consisting of asserting these statements are successful. However, this perspective seems to imply that the concept of genuine legal order is merely an illusion – a "promised land" we pretend to discuss, yet is ultimately detached from our actual statements. Consequently, legal expressivism leaves open the possibility that judicial or administrative power amounts to mere brute coercion, devoid of legitimate justification.

4.5. Conclusion

In this chapter, I have discussed possible reactions to the skeptical arguments outlined in Chapter 3. I have begun by examining legal nihilism – a position in which legal statements about the law – that is, statements expressing a proposition that norm *N* satisfies, in respect of *S*, the interpretive

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[192] Allan Gibbard, "Reply to Blackburn, Carson, Hill, and Railton," *Philosophy and Phenomenological Research* 52, no. 4 (1992): 971.

[193] Simon Blackburn, *Ruling Passions: A Theory of Practical Reasoning* (Oxford: Oxford University Press, 1990), 9.

procedure set by the method of interpretation *M* – are systematically false, and legal agents who formulate these statements are systematically in error. This position undertakes a quasi-cognitivist commitment that the legal status of norm *N* hinges on whether it satisfies- in respect of the sources of law, the interpretive procedure set by the proper method of interpretation. In this manner, it aligns with quasi-cognitivism in attributing a crucial role to rules of interpretation in constituting legal content and explaining the cognitivist appearances of internal of legal statements. Nonetheless, due to the arguments outlined in Chapter 3, it admits that participants of legal discourse are systematically in error while formulating these statements. For this reason, legal nihilism is substantially unsatisfactory, as it implies that there are no such things internal legal statements refer to, implying that judicial practice is merely brutal coercion lacking any proper justification.

Following this, I have discussed alternative positions aimed at avoiding legal nihilism while confronting the aforementioned arguments. The initial focus has been directed towards legal anti-realism. This account posits that the legal status of a given norm is judgment-dependent; that is, it is constituted by judgments performed by legal actors under cognitively ideal conditions. Therefore, based on legal anti-realism, methods of interpretation and their interpretative rules do not play a distinct role in constituting the legal content of sources of law, and, consequently, in explaining the cognitive aspect of legal statements. Instead, these roles are directly attributed to the judgments made by participants in legal discourse. Therefore, the limitations of interpretative rules in identifying legal content, the underdetermination of the properness of method of interpretation, and the incoherence of methods of interpretation – all of these do not entail any negative consequences for the anti-realist picture of legal discourse. Nonetheless, one of the main weaknesses of this position is that it blurs the line between applying and creating the law due to its claim that legal content is constituted by judgments formulated by participants in legal discourse.

Subsequently, attention has been shifted towards non-interpretivism – a claim that we have non-inferential access to legal content and that legal content is not constituted by any inferential procedure settled by some method of interpretation. In non-interpretivism, interpretative methods and rules don't distinctly contribute to defining the legal content of sources or explaining legal statements' cognitive aspects. Therefore, the arguments outlined in Chapter 3 do not pose any threat to this picture of legal discourse as well. Nevertheless, in my view, the non-interpretivist stance is flawed, as the non-inferential content of sources of law rarely fulfills the role of being the basis for resolving disputes brought before courts or other adjudicatory bodies.

Considerations regarding non-interpretivism have been followed by an examination of legal expressivism, which holds that both the cognitive and the practical aspects of legal statements

should be explained in terms of conative states expressed by participants of legal discourse formulating such statements. In this regard, I have discussed both the semantic and metasemantic versions of legal expressivism. When it comes to semantic legal expressivism, I noted that this position denies that legal statements have any cognitive aspect. In this regard, this position denies that methods of interpretation play any significant role in the explanation of our use of legal statements. Nevertheless, I argued that this position has substantial problems when it comes to explaining the cognitive aspect of legal statements, for example, the fact that legal statements are usually assessed by participants as correct or incorrect and that the justification provided for such assessments usually refers to subject matters of the law. Afterward, I have discussed the metasemantic version of legal expressivism. This position does not deny that legal statements have a certain cognitive aspect, but it explains this aspect in terms of desire-like states of participants in legal discourse who formulate such statements. In this regard, I noted that metasemantic legal expressivism has no hesitation in attributing a constitutive role to rules of interpretation when it comes to determining the legal status of norms, and consequently, a proper explanatory role when it comes to the cognitive aspect of legal statements. Nonetheless, I highlighted that such maneuvers merely imitate the maneuvers of genuinely cognitivist approaches without undertaking their commitments. This is revealed in the fact that even if metasemantic legal expressivists mention a method of interpretation (referred to as *T*) in their explanation of the status of norms or the cognitive aspect of legal statements, *M* would not perform any genuine work here – it is only a label covering the conative attitude of the speaker toward a particular issue. However, the quandary of metasemantic legal expressivism revolves around whether the expressivist imitation of ideas like rationality of adjudication or following rules of interpretation is satisfactory – in other words, whether such imitation is capable of providing a satisfactory explanation of the principles that legal discourse should consider, such as the rule of law and the separation of powers.

On the basis of reflections conducted in this chapter, it may be concluded that despite the intriguing prospects the discussed viewpoints offer, they also come with their own set of complex, sometimes problematic features. Recognizing these challenges, in the next three chapters, I will investigate whether a strengthened defense of the quasi-cognitivist framework of legal discourse aids in countering the consequences that arise for this account from the arguments outlined in Chapter 3.

5. Refutation of the Regress Argument

In the opening chapter, I discussed both cognitivist and practical appearances of internal legal statements. In Chapter 2, I have outlined the key elements of a quasi-cognitivist explanation of these appearances. In Chapter 3, I explored three objections that aim to challenge the quasi-cognitivist picture of internal legal statements, demonstrating that it is untenable to maintain all the claims to which quasi-cognitivism is committed. In Chapter 4, I have explored a range of theoretical approaches that could serve as alternatives to the quasi-cognitivist picture of internal legal statements. However, I have noted that each alternative comes with its own complexities and challenges.

The next three chapters aim to address and refute the objections introduced in Chapter 3. The present chapter is devoted to countering the first of these objections: the regress argument. To counter this argument, I will explore the possibility of determining the content of interpretive rules in a way that avoids the need for their further interpretation in order to determine whether a norm *N* is, in respect of sources of law *S*, a legally binding norm. In this regard, I argue that the content of these rules should be explained in terms of division of linguistic labor, which posits that what expression *E* means depends on what legal experts mean by *E*. Afterward, I will investigate whether this approach is capable of facing the skepticism rooted in the rule-following problem. This skepticism argues that there are no genuine facts in virtue of which agents mean so-and-so by a specific expression, implying that they mean nothing by this expression. Viewed through the division of linguistic labor, this skepticism suggests that the rules of interpretation also lack determinate meaning, since there is nothing that legal experts specifically mean by them. This, in turn, entails that these rules are not capable of determining whether norm *N* is, in respect to sources of law *S*, a legally binding norm. To counteract this skeptical attack on their position, legal quasi-cognitivists need to affirmatively address three questions:

i. Is it possible to attribute a specific understanding of rules of interpretation to legal experts?
ii. Can this understanding be effectively transferred to other participants in legal discourse?
iii. May this understanding ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm?

Hence, questions 2 and 3 adress whether legal experts' meaning so-and-so by rules of interpretation can be effectively transferred to other participants in legal discourse in such a way that these rules, as used by these participants, would be capable of determining – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm.

To address the first question, I will explore three accounts of meaning ascriptions. First, I will discuss the skeptical solution offered by Kripke, which I interpret as advocacy for semantic expressivism toward meaning ascriptions. Subsequently, I will delve into McDowell's naturalized platonism, anchored in the notion that our experience is intrinsically conceptual. This account affords us direct insight into not only what we mean by a particular expression, but also what other people mean by this expression as well. Finally, I will discuss Brandom's inferentialism, which states that the speakers' meaning so-and-so by linguistic expressions should be explained in terms of speakers' deontic statuses. These statuses, in turn, are explained by the practical attitudes of the speakers.[194] After a detailed examination of these perspectives, I will address the second question by determining whether the aforementioned positions: Kripke's skeptical solution, McDowell's naturalized platonism, and Brandom's inferentialism, align with the concept of a division of linguistic labor. Finally, I will tackle the third question by examining whether the notion of meaning proposed within these philosophical positions may ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm. Subsequently, I will investigate any potential weaknesses in

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[194] In exploring the complex terrain of meaning ascriptions, this dissertation focuses on the contributions of Kripke, McDowell, and Brandom. While recognizing the significant insights of other philosophers, such as Crispin Wright, Paul Boghossian, and Hanna Ginsborg, the selection of Kripke, McDowell, and Brandom is guided by their central status in the broader philosophical discussion on rule-following. Nonetheless, for further reading on alternative approaches and perspectives within the rule-following debate, see Paul A. Boghossian, "The Rule-Following Considerations," *Mind* 98, no. 392 (1989): 507–49; Paul A. Boghossian, "The Status of Content," *The Philosophical Review* 99, no. 2 (1990): 157–84; Paul A. Boghossian, "Blind Rule-Following," in *Mind, Meaning, and Knowledge: Themes From the Philosophy of Crispin Wright*, ed. Crispin Wright and Annalisa Coliva (Oxford University Press, 2012), 27–48; Annalisa Coliva, ed., *Mind, Meaning, and Knowledge: Themes from the Philosophy of Crispin Wright* (Oxford University Press, 2012); Hannah Ginsborg, "Inside and Outside Language: Stroud's Nonreductionism About Meaning," in *The Possibility of Philosophical Understanding: Essays for Barry Stroud*, ed. Jason Bridges, Niko Kolodny, and Wai-Hung Wong (Oxford University Press, 2011); Hannah Ginsborg, "Primitive Normativity and Skepticism About Rules," *Journal of Philosophy* 108, no. 5 (2011): 227–54; Hannah Ginsborg, "Meaning, Understanding and Normativity," *Proceedings of the Aristotelian Society, Supplementary Volumes* 86 (2012): 127–46; Hannah Ginsborg, "Wittgenstein on Going On," *Canadian Journal of Philosophy* 50, no. 1 (2020): 1–17; Hannah Ginsborg, "Going on as One Ought: Kripke and Wittgenstein on the Normativity of Meaning," *Mind & Language* 37, no. 5 (2022): 876–92; Alexander Miller and Crispin Wright, *Rule-Following and Meaning*, First Edition (Montreal: McGill-Queen's University Press, 2002); Crispin Wright, *Wittgenstein on the Foundations of Mathematics* (Cambridge, Mass.: Harvard University Press, 1980); Crispin Wright, "Kripke's Account of the Argument Against Private Language," *Journal of Philosophy* 81, no. 12 (1984): 759–78; Wright, *Rails to Infinity*; Crispin Wright, "Rule-Following Without Reasons: Wittgenstein's Quietism and the Constitutive Question," *Ratio* 20, no. 4 (2007): 481–502.

the support these positions provide for quasi-cognitivism and examine how these weaknesses might impact the credibility of quasi-cognitivism.

5.1. Division of Linguistic Labor

I begin my response to the regress argument by adopting a Gricean perspective, suggesting that the meaning of linguistic expressions should be understood in terms of what they mean to people.[195] This principle extends to encompass rules of interpretation, as they should be considered as linguistic expressions as well. It is worth noting that the Gricean view of linguistic meaning has historical roots in John Locke's attempt to explain the semantic features of words in terms of speakers intentionally investing signs with meanings in order to communicate to others their states of mind.[196] Nonetheless, as Sarah Sawyer notes, "Given what is often widespread diversity in use, a conjunction of individual uses would tend towards an inconsistent meaning satisfied by nothing, and a disjunction of individual uses would eliminate the possibility of substantive error and undermine the normativity of language".[197] But she also states that the linguistic meaning of a term cannot be understood in purely statistical terms, "since a linguistic norm cannot be understood as a statistical norm, given the merely descriptive nature of the latter".[198] Therefore, the question is: How should we understand the claim that expressions mean what they mean to people?

In this regard, I contend that considering the Gricean perspective is not enough to explain the public meaning of rules of interpretation. Instead, I follow the intuition that it may be commonplace (and known to be commonplace) that the vast majority of English speakers do not classify, for example, olives as fruits and do not intend to use "is a fruit" to include olives, etc. Yet the predicate "is a fruit" does all the same include olives in its extension. In this particular case, this is perhaps because of a higher order trumping the conventional norm of deference to experts in such matters. On this basis, I embrace the view that the content of rules of interpretation that constitute a particular method of interpretation is determined by what these rules mean for legal experts.

The idea of semantic deference has been widely discussed since Hilary Putnam's famous essay "The Meaning of 'meaning'".[199] As Putnam notes, in a great many situations of communication, speakers (or writers) use words whose meaning they only understand imperfectly. Yet, those very speakers usually also intend to use those words in the same sense as the other

195 Grice, *Studies in the Way of Words*.
196 Dorit Bar-on, "Origins of Meaning: Must We 'Go Gricean'?," *Mind and Language* 28, no. 3 (2013): 344.
197 Sarah Sawyer, "VI—The Importance of Concepts," *Proceedings of the Aristotelian Society* 118, no. 2 (2018): 130.
198 Sawyer, 130.
199 Hilary Putnam, "The Meaning of 'Meaning,'" *Minnesota Studies in the Philosophy of Science* 7 (1975): 131–93.

members of their linguistic community. In such cases, the use of such terms by these speakers depends on a structured cooperation between them and the speakers in the relevant subsets. In this regard, as Hilary Putnam notes, within a linguistic community, there is a difference in status and the asymmetry relative to a conceptual term between "expert" speakers and "nonexpert" speakers.[200] Consequently, when nonexpert speakers use particular terms, they *defer* to the external bearers of meaning – the experts – and it is those experts' earnings that are contributed to the propositions they express, not the imperfect or incomplete meanings they have in mind.

Let's take a term "gold." Putnam explains his idea with the metaphor of community as a "factory": in this "factory" some people have the "job" of *wearing gold wedding rings,* other people have the "job" of *selling gold wedding rings,* still other people have the "job" of *telling whether or not something is really gold.*[201] It is not at all necessary or efficient that everyone who wears a gold ring (or a gold cufflink, etc.), or discusses the "gold standard," etc., engage in buying and selling gold. Nor is it necessary or efficient that everyone who buys and sells gold be able to tell whether or not something is really gold in a society where this form of dishonesty is uncommon (selling fake gold) and in which one can easily consult an expert in case of doubt. And it is *certainly* not necessary or efficient that everyone who has occasion to buy or wear gold be able to tell with any reliability whether or not something is really gold. The foregoing facts are just examples of a mundane division of labor (in a wide sense). But they engender a division of linguistic labor: everyone to whom gold is important for any reason has to *acquire* the word "gold"; but he does not have to acquire the *method of recognizing* if something is or is not gold. He can rely on a special subclass of speakers. The features that are generally thought to be present in connection with a general name – necessary and sufficient conditions for membership in the extension, ways of recognizing if something is in the extension ("criteria"), etc. – are all present in the linguistic community *considered as a collective body;* but that collective body divides the "labor" of knowing and employing these various parts of the "meaning" of "gold."

A clear illustration of the discussed idea was presented by Francais Recanati, discussing the case of a student who has learned from a teacher that Cicero made ample use of synecdoches.[202] The student has no other understanding of synecdoches than that they are a figure of speech. Nevertheless, according to Recanati, when the student utters: "Cicero's prose is full of synecdoches," the content of "synecdoches" is not determined by the Kaplanian character that the student has in mind (that character is merely the indeterminate "figure of speech") but by the character stored in the teacher's lexicon. Consequently, if Cicero's prose turns out to be replete

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200 Putnam, 227–28.

201 Putnam, "The Meaning of 'Meaning.'"

202 François Recanati, "Can We Believe What We Do Not Understand?," *Mind & Language* 12, no. 1 (1997): 84–100.

with figures of speech but not actual synecdoches, the sentence should be considered false. According to Recanati, this confirms that the student's own understanding is not what goes into its truth-conditions. If it did, the sentence would be true even if Cicero's prose was full of figures of speech other than synecdoches.

As Kallestrup notes, a deferential character of certain terms is manifested by the readiness to conform to the ways that experts use the terms in question.[203] Suppose that agent S has many true beliefs about tomatoes: they are red, savory in flavor, used in pizzas, and 5–9 centimeters in diameter. But, like many others, S also assents to "tomatoes are vegetables." Nevertheless, it may be argued that S uses "tomato" deferentially, as when the experts point out to S that tomatoes are fruit, S corrects his usage. What is more, S's utterance "tomatoes are vegetables" is best understood as being about tomatoes, thus expressing S's (false) belief that tomatoes are vegetables. But in order to achieve this understanding, we need to assume that the meaning of "tomato" in S's utterance is not fixed by his understanding of this term, but by some other external factors.

Nonetheless, in order to explain why such a mechanism arose in our language, Goldberg argues that the tendency to defer in matters of semantic is rationalized by our reliance on the say-so of others for much of what know about the world.[204] His thesis is that our semantic deference to experts is itself rationalized by our epistemic reliance on other speakers. Deferential terms often emerge within specialized domains that require a high level of expertise. These domains can range from scientific disciplines like physics or biology to technical fields such as engineering or law. The intricate nature of these subjects necessitates specialized knowledge for accurate interpretation and usage. Deferential terms are often associated with specific communities of experts who have devoted significant time and effort to studying and understanding a particular subject area. Experts in a given field possess a nuanced understanding of these terms within the context of their domain, including the underlying theories, principles, and applications associated with them. Deferential terms are often used to capture nuanced or precise aspects of a subject matter. They may be designed to convey specific technical or specialized meanings that cannot be easily captured by ordinary language. These communities develop their own terminology, definitions, and standards, which may not align with everyday or layperson usage. Nevertheless, the layperson recognizes the expertise of these communities and acknowledges that they are best positioned to establish the meanings of terms within their respective fields. In addition, there are many situations where a layperson needs to use such terms. The notion of semantic deference provides the best explanation of the communicative success that occurs in such situations.

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[203] Jesper Kallestrup, *Semantic Externalism* (Abingdon, Oxon ; New York: Routledge, 2011).
[204] Sanford Goldberg, "Experts, Semantic and Epìstemìc," *Noûs* 43, no. 4 (2009): 581–98.

But let's consider how we can identify deferential terms, that is, terms that are subjects of the division of linguistic labor. As Engelhardt notes,[205] the sociality of the division of linguistic labor is plausibly obscured by the tendency among many philosophers to focus exclusively on scientific terms as examples of terms subject to the division of linguistic labor. This tendency gives the impression that there is something unique to scientific terms (especially natural kind terms) or the kinds to which they refer that makes the division of linguistic labor possible. As a result, this tendency gives the impression that (i) only scientific terms are subject to the division of linguistic labor, that (ii) only research into natural kinds can be linguistic labor, that (iii) linguistic labor can be divided only according to scientific expertise relevant to a term's referent, and that (iv) if a word is subject to the division of linguistic labor, then it has its extension determined by the objective natural kinds in the world. But, as Engelhardt notes, i–iv are all mistaken. Accordingly, Coleman and Simchen note that the distinction between terms that are linguistically deferential and terms that are not cuts across the distinction between natural- and non-natural-kind terms. There are terms like "water" and "gold," that refer to natural kinds for which membership is a matter to be determined by a certain expertise. Yet, there are terms for natural kinds, membership in which is not left to experts, such as "pebble," "puddle," and "pond." The first ones are deferential, while the second ones are not. Accordingly, there are terms for simple everyday artifacts such as "chair," "pencil," and "hammer" that do not involve reliance on experts, but there are also terms such as "electron microscope," which are used by ordinary in virtue of the fact that there are some in the linguistic community who can identify electron microscopes for what they are. Consequently, it may be argued that there are natural-kind terms that are not linguistically deferential, such as "pebble" or "pond," and non-natural-kind terms that are, such as "electron microscope" and "operating system." This means that the distinction between natural- and non-natural-kind terms cannot act as our guide in deciding whether a given term exhibits reliance on expertise.

When it comes to the question of how we decide whether a given common noun is linguistically deferential, Coleman and Simchen argue that the fact that ordinary speakers rely on expert knowledge to fix the extensions of their substance terms is best explained by the *trust* that members of the linguistic community generally place in the expert knowledge in question.[206] Speakers rely on scientific expertise in fixing the extensions of everyday substance terms because of their perception that science surely has it right when it comes to what the substances really are. As Coleman and Simchen note, a perceived absence of agreement among experts on a received doctrine is often reason enough for ordinary speakers to be dubious about the reliability of the

[205] Jeff Engelhardt, "Linguistic Labor and Its Division," *Philosophical Studies* 176, no. 7 (2019): 1855–71.
[206] Jules L. Coleman and Ori Simchen, "Law," *Legal Theory* 9, no. 1 (2003): 1–41.

experts. Thus, a term will exhibit linguistic deference when there is (1) a sufficiently salient received expert doctrine, (2) concerning the nature of the thing to which the term refers, that (3) is commonly believed important to success in negotiating the world. If any of these conditions are not satisfied with respect to a given term, it is unlikely that the term will be linguistically deferential.[207]

Noteworthy, Philippe de Brabanter and Bruno Leclerq distinguish several kinds of semantic deference.[208] The first type of deference may be called *conventional externalism*. This kind of difference occurs when deferred word meanings are fixed by experts' definitions.[209] The second type of deference – *indexical externalism* – states that the extension of our terms depends upon the actual nature of the particular things that serve as paradigms.[210] De Brabanter and Leclerq consider here Putnam's well-known Twin-Earth thought experiment: Putnam invites us to imagine a substance on Twin Earth that goes by the name of *water* and shares with it all its stereotypical properties. Yet, that substance is not water, because its physical internal structure is different from that of the earthly paradigms of water that served as the basis for the ostensive definition of our term *water*.[211] As de Brabanter notes, such "deference" to the world takes the form of provisional deference to the people who are best qualified to get at the nature of this referent, i.e. to the experts in the field of investigation to which the phenomenon pertains. This deference goes to present experts but even more so to future, more knowledgeable, "ultimate experts," the ones who will speak the final word on the scientific investigation of the referent. In this picture, deferring to the ultimate experts goes proxy for deferring to reality itself. Yet it is important to stress that the deference to experts that occurs in this context is very different than in the case of conventional externalism. What matters here is the nature of the referent; descriptive knowledge of the experts does not fix the content of the word; it is just a proxy for the nature of the referent and therefore for the meaning of the word. The third type of semantic deference is usage-dependent externalism.[212] Many members of the linguistic community use certain words in the absence of a perfect grasp of their use within the community; yet this usage, not their own understanding of the word, is what fixes its meaning in their utterances. Here, the content of an agent's proposition is not ruled by an experts' definition or by the nature of a specific referent, but by the practice of the whole community.

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207 Coleman and Simchen, 23–24.

208 Philippe De Brabanter and Bruno Leclercq, "From Semantic Deference to Semantic Externalism to Metasemantic Disagreement," *Topoi* 42 (2023): 1039–50.

209 De Brabanter and Leclercq, 1040.

210 De Brabanter and Leclercq, 1040–41.

211 Putnam, "The Meaning of 'Meaning.'"

212 De Brabanter and Leclercq, "From Semantic Deference to Semantic Externalism to Metasemantic Disagreement," 1041.

The thesis on semantic deference, widely discussed, also encountered skeptical voices. Catherine J.L. Talmage formulates the following critique of this position.[213] Let us suppose that there is an individual who is generally a competent speaker of English, not only lacks the ability to tell whether or not any given sample is really a sample of gold, but knows simply that the word "gold" is a mass noun in the language of her community. This person might well take to pointing to things and saying, "Is this gold?", and she could also, if she wished, say things like, "Gold is wet," or "Gold is dry." Surely, however, it would be absurd to hold that the word "gold" as uttered by this person means just what it does in English. However, Talmage suggests that if Putnam were right that the labor of knowing the meaning of this word rests with a small subclass of English speakers – a subclass that is presumably doing its job – it has to be concluded that the word "gold" as uttered by this person does, in fact, mean gold.

The above critical voices certainly touch upon the neuralgic points of semantic externalism in all its varieties. However, it seems that externalists are fundamentally capable of repelling the accusations presented against them. Let's focus first on the objection formulated by Talmage. To investigate whether the thesis about the division of linguistic labor actually leads to the consequences pointed out by Talmage, let us consider the issue of how much information needs to flow down the links for a novice to acquire the capacity to use the term to pick out the kind, and to act themselves as a link, connecting further speakers into the network of the term's users. Kim Sterelny points out that there are at least two answers to this question.[214] The first one, proposed by Michael Devitt, assumes that the experts who "ground" a term on a kind (or an individual) must have (or have had) perceptual interaction with the kind, in which some information about the referential target has been picked up. But they do not need to be able to specify the kind; they do not need to know a uniquely identifying description, or anything that comes close to that. Moreover, the network can grow from link to link just through linguistic perception. I listen to someone talking about Buckminsterfullerene, and so long as I understand the sentence well enough to parse it, and realize that the speaker is talking about a kind of stuff (and so long as I remember the term), I can then talk about that kind of stuff myself. By doing so, I provide the perceptual opportunity for others to pick up that very capacity.

There is no doubt that this approach actually leads to the consequences mentioned by Talmage. However, Sterelny points out that there is a second answer to this question.[215] This answer – suggested by Frank Jackson – assumes that both launching a term and acquiring it

213 Catherine J. L. Talmage, "Is There a Division of Linguistic Labour?," *Philosophia* 26, no. 3 (1998): 421–34.
214 Kim Sterelny, "Michael Devitt, Cultural Evolution and the Division of Linguistic Labour," in *Language and Reality from a Naturalistic Perspective. Themes from Michael Devitt*, ed. Andrea Bianchi (Chaim: Springer Verlag, 2020).
215 Sterelny, 174–75.

through conversational interaction with others using it, is more informationally demanding.[216] Users of the term have to be able to specify the stuff, even though, in most cases, that specification is indirect: I know what Buckminsterfullerene is because I know that Buckminsterfullerene is the stuff carbon chemists call "Buckminsterfullerene." I know Gödel is the mathematician other mathematicians call "Gödel." In this regard, Sterelny points out that Devitt's automatic, quasi-reflex-like picture of the introduction and transmission of a term from one speaker to the next., is hard to reconcile with the idea of the flexibility of semantic competence.[217] A minor expression of that flexibility is our ability to co-opt a term for a new use, as in the making of metaphors or the coining of nicknames. Assume my knowledge about who Danton was is limited to the fact that he was a historical figure. However, it seems that in a conversation about revolutionary France, my statement containing the name "Danton" will refer de re to Danton – a person who was a leading figure in the French Revolution, was born on 26 October 1759 and was a famous orator of the Cordeliers Club. Nonetheless, I can also use the name Danton in a different way – I can, for example, name my dog after him; in such a case, when saying a sentence like "I need to take Danton to the vet," I will not be referring to the aforementioned French politician, but to my dog. This is a very minor instance of a most remarkable and important capacity: we can expand our lexicon, at will, at need, on the fly. As Sterelny states, this is a central aspect of our semantic competence, not a peripheral one. Our capacity to expand our lexicon contrasts sharply with other aspects of language, which are apparently fully automated and which seem to change mostly by unnoticed, accidental variation and contagion: phonology, morphology, and syntax. Thus, according to Sterelny, the fact that I can coin a new name – for the recently arrived dog – and smoothly integrate it into my language, strongly suggests that agents represent the referential, semantic properties of words in ways that do not represent their phonological or morphological properties. Thus, our capacity to use names or other terms depends not just on the existence of sociolinguistic networks; it also depends on recognizing these networks' existence and intending to extend them through our use of language. Thus in using "Danton" as a name for my dog, I am displaying my awareness of the network, while *not* intending to extend it. Consequently, the notion of deference, as viewed by Sterelny and Jackson, counters Talmage's criticism. The requirement to 1) possess specific information about a given term and 2) have the appropriate intention to engage in the network of sociolinguistic relations – allows avoiding the absurd consequences that, according to Talmage, result from the thesis about the division of linguistic labor. The person described by Talmage is not able to meet the above conditions, freeing proponents of linguistic

216 Frank Jackson, *Language, Names, and Information*, Wiley-Blackwell (Chichester, 2010), 32–33.
217 Sterelny, "Michael Devitt, Cultural Evolution and the Division of Linguistic Labour," 175.

division from asserting that this person uses "gold" in the same sense as the rest of the language community. On the basis of the above considerations, one might conclude that indeed the content of interpretative rules is determined by how they are understood by legal experts.

However, one issue remains. According to Coleman and Simchen, disagreement among legal experts – namely judges, lawyers, and jurisprudents – about what law is highlight a salient feature of our legal practice that undermines the reliance on expertise in fixing the extensions of legal terms.[218] It could be argued that this perspective might also apply to other expressions of legal domain, including rules of interpretation. Thus, a disagreement among legal experts would undermine a claim that the meaning of interpretive rules is deferentially determined by their expertise. Let us consider then whether the fact that numerous disputes are conducted within the legal discourse means that legal terms cannot be regarded as deferential. In this regard, I argue that a fact of disagreement between legal experts does not negate that rules of interpretation are deferential. Accordingly, a disagreement between physicists regarding quantum physics does not undermine the deferential character of physical terms like a quark. Therefore, disagreements in any domain do not affect a deferential nature of its terms, as long as this disagreement does not regard the meaning of these terms.

Therefore, I admit that disagreement among legal experts is undeniable. In the context of interpretation, there is a disagreement about which rules of interpretation are the proper tool to identify legal content. However, I claim that this disagreement does not negate that these rules are deferential, as this disagreement does not regard the meaning of these rules. To consider disagreements regarding the proper method of interpretation as actual disputes, one must acknowledge that both sides of the dispute talk about the same thing. Therefore, when legal agent S_1 criticizes the rule of interpretation *R* and legal agent S_2 argues for R, both understand *R* in the same way. In any other case, this disagreement would be illusory. But this disagreement is certainly not illusory. Thus, disagreement about which system of rules of interpretation is the proper one presupposes an agreement on the meaning of these rules. It is noteworthy that an agreement presupposed by this disagreement, that is, agreement about the meaning of rules of interpretation, is sufficient to endorse a view that the meaning of these rules is determined by what legal experts mean by them. Consequently, we can assert that legal disputes do not inherently challenge the explanation of the meaning of interpretative rules in terms of the division of linguistic labor. In this regard, any suggestions of refuting the idea that the meaning of rules of interpretation depends on what legal experts mean by them appears to be *ad hoc*, at best.

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[218] Coleman and Simchen, "Law," 27.

5.2. Rule-Following Problem

In the previous section, I adopted the view that the content of interpretative rules hinges on their meaning to legal experts. However, the feasibility of determining what these rules mean to these experts has been called into question. In this regard, I want to focus on Kripke's interpretation of Wittgenstein's remarks regarding rule-following. The culmination of Kripke's interpretation is the skeptical problem, which poses a challenge of whether there is a fact that determines what an agent means by a given expression.[219] Kripke introduces a figure of the skeptic who claims that there is no such fact; on this basis, he comes to a nihilistic conclusion that there can be no such thing as meaning anything by any word. Martin Kusch states that Kripke's skeptic's view of meaning presupposes what he calls *meaning determinism*.[220] Meaning determinism holds that sentences of the form "person *x* means *Y* by sign "*z*"" (e.g. Jones means addition by "+") are true if, and only if, *x* has a certain mental state. This mental state *constitutes x*'s meaning *Y* by "*z*," or, put differently, this mental state is the necessary and sufficient condition for *x*'s meaning *Y* by "*z*." Meaning determinism makes several assumptions about this mental state. The initial assumption is that *x* usually knows this mental state immediately and with fair certainty, as she has introspective access to it. What is more, the meaning- constituting mental state is an intrinsic state of *x*: *x* could be in this state even if *x* had never had any contact with other human beings. It means that such states can be analyzed and understood in terms of facts about the agent alone, without reference to her membership in a wider community. In this regard, learning the meaning of a word is regarded as grasping this meaning, which is a solitary achievement of each of every user of language, independent of any interaction with a wider community. Another assumption, "semantic normativity," is best understood as a covering term for several specific ideas. The first one is "non-blindness." Suppose that *x* has decided in the past to mean addition by the sign "+." Allow further that *x* gives the answer "125" in answer to "68 +57 = ? ." As the meaning determinist sees it, in these circumstances *x*'s response is not something *x* does "blindly," not "an unjustified leap in the dark," a "brute inclination," "an unjustified stab in the dark," an "unjustifiable impulse" or "a mere jack-in-the-box unjustified and arbitrary response".[221] Rather, *x*'s meaning-constituting mental state guides and instructs *x* on how to apply "*z*"; that is, it tells *x* how she ought to apply "*z*" if she wishes to use "*z*" with the same meaning with which she used it before. In other words, the meaning-constituting mental state contains a standard of correct use. Furthermore, meaning

219 Saul A. Kripke, *Wittgenstein on Rules and Private Language: An Elementary Exposition* (Cambridge, Mass, 1982).
220 Martin Kusch, *A Sceptical Guide to Meaning and Rules: Defending Kripke's Wittgenstein* (Montreal, 2006).
221 see Kripke, *Wittgenstein on Rules and Private Language*, 10–23.

determinism embraces the view that *the* meaning-constituting mental state of x contains and determines all future, potentially infinite, correct applications of "z."

Nonetheless, according to Kripke, Wittgenstein's remarks on rule-following undermine the meaning-determinist picture of meaning something.[222] Kripke's argument against meaning determinism was expressed in the form of a dialogue between a skeptic and Jones. The skeptic asks Jones a mathematical question that he has never previously considered (let's assume that it is a question about the sum of 58 and 67). Jones performs the computation, obtaining, of course, the answer "125". He is confident, perhaps after checking her work, that "125" is the correct answer, as he intended to use "plus" word as in the past, that is, as denoting a function of addition, which, when applied to the numbers I called "68" and "57", yields the value "125." Nevertheless, the skeptic encourages Jones to imagine a mathematical function, quaddition, denoted by "$\oplus$" and defined as follows: $x \oplus y = x + y$, if $x, y < 57$; $x \oplus y = 5$ otherwise. Afterward, the skeptic argues that we cannot assert that Jones means addition by "+" if we cannot deny that Jones means quaddition by "+." Nevertheless if we assert that Jones means addition by "+," then we cannot deny that Jones means quaddition by "+, as all the evidence that supports the former supports the latter as well. Consequently, we cannot assert that Jones means addition by "+."

Afterward, the skeptic questions Jones if there is any fact that would support the claim that he understood "+" as an *addition* rather than *quaddition*. As Kripke notes, an answer to the skeptic must satisfy two conditions. First, it must give an account of what fact it is (about my mental state) that constitutes my meaning plus, not quus. But further, it must, in some sense, show how I am *justified* in giving the answer "125" to "68+57".[223]

The skeptic considers the following candidacies: 1) the fact that Jones has the particular disposition to respond in a certain way; 2) the fact that Jones' use of "+" is governed by a certain rule; 3) facts concerning Jones' language training; 4) Facts concerning Jones usage of "+" under ceteris paribus conditions; 5) facts concerning counting machines; 6) facts concerning the relative simplicity of competing interpretations of Jones usage of "+"; 7) Facts concerning Jones introspective mental states; 8) The fact that Jones has grasped a certain objective, abstract Platonic entity – the meaning of the symbol "+."

According to the skeptic, Jones' dispositions do not determine that Jones means addition by "+." He states even that the totality of dispositions should be regarded as finite (Kripke, p. 26). Consequently, the moment when the addition function starts to diverge from the quaddition

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222 It is noteworthy that one may question whether the picture of meaning that Kripke had in mind was meaning determinism. In this dissertation, I assume that it was indeed.

223 Kripke, *Wittgenstein on Rules and Private Language*, 11.

function may lie beyond the boundaries of the space captured by the current dispositions of the subject. But if it is so, then dispositions do not explain that by "+" Jones means addition rather than quaddition. What is more, the dispositionalist gives a descriptive account of the relation between meaning something and an action: she states that if Jones means addition by "+," then Jones will answer "125." But this is not the proper account of the relation, which is normative, not descriptive. The point is not that if Jones meant addition by "+," he will answer "125," but that he should answer "125."[224]

Sceptic argues that appealing to another more "basic" rule does not determine what Jones means by "+," because the skeptical move can be repeated at the more "basic" level also. Therefore, at some point, it would be necessary to identify a rule that cannot be reduced in any way to another. The problem is that even this rule could easily be interpreted by a skeptic in such a way as to justify the claim that S understood the sign "+" as quaddition.[225]

The past uses of the sign "+" by Jones do not constitute an actual basis to assume that Jones meant addition by "+" as well. This follows from the fact that both the hypothesis that S understood "+" as addition and the competing hypothesis that S understood "+" as quaddition provide an equally justifiable explanation of the history of Jones's use of the sign "+."

The skeptic contends that invoking ceteris paribus conditions in response to the problem he presents is inadequate as well. This line of argument implies that, under ideal circumstances, when faced with an addition task involving two large numbers, Jones would respond with their sum, and not with the result according to some quus-like rule. It hypothesizes that if, for example, Jones's brain were augmented with sufficient capacity to comprehend and compute such large numbers, and if his lifespan were artificially extended to allow enough time for this calculation, then he would, in theory, respond with the correct sum when presented with an addition problem involving large numbers. However, the Skeptic challenges this notion as baseless. Fundamentally, we cannot what would happen if Jones' brain had such capacity, or if Jones' life had been prolonged in such a way. As Kripke notes, such conjectures are better suited to the realms of science fiction and futurology, rather than forming a solid foundation for argumentation.[226]

But what if Jones built a counting machine, such that the rule would be *embodied* in it, and it will simply grind out the right answer, in any particular case, to any particular addition problem? In such cases, the answer that the machine would give is, then, the answer that Jones intended. Consequently, if the machine built by Jones, when asked about the result of the equation "67+58," would answer "125," it would mean that S understood "+" as an addition. However, there are

[224] Kripke, 37.
[225] Kripke, 17.
[226] Kripke, 27.

several problems with this idea. One of them is that there might exist an equation that would exceed the computational capabilities of the machine under discussion. In such a situation, we would again face the doubt of what Jones means by "+." The second problem is related to the reliability of the answers suggested by the machine I built. Such a machine might at some point start to malfunction. The issue is that the assessment of the machine's malfunction is made by referring to the intention of its designer. Depending on the designer's intentions, any phenomenon might thus be counted as – or not – a "malfunction" of the machine. Therefore, whether the machine is functioning correctly requires an answer to the question of which rule was programmed into it. However, if this is the case, then building a counting machine will not answer the Skeptic's question, as the correctness of such an answer will depend on how Jones understood the sign "+," and this is precisely the subject of dispute.[227]

Nonetheless, one may argue that Jones means addition by "+" because it is the simplest hypothesis.[228] Nonetheless, the fact that addition is a simpler function than quus, according to the Skeptic, is not a reason to believe that S understood "+" as addition rather than quus. The Skeptic suggests in this context that perhaps for a Martian, the quus function might be simpler than the plus function. However, the most significant problem with referring to the simplicity of a given hypothesis, according to him, lies in the fact that simplicity tells us nothing, as Wittgenstein's skeptic argues that he knows of no fact about an individual that could constitute his state of meaning plus rather than quus. Against *this* claim simplicity considerations are irrelevant. Simplicity considerations would have been relevant against a skeptic who argued that the indirectness of our access to the facts of meaning and intention *prevents us ever from knowing* whether we mean plus or quus. But the sceptic does not argue that our own limitations of access to the facts prevent us from knowing something hidden. He claims that an omniscient being, with access to *all* available facts, would still not find any fact that differentiates between the plus and the. quus hypotheses. Such an omniscient being would neither need nor use for simplicity considerations. Therefore, the reference to simplicity does not settle whether Jones means addition or quaddition by "+".[229]

But why not argue that "meaning addition by "plus"' denotes an irreducible experience, with its own special *quale (such as headache or tickle),* known directly to each of us by introspection? Let's suppose Jones in fact feels a certain headache with a very special quality whenever he thinks of the "+" sign. Consequently, this headache would suggest to Jones that he should respond "125" rather than "5." However, the Skeptic believes that no internal experience can, by itself, dictate how a particular sign should be used in new instances, as it cannot tell Jones in itself how it is to

[227] Kripke, 33–34.
[228] Kripke, 38.
[229] Kripke, 38–39.

be applied in future cases. Consequently, even if, in past situations involving the use of the "+" sign, a headache appeared when Jones was responding in accordance with the meaning of "+," its appearance in Jones at the thought of the number "125" might mean something else, for example, to seek a different answer. If so, then the appearance of the headache does not determine that Jones means addition by the sign "+" as addition, rather than quaddition.[230]

Nonetheless, one may refer to Frege's analysis of the usage of the plus sign by an individual that posits the following four elements: (a) the addition function, an "objective" mathematical entity; (b) the addition sign "+," a linguistic entity; (c) the "sense" of this sign, an "objective" abstract entity like the function; (d) an idea in the individual's mind associated with the sign. However, the Skeptic notes that Fregean analysis does not avoid the skeptical problem, as it arises with the question in the question how the existence in my mind of any mental entity or idea can *constitute* "grasping" any particular sense rather than another, that is, what makes Jones' idea refer to this specific sense and not another? As skeptic notes, the idea in Jones' mind is a finite object: therefore, it can be interpreted as determining a quus function, rather than a plus, et vice versa.[231]

Therefore, after examining every possibility, the skeptic ultimately concludes that there is no fact that could justify the assertion that Jones understood "+" as an *addition* rather than *quaddition*.[232] Thus, he comes to what Wilson calls the Basic Sceptical Conclusion.[233]

> (basic skeptical conclusion). There are no facts about Jones that fix what Jones meant by a given term.

Recall that the skeptical problem was not merely epistemic. To grasp the difference between these two conceptions of skepticism, consider two skeptical claims: (a) there exists some fact that determines that Jones means addition rather than quaddition by "+." However, although such a fact exists, it is not epistemically accessible, making it impossible to justify the belief (even if it were true) that Jones indeed means addition by "+"; (b) there is no fact that Jones means addition rather than quaddition by "+," and for this reason, it is impossible to justify the belief that Jones indeed means addition by "+." The first claim formulates an epistemic skepticism about meaning, while the second claim formulates a constitutive, or metaphysical skepticism. Therefore, according to Kripke, the Skeptic's argumentation leads to the second type of skepticism. This conclusion serves as a premise for further reasoning. It leads the skeptic to the claim that since there is no fact

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230 Kripke, 43–46.
231 Kripke, 54.
232 Kripke, *Wittgenstein on Rules and Private Language*.
233 George M. Wilson, "Semantic Realism and Kripke's Wittgenstein," *Philosophy and Phenomenological Research* 58, no. 1 (1998): 107.

that Jones means addition rather than *quaddition* by "+," all sentences attributing a specific understanding of the given term to Jones are false. This line of reasoning leads to a much less credible claim Wilson calls the Radical Skeptical Conclusion.[234]

(radical skeptical conclusion). No one ever means anything by any term.

It is precisely this conclusion that creates the skeptical paradox – based on a sound premise, i.e., 1) a requirement of semantic facts in order to make attributions of meaning true, and 2) a claim that there are no semantic facts – the Skeptic arrives at an extremely counterintuitive conclusion that meaning ascriptions are systematically false, and agents that formulate such ascriptions are systematically in error.

Nonetheless, the radical skeptical conclusion entails some substantial consequences for a quasi-cognitivist picture of legal discourse:

(1) Legal statements are about satisfying, in respect of sources of law *S*, the interpretive procedure set by a method of interpretation *M* by norm *N*.
(2) If legal statements are about satisfying, in respect of *S*, the interpretive procedure set by a method of interpretation *M* by norm *N*, then (if legal statement x is to be true, then *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*).
(3) For any norm *N*, if *N* has to satisfy, in respect of *S*, the interpretive procedure set by the method of interpretation *M*, then *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M*.
(4) For any norm *N*, if *N* needs rules of interpretation *R* determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M,* then *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M* only if legal experts mean *U* by *R*.
(5) There is no fact in virtue of which legal experts mean *U* by *R*.
(6) Legal experts mean nothing by *R*.
(C) Legal statements are systematically false.

On the basis of this argument, the skeptic may argue that a claim that the content of rules of interpretation depends on what they mean for legal experts does not provide satisfactory support

[234] Wilson, 108.

for quasi-cognitivism against the regress argument, because, given the skeptical conclusion there is no fact in virtue of which I legal experts mean so-and-so by rules of interpretation. This, in turn, implies that they mean nothing by rules of interpretation. The consequence is that rules of interpretation have no content, which means that they are not capable of determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm. This, in turn, means that the quasi-cognitivist picture of legal content is not capable of refuting the regress argument, which implies that it cannot avoid collapsing into a form of legal nihilism.

5.3. Responses to the Skeptical Problem

In the previous part, I have argued that the way to stop the regress argument is to refer to experts' meanings. Nonetheless, this solution seems to be undermined by the skeptical conclusion, stating that there is no fact that experts mean so-and-so by such-and-such rules of interpretation. In this regard, one could argue that we should abandon the idea of deference when it comes to the meaning of rules of interpretation. However, I argued that this is not a satisfactory, *ad hoc* answer. Therefore, to counter the skeptical critique, legal quasi-cognitivists must convincingly address three questions: 1) Is it possible to attribute a specific understanding of rules of interpretation to legal experts? 2) Can this understanding be effectively transferred to other participants in legal discourse? 3) May this understanding ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm? In this part, I will examine the first question, addressing the skeptical challenge related to meaning ascriptions. Initially, I will explore Kripke's skeptical solution, which I interpret as an endorsement of semantic expressivism regarding meaning ascriptions. Next, I will investigate McDowell's naturalized platonism, endorsing a view that our experience is intrinsically conceptual, and that we have a direct insight into not only what we mean by a particular expression, but also what other people mean by this expression as well. Lastly, I will discuss Brandom's inferentialism, proposing that the meaning of linguistic expressions, as understood by speakers, should be explained in virtue of their inferential roles, which, in turn, are explained in virtue of practical attitudes of agents.

5.3.1. Kripke's skeptical solution

According to Kripke, Wittgenstein provides a skeptical solution to the problematic conclusion of the skeptic. The skeptical solution begins by agreeing with the skeptic that there are no semantic

facts in neither the "internal" nor the "external" world.[235] Therefore, this stance acknowledges there is no "superlative fact" about my mind that constitutes my understanding of "plus" as addition, and determines in advance what I should do to accord with this understanding. Therefore, Kripke's Wittgenstein does not give a "straight" solution, pointing out to the silly skeptic a hidden fact he overlooked, a condition in the world that constitutes my meaning addition by "plus". Instead, he argues that the appearance that our ordinary concept of meaning demands such a fact is based on a philosophical misconstrual.[236] He states that if we suppose that facts, or truth conditions, are of the essence of a meaningful assertion, it will follow from the skeptical conclusion that assertions that anyone ever means anything are meaningless. On the other hand, he suggests that all that is needed to legitimize assertions that someone means something is that there be roughly specifiable circumstances under which they are legitimately assertible and that the game of asserting them under such conditions has a role in our lives. In this regard, Wittgenstein replaces the question, "What must be the case for this sentence to be true?" with two others: first, "Under what conditions may this form of words be appropriately asserted (or denied)?"; second, given an answer to the first question, "What is the role, and the utility, in our lives of our practice of asserting (or denying) the form of words under these conditions?".[237] In this regard, we can say that Wittgenstein proposes a picture of language based, not on truth conditions, but on assertibility conditions or justification conditions: under what circumstances are we allowed to make a given assertion?

In this regard, Kripke states that we must give up the attempt to find any fact about Jones in virtue of which Jones means "plus" rather than "quus," and must then go on in a certain way. Instead, we must consider how we actually use: (i) the categorical assertion that an individual is following a given rule (that he means addition by "plus"); (ii) the conditional assertion that "if an individual follows such-and-such a rule, he must do so-and-so on a given occasion" (e.g., "if he means addition by '+,' his answer to '68+57' should be '125'"). That is to say, we must look at the circumstances under which these assertions are introduced into discourse, and their role and utility in our lives. In response, he states that we say of someone else that he follows a certain rule when his responses agree with our own and deny it when they do not. In turn, when the community accepts a particular conditional assertion, it accepts its contraposed form: the failure of an individual to come up with the particular responses the community regards as right leads the community to suppose that he is not following the rule. On the other hand, if an individual passes enough tests, the community, by endorsing assertions of the categorial form, accepts him as a rule

235 Kripke, *Wittgenstein on Rules and Private Language*, 69.
236 Kripke, 65.
237 Kripke, 73.

follower, thus enabling him to engage in certain types of interaction with them that depend on their reliance on his responses.

Nonetheless, Kripke states that Wittgenstein's general picture of language, as sketched above, requires for an account of a type of utterance not merely that we say under what conditions an utterance of that type can be made, but also what role and utility in our lives can be ascribed to the practice of making this type of utterance under such conditions. In terms of this account, Kripke enumerates three of Wittgenstein's key concepts. First, agreement. The entire "game" we have described – that the community attributes a concept to an individual so long as he exhibits sufficient conformity, under test circumstances, to the behavior of the community – would lose its point outside a community that generally agrees in its practices. We respond unhesitatingly to such problems as "68 + 57," regarding our procedure as the only comprehensible one and we agree in the unhesitating responses we make. On Wittgenstein's conception, such agreement is essential for our game of ascribing rules and concepts to each other.

Second, the form of life. The set of responses in which we agree, and the way they interweave with our activities, is our form of life. On Wittgenstein's conception, a certain type of traditional – and overwhelmingly natural – explanation of our shared form of life is excluded. We cannot say that we all respond as we do to "68 + 57" because we all grasp the concept of addition in the same way, that we share common responses to particular addition problems because we share a common concept of addition. Rather our license to say of each other that we mean addition by "+" is part of a "language game" that sustains itself only because of the brute fact that we generally agree. (Nothing about "grasping concepts" guarantees that it will not break down tomorrow. In this regard, Kripke emphasizes that beings who agreed in consistently giving bizarre quus-like responses would share in another form of life. By definition, such another form of life would be bizarre and incomprehensible to us. However, Kripke states that if we can imagine the abstract possibility of another form of life (and no a priori argument would seem to exclude it), the members of a community sharing such a quus-like form of life could play the game of attributing rules and concepts to each other as we do. Someone would be said, in such a community, to follow a rule, as long as he agrees in his responses with the (quus-like) responses produced by the members of that community.

Finally, the criteria. As Kripke notes, criteria play a fundamental role in Wittgenstein's philosophy of mind: An "inner process" stands in need of outward criteria. In this regard, Kripke states that outward criteria for an inner process are circumstances, observable in the behavior of an individual, which, when present, would lead others to agree with his avowals. If the individual generally makes his avowals under the right such circumstances, others will say of him that he has

mastered the appropriate expression ("I am in pain," "I feel itchy," etc.). We have seen that it is part of Wittgenstein's general view of the workings of all our expressions attributing concepts that others can confirm whether a subject's responses agree with their own. In the case of avowals of sensations, the way the community makes this judgment is by observing the individual's behavior and surrounding circumstances.

5.3.1.1. Non-factualist interpretation of the skeptical solution

For decades, one of the most popular ideas in the literature was that the skeptical solution offers a non-factualist position on meaning-ascription. In this regard, the non-factualist interpretation states that Kripke's Wittgenstein's idea is that we look at the conditions in which there is assertoric use by the community of ascriptions of meaning and tell a story about the pragmatic utility of that practice. The non-factualist agrees with the skeptic that there are no semantic facts of any type. Nonetheless, she argues that to avoid semantic nihilism one needs to refrain from attributing truth-conditions of any sort (whether classical-realist or deflationary ones) to meaning ascriptions.[238] Therefore, she assumes that meaning ascriptions do not have any truth-conditions, but they have a non-descriptive function, as they do not express any cognitive states, like judgments or beliefs, but conative states, like emotions or evaluative attitudes.[239] Unlike beliefs or judgments, conative states do not purport to describe the way things are; hence we do not normally take them to be the sorts of sentences that can be true or false. Nevertheless, a closer look at the literature reveals that the non-factualist interpretation suffers from certain weaknesses. The foremost problems of the non-factualist interpretation were indicated by Wright,[240] Boghossian,[241] Kusch,[242] Hattiangadi[243] and Miller.[244]

5.3.1.2. Factualist interpretations of the skeptical solution

Several authors have tried to defend the non-factualist interpretation by responding to the problems mentioned above.[245] Other scholars, on the other hand, have dealt with the problems of the non-factualist interpretation by adopting the factualist stance toward the skeptical solution.

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238 Alexander Miller, "Kripke's Wittgenstein, Factualism and Meaning," in *The Later Wittgenstein on Language*, ed. Daniel Whiting (Basingstoke: Palgrave Macmillan, 2010), 183.

239 see Anandi Hattiangadi, *Oughts and Thoughts: Rule-Following and the Normativity of Content*, 1st edition (Oxford: Clarendon Press, 2007), 89; Miller, "Kripke's Wittgenstein, Factualism and Meaning," 183–84.

240 Wright, "Kripke's Account of the Argument Against Private Language."

241 Boghossian, "The Status of Content."

242 Kusch, *A Sceptical Guide to Meaning and Rules*.

243 Hattiangadi, *Oughts and Thoughts*.

244 Alexander Miller, "Rule-Following Skepticism," in *The Routledge Companion to Epistemology* (Routledge, 2011).

245 Daniel Boyd, "Semantic Non-Factualism in Kripke's Wittgenstein," *Journal for the History of Analytical Philosophy* 5, no. 9 (2017); Andrea Guardo, "Meaning Relativism and Subjective Idealism," *Synthese* 197, no. 9 (2020): 4047–64; Alexander Miller, "What Is the Sceptical Solution?," *Journal for the History of Analytical Philosophy* 8, no. 2 (2020).

According to proponents of the factualist interpretation, meaning ascriptions do have a descriptive function. Accordingly, in order to answer the problem posed by the skeptic, they argue that the most crucial idea of the skeptical solution is the rejection of not so much the semantic facts as their particular explanatory capacity. Over time, extensive literature has developed on the factualist position. Consequently, two factualist ways of interpreting the skeptical solution arose – factualism without minimalism and factualism via minimalism. In order to answer the problem posed by the skeptic, the first relies on the remarks Kripke's Wittgenstein makes about assertability conditions. According to this approach, the assertibility of meaning ascriptions is not governed by a property or set of properties serving as its pre-established standard of correctness. Rather, it explains the assertibility of meaning ascriptions in virtue of facts about the overall linguistic use of the terms that the ascriptions correctly describe. This way of understanding the factualist interpretation was established, for instance, in Byrne[246] and Wilson.[247] In turn, the "minimalist" reading of the Skeptical Solution answers the skeptic's problem in terms of a deflationary account of facts and truth. According to this view, meaning ascriptions are truth-apt because they satisfy two conditions relating to discipline and syntax. Consequently, it suggests that meaning ascriptions have only deflationary truth conditions. Nevertheless, in virtue of these conditions, one may attribute meaning ascriptions with descriptive semantic function. On this basis, the advocates of minimal factualism state that the explanation of the truth of meaning ascriptions does not involve any facts. Nonetheless, they argue that the existence of semantic facts follows from the idea that when "Jones means addition by '+'" is true, then one may trivially affirm that there is a fact that Jones means addition by "+." It is worth noting that the minimalist approach seems to be advocated by the majority of "factualist" interpreters of the skeptical solution. It is explicitly endorsed by Davies,[248] Wilson,[249] Kusch,[250] and Šumonja.[251]

It is worth mentioning the error theory interpretation of the skeptical solution. Miller[252] notices that, on the skeptical solution, our meaning-ascriptions can be fully justified despite the absence of meaning-constituting facts. In this regard, he considers the non-eliminativist type of

246 Alex Byrne, "On Misinterpreting Kripke's Wittgenstein," *Philosophy and Phenomenological Research* 56, no. 2 (1996): 339–43.
247 George M. Wilson, "Kripke on Wittgenstein and Normativity," *Midwest Studies In Philosophy* 19, no. 1 (1994): 366–90.
248 David Davies, "How Sceptical Is Kripke's 'Sceptical Solution'?," *Philosophia* 26, no. 1 (March 1, 1998): 131.
249 George M. Wilson, "The Skeptical Solution," in *The Legitimacy of Truth*, ed. Riccardo Dottori (Münster: Lit Verlag, 2003), 180.
250 Kusch, *A Sceptical Guide to Meaning and Rules*, 172.
251 Miloš Šumonja, "Kripke's Wittgenstein and Semantic Factualism," *Journal for the History of Analytical Philosophy* 9, no. 3 (2021): 15.
252 Alexander Miller, "Rule Following, Error Theory and Eliminativism," *International Journal of Philosophical Studies* 23, no. 3 (2015): 324.

error theory which relies on avoiding the possibility of the eventual displacement of the relevant area based on pragmatic advantages associated with the subsidiary norms. The non-eliminativist error theory may be seen as another interpretation of the skeptical solution, with a skeptic claiming that meaning ascriptions are systematically false, and Kripkenstein stating that, regardless, they conform with particular subsidiary norms constituting assertibility conditions.

5.3.1.3. Expressivist interpretation of the skeptical solution

It is understandable why various interpretations of the skeptical solution have emerged. Initially, the aspects of the skeptical solution appear contradictory. However, in this dissertation, I argue that these seemingly contradictory aspects can be harmoniously integrated. This integration is based on the premise that Kripke refutes the general form of explanation of meaning in genuinely cognitive terms, and states that meaning ascriptions do not refer to any facts, but express conative states of the speaker instead. Nonetheless, skeptical solution may be seen as a form of quasi-realist expressivism concerning meaning ascriptions.

According to a common view, conventional content of the target sentences is equated to propositions, regarded as representations of the world as being a particular way which are true if and only if the world is so.[253] Such propositions are the contents of ordinary *beliefs*, understood as attitudes with a mind-to-world direction of fit. However, expressivists explain the content of target sentences in terms of a mental state that the speaker needs to be in order to assert this sentence.[254] Consequently, expressivists endorse something Drew Johnston called a *mentalist semantic assumption*: the semantic content of a sentence is determined by the mental states that sentence characteristically expresses. As Johnston notes, the relevant type of non-cognitive state may be akin to attitudes of approval or disapproval (as proposed by emotivists), or planning states,[255] or states of being for,[256] depending on the particular expressivist view – at any rate, such states are what Hume would have called a "passion", as opposed to an exercise of reason. As Johnston notes, along with this non-cognitivist view about the mental states expressed by ethical claims, expressivism also takes an anti-realist stance about moral metaphysics, either denying that there are any genuine moral facts or properties, or else holding that they have a different, less 'substantive' metaphysical status from the facts and properties found in realist domains. According to Drew Johnson, the traditional metaethical expressivist picture can be decomposed into four logically independent theses:

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253 Finlay and Plunkett, "Quasi-Expressivism about Statements of Law: A Hartian Theory," 53.
254 Mark Schroeder, *Being For: Evaluating the Semantic Program of Expressivism* (Oxford University Press, 2008), 31.
255 Allan Gibbard, *Thinking How to Live* (Cambridge (Mass.): Harvard University Press, 2003).
256 Schroeder, *Being For*.

i. A positive expressivist thesis (*expression*): ethical claims characteristically express motivationally-charged non-cognitive mental states or attitudes.
ii. A positive constitutivist thesis (*internalism*): To count as sincerely making a claim or judgment in the domain of ethics, an agent must be appropriately related to a motivationally-charged non-cognitive state.
iii. A negative metaphysical thesis (*anti-realism*): Either there are no moral facts or properties for ethical claims to report on or describe, or else such moral facts or properties are in some way metaphysically less substantive than the entities reported upon or described by paradigmatically cognitivist thought and discourse.
iv. A negative semantic thesis (*anti-representationalism*): claims in the domain of ethics do not have a descriptive representationalist semantic function.[257]

I believe that expressivism is a central idea of Kripke' skeptical solution – that meaning ascriptions are assertible due to the fact that the speaker is in a certain mental, non-cognitive state. In this regard, Kripke states that the most basic idea of the Tractatus is that a declarative sentence gets its meaning by virtue of its truth conditions, by virtue of its correspondence to facts that must obtain if it is true. Nonetheless, Kripke writes about "the replacement of truth conditions by justification conditions." In this regard, he states that the Investigations contains implicitly a rejection of the classical (realist) Frege-Tractatus view that the general form of explanation of meaning is a statement of the truth conditions. Moreover, Kripke states that the crucial point of the skeptical solution is that it replaces the question, "What must be the case for this sentence to be true?" with two others: first, "Under what conditions may this form of words be appropriately asserted (or denied)?"; second, given an answer to the first question, "What is the role, and the utility, in our lives of our practice of asserting (or denying) the form of words under these conditions?."

Expressivist character of Kripke's skeptical solution is evident when we investigate his explanation of the content of meaning ascriptions. According to Kripke, when we attribute the concept of addition to Jones, we depict no special "state" of his mind. Rather, *Smith* will judge Jones to mean addition by "plus" only if he judges that Jones's answers to particular addition problems agree with those *he* is inclined to give, or, if they occasionally disagree, he can interpret Jones as at least following the proper procedure. In all this, Smith's inclinations are regarded as just as primitive as Jones's. In no way does Smith test directly whether Jones may have in his head some rule agreeing with the one in Smith's head. Rather the point is that if, in enough concrete

[257] Johnson, "A Hybrid Theory of Ethical Thought and Discourse," 38.

cases, Jones's inclinations agree with Smith's, Smith will judge that Jones is indeed following the rule for addition. In consequence, Kripke states that when we attribute concepts to individuals, we depict no special "state" of their minds, we do something of importance. We take them provisionally into the community, as long as further deviant behavior does not exclude them.[258]

Kripke illustrates this concept with an example of a customer. A customer, when he deals with the grocer and asks for five apples, expects the grocer to count as he does, not according to some bizarre non-standard rule; and so, if his dealings with the grocer involve a computation, such as "68+ 57," he expects the grocer's responses to agree with his own. Indeed, he may entrust the computation to the grocer. Of course, the grocer may make mistakes in addition; he may even make dishonest computations. But as long as the customer attributes to him a grasp of the concept of addition, he expects that at least the grocer will not behave bizarrely, as he would if he were to follow a quus-like rule; and one can even expect that, in many cases, he will come up with the same answer the customer would have given himself. When we pronounce that a child has mastered the rule of addition, we mean that we can entrust him to react as we do in interactions such as that just mentioned between the grocer and the customer. Our entire lives depend on countless such interactions, and on the "game" of attributing to others the mastery of certain concepts or rules, thereby showing that we expect them to behave as we do.

The rest of Kripke's story concerning the skeptical solution merely aims to mimic the cognitive appearances often associated with meaning ascriptions. He discusses these through five aspects: truth-value, factuality, propositionality, embeddability, and objectivity.

5.3.1.4. Cognitivist appearances of meaning ascriptions

The first difficulty for traditional expressivism is that it appears committed to denying the cognitivist platitude that target sentences are truth-apt. Expressivism views the literal meanings of target sentences as determined in some way by the non-cognitive states those sentences are said to express. But, at least on early versions of expressivism, those types of state are not assessable for truth or falsity. Where beliefs are paradigmatic bearers of truth, boos and hurrays, plans, states of approval and disapproval, and so on, are not. Early emotivists saw the denial of truth-aptness for ethical claims as a feature of their view, rather than a bug. (Ayer, for instance, was happy to charge that ethical claims are strictly meaningless, according to his verificationist standard for meaning). But contemporary expressivists are concerned to preserve the surface appearances of ethical thought and discourse. So expressivists must provide some explanation of how ethical

[258] Kripke, *Wittgenstein on Rules and Private Language*, 95.

sentences could be truth-apt even though the mental states those sentences express and from which they derive their meanings are non-cognitive.

In response, Kripke's Wittgenstein adopts a deflationary (or, as Kripke calls it, "redundancy") theory of truth: to affirm that a statement is true is simply to affirm the statement itself, and to say it is not true is to deny it: *('p' is true = p).*[259] Deflationists about truth deny that there is any interesting answer to the question "what is the nature of truth?." In so doing, deflationists deny that there is any substantive property of truth, some quality which all and only truths possess and in virtue of which they are true.[260] Rather, deflationists give an account of the predicate "is true" that assigns it only an expressive and generalizing function. The guiding thought is that if deflationists can successfully account for our use of the truth predicate and concept without appeal to a substantive property of truth, we have no need to postulate such a property in the first place, obviating the need for a substantive theory of truth.

It will be useful to contrast the deflationist approach with a prominent competing inflationary approach: the correspondence theory of truth. According to correspondence theory, truth is not just an expressive device; it is a substantial property, one that relates truth-bearers to the world. The core correspondence intuition is just that, when a truth-bearer (such as a sentence, belief, proposition) is true, this is because it corresponds to some worldly fact. So, to say "It is true that grass is green," on this approach, is not just a way of endorsing the claim that grass is green; it additionally ascribes to that claim the property of corresponding to the fact that grass is green. This approach has the advantage of capturing the intuition that truth depends on reality (an intuition deflationists struggle to capture, since acknowledging such a dependence seems to assign an explanatory role to truth going beyond its use as an expressive device). However, when combined with a philosophical stance that only recognizes naturalistic entities as the inhabitants of our world at the most fundamental level, correspondence theories face the challenge of locating the naturalistic truth-makers for certain claims. For instance, what would the natural world have to be like in order for it to be true that 2+2=4, or that Mitch Hedburg is funny? Inflationary views of truth (combined with naturalism) face "placement problems": they have to somehow fit mathematical truths, truths about humor, ethical truths, and so on, into the natural world. Deflationary views do not face this problem, for the simple reason that they do not view it as part of the job for a theory of truth to explain what the world has to be like for any particular claim to get to be true. Consequently, deflationism removes any metaphysical overtones from notions such

[259] Kripke, 86.
[260] Paul Horwich, *Truth* (Oxford, 1998); Field, "Deflationist Views of Meaning and Content."

as "truth" by regarding them not as metaphysically heavyweight concepts, but as useful devices that we employ in language to do certain things that would not be possible without them.[261]

Secondly, traditional expressivism, appears committed to denying the platitude that target sentences concern facts, as there are no facts or properties for target sentences to report on or describe. Nonetheless, in response Kripke offers a deflationist account of semantic facts similar to the one he embraced when it comes to truth: to affirm that "It is a fact that ..." is simply to affirm the statement itself, and to say it is not a fact is to deny it. In this regard, Davies notes that the skeptical paradox undermines the very notion of "fact-stating discourse" understood in the "Tractarian" sense. Consequently, skeptical solution holds that we are entitled to talk of a realm of facts to which the assertoric sentences of a discourse correspond to the extent that the discourse is legitimized in the manner required by the "non-Tractarian" model. It permits KW to rehabilitate talk of semantic facts while granting the skeptical conclusion that no such facts can ground semantic discourse, or, indeed, any form of discourse. Consequently, Kripke's assertion that there is "no objective fact...that explains our agreement in particular cases" should be read as the claim that (i) there are, or may be, semantic facts, but (ii) they cannot play a particular explanatory role.[262]

The third challenge for traditional expressivism is that it appears committed to denying the platitude that target sentences express propositions, as their meaning is explained in terms of non-cognitive state they express. Nonetheless, Kripke deals with this appearance of meaning ascriptions in deflationary way, similar to the one embraced when it comes to truth: we call something a proposition, and hence true or false, when in our language we apply the calculus of truth functions to it. That is, it is just a primitive part of our language game, not susceptible of deeper explanation, that truth functions are applied to certain sentences. Consequently, by adopting a deflationary stance, he compromises his expressivist account with an intuition that meaning ascriptions express propositions. It is noteworthy that this claim does not equal with embracing a truth-conditional semantics, as the meaning of target sentences are still explained in terms of the mental state that is expressed by these sentences, rather than by such deflationary propositions.

Another problem for expressivism is that meaning ascriptions, like any ordinary declarative sentence, are capable of being the objects of propositional attitude ascriptions, can be significantly embedded in a variety of contexts, including in conditionals, negation, propositional attitude reports, and so on. Moreover, these sentences, like any ordinary sentence, must make the same contribution to the meanings of any complex construction in an extensional context in which they can be embedded. Accordingly, Kripke notes that it is essential to our concept of a rule that we

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261 Horwich, *Truth*.

262 Davies, "How Sceptical Is Kripke's 'Sceptical Solution'?," 130–33.

maintain some conditionals as "If Jones means addition by '+' then if he is asked for '68+ 57', he will reply '125"'.[263] In this regard, Kripke seems to acknowledge that one of the most significant constraints on any adequate account of semantic content is that of compositionality: it must turn out that the meanings of complex linguistic items are systematically related to the meanings of their parts. This applies to meaning ascriptions just as much as any other kind of sentence, as any adequate theory of meaning must recognize that the content of a linguistic item remains constant across a variety of contexts – asserted and unasserted, free-standing and embedded, etc. Traditional expressivism, we have seen, associates the meaning of target sentences with the non-cognitive mental states those sentences are said to express. The basic problem for traditional expressivism concerning moral statements is that it is only when ethical sentences are asserted that they seem to express the meaning-giving non-cognitive states. As Bob Hale notes, we happily affirm that if lying is wrong, getting others to lie is also wrong, without thereby expressing or endorsing the attitude of disapproval towards lying, or getting others to lie, which we should, according to the expressive theorist, be taken to express or endorse when we affirm the components in isolation. But since the mental state expressed by the assertive utterance of "Lying is wrong" was supposed to give the meaning of that sentence, and this mental is not part of what is expressed by an utterance of the conditional sentence, it seems that "Lying is wrong" cannot have the same meaning when it appears embedded in the conditional sentence as it does when it is asserted on its own.[264]

In response, Kripke notes that conditionals involving meaning ascriptions appear that some mental state obtains in Jones that guarantees his performance of particular additions such as "68+ 57" – just what the skeptical argument denies. However, Kripke states that Wittgenstein's picture concentrates on the contrapositive. If Jones does not come out with "125" when asked about "68+57," we cannot assert that he means addition by "+." Actually, of course, this is not strictly true because our formulation of the conditional is overly loose; other conditions must be added to the antecedent to make it true. As the conditional is stated, not even the possibility of computational error is taken into account, and there are many complications not easily spelled out. The fact remains that if we ascribe to Jones the conventional concept of addition, we do not expect him to exhibit a pattern of bizarre, quus-like behavior. By such a conditional we do not mean, on the Wittgensteinian view, that any state of Jones guarantees his correct behavior. Rather by asserting such a conditional we commit ourselves, if in the future Jones behaves bizarrely enough (and on enough occasions), no longer to persist in our assertion that he is following the

263 Kripke, *Wittgenstein on Rules and Private Language*, 89.
264 Bob Hale, "Can There Be a Logic of Attitudes?," in *Reality, Representation, and Projection*, ed. John Haldane and Crispin Wright (Oxford University Press, 1993), 338.

conventional rule of addition. The rough conditional thus expresses a restriction on the community's game of attributing to one of its members the grasping of a certain concept: if the individual in question no longer conforms to what the community would do in these circumstances, the community can no longer attribute the concept to him.

In this regard, Kripke's account seems to align with an influential non-cognitivist response to Frege-Geach Problem, that aims to mimic the realist appearances consists in formulating and defending an elaborate "logic of attitudes," which endeavors to establish that attitudinal states can behave more or less exactly like ordinary beliefs.[265] The idea starts from postulating norms governing combinations of attitude that do not (much) depend on prior relations of implication or consistency among their contents. From there the strategy goes on to generate relations of implication and consistency between the sentences that express these attitudes as reflections of the norms which in the first instance govern attitudes directly. If there are norms governing the co-acceptance of attitudes such that certain combinations are ruled out perhaps those norms can also underwrite the relation of logical inconsistency that we intuitively find among the sentences expressing those judgments. And from there perhaps we can explain logical implication by deploying the fact that the premises of valid arguments are inconsistent with the negation of the conclusions of those arguments. If the general idea is promising, non-cognitivists should aim to provide a systematic story linking simple and complex sentences to attitudes of the right sort to capture intuitive logical relations among those sentences. A simple example of this sort of approach comes from Blackburn. Conditionals express higher order attitudes towards accepting certain conjunctions of attitudes. "If lying is wrong, telling your little brother to lie is wrong," (when sincerely uttered) expresses approval of making disapproval of getting one's brother to lie "follow upon" disapproval of lying. Anyone holding this pair (the above attitude, plus the attitude expressed by "lying is wrong") must hold the consequential disapproval: he is committed to disapproving of getting little brother to lie, for if he does not his attitudes clash. He has a fractured sensibility which cannot itself be an object of approval.[266] In this regard, Blackburn suggests that logical entailments involving moral judgments are explained as follows: A complete constellation of attitudes which includes the attitudes expressed by the conditional and by the seemingly assertive premises but not also including the attitude expressed by the conclusion is irrational, because it goes against the purposes of moral discourse.

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265 Hale, "Can There Be a Logic of Attitudes?"; Mark Schroeder, "What Is the Frege-Geach Problem?," *Philosophy Compass* 3, no. 4 (2008): 703–20.

266 Simon Blackburn, *Spreading the Word: Groundings in the Philosophy of Language* (Oxford: Oxford University Press, 1984), 195.

The final cognitivist appearance of meaning ascriptions concern their objectivity: Whether a meaning ascription M is true does not vary depending on what individuals happen to think about M. This idea was expressed by Wittgenstein in his claim that there is a difference between thinking one was obeying a rule and actually obeying it. When a subject matter is objective, it is possible for one to get things *wrong* in that domain even if one thinks one has the correct view. Nonetheless, bases on the skeptical solution, this distinction cannot be explained in terms of semantic facts – that is, the correctness or wrongness of one's judgement whether Jones means addition by + cannot be explained in terms of any semantic facts. However, Kripke aims to explain the distinction between correctness and wrongness in an expressivist way. In this regard, he suggests to consider the example of a small child learning addition. It is obvious that his teacher will not accept just any response from the child. On the contrary, the child must fulfill various conditions if the teacher is to ascribe to him mastery of the concept of addition. First, for small enough examples, the child must produce, almost all the time, the "right" answer. If a child insists on the answer "7" to the query "2+3," and a "3" to "2+2," and makes various other elementary mistakes, the teacher will say to him, "You are not adding. Either you are computing another function" – I suppose he would not really talk quite this way to a child! – "or, more probably, you are as yet following no rule at all, but only giving whatever random answer enters your head." Suppose, however, the child gets almost all "small" addition problems right. For larger computations, the child can make more mistakes than for "small" problems, but it must get a certain number right and, when it is wrong, it must recognizably be "trying to follow" the proper procedure, not a quus-like procedure, even though it makes mistakes. (Remember, the teacher is not judging how accurate or *adept* the child is as an adder, but whether he can be said to be following the rule for adding.) Now, what do I mean when I say that the teacher judges that, for certain cases, the pupil must give the "right" answer? I mean that the teacher judges that the child has given the same answer that he himself would give. Similarly, when I said that the teacher, in order to judge that the child is adding, must judge that, for a problem with larger numbers, he is applying the 'right' procedure even if he comes out with a mistaken result, I mean that he judges that the child is applying the procedure he himself is inclined to apply. Something similar is true for adults. If someone whom I judge to have been computing a normal addition function (that is, someone whom I judge to give, when he adds, the same answer I would give), suddenly gives answers according to procedures that differ bizarrely from my own, then I will judge that something must have happened to him, and that he is no longer following the rule he previously followed. If this happens to him generally, and his responses seem to me to display little discernible pattern, I will judge him probably to have gone insane.

On this basis, Kripke suggests that if one person is considered in isolation, the notion of objectivity can have *no* substantive content. There are, we have seen, no truth conditions or facts in virtue of which it can be the case that he accords with his past intentions or not. As long as we regard him as following a rule "privately," so that we pay attention to *his* justification conditions alone, all we can say is that he is licensed to follow the rule as it strikes him. However, Kripke notes that the situation is very different if we widen our gaze from consideration of the rule follower alone and allow ourselves to consider him as interacting with a wider community. In this regard, Kripke suggests that the objectivity of meaning ascriptions hinges on their vulnerability to judgment of peers. For instance, *Jones* seems to be entitled to say, "I mean addition by 'plus'", whenever he has the feeling of confidence that he can give "correct" responses in new cases. Nonetheless, *Smith* will judge Jones to mean addition by "plus" only if he judges that Jones's answers to particular addition problems agree with those *he* is inclined to give, or, if they occasionally disagree, he can interpret Jones as at least following the proper procedure. If Jones consistently fails to give responses in agreement (in this broad sense) with Smith's, Smith will judge that he does not mean addition by "plus." In all this, Smith's inclinations are regarded as just as primitive as Jones's. In no way does Smith test directly whether Jones may have in his head some rule agreeing with the one in Smith's head. Rather the point is that if, in enough concrete cases, Jones' inclinations agree with Smith's, Smith will judge that Jones is indeed following the rule for addition. Consequently, the idea of objectivity of meaning ascriptions, is explained by Kripke in terms of the fact that meaning ascriptions, such as Jones self-ascription "I mean addition by '+' ," may be further accepted or criticized by our peers. Accordingly, we may suppose that Smith's claims may be a subject of further judgement by other peers as well, and, in this regard, the explanation of correctness of particular sentence will never be limited to what the speaker thinks.

5.3.2. McDowell's conceptualist solution

McDowell is one of the most prominent critics of Kripke's reading of Wittgenstein's remarks. In this regard, he provides a solution to the rule-following problem that significantly diverges from the skeptical solution offered by Kripke. First, it is worth emphasizing that McDowell thinks of meaning and understanding in contractual terms.[267] The idea is that to learn the meaning of a word is to acquire an understanding that obliges us subsequently – if we have occasion to deploy the concept in question—to judge and speak in certain determinate ways, on pain of failure to obey the dictates of the meaning we have grasped; that we are "committed to certain patterns of linguistic usage by the meanings we attach to expressions". In this regard, McDowell presupposes

[267] John McDowell, *Mind, Value and Reality* (Cambridge, Mass, 1998), 221.

a notion of meaning that is capable of guiding our actions and to which we may respond with our behavior. Therefore, he acknowledges a "meaning-determinist" account of meaning.

McDowell begins his answer to the skeptical problem with a reflection on the concept of the mind. According to McDowell, Kripke's considerations presuppose the picture of the mind, in which the "conceptual" space is separate and independent from both an outer, "physical" world, and "inner" world of agents. In this regard, Kripke presupposes a craving for rational constraint from outside the realm of thought and judgment. As McDowell notes, this craving is most familiar in connection with empirical knowledge of the world about us; knowledge yielded by what Kant calls "outer sense."[268] In the case of "outer sense," the idea is that our understanding of the "outer" world requires something that mediates between the experiencing subject and an independent outer reality, of which the subject is aware through this mediation. But McDowell notes that exactly the same temptation arises in connection with what Kant calls "inner sense", that is, the thinker's own perceptions, thoughts, sensations, and the like. [269] In this regard, our understanding of our "inner" world requires something that mediates between us and our inner states. McDowell points out that this picture assumes "an outer boundary around the sphere of the conceptual, with a reality outside the boundary impinging inward on the system".[270] According to McDowell, only with this picture of the mind in place can the skeptic state that there are no facts in virtue of which Jones means addition by "+."

In this regard, it is worth noting that according to McDowell, Kripke's position is a form of non-conceptualism, that is, a position that states that experience has nonconceptual content. According to Eva Schmidt, this claim can be understood as stating that "one can have a certain experience even if one neither possesses nor exercises the concepts that would specify its content".[271] Schmidt contends that the debate over nonconceptual content is, fundamentally, a debate about the relation between experience and thought. Ideally, conceptualists need to demonstrate that *all* experiences, if they contain any content, are inherently conceptual. However, Schmidt points out that the custom in the debate is to focus on perceptual experience.[272]

5.3.2.1. Scylla of the Myth of the Given and Charybdis of a Coherentism

The problem of non-conceptualism noted by McDowell in the context of justifiability of meaning ascriptions is as follows: When we want to attribute a particular way of understanding a given

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[268] John McDowell, *Mind and World* (Cambridge, MA: Harvard University Press, 1996), 18.
[269] McDowell, 18.
[270] McDowell, 34.
[271] Eva Schmidt, *Modest Nonconceptualism: Epistemology, Phenomenology, and Content* (Cham: Springer International Publishing, 2015), 1.
[272] Schmidt, 3.

expression to someone (or even to ourselves), we are faced with the following dilemma: either we can say that experience does affect the validity of such attributions, as the raw data, in virtue of being interpreted by our conceptual capacities, provide proper reasons for such attributions, or we can admit that it does not influence their validity, as the raw data lack justifying power.

5.3.2.2. Myth of the Given

The first horn of the dilemma is the Myth of the Given. According to McDowell, the idea of the Given is the idea that the space of reasons, the space of justifications or warrants, extends more widely than the conceptual sphere.[273] The extra extent of the space of reasons is supposed to allow it to incorporate non-conceptual impacts from outside the realm of thought. The idea is that when we have exhausted all the available moves within the space of concepts, all the available moves from one conceptually organized item to another, there is still one more step we can take: namely, pointing to something that is simply received in experience. Traditionally, items "received in experience" have been identified with sensations (or their non-conceptual contents). But this is not an essential feature of the Myth. Rather, at the heart of the Myth lies the demand for thoughts being constrained by something that is radically external: that is to say, something that is "outside the conceptual sphere" but nevertheless somehow present to us.

What generates the temptation to appeal to the Given is the thought that spontaneity – understood as an action of the mind or will that is not determined by a prior external stimulus – characterizes exercises of conceptual understanding in general, so that spontaneity extends all the way out to the conceptual contents that sit closest to the impacts of the world on our sensibility. We need to conceive this expansive spontaneity as subject to control from outside our thinking, on pain of representing the operations of spontaneity as a frictionless spinning in a void. The Given seems to supply that external control. Therefore, recoiling from spinning around in the void, we are tempted to suppose we can reinstate friction between thought and the world by making out that justifications of empirical judgments stop at objects of pure ostension, uncontaminated by conceptualization.

As McDowell notes, Gareth Evans may be seen as one of the advocates of such a position.[274] According to Evans, the informational states that a subject acquires through perception are non-conceptual, or non-conceptualized. These non-conceptual informational states are the results of perception playing its role in what Evans calls "the informational system".[275] The informational system is the system of capacities we exercise when we gather information about the

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[273] McDowell, *Mind and World*, 7.
[274] McDowell, 47–49.
[275] Gareth Evans, *The Varieties of Reference* (Oxford, New York: Oxford University Press, 1982), 122.

world by using our senses (perception), receive information from others in communication (testimony), and retain information through time (memory). It is central to Evans's view that "the operations of the informational system" are "more primitive" than the rationally interconnected conceptual skills that make room for the notion of judgment and a strict notion of belief.[276] To put the thought in the terms I have been using: the operations of the informational system are more primitive than the operations of spontaneity. This point is straightforward in the case of perception and memory, which, as Evans says, "we share with animals,"[277] that is, with creatures on which the idea of spontaneity gets no grip. In turn, judgments based upon such states necessarily involve conceptualization: in moving from a perceptual experience to a judgment about the world (usually expressible in some verbal form), one will therefore be exercising basic conceptual skills. The process of conceptualization or judgment takes the subject from his being in one kind of informational state (with a content of a certain kind, namely, non-conceptual content) to his being in another kind of cognitive state (with a content of a different kind, namely, conceptual content).

5.3.2.3. Coherentism

In contrast to the Myth of the Given, coherentism denies that thinking and judging are subject to rational constraint from outside.[278] In turn, it usually proposes that our thoughts do not need anything but causal constraints.[279] According to McDowell, Davidson – a prominent coherentist – is clear that experience consists of raw, non-conceptual data. But if we conceive experience in terms of impacts on sensibility that occur outside the space of concepts, we must not think that we can appeal to experience to justify judgments or beliefs. Rather, the experience can be nothing but an extra-conceptual impact on sensibility. Therefore, the experience must be outside the space of reasons. It may be causally relevant to a subject's beliefs and judgments, but it has no bearing on their status as justified or warranted. In this regard, Davidson states that "nothing can count as a reason for holding a belief except another belief,"[280] and he means in particular that experience cannot count as a reason for holding a belief.

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276 Evans, 124.
277 Evans, 124.
278 McDowell, *Mind and World*, 14.
279 McDowell, 25.
280 Donald Davidson, "A Coherence Theory of Truth and Knowledge," in *Truth and Interpretation. Perspectives on the Philosophy of Donald Davidson*, ed. Ernest LePore (Blackwell, 1986), 310.

5.3.2.4. McDowell's Critique of the Myth of the Given

As McDowell notes, what we wanted was a reassurance that when we use our concepts in judgment, our freedom – our spontaneity in the exercise of our understanding – is constrained from outside thought, and constrained in a way that we can appeal to in displaying the judgments as justified. But when we make out that the space of reasons is more extensive than the conceptual sphere so that it can incorporate extraconceptual impingements from the world, the result is a picture in which constraint from outside is exerted at the outer boundary of the expanded space of reasons, in what we are committed to depicting as a brute impact from the exterior. As McDowell notes, what happens there is the result of an alien force, the causal impact of the world, operating outside the control of our spontaneity. But it is one thing to be exempt from blame, on the ground that the position we find ourselves in can be traced ultimately to brute force; it is quite another thing to have a justification. In effect, McDowell rejects the idea of the Given as offering exculpations where we wanted justifications.

5.3.2.5. McDowell's Critique of the Coherentism

According to McDowell's coherentist picture is a version of the conception of spontaneity as frictionless, the very thing that makes the idea of the Given attractive. It depicts our empirical thinking as engaged in with no rational constraint, but only causal influence, from outside. This just raises a worry as to whether the picture can accommodate the sort of bearing on reality that empirical content amounts to, and that is just the kind of worry that can make an appeal to the Given seem necessary. In this regard, McDowell agrees with Davidson that we should be wary of the idea according to which we can appeal to raw, nonconceptual data in order to justify our empirical beliefs: this is, in effect, the lesson of the Myth of the Given. But he is not led to reject a justificatory role for experience.[281] As McDowell notes, when Davidson argues that a body of beliefs is sure to be mostly true, he helps himself to the idea of a body of beliefs, a body of states that have content. This means that, however successful the argument may work on its own terms, it comes too late to neutralize the real problem for this horn of the dilemma. In response to Davidson, McDowell argues that thoughts without intuitions would be empty, as Kant almost says; and if we are to avert the threat of emptiness, we need to see intuitions as standing in rational relations to what we should think, not just in causal relations to what we do think. Otherwise, the very idea of what we think goes missing.

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281 Michael Williams, "Science and Sensibility: Mcdowell and Sellars on Perceptual Experience," in *John McDowell*, ed. Jakob Lindgaard (Blackwell, 2008), 152–75.

5.3.2.6. McDowell's Conceptualism

According to McDowell, non-conceptualist positions, that is, the Myth of the Given and coherentism, do not provide a satisfactory answer to the question of how rational content can arise from perception. In response, McDowell embraces a conceptualist position, implying that experiences themselves are already equipped with conceptual content.[282] In this regard, McDowell refers to the original Kantian thought that empirical knowledge results from a co-operation between receptivity – a capacity of the mind where the subject is passive, as it is actualized by an external stimulus, and spontaneity – an action of the mind where the subject is active, as its actualization occurs "through the subject itself." The key step performed by McDowell which allows him to abandon non-conceptualism is a claim that the relevant conceptual capacities are drawn on *in* receptivity. It is not that they are exercised *on* an extra-conceptual deliverance of receptivity. Accordingly, he argues that we should understand experiential intake not as a bare getting of an extra-conceptual Given, but as a kind of occurrence or state that already has conceptual content. Based on this, McDowell states that when we trace the ground for an empirical judgment, the last step that takes us to experiences is not problematic, as these experiences already have conceptual content. Therefore, we must conceive experiences as states or occurrences in which capacities that belong to spontaneity are in play in actualizations of receptivity. But when these capacities come into play in experience, the experiencing subject is passive, acted on by independent reality. Consequently, one's conceptual capacities have already been brought into play, in the content being available to one before one has any choice in the matter. Based on this, McDowell argues that experiences can satisfy the need for an external, yet rational control on our freedom in empirical thinking. The fact that experience involves receptivity ensures the required constraint from outside thinking and judging. In this manner, the picture avoids the pitfall of coherentism. But since the deliverances of receptivity already draw on capacities that belong to spontaneity, we can coherently suppose that the constraint is rational, thus avoiding the pitfall of the Given.

Based on this, McDowell rejects the idea that our understanding requires mediation regarding the items populating the minds of agents and those in the external world, implying that we have direct access to both realms. In respect of understanding the inner world, McDowell concludes nothing can qualify as an episode in a stream of consciousness unless it possesses a conceptual shape, an articulable experiential content.[283] In a similar vein, when it comes to our

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[282] McDowell, *Mind and World*, 12.
[283] McDowell, *Mind, Value and Reality*, 279.

understanding of the outer world, he argues that the experiences we receive from the world's impact on our senses are conceptually structured.

Nevertheless, it is worth noting that along with the conceptualism regarding perception, McDowell embraces a conceptualist account of action. In this regard, he rejects a view we may call a non-conceptualist account of action. Non-conceptualist account of action gives spontaneity a role in bodily action only in the guise of inner items, pictured as initiating bodily goings-on from within, and taken on that ground to be recognizable as intentions or volitions. Therefore, the bodily goings-on themselves are events in nature. As McDowell notes, in the context of a disenchanting naturalism, combined with a conviction that the conceptual is sui generis, that means that such bodily goings-on cannot be imbued with intentionality; rather, they are just actualizations of natural powers that may be seen as mere happenings as well. In consequence, what we do in those of our actions that we think of as bodily, is at best to direct our wills, as it were from a distance, at changes of state in those alien objects. Nonetheless, according to McDowell, it is not a satisfactory picture of our active relation to our bodies. Just as the exclusion of spontaneity from sentient nature obliterates anything we can recognize as empirical content, so here the withdrawal of spontaneity from active nature eliminates any authentic understanding of bodily agency. In response, McDowell offers a picture that suggests that intentional bodily actions are actualizations of our active nature in which conceptual capacities are inextricably implicated.

However, the crucial point is that, based on his conceptualism regarding both perception and action, McDowell introduces a surprising idea that once one is initiated into the realm of reasons, one perceives more in the behavior of others than someone who lacks language comprehension. Consequently, we should conceive of understanding others as a form of direct perception of their meanings. This means viewing understanding as simply perceiving the meanings and thoughts conveyed through the bodily motions and sounds of others.[284]

5.3.2.7. Between Rampant and Naturalized Platonism

According to Jose L. Zalabardo, McDowell should see the platonist as an unwelcome ally.[285] Given that McDowell states that our perceptual experience is necessary conceptual, he is committed to the claim that our experience provides us ratification-independent meanings that reach forward ahead of anyone who actually applies them, and is so to speak already there waiting for such a person.[286] However, McDowell tries to avoid the charge of platonism. In this regard, he distinguishes between what he calls rampant Platonism and naturalized Platonism. Working with

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284 Tim Thornton, *John McDowell* (Montreal: McGill-Queen's University Press, 2004), 126–27.
285 José L. Zalabardo, "Wittgenstein on Accord," *Pacific Philosophical Quarterly* 84, no. 3 (2003): 311–29.
286 McDowell, *Mind, Value and Reality*, 274.

Sellars's idea that our conceptualized thought forms a rational structure called the space of reasons, McDowell introduces rampant Platonism as "picturing the space of reasons as an autonomous structure – autonomous in that it is constituted independently of anything specifically human".[287] For example, it characterizes the output of our mathematical competence as the inexorable workings of a machine: something that could be seen to be operating from the platonist's standpoint, the standpoint independent of the activities and responses that make up our mathematical practice. McDowell refers to this view as rampant platonism. Therefore, in rampant platonism, the structure of the space of reasons, the structure in which we place things when we find meaning in them is simply extra-natural. We fall into rampant platonism if we take it that the structure of the space of reasons is sui generis, but leave in place the equation of nature with the realm of law. That makes our capacity to respond to reasons look like an occult power, a gift from outside nature, something extra to our being the kind of animals we are. If we took that seriously, we would have to suppose that when succeeding generations are initiated into responsiveness to meaning, what happens is that upbringing actualizes a potential for the development of an extranatural ingredient, a potential implanted in the species in the supposed extra-natural evolutionary event.

Nonetheless, McDowell rejects rampant platonism. Instead, he contrasts this idea with the idea of naturalized Platonism. As McDowell states, naturalized platonism is platonistic in that the structure of the space of reasons has a sort of autonomy. Nonetheless, the structure of the space of reasons is not constituted in splendid isolation from anything merely human. The demands of reason are essentially such that a human upbringing can open a human being's eyes to them. In this regard, McDowell offers what he calls a naturalism of second nature. In this regard, McDowell states that it is not even clearly intelligible to suppose a creature might be born at home in the space of reasons. Human beings are not: they are born mere animals, and they are transformed into thinkers and intentional agents in the course of coming to maturity. This transformation might seem mysterious. In this regard, McDowell states that our Bildung – a form of life – actualizes some of the potentialities we are born with; we do not have to suppose it introduces a non-animal ingredient into our constitution. And although the structure of the space of reasons cannot be reconstructed out of facts about our involvement in the realm of law, it can be the framework within which meaning comes into view only because our eyes can be opened to it by Bildung, which is an element in the normal coming to maturity of the kind of animals we are.

In this regard, McDowell compares his view with Aristotle's claim that rational demands of ethics are autonomous but essentially within reach of human beings. In this regard, he states

[287] McDowell, *Mind and World*, 77.

that human beings are intelligibly initiated into this stretch of the space of reasons by ethical upbringing, which instills the appropriate shape into their lives. The resulting habits of thought and action are second nature, which enables them to see things as good or not. Nonetheless, in McDowell's thought, this point is clearly not restricted to ethics; if we generalize the way Aristotle conceives the molding of ethical character, we arrive at the notion of having one's eyes opened to reasons at large by acquiring a second nature. Therefore, McDowell regards the initiation into conceptual capacities as a normal part of what it is for a human being to come to maturity. Therefore, although the structure of the space of reasons is alien to the layout of nature conceived as the realm of law, it does not take on the remoteness from the human that rampant platonism envisages. The consequence of this view is that meaning is not a mysterious gift from outside nature. In being initiated into a language, a human being is introduced into something that already embodies rational linkages between concepts, putatively constitutive of the layout of the space of reasons, before she comes on the scene. This is a picture of initiation into the space of reasons as an already going concern; there is no problem with how something describable in those terms could emancipate a human individual from a merely animal mode of living into being a full-fledged subject, open to the world. A mere animal, moved only by the sorts of things that move mere animals and exploiting only the sorts of contrivances that are open to mere animals, could not single-handedly emancipate itself into possession of understanding. Human beings mature into being at home in the space of reasons or, what comes to the same thing, living their lives in the world; we can make sense of that by noting that the language into which a human being is first initiated stands over against her as a prior embodiment of mindedness, of the possibility of an orientation to the world. So reasons can be objective after all, yet they are accessed only from within a tradition in which we educate our responsiveness to them. Here, the notion of Bildung conveys the idea that developing our natural sensitivity to reasons requires us to be initiated into a practice that accounts for the cultural and social traits of understanding.[288]

Therefore, McDowell situates his conception of meaning and understanding within a framework of communal practices. This resonates with Kripke's thesis that the notion of meaning something by one's words is "inapplicable to a single person considered in isolation".[289] However, McDowell and Kripke differ in how they perceive the requirement for publicity. In this regard, McDowell's invocation of the community differs strategically from that of Kripke. Kripke deploys it to make the non-conceptualist consequences less unattractive. In turn, McDowell deploys it as a method of avoiding a non-conceptualist account in the first place. In this regard, Kripke seems

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[288] Matteo Bianchin, "Bildung, Meaning, and Reasons," *Verifiche: Rivista Trimestrale Di Scienze Umane* 41, no. 1–3 (2012): 73–102.

[289] McDowell, *Mind, Value and Reality*, 243.

to picture a community as a collection of individuals presenting to one another exteriors that match in certain respects. They hope to humanize this bleak picture by claiming that what meaning consists of lies on those exteriors as they conceive them. Nonetheless, McDowell states that if regularities in the verbal behavior of an isolated individual, described in norm-free terms, do not add up to meaning, it is quite obscure how it could somehow make all the difference if there are several individuals with matching regularities. Therefore, according to McDowell, the picture of a linguistic community degenerates under Kripke's assumptions into a picture of a mere aggregate of individuals whom we have no convincing reason not to conceive as opaque to one another. But if we reject non-conceptualism, we entitle ourselves to this thought: shared membership in a linguistic community is not just a matter of matching in aspects of an exterior that we present to anyone whatever, but equips us with the conceptual capacity that enables us to see *things as thus and so*.

5.3.2.8. McDowell's Solution to the Skeptical Problem

McDowell states that experiences themselves are already equipped with conceptual content, and our conceptual capacities are drawn on *in* receptivity. This claim implies that we should understand experiences as states or occurrences in which capacities that belong to spontaneity are in play in actualizations of receptivity. Based on this, McDowell argues that experiences can satisfy the need for an external, yet rational control on our freedom in empirical thinking. McDowell thus undermines the assumption that understanding is a species of interpretation, that is, an inferential process that bridges the gap between mind and world (either "inner" or "outer".) As a result, McDowell contends that we have direct access to items populating the "inner" world of our minds, as well as to items in the "outer" physical world. Based on this, McDowell suggests that our direct access to items that populate the mind equips us with the knowledge that, for example, by "+," we mean addition rather than quaddition. However, as already noted, McDowell introduces a surprising idea that we are capable of knowing one another's meaning without needing to arrive at that knowledge by interpretation, implying that we have a direct access not only to what we mean by "+," but also to what others mean by this sign. Based on this, McDowell refutes Kripke's skepticism by arguing that it stems from a non-conceptualist view of the mind. In response, McDowell contends that, by adopting a conceptualist stance, the problem dissolves, as the shared command of a language equips us with conceptual capacities that make our minds available to one another.[290]

[290] McDowell, 253.

5.3.3. Brandom's inferentialist solution

In this section, I will explore Brandom's solution to the skeptical problem of assertibility of meaning ascriptions. To recap, the skeptic posits that to assert that Jones means *addition* by "+," one must deny that by "+" Jones means *quaddition*. However, the skeptic argues that there are no facts determining whether Jones means *addition* or *quaddition* by "+," leading to the claim that the speaker cannot deny that by "+" Jones means *quaddition*. On this basis, the skeptic states that the assertibility of "Jones means *addition* by "+" is untenable.

According to Brandom, assertibility theories for the propositional contents expressed in declarative sentences aim to begin with a notion of linguistic propriety, understood in terms of allowable moves in a linguistic game. As Brandom notes, "To specify the circumstances in which a sentence is assertible is to say when its assertional use is appropriate or allowable, when a speaker is licensed or entitled to use the sentence to perform that speech act, when its assertional utterance would have a certain sort of normative significance or status".[291] Brandom notes that assertibility theorists often resort to ideality conditions, interpreting truth assessments as evaluations of assertibility under ideal circumstances – of what claims one would be entitled to or justified in making if one were an ideal knower, or given full information, maximal evidence, at the end of the inquiry, and so on. Nevertheless, Brandom argues that this sort of strategy is hopeless.[292]

In response, Brandom adopts a pragmatist conception of assertibility, in line with Wittgenstein's philosophy. Consequently, he explains assertibility conditions in virtue of how this expression is used. On this basis, he denies that there can be differences that have an impact on the assertibility of particular expressions that are not publicly accessible since these would be semantic differences without pragmatic differences. Accordingly, he refutes antipragmatist positions which allow for the possibility of semantic "facts of the matter" that could remain hidden even if all the pragmatic facts were known: facts we could discover only by cutting open a speaker's brain or finding out about a creature's early evolutionary history, or discerning patterns of lawlike covariation between brain states and external objects.[293]

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[291] Robert Brandom, *Articulating Reasons: An Introduction to Inferentialism*, First Edition (Cambridge: Harvard University Press, 2001), 186.
[292] Brandom, 188.
[293] John MacFarlane, "Pragmatism and Inferentialism," in *Reading Brandom: On Making It Explicit*, ed. Bernhard Weiss and Jeremy Wanderer (Routledge, 2010), 83.

5.3.3.1. Between Regulism and Regularism

Brandom explains his position by introducing the idea that norms implicit in practice precede and are presupposed by explicit norms in rules or principles.[294] On this basis, he rejects two models of normativity: regulism and regularism. Regulism links the assertibility of expressions to the bindingness of underlying principles. Therefore, to assess the correctness (and assertibility, as well) of a given utterance is always to make at least an implicit reference to a rule or principle that *determines* what is correct by explicitly *saying* so. However, Brandom contends that regulism fails to take into account that applications of those rules are themselves subject to normative assessment. Thus, when applied to the norms governing the application of rules, regulism faces the problem of regress.[295] The second model of the normative that Brandom rejects is what he calls regularism. Regularism holds that there are norms that are implicit in practices that determine the assertibility of linguistic expressions. However, it takes these implicit norms to be a kind of regularity of performance. Therefore, being correct (and, hence, assertible) is identified with producing performances that are regular in that they count in a particular community as correct according to it.[296] Accordingly, being incorrect (or non-assertible) is identified with producing performances that are irregular. Brandom points out that associating correctness with regularity of performance avoids the regress, but faces other challenges. As Brandom point out, the main challenge for regularism is the Gerrymandering Objection. This objection questions the possibility to determine the specific regularity – judging a performance as regular or irregular – due to the fact that any set of performances demonstrate many regularities. Consequently, a performance may count as regular according to some of the regularities exhibited by the original set of performances and as irregular according to others.[297] Thus, if regularism is right, no course of action could be determined by a rule, because every course of action, any act of speech, can be brought into accord with, or into conflict with the rule, depending on the sort of the picked out regularity according to which the performance is judged as regular or irregular. In response, Brandom maintains that "[t]here simply is no such thing as the (…) regularity exhibited by a stretch of past behavior, which can be appealed to in judging some candidate bit of future behavior as regular or irregular".[298] The second problem with regularism is that regularism's reduction of the normative distinction between correctness and incorrectness to regularity or irregularity, does not view us as bound by

294 Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment*, First Edition (Cambridge, Mass: Harvard University Press, 1994), 21.
295 Brandom, 23.
296 Brandom, 27.
297 Brandom, 28.
298 Brandom, 28.

norms which determine how we ought to or must act, but by laws of nature which determine how we will act. However, Brandom points out that the way in which our practices (especially concept-using ones) are governed by norms has an essentially normative aspect.

5.3.3.2. Normative statuses

Brandom's central concern regarding his own idea of assertibility revolves around normative statuses, particularly the significance of performances being deemed correct or incorrect. Accordingly, he introduces the concepts of commitments and entailments as crucial elements in understanding these normative statuses.[299] Commitments, in Brandom's view, dictate how one ought to act.[300] For instance, if one asserts, "The watch is red," one *ought* to add to one's score also "The watch is colored." Making the one move *obliges* one to be prepared to make the other as well.[301] It follows from the fact that assertions express judgments or beliefs. Putting a sentence on one's list of judgments, putting it in one's belief box, has consequences for how one ought, rationally, to act, judge, and believe. Therefore, a move, to be recognizable as assertional, must not be idle, it must make a difference, it must have consequences for what else it is appropriate to do, according to the rules of the game. Consequently, understanding a claim, the significance of an assertional move, requires understanding at least some of its consequences, knowing what else (what other moves) one would be committing oneself to by making that claim. For this reason we can understand making a claim as taking up a particular sort of normative stance toward an inferentially articulated content. It is *endorsing* it, taking *responsibility* for it, *committing* oneself to it. The difference between treating something as a claiming and treating it just as a brute sounding-off, between treating it as making a move in the assertional game and treating it as an idle performance, is just whether one treats it as the undertaking of a commitment that is suitably articulated by its consequential relations to other commitments. These are *rational* relations, whereby undertaking one commitment *rationally* obliges one to undertake others, related to it as its inferential consequences. These relations articulate the *content* of the commitment or responsibility one undertakes by asserting a sentence. Apart from such relations, there is no such content, hence no assertion.[302] On this basis, Brandom states that determining the deontic status of particular performance (for example, assertibility of uttering a particular sentence) requires determining what else one becomes committed to by asserting p (what follows from p) and what would commit one to it. It is noteworthy, Brandom states, that we may be able to construct cases where it is intelligible

299 Brandom, 134.
300 Brandom, 15.
301 Brandom, *Articulating Reasons*, 190.
302 Brandom, 192.

to attribute beliefs that are consequentially inert and isolated from their fellows: "I just believe that cows look goofy, that's all. Nothing follows from that, and I am not obliged to act in any particular way on that belief." Nonetheless, he claims that *all* of our beliefs could not intelligibly be understood to be like this.[303] Brandom notes that this is not to say that all players actually *do* have the dispositions they *ought* to have. One may not act as one is committed or obliged to act; one can break or fail to follow this sort of rule of the game, at least in particular cases, without thereby being expelled from the company of players of the asserting game. Still, he claims that assertional games must have rules of this sort: rules of *consequential commitment*.[304]

Brandom distinguishes between two normative practical attitudes one can adopt toward a commitment: undertaking and attributing.[305] Undertaking a commitment is doing something – that is, saying or thinking that things are thus-and-so – that makes it appropriate for others to attribute that commitment. For example, in saying that it is raining outside, one undertakes a commitment to the claim "It is raining outside." What is important, according to Brandom, in undertaking commitment to p, the asserter obligates herself to acknowledge related commitments that follow from it. She has also authorized other interlocutors to *attribute* these commitments to her. Further, she has obliged herself to offer a justification (give reasons) for these commitments, if her authority is suitably challenged. Brandom notes that undertaking a commitment can be done in two different ways. First, one may acknowledge the commitment by an overt assertion or by acting on it, that is, by employing it as a premise in the practical reasoning that underlies his intentional action.[306] Consider, for example, the claim "Going to sleep before 9 o'clock is good for my health." If one asserts that "Sleeping before 9 o'clock is good for my health" , she needs to explicitly acknowledge a commitment to this claim. But one can also go to sleep before 9 o'clock every night. For in this way one is acting on this claim practically. Second, one may undertake the commitment consequentially.[307] That is, one may undertake the commitment as an inferential consequence that is entailed by a claim to which he is committed. Consider, for example, the claim "Daisy is a cat." If one is committed to this claim, then he is also committed to the claim "Daisy is a mammal." For "Daisy is a cat" entails "Daisy is a mammal."

Brandom notes that players of the game of giving and asking for reasons must also distinguish among the commitments an interlocutor undertakes, a distinguished subclass to which she is *entitled*. Therefore, explanation of assertibility must involve acknowledgment of a *second* kind

303 Brandom, 191.
304 Brandom, 191.
305 Brandom, 161.
306 Brandom, 174.
307 Brandom, 174.

of normative status, that is – entitlement.[308] According to Brandom, asking what entitles one to a claim or belief is asking for the reasons that justify it.[309] Consequently, there are commitments for which one can give a reason and those for which one cannot. Accordingly, there are commitments to which one is entitled and those to which one is not.[310] For example, one is entitled to claim "The notebook is colored," if he can offer justifications such as "The notebook is red." On the other hand, one may form the belief on the basis of his wishful thinking that "The numer of stars in the sky is even." Given that the person has no good reasons for believing this to be the case, it is clear that although he is committed to this claim, he is not entitled to his commitment.

Nevertheless, Brandom states that these two aspects of normative status are not simply independent of each other. They interact. In this regard, we can say that two assertible contents are *incompatible* in case *commitment* to one precludes *entitlement* to the other. Thus commitment to the content expressed by the sentence "The watch is red" rules out entitlement to the commitment that would be undertaken by asserting the sentence "The watch is green".[311] Accordingly, determining the content of the concept or predicate "being a woman" requires excluding determinations that are incompatible with it, such as "being a man," "being a flower," "being a table," etc.

Therefore, what Brandom wants to do is to split up the notion of assertibility into two parts. More precisely, where assertibility theorists appeal to just *one* sort of normative status – a sentence being assertible, or a speaker being justified or having sufficient reasons to assert it – Brandom looks at *two* kinds of normative status: commitment and entitlement. For now instead of the undifferentiated question "Under what circumstances would it be appropriate to assert the sentence?" we must ask, "Under what circumstances (for instance, in the context of what other claims) would one count as *committed* to the claim expressed by the sentence?" and "Under what circumstances (for instance, in the context of what other claims) would one count as *entitled* to the claim?".[312]

5.3.3.3. Practical attitudes

The expressivist position of Brandom reveals in the fact that he explains normative statuses by appeal to the practical attitudes. It means that normative statuses are explained in virtue of the practical attitudes of the discursive practitioners of the individual's community. In other words,

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308 Brandom, 192.
309 Robert Brandom, "Conceptual Content and Discursive Practice," *Grazer Philosophische Studien* 81, no. 1 (2010): 21–22.
310 Brandom, *Articulating Reasons*, 193.
311 Brandom, 194.
312 Brandom, 196.

the normative (or deontic) status of being committed is to be understood in terms of the normative (or deontic) attitude of being taken or treated as committed. Accordingly, being entitled is also to be understood in terms of the normative (or deontic) attitude of being taken or treated as entitled. In consequence, whether one is entitled to his commitment is determined by whether the discursive practitioners of his community take him to be so entitled. Therefore, based on Brandom's account, the direction of explanation goes from attitudes to statuses – people are entitled or committed to a particular claim, *because* they are taken to be entitled or committed to this claim by others.

It is noteworthy that, according to Brandom, agents acknowledging and attributing two kinds of normative deontic status, commitments and entitlements, can distinguish three sorts of inferential relations in the assertible contents expressed by sentences suitably caught up in those practices[313]:

i. Incompatibility: p is incompatible with q if commitment to p precludes entitlement to q.
ii. Commitment-preservation: The inference from premises *L* to p is commitment-preserving if commitment to L counts as commitment to p.
iii. Entitlement-preservation: The inference from premises L to p is entitlement-preserving if entitlement to L counts (defeasibly) as entitlement to p.

Therefore, when S asserts p, scorekeepers who take anyone who is committed to p to be committed to q (that is, stating that there is a commitment-preserving inference from p to q) add to the repertoire of commitments attributed to S commitments to all those claims q. Therefore, as Brandom notes, the concept of commitment-preserving inference is a generalization of that of deductive inference, from the case of logically good to the case of materially good inferences.[314]

Next, scorekeepers who take anyone who is entitled to *p* to be (prima facie) entitled to *q* (that is, holding that there is an entitlement-preserving inference from *p* to *q*) add to the repertoire of entitlements attributed to S all the *q*. This is, as Brandom notes, a generalization of inductive inference, such as "The barometer is falling, so there will be a storm".[315] At the same time, scorekeepers for whom everything incompatible with *q* is incompatible with *p* (that is, holding that q is incompatibility-entailed by p) add to the repertoire of entitlements attributed to S all the q as well. These are, as Brandom states, modally robust, counterfactual-supporting entailments.[316]

313 Brandom, *Making It Explicit*, 188.
314 Brandom, "Conceptual Content and Discursive Practice," 21.
315 Brandom, 22.
316 Brandom, 22.

Eventually, scorekeepers who practically take or treat anyone who is committed to *p* not to be entitled to *r* and vice versa (that is, stating that p is incompatible with *q*), subtracts from the repertoire of entitlements attributed to S all the claims *q* such that there is some r incompatible with q to which S is (according to the scorekeeper) committed.[317]

In the simplest case, this score consists of a list of claims to which the player is committed, with some of these marked (say, with a star) as commitments to which the player is entitled. Consequently, if Jill takes there to be a relation of commitment preservation between "boysenberries are red" and "boysenberries are colored," and Tom asserts (avows commitment to) "boysenberries are red," Jill will also list "boysenberries are colored" as one of Tom's commitments. If she takes "boysenberries are red" to be incompatible with "boysenberries are blue," and she lists "boysenberries are blue" as another of Tom's commitments, she will make sure that neither "boysenberries are red" nor "boysenberries are blue" is marked with a star.

The line of reasoning that Brandom pursues in illustrating the deontic scorekeeping model of discursive practice can therefore be summed up as follows. Assertibility of particular speech acts is described in terms of deontic statuses – what one is committed or entitled to in performing those acts. What it is to for one to be committed or entitled by performing a particular speech act is then explained in terms of deontic attitudes. Finally, such practices of instituting deontic statuses by attributing or undertaking deontic attitudes are made intelligible in terms of the notion of scorekeeping.

Nevertheless, what does it mean in practice to state that there is a commitment-preserving, or entitlement-preserving inference from p to q, or that p is incompatible with q? In other words, how to explain the notion of being a scorekeeper, who treats someone as committed or entitled to a particular performance? In this regard, taking or treating performances as correct or incorrect, approving or disapproving of them in practice, is explained by Brandom in terms of positive and negative sanctions, rewards, and punishments

Brandom offers here the retributive approach to assessment, which treats a performance as correct or appropriate by rewarding it, and as incorrect or inappropriate by punishing it. Therefore, deontic attitudes are understood by Brandom as dispositions to sanction, positively or negatively. As Brandom notes, what counts as punishment may be specifiable in nonnormative terms, such as causing pain or negatively enforcing the punished behavior. In this regard, punishing an act is to do something that makes it likely that acts of that sort do not happen in the future, e.g.,

317 Brandom, 22.

by "beating with sticks".[318] In turn, rewarding an act is to do something that makes it likely that acts of that sort will happen in the future.

As Brandom notes, such an account can take many forms, depending on how sanctions are construed. In the simplest case, applying a negative sanction might be understood in terms of corporal punishment; a prelinguistic community could express its practical grasp of a norm of conduct by beating with sticks any of its members who are perceived as transgressing that norm. In these terms, it is possible to explain for instance what it is for there to be a practical norm in force according to which in order to be entitled to enter a particular hut one is obliged to display a leaf from a certain sort of tree. The communal response of beating anyone who attempts to enter without such a token gives leaves of the proper kind the normative significance, for the community members, of a license. In this way, members of the community can show, by what they do, what they take to be appropriate and inappropriate conduct.

Nevertheless, Brandom notes that assessing and sanctioning, is itself something that can be done correctly or incorrectly. If the normative status of being incorrect is to be understood in terms of the normative attitude of treating as incorrect by punishing, it seems that the identification required is not with the status of actually being punished but with that of deserving punishment, that is, being correctly punished. In this regard, Brandom states that sanctioners can be sanctioned in turn for their sanctioning, which is thereby treated as itself correctly or incorrectly done.[319] Therefore, as Kiesselbach aptly notes, Brandom's basic idea is that in groups of individual systems exhibiting particular dispositions vis-ŕ-vis each other, these dispositions, counting now as practical attitudes can, under appropriate circumstances, give rise to normative statuses. They can make it the case, or contribute to making it the case, that some performances can appropriately be said to be *appropriate* and others *inappropriate*.[320]

On this basis, Brandom specifies propositional *contents* with *objectivity,* in the sense of a specifiable sort of attitude-transcendence, of the deontic statuses.[321] In this regard, Brandom suggests that objectivity requires the distinction between normative status and normative attitude – between what someone is *really* committed or entitled to and what anyone, including even the subject of those statuses, *takes* that individual to be committed or entitled to. Brandom's account provides such distinction just by stating that that assessing, sanctioning, is itself something that can be done correctly or incorrectly, which can be sanctioned as well. Therefore, the fact that S

318 Brandom, *Making It Explicit*, 34, 180.
319 Brandom, 34.
320 Matthias Kiesselbach, "Constructing Commitment: Brandom's Pragmatist Take on Rule-Following," *Philosophical Investigations* 35, no. 2 (2012): 105.
321 Brandom, *Articulating Reasons*, 189.

takes S' to be committed to p does not entail mechanically that S' is committed to p, a claim of S that S' is committed to p may be rejected by others. In this regard, S' is not really committed to p. However, she would be, if a claim of S were not defeated.

Summing up, the structure of Brandom's explanatory strategy toward the assertibility of expressions is as follows. Assertibility of a particular expression may be seen as its normative status. The notion of a normative status, and of the significance of performances that alter normative status, is in turn to be understood in terms of the practical deontic attitude of taking or treating someone as committed or entitled. Finally, these attitudes are explained in terms of imposing sanctions – responding in certain ways to certain behavior. Hence, treating someone as having a certain status requires only an ability to discriminate features of the environment by sanctioning differentially. Moreover, these dispositions are sufficient for the adoption of attitudes: the disposition to impose sanctions amounts to the 'practical deontic attitude of taking or treating someone as committed or entitled. As Hattiangadi aptly notes, despite Brandom's use of conspicuously normative language, his picture is still largely, or perhaps even entirely, founded on dispositions: normative statuses are always derivative of normative attitudes, and latter are explained in terms of responsive discrimination and propensities to sanction.[322]

5.3.3.4. Brandomian framework and the skeptical problem

The skeptic argues that there are no facts determining whether Jones means *addition* or *quaddition* by "+," leading to the conclusion that stating "Jones means *addition* by '+'" is not assertible. On the basis of the following considerations, the question is: what is the answer Brandom offers in regard to the skeptical problem? In other words: how to defend the assertibility of meaning ascriptions, given the skeptical objections toward it? To understand Brandom's response, we must first examine how to frame the skeptical problem within Brandom's considerations.

I will start by outlining the formal requirements Brandom posits for meaning ascriptions. In this regard, Brandom states that the expressions occurring in an ascription must specify three sorts of information, which differ in how their occurrence bears on the commitments being attributed and undertaken by the assertion of the ascription. The individual who is the target of the attribution, to whom a commitment is being ascribed, must somehow be indicated. The sort of commitment being attributed – for instance, "claims," "believes," "intends," or "prefers" – must be specified. Finally, the content of the ascribed commitment must be outlined.[323] These formal requirements establish the criteria for a statement to qualify as an ascription. Applying these

322 Hattiangadi, *Oughts and Thoughts*, 164.
323 Brandom, *Making It Explicit*, 504.

criteria to a skeptical scenario, consider the meaning ascription "Jones means *addition* by '+' ." In this case, the individual who is the target of the attribution is Jones. The sort of commitment being attributed – meaning something – is indicated as well. the content of the ascribed commitment is also specified, as it states that '+" refers to *addition*.

Nonetheless, the crucial point of Brandom's considerations regarding the assertibility of meaning ascriptions is a claim that making an ascription involves doing two different things. Ascribing is attributing one commitment (to another) while undertaking (acknowledging) a different commitment (oneself). In this regard, it shall be noted that the skeptic's challenge revolves around the commitments undertaken by a person making meaning ascriptions, particularly when claiming that someone, like Jones, means *addition* by '+'. The skeptic posits that in making this claim, the speaker is implicitly committed to the assertion that Jones does not mean *quaddition* by '+'. This stems from the fact that when committed to the claim that by "+" Jones means *addition*, one is not entitled to a commitment that by "+" Jones means *quaddition* because the claim that by "+" Jones means *addition* is incompatible with a claim that Jones means *quaddition*. The skeptic's argument gains traction by highlighting that while the speaker is committed to the claim that Jones means *addition* by '+', she is unable to provide reasons justifying the assertion that Jones does not mean *quaddition* by '+'. This lack of justificatory support leads the skeptic to argue that the speaker is not entitled to claim that Jones does not mean *quaddition* by "+." On this basis, the skeptic argues that the speaker is not entitled to the original claim – that Jones means *addition* by "+," as she is not capable of holding its inferential consequences. Therefore, the skeptic challenges the original claim that Jones means *addition* by "+," contending that the speaker is committed to a specific assertion but lacks entitlement to the inferential consequence of that claim – that Jones does not mean *quaddition* by "+."

5.3.3.5. Brandomian solution to the skeptical problem

The following question remains: what is Brandom's solution to the problem posed by the skeptic? Skeptic claims that the speaker is unable to take responsibility for the inferential consequences of a claim that Jones means *addition* by "+." In this regard, Brandom admits that if one fails to fulfill that justificatory responsibility in response to a suitably qualified challenge, then the cost of that failure is simply the loss of the authority one implicitly claimed by issuing the assertion in the first place. For this reason, as Brandom notes, practices in which that status is attributed only upon actual vindication by appeal to inheritance from other commitments are simply unworkable; nothing recognizable as a game of giving and asking for reasons results if justifications are not permitted to come to an end. Nonetheless, Brandom states that claims such as "There have been

black dogs" and "I have ten fingers" are ones to which interlocutors are treated as prima facie entitled. They are not immune to doubt in the form of questions about entitlement, but such questions themselves stand in need of some sort of warrant or justification. Entitlement is, to begin with, a social status that a performance or commitment has within a community. Therefore, Brandom presents a model that has what might be called a default and challenge structure of entitlement. Often when a commitment is attributed to an interlocutor, entitlement to it is attributed as well, by default. As Brandom notes, the prima facie status of the commitment as one the interlocutor is entitled to is not permanent or unshakeable; entitlement to an assertional commitment can be challenged. Moreover, when it is appropriately challenged (when the challenger is entitled to the challenge), the effect is to void the inferential and communicative authority of the corresponding assertions (their capacity to transmit entitlement) unless the asserter can vindicate the commitment by demonstrating entitlement to it. This is what was meant by saying that the broadly justificatory responsibility to vindicate an assertional commitment by demonstrating entitlement to it is a conditional task-responsibility. It is conditional on the commitment's being subject to a challenge that itself has, either by default or by demonstration, the status of an entitled performance. Indeed, the simplest way to implement such a feature of the model of asserting is to require that the performances that have the significance of challenging entitlements to assertional commitments themselves be assertions. One then can challenge an assertion only by making an assertion incompatible with it. (Recall that two claims are incompatible just in case commitment to one precludes entitlement to the other.) Then challenges have no privileged status: their entitlement is on the table along with that of what they challenge. Tracing the provenance of the entitlement of a claim through chains of justification and communication is appropriate only where an actual conflict has arisen, where two prima facie entitlements conflict. There is no point fixed in advance where demands for justification or demonstration of entitlement come to an end, but there are enough places where such demands can end that there need be no global threat of debilitating regress. This is the sort of picture of the practices of giving and asking for reasons that Wittgenstein suggests, but it is recognizable already in Socratic elenchus.[324] The picture, then, is one in which giving reasons is obligatory, under the risk of losing the entitlement, only if one has been appropriately asked for.[325] Therefore, according to Brandom, social practices that govern the giving and asking for reasons need not be such that the default entitlement status of a claim or assertional commitment is to be guilty until proven innocent. As Brandom notes, even if all of the methods of demonstrating entitlement to a commitment are regressive (that is,

[324] Brandom, 177–78.
[325] Brandom, 117.

they depend on the inheritance of entitlement), a grounding problem arises in general only if entitlement is never attributed until and unless it has been demonstrated. If many claims are treated as innocent until proven guilty-taken to be entitled commitments until and unless someone is in a position to raise a legitimate question about them-the global threat of regress dissolves.[326] In this context, genuine authority does not have to be indefeasible.[327]

In my opinion, the idea of prima facie entitlements is the crucial notion of the Brandomian response to the skeptical problem. Therefore, in the context of the skeptic's argument that the speaker is committed to "Jones means *addition* by '+'" but not entitled to the claim "Jones does not mean *quaddition* by '+' ," Brandom does not deny that a claim made by skeptic is incompatible with a claim that Jones means *addition* by "+." Nevertheless, he argues that the assertor of this claim is, at least, prima facie entitled to it. What is more, Brandom suggests that if there is a commitment-preserving inference from *p* to *q*, then anyone who is provisionally entitled to a commitment to *p* is provisionally entitled to a commitment to *q*.[328] Therefore, on the basis of prima facie entitlement to the claim that Jones means *addition* by "+," one is prima face entitled to state that Jones does not mean *quaddition* by "+". For this reason, the assertor is entitled to the claim that Jones means *addition* by "+," even if he is not in a possession of any reasons that Jones does not mean *quaddition* by "+," as long as one of these claims is not challenged. Consequently, Brandom suggests that "Jones means *addition* by '+'" is assertible by default, but it remains assertible as long as one does not deny this claim or one of its inferential consequences. In this way, Brandom allows to refute semantic nihilism of the skeptical conclusion, which states that there is no such a thing as meaning something by a given expression.

5.4. Solutions to the Regress Argument

In Chapter 2, I introduced a semantic analysis of internal legal statements, which suggests that legal statements formulated by participants in legal discourse, such as "It is the law that capital punishment is prohibited," express a proposition that norm *N* satisfies, in respect of sources of law *S,* the interpretive procedure set by the method of interpretation *M.* Nonetheless, in Chapter 3, I introduced the Regress Argument, implying that legal agents who formulate legal statements are systematically in error due to the incapacity of methods of interpretation to determine that norm *N* satisfies the interpretive procedure set by these methods. This follows from the fact that the rules of interpretation constituting such methods are themselves subject to further

326 Brandom, 177.
327 Brandom, "Conceptual Content and Discursive Practice," 26.
328 Brandom, 27.

interpretations, *ad infinitum*. In Section 5.1, I suggested that this interpretive regress can be stopped by acknowledging that the content of rules of interpretation is determined by what these rules mean for legal experts. However, I noted this response comes with its own set of problems. In Section 5.2, I have discussed skepticism toward meaning ascriptions as formulated in the context of rule-following discussions. This skepticism contends that there is no genuine fact in virtue of which experts mean so-and-so by rules of interpretation, implying that legal experts mean nothing by these rules. These challenges the ability of rules of interpretation to settle whether a norm *N* is, in respect of sources of the law S, a legally binding norm. I have noted that legal quasi-cognitivists, to counter this skepticism, must convincingly answer three questions: 1) Is it possible to attribute a specific understanding of rules of interpretation to legal experts? 2) Can this understanding be effectively transferred to other participants in legal discourse? 3) May this meaning ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm? In Section 5.3, I have discussed the first question, exploring three accounts regarding meaning ascriptions: Kripke's skeptical solution, McDowell's naturalized Platonism, and Brandom's semantic inferentialism.

In this part, building on the accounts discussed in Section 5.3, I will address the two remaining questions: whether legal experts' meaning so-and-so by rules of interpretation can be effectively transferred to other participants in legal discourse, and whether this meaning may ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm.

Therefore, the question discussed in this section is whether legal experts' meaning so-and-so by rules of interpretation can be effectively transferred to other participants in legal discourse in such a way that these rules, as used by these participants, would be capable of determining – without the need of further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm. Based on these considerations, I will answer whether quasi-cognitivists can refute the Regress Argument.

5.4.1.1. Kripke's skeptical solution and regress argument

In Section 5.3.1, I have argued that Kripke's skeptical solution should be seen as a form of semantic expressivism. This approach states that meaning ascriptions, such as "Jones means addition by '+'," express a desire-like state, namely, a state of expectation toward Jones. The central question is whether Kripke's skeptical solution provides legal quasi-cognitivists with a tool to support the idea that legal experts' meaning so-and-so by rules of interpretation can be effectively transferred to other participants in legal discourse in such a way that such rules, as used by these participants,

are capable of determining – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm.

I will begin by questioning whether legal experts' meaning so-and-so by rules of interpretation, as viewed within Kripke's account, can be transferred to other participants in legal discourse. In this context, it is pertinent to examine the expressivist stance toward deference to experts in other fields, noting that deference represents a form of the more general phenomenon of testimony.

According to Paulina Sliwa more sophisticated views of expressivism explicitly grant that we can rely on others for our moral norms.[329] Gibbard for example, writes: "When conditions are right and someone else finds a norm independently credible, I must take that as favoring my own accepting the norm".[330] Therefore, it seems that expressivist account is compatible with semantic testimony, along with semantic deference. Nonetheless, I am not sure whether this option is available for Kripke's skeptical solution. According to Paul Faulkner, deference to the speaker is a way of acquiring testimonial knowledge only insofar as the speaker could articulate the grounds that would allow the audience to know at first hand or non-testimonially.[331] In this regard, non-cognitivism does not allow the audience to know at first hand or non-testimonially. Accordingly, Hopkins argues that testimony requires knowledge to transmit – it is a means for learning from others, for coming to know what they know. In this regard, he argues that there is no such a thing as moral testimony, as there is no moral knowledge to hand on, as moral "claims" are nothing more but expressions of sentiment, perhaps of approval and disapproval. As if testimony requires knowledge to transmit, there cannot even be testimony about moral matters.[332] Therefore, assuming that testimony requires knowledge, is Kripke's account of meaning attributions compatible with the existence of semantic knowledge?

In this regard, one may suggest that Kripke's semantic expressivism toward meaning ascriptions implies that there is no knowledge about what other people mean to pass on. Consequently, it does not allow the audience to know at first hand or non-testimonially what a given expression means for a particular agent. But if it is so, then Kripke's account is not capable of providing a ground for attributing any meaning to rules of interpretation. Consequently, it does not provide any means for legal quasi-cognitivism to refute the Regress Argument. Nonetheless, one could argue that Kripke's semantic expressivism is compatible with a claim that there is

329 Paulina Sliwa, "In Defense of Moral Testimony," *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 158, no. 2 (2012): 175–95.
330 Gibbard, *Wise Choices, Apt Feelings*, 180.
331 Paul Faulkner, "Communicating Your Point of View," *European Journal of Philosophy* 30, no. 2 (2022): 667.
332 Robert Hopkins, "What Is Wrong With Moral Testimony?," *Philosophy and Phenomenological Research* 74, no. 3 (2007): 615.

knowledge about what other people mean. In this regard, one may rely on epistemic expressivism – a general view that applies expressivism to epistemological notions in so far as they have a normative component. It implies that, for instance, to say that S's belief that p is knowledge is to express a particular kind of approval of S's belief that p and of the epistemic position in which S holds the belief that p.[333] On this basis, one may endorse a view that the skeptical solution allows to attribute particular understanding of rules of interpretation to legal experts, say that it is possible to know what legal experts mean by these rules, implying that this meaning can be transmitted to other participants in legal discourse.

Therefore, a critical question arises: Can legal experts' meaning so-and-so by rules of interpretation (as viewed within Kripke's skeptical solution) be effectively transferred to other participants in legal discourse in such a way that such rules, as used by these participants, would be capable of determining – without the need for further interpretation – whether norm N, in respect of sources of the law S, is a legally binding norm?

In response, it is important to recognize that, on the basis of Kripke's semantic expressivism, the meaning in question is merely a minimal property, lacking any substantial explanatory or normative power. Therefore, rules of interpretation that inherit such meaning from legal experts cannot guide (in any robust sense) the usage of rules of interpretation associated with them. Consequently, it implies that for any norm N, no rules of interpretation *R* are capable of determining that *N* satisfies, in respect of *S*, the interpretive procedure set by the method of interpretation *M*. Therefore, it is obscure how Kripke's position could provide any intelligible foundation to defend the quasi-cognitivist picture of legal discourse from the negative consequences entailed for this position by the regress argument.

Does this imply that Kripke's skeptical solution is futile in countering the regress argument? In my view, the response to this question is no. Even if no rules of interpretation *R* are capable of determining that *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M*, Kripke's semantic expressivism implies that the success of actions consisting of the usage of rules of interpretation does not require from legal experts' meaning so-and-so by rules of interpretation to guide the interpretive process. In turn, it may be regarded as suggesting that assertions such as "rules of interpretation indicate such-and-such interpretation of sources of law" or that "norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by rules of interpretation belonging to method of interpretation *M*" are just more or less sophisticated ways to express a favorable attitude toward a particular norm

333 Klemens Kappel, "Expressivism about Knowledge and the Value of Knowledge," *Acta Analytica* 25, no. 2 (June 1, 2010): 176.

resulting from interpretation of sources of law, and explanation their contents involves nothing but the conative states of the speaker. Consequently, Kripke's account may not assist quasi-cognitivists, but it still can be utilized by legal expressivists, suggesting that the regress argument is not vicious,[334] as attributing the legal status to particular norms in virtue of rules of interpretation does not require the capacity of rules of interpretation to guide (in any robust sense) the usage of rules of interpretation associated with them.

5.4.1.2. McDowell's platonism and regress argument

In Section 5.3.2. I have argued that McDowell's naturalized platonism states that meanings play a substantial explanatory role toward agents' use of particular expressions, and that we have a direct access to what other mean by such-and-such expression. Therefore, the following question arises: Can legal experts' meaning so-and-so by rules of interpretation (as viewed within McDowell's naturalized platonism) be effectively transferred to other participants in legal discourse in such a way that such rules, as used by these participants, are capable of determining – without the need for further interpretation – whether norm N, in respect of sources of the law S, is a legally binding norm?

I will begin with a question whether legal experts' understanding of rules of interpretation, as viewed within McDowell's account, can be transferred to other participants in legal discourse. Prima facie, McDowell's view appears compatible with the explanation of agents' understanding of rules of interpretation in terms of what they mean to legal experts. McDowell explicitly states that what other people mean can be a subject of knowledge, providing a proper ground for semantic deference. Nonetheless, one may claim that the compatibility of McDowell's account and the idea of semantic deference is dubious due to McDowell's account of the mind. In this regard, it is worth noting McDowell's remarks on Putnam's externalism. While Putnam endorsed a view that psychological states are "psychological states in the narrow sense" ("states whose attribution to a subject entails nothing about her environment") and rejected the claim that grasping the sense of "... is water" is just a matter of being in a certain psychological state, McDowell accepts the latter and rejects the former.

As McDowell states, "The moral of Putnam's considerations is that the idea of a psychological state, as it figures in the first assumption, cannot be the idea of a "narrow" state. That is: we should not leave in place an idea of the mind that is shaped by the tenets of "methodological solipsism," and conclude that meanings are not in the mind, since they are not in

334 see Teemu Toppinen, "Expressivism and the Normativity of Attitudes," *Pacific Philosophical Quarterly* 96, no. 2 (2015): 233–55.

the head. Rather, we should read the two assumptions in such a way that they can be true together and exploit such a reading to force us into explicit consideration of a different conception of the mind." It is worth noting that McDowell's conception of the mind implies that the content of what we mean by a given expression is, at the same time, a content of our mental state. Nonetheless, this idea clashes with the idea of semantic deference, which seems to imply that when I state "my bracelet is gold," my meaning of "gold" is not in my head. Therefore, the question is, how to reconcile McDowell's account of the mind with the idea of semantic deference?

In this regard, it is worth mentioning Francais Recanati considerations on the division of linguistic labor thesis. Recanati notes that there are (at least) two views on this issue[335] – the first explains deference in terms of metarepresentation, and the second in terms of a deferential operator. Let's take a woman that goes to the doctor who tells her that she has arthritis. She believes what the doctor tells her. Thus, the doctor comes to entertain the thought: "She has arthritis." He expresses that thought by telling her: "You have arthritis." The woman, in turn, comes to believe something that might be expressed by the sentence: "I have arthritis." It seems, at this stage, that the woman has acquired the belief that she has arthritis. But suppose that the woman has no idea what arthritis is – she lacks the concept altogether.

On the first view that takes deference as metarepresentation, she does not actually believe that she has arthisis. Even if she goes about repeating "I have arthritis," and that sentence expresses the proposition that she has arthritis, still that is not what she believes. What she believes would be more faithfully expressed by a metalinguistic sentence: "I have an ailment called (by the doctor) *arthritis*." It follows that there is a divergence between the content of the utterance, which depends on social factors (viz. the conventions in force in the public language), and the content of the underlying mental representation. Such a view suggests that there may be a clash between the content of my utterance and the content of my mental state. However, exactly the possibility of such clash is rejected by McDowell. The question is whether there is such a conception of semantic deference that does not imply such clash.

In this regard, Recanati discusses an alternative to the aforementioned metarepresentational account of semantic deference. This alternative explains the idea of deference by deferential operator which enables us to construct deferential concepts with a semantics analogous to that of indexical concepts. As Recanati states, the deferential operator Rx( ) applies to (the mental representation of) a public symbol σ and yields a syntactically complex representation Rx(σ) – a deferential concept – which has both a character and a content. The

335 François Recanati, "Modes of Presentation: Perceptual vs Deferential," in *Building on Frege: New Essays about Sense, Content and Concepts*, ed. Albert Newen, Ulrich Nortmann, and Ranier Stuhlmann-Laeisz (Stanford: CSLI, 2001).

character of Rx(σ) takes us from a context in which reference is made to a competent user *x* of σ, to a certain content, namely the content which σ has for *x*, given the character which *x* attaches to σ. What is special with the deferential concept Rx(σ) is that its content is determined 'deferentially', via the content which another cognitive agent, somehow given in the context, attaches or would attach to σ in the context of utterance. Thus, as Recanati notes, the deferential operator is the mental equivalent of quotation marks in written speech. It is metalinguistic in the sense that it involves a mention of the symbol σ and a tacit reference to its use by the cognitive agent *x* (which can be a community as well as an individual). But that metalinguistic aspect is located in the character of the deferential concept: the content of that concept is the same as the content of the symbol σ when used by *x*. Consequently, when the woman who does not know what arthritis is says "I have arthritis," she does not entertain "the" concept of arthritis, as the doctor does when he tells her "you have arthritis." In the woman's belief a deferential concept occurs, namely: Rdoctor(arthritis). But the content of that concept is the same as the content of the doctor's concept of arthritis – indeed the woman's deferential concept is parasitic on the doctor's concept and automatically inherits its referential content, by virtue of the mechanics of the deferential operator. Thus, the doctor's concept of arthritis and the woman's deferential concept Rdoctor(arthritis) both refer to arthritis, but under different modes of presentation. In consequence, the difference between the woman's belief and the doctor's (or between the woman's belief and her utterance) is not a difference at the content level (as one and the same proposition, namely the proposition that the woman has arthritis, is both the content of the doctor's belief, but also of the woman's utterance and the content of her belief), but a difference in character or mode of presentation.

The aforementioned alternative to the metarepresentational account of semantic deference provides a crucial insight into the compatibility of McDowell's naturalized Platonism with the idea of semantic deference. It shows that by endorsing the idea of semantic deference, one is not committed to the possibility of meanings that are not in the head. Therefore, it seems that legal experts' meaning so-and-so by rules of interpretation, as viewed within McDowell's account, can be transferred to other participants in legal discourse.

Therefore, the next step is to asses, based on McDowell's account of "meaning something," whether legal experts' meaning so-and-so by rules of interpretation can be effectively transferred to other participants in legal discourse in such a way that such rules, as used by these participants, would be capable of determining – without the need for further interpretation – whether norm N, in respect of sources of the law S, is a legally binding norm.

In this context, we should focus on McDowell's contractual account of meaning and understanding.[336] McDowell suggests that the meanings grasped by agents obligate them – if they have occasion to deploy the concept in question – to judge and speak in certain determinate ways, on pain of failure to obey the dictates of this meaning. However, it is crucial to note that McDowell does not deny any substance to the idea of understanding as being committed to certain "pattern".[337] In this light, McDowell's account aligns with the idea that if *x* has decided in the past to mean addition by the sign "+," and *x* gives the answer "125" in answer to "68 +57 = ?," in these circumstances *x*'s response is not something *x* does "blindly," not "an unjustified leap in the dark," a "brute inclination," "an unjustified stab in the dark," an "unjustifiable impulse" or "a mere jack-in-the-box unjustified and arbitrary response".[338] In consequence, McDowell embraces a view that the state of meaning something guides and instructs agents on how to apply particular expressions, implying that this state determines all future, potentially infinite, correct applications of given expression.

Therefore, since what legal experts mean 1) is accessible to other participants in legal discourse without the need for further interpretation; 2) determines all future, potentially infinite, correct applications of rules of interpretation; and 3) can be transferred to other participants in legal discourse—it seems justified to state that the content of rules of interpretation does not require further interpretation in order to determine whether norm *N*, in respect of sources of the law *S*, is a legally binding norm. However, this implies that rules of interpretation are not susceptible to the infinite regress of interpretation.

Based on this, it can be concluded that McDowell's stance offers an account of meaning that 1) enables legal quasi-cognitivists to refute the skeptical conclusion, which implies that no one ever means anything by any term, and 2) defend the idea that explaining the meaning of rules of interpretation in terms of what these rules mean to legal experts halts the infinite regress of interpretation. This, in turn, permits legal quasi-cognitivists to refute the regress argument and, consequently, to deny that participants in legal discourse, while formulating internal legal statements, are systematically in error.

5.4.1.3. Brandom's inferentialism and regress argument

Brandom's inferentialism suggests that we have at least a prima facie entitlement to attribute understanding to others, notably experts. Therefore, it avoids the negative consequences of the radical skeptical conclusion. The question is whether Brandom's inferentialism equips legal quasi-

336 McDowell, *Mind, Value and Reality*, 221.
337 McDowell, 223.
338 see Kripke, *Wittgenstein on Rules and Private Language*, 10–23.

cognitivists with a tool to support the idea that legal experts' meaning so-and-so by particular rules of interpretation undermines the Regress Argument. In this regard, another question arises: Can legal experts' meaning so-and-so by particular rules of interpretation, as viewed within Brandom's account, be transferred to other participants in legal discourse in such a way that these rules, as used by these participants, would be capable of determining – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm?

I will begin by questioning whether legal experts' meaning so-and-so by rules of interpretation, as understood within Brandom's account, can be transferred to other participants in legal discourse. At first glance, Brandom's inferentialism might seem at odds with this idea. Inferentialism suggests that understanding a word or an expression involves grasping its role in a network of inferences. In contrast, the idea of semantic deference suggests that individuals don't need to understand inferential roles of an expression, as long as some members of the community do. Therefore, the question is: How can the meaning of expressions that we attribute to experts impact our understanding of those expressions? Especially, how can we be attributed with the same understanding of expressions that experts have? In other words: How can Brandom's theory of meaning attributions be reconciled with the concept of semantic deference?

In this regard, it is worth noting that in Brandom's theory, understanding a term is not merely about grasping its inferential role in isolation but about recognizing its place within a broader network of social and discursive practices. Elaborating on this issue, it is crucial to mention Brandom's considerations on the practices that govern the attribution of entitlement to assertional commitments. In this context, Brandom states that entitlement to commitment to one claim can be extended to entitlement to another either according to 1) the inferential pattern appealed to by justification, in which case that entitlement is inherited by another commitment (to a different claim) undertaken by the same interlocutor, or, what is crucial when it comes to the idea of semantic deference, 2) according to the communicational pattern appealed to by deferral, in which case that entitlement is inherited by another commitment (to the same claim) by a different interlocutor.[339]. Consequently, those who inherit entitlement to the claim can, if they are challenged, vindicate their entitlement by deferral to the original assertor, instead of having to produce independent justifications.

In this regard, Brandom's inferentialism suggests semantic deference arises from the fact that agents, while formulating particular assertions, bind themselves to standards of correctness that are administered by other people. By virtue of this binding, they inherit both commitments and entitlements attributed to legal experts by others.

339 Brandom, *Making It Explicit*, 176.

Brandom explores this idea in his remarks on how the social division of conceptual labor works in Hegel's perspective. In this regard, he states that it is up to me which counter in the game I play, which move I make, which word I use. But it is not then in the same sense up to me what the significance of that counter is – what other moves playing it precludes or makes necessary, what I have said or claimed by using that word, what the constraints are on successful rational integration of the commitment I have thereby undertaken with the rest of those I acknowledge. It is up to me what concept I apply in a particular judgment – whether I claim that the coin is made of copper or silver, for instance. But if I claim that it is copper, it is not then up to me what move I have made, what else I have committed myself to by using that term. So, for instance, I have thereby committed myself to the coin melting at 1084°C, but not at 1083° – in the sense that if those claims are not true, then neither is the one I made. (Brandom 2009: 72–3). Therefore, what I do when I defer to someone is intelligible as binding myself by the norms associated with the concept of copper when I use the word "copper," because in doing so, I subject myself to normative assessment as to the correctness of my commitment (for instance, about the temperature at which a particular coin would melt) according to standards of correctness that are administered by metallurgical experts.

Consequently, when I use a particular set of rules of interpretation, for example, by stating that these rules of interpretation indicate such-and-such an understanding of sources of law, I – at the same time – indicate a testimonial path whereby entitlement to this use can be inherited. In this manner, I undertake the commitments associated with these rules by legal experts – I treat myself as de dicto committed to these commitments concerning rules of interpretation that legal experts would acknowledge, along with attributing to oneself proper entitlements. As a consequence, I subject myself to normative assessment of their use of particular expressions according to the context of legal experts.

Hence, Brandom's inferentialism seamlessly incorporates the concept of semantic deference by relying on the fact that agents bind themselves to standards of correctness administered by others. On this basis, they inherit the commitments and entitlements of these agents related to the usage of a target expression. Consequently, my entitlement to use a particular expression in such-and-such a way is explained by the experts' entitlement to use it in that way. In this regard, Brandom's account of meaning attribution appears capable of vindicating the idea that rules of interpretation possess specific meanings in virtue of what they mean to legal experts.

The crucial question is: Does Brandom's theoretical framework offer quasi-cognitivists a viable strategy to counter the regress argument? In this regard, the question is whether legal experts' meaning so-and-so by rules of interpretation may ground the ability of these rules to determine –

without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm.

Revisiting Brandom's initial comments on the nature of norms implicit in practices sheds light on this dilemma. Brandom suggests that norms that are explicitly expressed in the form of rules, which determine what is correct according to them by saying or describing what is correct, must be understood as only one form that norms can take. That form is intelligible only against a background that includes norms that are implicit in what is done, rather than explicit in what is said. On this basis, Brandom argues that there is a need for a pragmatist conception of norms – a notion of primitive correctness of performance implicit in practice that precede and are presupposed by their explicit formulation in rules and principles. That is, there must be such a thing as norms that are implicit in practice, there must be a way of grasping a rule which is not an interpretation, but which is exhibited in what we call "obeying the rule" and "going against it" in actual cases.

In this regard, it is worth noting that based on Brandom's framework, the explanation of meaning attributed to legal experts involve commitments and entitlements associated with this attribution. Nonetheless, these commitments and entitlements are explained by Brandom in terms of deontic attitudes of speakers, which, in turn, are explained in brute terms of positive and negative sanctions consisting of purely physical rewards and punishments. This is exactly the idea behind the concept of "norms implicit in practice." According to Brandom, this backdrop of norms implicit in practice facilitates a primitive understanding of correctness in action that is intrinsic to the practice itself, thereby countering the need for an infinite regress of interpretations.

At this point, it seems that, based on Brandom's account, the content of particular rules of interpretation, explained in terms of what legal experts mean by these rules, requires no further interpretation.

Nevertheless, it is essential to recognize that in Brandom's framework, the inferential roles – the list of commitment-preserving, entitlement-preserving, and incompatibility relations they stand in to other assertions – that are the subject of semantic deference are not explained in virtue of their content, but in virtue of deontic attitudes of the speakers.

At this juncture, a worry might be raised about whether Brandom's account can understand using rules of interpretation in terms of cognitive processes. The concern can be made out in the following way: Doesn't Brandom emphasize the expressivist explanation of inferential roles in such a way that the inferences we need to focus on in order to understand the meaning of our words are not really cognitive processes of a cognitive system but merely primitive behaviors? According to Adam Carter, James H. Collin and Orestis Palermos a notion of cognitive process

coheres well with Brandom's inferentialism.[340] Though it is true that Brandom understands the concepts in normative terms and holds that norms are instituted by social practices, he steers clear of the view that conceptual contentfulness – and therefore inference, since contentfulness is understood in inferential terms – is merely a device of interpreting a person's overall behavior. In this regard, they note that Brandom takes his account to be one of original (as opposed to derived) intentionality; an account of the sorts of activities that agents must engage in in order to have contentful mental states. In this regard, Brandom writes: "This approach construes conceptual contents as consisting in the significance states and performances have within the behavioral economy of a system because of their interactions with each other and with the environment. According to this sort of account, it is the activity of the system itself that establishes the conceptual contentfulness of the states it exhibits, the performances it produces, and the expressions it uses. In this way it is distinguished from the first sort of account, according to which conceptual contents are conferred by the activity of an external interpreter. [This] picture does not require that conceptual contentfulness derive from the antecedently conceptually articulated intentions and beliefs of another. Rather, in some sense the system itself implicitly takes or treats its own states as contentful, and thereby makes them so."[341]

A potential objection is worth considering at this point. The anticipated objection begins by cautioning that we should not be so quick to assume that the inferences Brandom has in mind are cognitive inferences after all. First, Brandom is not focusing merely on the inferences that take place within an individual's head, but instead on the inferential practices that take place within the relevant individual's community. However, Brandom provides an expressivist explanation of these practices in terms of practical attitudes of agents. In this regard, cognitive states, as results of cognitive processes, do not explain "the activity of the system" in a form of inferential practices; rather, these states under discussion are explained in virtue of these practices. However, in order to avoid the circular explanation, inferential practices themselves cannot be explained in virtue of cognitive states. Therefore, seems that, based on Brandom's account, inferential practices are not underpinned by any cognitive capacities.

However, if inferential practices are not underpinned by any cognitive capacities, it becomes unclear how internal legal statements – as involving deferential use of rules of interpretation that relies on legal experts' understanding of these rules' inferential roles – aligns with the notion of cognitive capacities. This does not mean that the expressivist cannot say (in a deflationary tone of voice) that it is true or a fact that, based on interpretive procedure set by such-

340 Adam Carter, James H. Collin, and Orestis Palermos, "Semantic Inferentialism as (a Form of) Active Externalism," *Phenomenology and the Cognitive Sciences* 16, no. 3 (2017): 387–402.
341 Robert Brandom, *Reason in Philosophy: Animating Ideas* (Harvard University Press, 2009), 178.

and-such rules of interpretation, in respect to the sources of law, a norm N is the law. The problem is that, according to Brandom's account, at no point in the explanation of our use of internal legal statements is it necessary to postulate any content of rules of interpretation, implying our understanding of the rules of interpretation is not truly causally effective in respect to the way we use them and the way this use is assessed.

Nonetheless, this portrayal of the role of the content of rules of interpretation in the process of legal interpretation starkly contrasts with the quasi-cognitivist view that views legal interpretation as a rational process. In this perspective, legal agents respond to reasons provided by these rules of interpretation and, in light of the sources of law, determine whether a particular norm N is the law. While quasi-cognitivists highlight the substantial explanatory role of the content of rules of interpretation regarding the correctness conditions for the use of internal legal statements, implying that the manner in which we use internal legal statements should be explained as resulting from our cognitive processes, Brandom's account suggests that the content of rules of interpretation does not play any substantial role concerning the way participants in legal discourse use legal statements. In consequence, this approach makes it obscure how – given the relational semantics outlined in Chapter 2 – the way participants in legal discourse use legal statements could be adequately explained as a result of our cognitive capacities. This tension raises doubts whether Brandom's position offers any intelligible foundation to defend the quasi-cognitivist picture of legal discourse from the Regress Argument's nihilistic consequences.

5.5. Soundness of Refutation of the Regress Argument

In the previous section, I noted that Kripke, McDowell, and Brandom each provide accounts on meaning that respond to the skeptical problem. What is more, ways these accounts characterize meaning, are compatible with the idea of semantic deference. Nonetheless, I suggested that Kripke's skeptical solution is not a suitable position for defending a thesis that rules of interpretation, are capable of determining whether norm *N* is, in respect of *S*, legally binding norm. Due to the fact that that – based on Kripke's semantic expressivism – the meaning in question is merely a minimal property, it lacks any substantial explanatory or normative power. Such meanings cannot guide the usage of rules of interpretation associated with them. But if this is the case, then it seems that rules of interpretation are not capable of identifying legal content and answering whether norm *N* is, in respect of sources of law *S*, a legally binding norm. Consequently, Kripke's position does not offer any intelligible foundation to defend the quasi-cognitivist picture of legal discourse from the negative consequences entailed for this position by the regress argument. What is more, I argued that according to Brandom's account, at no point in the explanation of our use

of internal legal statements is it necessary to postulate any content of rules of interpretation, implying our understanding of the rules of interpretation is not truly causally effective in respect to the way we use them and the way this use is assessed. Nonetheless, the core idea of quasi-cognitivism is that legal interpretation should be seen as a rational process in which legal agents respond to reasons provided by the content of rules of interpretation, allowing the legal statements they assert to be assessed as true or false based on this content. Meanwhile, on the basis of Brandom's inferentialism, rules of interpretation do not have a content that could fulfill these roles. Consequently, Brandom's position does not offer any intelligible foundation to defend the quasi-cognitivist picture of legal discourse from the negative consequences entailed for this position by the regress argument. For this reason, in this section I will focus on the account that remains – McDowell's naturalized platonism. I will examine whether it provides a credible support for a quasi-cognitivist picture of legal discourse.

In this regard, it is worth noting that McDowell's naturalized platonism was a subject of powerful criticism as well. McDowell's position may be accused of a hidebound conservatism about the possibilities for intelligibility.[342] What is more, it may be accused of hyper-intellectualizing perception.[343] In this regard, Gareth Evans suggests that, for example, our repertoire of color concepts is coarser in grain than our abilities to discriminate shades.[344] Consequently, our experience exhibits a far greater density of content than our concepts could account for, and this surplus content therefore cannot be conceptual. In this regard, Evans states that no account of what it is to be in a non-conceptual informational state can be given in terms of dispositions to exercise concepts unless those concepts are assumed to be endlessly fine-grained. Nonetheless, according to Evans, such a positions does not make sense, a we do not have as many color concepts as there are shades of color that we can sensibly discriminate. Accordingly, in "The Silence of the Senses," Travis argues that passive experience presents innumerable facts that are available to a host of different interpretations.[345] According to Travis, McDowell's account lumps together perceiving and perceiving-as, which "places an impossible set of demands" on perceptual content.[346] Travis argues that McDowell needs to separate out two cognitive processes, perceiving and perceiving-as, in order to get the phenomenology of perceptual experience right.

Nonetheless, in this part, I want to focus on a different objection: the objection from hallucination. Unlike the previously mentioned arguments, this one directly impacts the assessment

342 McDowell, *Mind and World*, 186.
343 Tyler Burge, "Perceptual Entitlement," *Philosophy and Phenomenological Research* 67, no. 3 (2003): 503–48.
344 Evans, *The Varieties of Reference*, 182.
345 Charles Travis, "The Silence of the Senses," *Mind* 113, no. 449 (2004): 57–94.
346 Travis, 82.

of McDowell's position's capacity to stop the regress. Therefore, it might be objected that experience sometimes misleads: how things appear is not how they are, which means that it cannot directly grasp the world. In hallucination, the subject clearly does not take in 'worldly facts', and that hallucination is introspectively indistinguishable from veridical experience. Consequently, experience content allows for contradictions within one and the same content. However, no conceptual contents are contradictory, so experience contents are nonconceptual.

Accordingly, our perceptual evidence may be compatible with both claims that are incompatible with each other – for example, the previous instances we have seen of Jones's use of the symbol "+"are compatible with a claim that Jones means addition by "+" and a claim that Jones means quaddition by "+." What is more, the perceptual evidence that Jones means addition by "+" may be – at least to some point – perceptually indistinguishable from a perceptual evidence that Jones means quaddition by "+." Therefore, such perceptual evidence regarding legal experts is not conceptual.

In response, McDowell has undertaken two modifications to his account.[347] First, he now upholds a quasi-Kantian distinction between categorial and empirical concepts and restricts the content of experience to the former.[348] Categorial concepts, on his view, comprise our concepts of the proper and common sensibles. The latter include formal concepts of objects, such as "substance" or "animal," by which we unify the former into modes of presentation that relate us to empirical objects. Empirical concepts, such as 'cardinal', then specify these formal concepts into less formal, material concepts by subdividing and categorizing the empirical objects constituted by them. In doing so, empirical concepts remain external to experience proper and merely supervene on its categorial content, which is why McDowell associates them with "recognitional capacities" operating on, rather than in, experience. McDowell's stated motivation here is to guarantee that two subjects will have essentially "the same" present in experience even if one of them lacks such contingent concepts as "cardinal" or 'okapi'.

McDowell's second modification rescinds his original claim that empirical content is propositional yet retains his basic contention that it is conceptual. For he now distinguishes two kinds of conceptual content, that is, the propositional content of judgment or belief and the intuitional content of experience.[349] Both qualify as conceptual and therefore belong under the same genus, first, because they both consist in the Fregean sense of the concepts unified in either judgment or experience and second, because the respective forms of propositional and intuitional

347 see Sascha Settegast, "Fineness of Grain and the Hylomorphism of Experience," *Synthese* 201, no. 6 (2023): 223.
348 John McDowell, "Avoiding the Myth of the Given," in *Having the World in View. Essays on Kant, Hegel, and Sellars* (Cambridge, Mass: Harvard University Press, 2009).
349 McDowell.

conceptual unity, while categorially distinct, still share an analogous structure. For they are products of the same 'unifying functions', which merely actualize themselves differently in each case. Thus, the same logical "function" or form of togetherness that joins subject and predicate in a judgment also unites a substance and its properties, under a conceptual mode of presentation, in an intuition. This is meant to preserve the internal relations between judgment and experience required by McDowell's account of justification, i.e., the essential availability of empirical content to judgment, and simultaneously to establish a formal difference between experience and belief in terms of their content. For McDowell, their contents are formally distinct chiefly because propositional content is discursive, i.e., actively synthesized, and therefore articulated or explicit, while intuitional content is passively given and therefore unarticulated or implicit, although open to discursive explication.

However, these paths are not satisfactory. Categorial units leave as with a claim that we can assert, for example, that Jones performs an arithmetical calculation, but we cannot assert that he means addition. In this regard, it does little help with attributing such a meaning to legal experts that could constitute such a meaning of rules of interpretation that guide the way they should be used. A claim that perceptive content is implicit seems to provide as little help as well. Nonetheless, in my opinion, several sources are available in order to defend an account of meaning that is based on McDowell's view.

In this regard, we should take into account McDowell's account of perceptual knowledge – epistemological disjunctivism.[350] Epistemological disjunctivism states that perceptual knowledge is paradigmatically constituted by a true belief whose epistemic support is both factive (i.e., it entails the truth of the proposition believed) and reflectively accessible to the agent. More concretely, epistemological disjunctivism holds that the reflectively accessible rational support an agent possesses for her perceptual belief that p in paradigm cases of perceptual knowledge is that of seeing that *p*, where that one sees that *p* entails *p*. As Duncan Pritchard notes, such a view seems to achieve the apparently impossible feat of incorporating key elements of both epistemic internalism and externalism (at least as regards the domain of perceptual knowledge).[351] From epistemic internalism it takes the idea that knowledge demands epistemic support that is reflectively available to the subject. In doing so it is in a position to capture, in line with standard forms of epistemic internalism, the role that epistemic responsibility plays in our acquisition of (perceptual) knowledge. From epistemic externalism it takes the idea that knowledge requires an objective connection between the epistemic support for our beliefs and the relevant facts.

350 McDowell, *Mind and World*, 111–13.
351 Duncan Pritchard, *Epistemological Disjunctivism* (Oxford, New York: Oxford University Press, 2012).

According to epistemological disjunctivism the connection is very direct indeed, since being in possession of the relevant epistemic support actually entails that the proposition believed is true. In consequence, we can have reflective transparency in our epistemic standings without paying the price of losing the essential connection between our epistemic standings and the relevant worldly facts.

Therefore, why should we accept that our perception provides us knowledge on what someone mean by particular expression? On a standard (nondisjunctivist) view about perceptual experiences, such claim should be refuted, as perceptual experiences under discussion are indistinguishable in this way then they are essentially the same experiences. At the very least, they have a shared essential nature. In contrast, metaphysical disjunctivists try to defend this claim. In this regard, they hold that veridical perceptual experiences are not essentially the same as the experiences involved in corresponding cases involving illusion and (especially) hallucination. More specifically, these experiences do not have a shared essential nature. In turn, McDowell seems to accept an epistemological disjunctivism, Epistemological disjunctivism holds that the reflectively accessible rational support one possesses for one's perceptual beliefs in epistemically good cases of perception can be different to the reflectively accessible rational support one possesses for one's perceptual beliefs in corresponding introspectively indistinguishable cases of perception which are epistemically poor.. In contrast, in corresponding epistemically poor but introspectively indistinguishable cases of perception the reflectively accessible rational support an agent possesses for her perceptual belief that p will fall short of such factive rational support, and will instead be at most some form of non-factive rational support (such as seeming to see that p). So, for example, it could be that in an epistemically good case of perception, an agent knows that there is a chair before her in virtue of possessing the reflectively accessible rational support provided by her seeing that there is a chair before her. In contrast, in a corresponding epistemically poor but introspectively indistinguishable case of perception, such as where the agent is hallucinating that there is a chair before her, she no longer sees that there is a chair before her (since, for one thing, there is no chair before her in this case), and hence her belief no longer enjoys this rational support.

What makes epistemological disjunctivism so controversial is the claim that it is specifically the rational support that one's perceptual beliefs enjoy which can vary from the epistemically propitious, or 'good', case to the epistemically poor, or 'bad', case. In particular, note that epistemological disjunctivists construe this rational support in the usual epistemically internalist fashion as being reflectively accessible to the subject. The idea, then, is that even though one cannot introspectively distinguish between the corresponding good and bad cases, one can nonetheless be in possession of significantly better reflectively accessible rational support for one's

perceptual beliefs in the good case than in the bad case (indeed, it may be that one has no reflectively accessible support for one's perceptual beliefs in the bad case). On the standard ways of thinking about rational support, however, this is simply incoherent. Indeed, it is meant to be just the point of the "new evil genius" thought-experiment to elicit the response that the rational support one's beliefs enjoy stays fixed regardless of whether one is forming one's beliefs in normal circumstances or in corresponding introspectively indistinguishable circumstances in which one is a brain-in-a-vat being "fed" one's experience by supercomputers. It is precisely because the rational support available to the agent in these two cases is held to be equivalent that it is standardly thought that the rational support one has for one's perceptual beliefs cannot be factive in the way that epistemological disjunctivism maintains (i.e., such that it entails facts about the subject's environment). For if one holds, with epistemological disjunctivism, that the rational support one possesses for one's perceptual beliefs can entail "worldly" facts, then clearly one is obliged to reject the new evil genius intuition. This is because the rational support an agent's beliefs enjoy will inevitably vary across the two target cases. In particular, in the non-envatted case the rational support the agent has for her beliefs can potentially consist in her seeing that p, where p concerns some specific fact regarding her environment. In contrast, in the corresponding envatted case the agent will not enjoy such factive rational support for her beliefs.

In this regard, disjunctivists rely on the distinction between favoring epistemic support and discriminating epistemic support.[352] Disjucntivists claim that the very idea of two scenarios being introspectively (reflectively) indistinguishable is ambiguous between a reading in terms of discriminating support and a reading in terms of favoring epistemic support.[353] So, Pritchard's reply is that we need to distinguish between introspective indiscriminability as knowledge by reflection alone grounded in favoring support and knowledge by reflection alone grounded in introspective discriminating support. To understand this distinction, consider Dretske's zebra case.[354] In this case, Zula sees that a zebra is in the pen, but intuitively she is unable to perceptually discriminate between there being a zebra in the pen from there being a cleverly disguised mule in the pen. Dretske famously denies that Zula is in a position to know that what she sees is not a cleverly disguised mule. According to Pritchard,[355] however, Zula only lacks discriminating support for believing that what she sees is not a cleverly disguised mule, because she is unable to perceptually discriminate between them. However, on disjunctivists' view, it doesn't follow that Zula thereby cannot know that what she sees is not a cleverly disguised mule. For she has a "wealth of

352 Pritchard, 63–108.
353 Pritchard, 96.
354 Fred I. Dretske, "Epistemic Operators," *Journal of Philosophy* 67, no. 24 (1970): 1007–23.
355 Pritchard, *Epistemological Disjunctivism*.

background knowledge" about zoos and "evidence regarding the likelihood" of the zoo-keepers replacing the zebra with a mule painted to just look like a zebra.[356] Once we take into account Zula's total evidence, it turns out that she has better evidence that what she sees is a zebra rather than a cleverly disguised mule: "it is essential that the agent's evidence set incorporates the favoring evidence" that she has to prefer the zebra hypothesis over the cleverly disguised mule hypothesis. Therefore, favoring evidence consists here in Zula's background inductive and abductive evidence. We can put the point like this: since Zula knows that the zebra is in the pen, of course her evidence favors the proposition that the zebra is in the pen over the proposition that it's merely a mule disguised to look just like a zebra. However, this fact doesn't entail that Zula can perceptually discriminate between zebras and a range of unlikely alternatives, such as the presence of cleverly disguised mules made to look just like zebras. And so, it doesn't entail that Zula has discriminating support for her belief that it's a zebra in the pen. In brief, the view that you cannot know that what you see is not a cleverly disguised mule is ambiguous between two readings: 1) You cannot know that the zebra isn't a cleverly disguised mule by way of your favoring support; 2) You cannot know that the zebra isn't a cleverly disguised mule by way of your discriminatory support. Disjunctivists think that the first, favoring reading of the claim is false, but the second, discrimination reading of the claim is true. Proponents of epistemic disjunctivism can now argue as follows: the cases in which you have reflective knowledge of your rational support (your seeing that p-state) for your external world beliefs are cases in which your reflective knowledge is grounded in favoring support rather than discriminating support. Favoring support pulls evidence not just from your current psychological time-slice, such as what you can introspectively discriminate between at that time, but from various historical factors as well, such as your beliefs about how reliable your introspection is in terms of generating true beliefs over false beliefs, and how likely it would be that you are suffering a hallucination in which it merely seems to you that you see that p. Moreover, it pulls evidence from your stored background knowledge.

5.6. Conclusion

In this chapter, I have discussed the possibility of attributing content to interpretive rules that avoids the necessity of further interpretation for determining the legal status of norm *N* based on specific sources of law. In response, I proposed defining the content of these rules in terms of division of linguistic labor, that is, an idea that what expression *E* means depends on what legal experts mean by *E*. Nonetheless, I have investigated whether this approach is capable of facing

356 Pritchard, 79.

the skeptical conclusion following from the rule-following problem, that there are no genuine facts in virtue of which agents mean so-and-so. To confront negative consequences that follow from this conclusion, I explored three responses. First, I discussed the skeptical solution offered by Kripke, which I interpreted as an advocacy for semantic expressivism toward meaning ascriptions. This account suggest that the explanation of meaning ascriptions does not require any substantial semantic facts, as the content of these ascriptions should be explained in virtue of conative states of speakers. Subsequently, I delved into McDowell's naturalized platonism, anchored in the notion that our experience is intrinsically conceptual, affording us direct insight into not only what we mean by particular expression, but also what other people mean by this expression as well. Finally, I discuss Brandom's meta-expressivist inferentialism, which posits that understanding of linguistic expressions by speakers, should be explained in terms of their deontic statuses. In response to the skeptical conclusion, Brandom suggests that speakers are at least prima facie entitled to attribute deontic statuses to others. Importantly, he argues that this entitlement does not necessitate further support from, for instance, semantic facts. After a detailed examination of these perspectives, I evaluated their ability to support a quasi-cognitivist stance in legal discourse in light of the regress argument. In this regard, I noted that Kripke's skeptical solution does not provide a satisfactory support for a thesis that rules of interpretation, due to their content, are capable of determining whether norm *N* is, in respect of sources of law *S,* a legally binding norm*,* because, on the basis of Kripke's skeptical solution, their content is deflationary, at best. What is more, I argued that Brandom's meta-expressivist inferentialism does not offer any intelligible foundation to defend the quasi-cognitivist picture of legal discourse from the negative consequences entailed for this position by the regress argument as well. It follows from the fact that, based on Brandom's account, it is obscure how our use of rules of interpretation, in respect of what they mean to legal experts, could be explained in terms of our cognitive capacities. Nonetheless, this insight undermines quasi-cognitivist idea of legal interpretation as a rational process, where legal agents respond to reasons provided by rules of interpretation due to their content, and the idea that legal statements they assert may be assessed as true or false in virtue of this content. Nonetheless, I argued that McDowell's solution seems to provide a satisfactory support for a thesis that rules of interpretation, due to their content, are capable of determining whether norm *N* is, in respect of sources of law *S,* a legally binding norm. Subsequently, I have investigated potential weaknesses in the support this position provide for quasi-cognitivism, examining how these weaknesses might affect the credibility of quasi-cognitivism. In response to objections against his position, I have outlined McDowell's epistemic disjunctivism, along with its distinction between favoring epistemic support and discriminating epistemic support.

6. Refutation of the Underdetermination Argument

In this chapter, I consider the possibility of countering the Underdetermination Argument regarding properness of methods of interpretation. The Underdetermination Argument states that legal statements about the law – that is, legal statements that express a proposition that norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M* implies that these statements – are systematically false. This is because the norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a theory. It follows from the fact that for a method of interpretation M_1 to be considered proper, there must be legally relevant support favoring M_1 over alternative theories $M_2 \ldots M_n$. Nonetheless, there is no legally relevant support that favors method of interpretation M_1 over methods of interpretation $M_2 \ldots M_n$. which leads to the conclusion that there is no proper method of interpretation. It follows from the fact that there is no proper theory of meta-interpretation favoring M_1 over alternative theories $M_2 \ldots M_n$, as for a theory of meta-interpretation T_1 to be considered proper, there must be legally relevant support favoring T_1 over alternative theories $T_2 \ldots T_n$. Nonetheless, many scholars tend to accept a theoretical isosthenia thesis – a claim that there are many different, yet equally adequate theories of meta-interpretation, and there is no fact (neither natural, nor conventional or intentional, anchored in the collective consciousness of society), determining that one of them is more accurate than the other ones.[357]

In response, I will explore the possibility of identifying whether method of interpretation *M* is the proper one, and consequently, whether it is a theory legal statements about the law refer to. In this regard, I will discuss three possible answers to the argument under discussion. First, I will investigate whether identifying the proper method of interpretation is feasible if we accept a specific theory of meta-interpretation (or, alternatively, specific method of interpretation) as legally binding. Moving to the second solution, I will explore whether there are any knock-down arguments that make it possible to choose one of many theories of meta-interpretation and, on this basis, answer the question of which method of interpretation is the proper one. Finally, I will explore a third solution, which examines whether identifying the proper method of interpretation is feasible by acknowledging a parity among competing theories of meta-interpretation.

[357] Dyrda, *Spory teoretyczne w prawoznawstwie*, 482.

6.1. Theory of Meta-Interpretation as Binding Law

The first solution to the underdetermination argument that naturally comes to mind is the institutional settlement of the need for meta-interpretive considerations. The idea behind this solution concerns lawmakers explicitly establishing a specific theory of meta-interpretation as legally binding. In consequence, determining whether such-and-such method of interpretation is the proper one, and, derivatively, determining whether norm *N* is a legally binding norm based on legal sources S would pose no problem. An alternative idea concerns lawmakers explicitly establishing such-and-such rules of interpretation of such-and-such method of interpretation as legally binding norms. In this regard, it is worth noting that recently, many scholars in the field of statutory construction have advocated for such solutions. Adrien Vermeule contends that every judge should adopt and follow a fixed interpretive doctrine.[358] Meanwhile, Gary O'Connor argues for a restatement as an authoritative formulation of permissible rules of interpretation.[359] Moreover, Nicholas Quinn Rosenkranz argues for the adoption of statute-like rules of interpretation.[360] However, it is rare for a specific theory of meta-interpretation, or method of interpretation to be explicitly established as binding law. Thus, the idea under discussion does not provide an actual answer to the Underdetermination Argument as it can, at best, be viewed as a postulate for future institutional developments.

Nonetheless, Baude and Sachs argue that there is also unwritten "law of interpretation" that determines what a particular provision "means" in our legal system. Such a law of interpretation consists of legal interpretive rules that govern the interpretation not only of private instruments, but also of new statutes and of the U.S. Constitution. Nonetheless, the main point of their thought is that these rules are actually part of the American legal system. For a long time, these rules have lain hidden in plain sight. Because people have assumed that an interpretive rule ought to outrank whatever it interprets, they've searched for these rules in statutes, quasi-constitutional doctrines, or the Constitution's text.[361] Yet, Baude and Sachs note that William Blackstone himself stated long ago that our interpretive rules are primarily rules of unwritten law, even as they govern the interpretation of written law.

Baude and Sachs argue that the importance of the unwritten law of interpretation has been systematically overlooked, despite its critical role. In this regard, they argue that many scholars

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358 Adrian Vermeule, "Interpretive Choice," *NYU Law Review*, no. 1 (2000): 74–149.
359 Gary E. O'Connor, "Restatement (First) of Statutory Interpretation," *New York University Journal of Legislation and Public Policy*, no. 7 (2003): 333–64.
360 Nicholas Quinn Rosenkranz, "Federal Rules of Statutory Interpretation," *Harvard Law Review* 115, no. 8 (2002): 2085–2157.
361 Baude and Sachs, "The Law of Interpretation," 1084.

have been looking in the wrong place – looking up, to rules of ever-higher legal authority, when they should have been looking down, to ordinary and unremarkable rules of unwritten law. Baude and Sachs admit that the law of interpretation would be easier to justify when it's imposed from Above. A law of interpretation for statutes might seem to invade the legislature's authority, denying it the power to express its will as it pleases. So, to govern how we read statutes, we might need rules of quasi-constitutional status – and only some strange superlaw could tell us how to read the Constitution. Nonetheless, Baude and Sachs state that a legal rule of interpretation doesn't need to outrank what it interprets in order to be useful, or even to be law. Rather than override the lawmakers' authority, the law of interpretation creates a legal structure that enables that authority's exercise. However, it is worth noting that Baude and Sachs note that whether particular legal system is textualist, intentionalist, purposivist, or something else, is a legal question, to be answered by given sources of law – and, in the end, by the appropriate theory of jurisprudence. Therefore, referring to unwritten law of interpretation does little help when it comes to answering whether particular method of interpretation is the proper one, as it still requires further inquiries in order to answer this question.

6.2. Refuting Alternative Meta-Interpretive Methods

Another way to respond to the underdetermination argument is to argue that even if we have conflicting theories of meta-interpretation, we do not need to refer to any higher-level meta-meta-interpretations – rather, we may establish that alternatives to the theory of meta-interpretation *T* are – in some sense – non-starters. Consequently, it is *T* which determines that method of interpretation *M* is the proper one.

In regard to conventionalist theory, one may evoke Dworkin's argument from theoretical disagreement. In regard to considerations proceeded in this dissertation, this argument states that there are disagreements on whether Norm *N* satisfies the interpretive procedure set by the proper method of interpretation, based on sources of interpretation; but, there are also disagreements that involve conflicting claims about what method of interpretation is the proper one. However, conventionalism implies that without consensus on whether a method of interpretation *M* is the proper one, *M* is not the proper one – at least from the legal point of view. At this point, the only credible explanation for such disputes available to the conventionalist is the assertion that these disputes can only be resolved through extra-legal reasoning. Nonetheless, Dworkin sees this answer as highly implausible. Contrary to what would be implied by conventionalism, legal discourse is filled with theoretical disagreements. These disagreements also concern what makes a particular method of interpretation the proper one. On this basis, we should conclude that there

is no convention that settles this issue. What is more, judges – contrary to what would follow from the assumptions of conventionalism – do not give up their search when conventional sources of argumentation are exhausted; for example, they do not decide to toss a coin, which they might do if the law truly had nothing to say on the matter they are considering. Instead, they argue among themselves and try to determine, for instance, which method of interpretation is the correct one. Thus, they behave as if the proper solution to the issue they are examining actually exists.[362]

In this regard, Shapiro suggests that conventionalists might defend their position by stating that legal participants who engage in theoretical disagreements are simply acting insincerely and opportunistically. They are aware, in other words, that there is a settled solution for these disputes, but nevertheless engage in them in an effort to bamboozle others into accepting the methodologies that they favor from a political perspective.[363] In this context, disputes over which method of interpretation is the proper one do not simply demonstrate a lack of convention; rather, they reveal that one party in this dispute seeks to alter this convention. In contrast, Leiter suggests that conventionalists may take theoretical disagreements seriously and admit that disputes over which method of interpretation is the proper one are so deep that they indeed undermine the existence of any convention in this area. Leiter argues that in such a situation, the conventionalist faces two possibilities for explaining such disputes: in terms of error or in terms of disingenuity.

The Error Theory account, as Leiter notes, attributes a pure mistake to the parties: they *genuinely* think there is a right legal answer regarding which method of interpretation is the proper one, even though there is no convergent practice (no social rule) supporting such an answer.[364] Therefore, all legal statements stating that method of interpretation is the proper one, in the absence of a convention supporting this claim are false. In this regard, Leiter states that this state of affairs should not be regarded as entailing serious consequences, because theoretical disagreements – therefore, disagreements over which method of interpretation is the proper one as well – represent only a minuscule fraction of all legal statements, while most such statements involve agreement, not disagreement.[365] The Disingenuity account can be put in terms that are either more or less accusatory, where each presupposes the *truth* of the Error Theory: a judge cannot be disingenuous in arguing *as if* there were a clear criterion of legal validity operative in a dispute without knowing that, in fact, there is no such criterion.[366] In the harsher version, the Disingenuity account claims that judges engaging in theoretical disagreements know full well (that

362 Shapiro, *Legality*, 297–98.
363 Shapiro, 290–91.
364 Brian Leiter, "Explaining Theoretical Disagreement," *University of Chicago Law Review*, no. 3 (2009): 1224.
365 Leiter, 1226.
366 Leiter, 1224.

is, consciously) that there is no method of interpretation to be found, that the issue is very much up for grabs, and that their purportedly theoretical disagreement over which method of interpretation is the proper one is nothing more than rhetorical posturing designed to facilitate acquiescence to their preferred quasi-legislative outcome.[367] In the milder version, the Disingenuity account claims only that judges have an unconscious or preconscious awareness that there is no "law" to be found-that is, under optimal conditions for rational reflection they would be able to acknowledge that there is no binding criterion of legal validity in the case at hand. But, because of the various familiar psychological and emotional influences on human decisionmaking in the heat of a legal dispute, they come to believe, at least occurrently, that there is a right answer as a matter of law, and it is an answer that favors their view of the case.[368]

However, in my opinion, conventionalists cannot take theoretical disagreements seriously without consequences for their position. This stems from the fact that an error theory regarding theories of meta-interpretation recurs at lower levels of legal discourse. This recurrence is evident in the context of the issues discussed in this chapter: the irresolvability of disputes concerning the proper theory of meta-interpretation seems to lead to the irresolvability of disputes concerning the proper method of interpretation; in turn, the irresolvability of the latter seems to undermine the possibility of determining the legal content of sources of law, which, in effect, implies that legal agents formulating statements about the law and treating them as a basis for further claims are systematically in error. Therefore, contrary to Leiter's suggestion, a claim that participants of legal discourse involved in disputes over the proper method of interpretation remain in error or are disingenuous is not as harmless as Leiter indicates. Nevertheless, it appears that the conventionalist can still attempt to demonstrate that, at some point, a convention exists to resolve the question of which method of interpretation is the proper one, and, consequently, that disputes over the proper method of interpretation represent a manifestation of the challenge in implementing a this convention, or they follow from a desire to change this convention.

Therefore, maybe there is a master argument against Dworkin's integral theory of meta-interpretation? An objection worth discussing here was formulated by Scott Shapiro. Shapiro states that if Dworkin is right about how law works, then to figure out what the proper method of interpretation is, we have to take up a moral inquiry. We have to ask what principles best fit and justify the community's legal practice. Nonetheless, there are at least two problems with this claim. First, such theory of meta-interpretation is overly demanding, as it requires meta-interpreters to engage in highly abstract and intricate thought processes in order to determine the correct method

[367] Leiter, 1224–25.
[368] Leiter, 1225.

of interpretation.[369] In this regard, Shapiro states that Dworkin's requirement that participants attempt to work out the moral principles that best fi *M* and justify their practice is so philosophically demanding that it is appropriate only for legal systems inhabited by extremely trustworthy individuals – for all other regimes, it would likely lead to organizational disaster.[370] Second, this claim gets things backwards. As Shapiro states: "Having to answer a series of moral questions is precisely the disease that law aims to cure." It follows from the fact that according to Dworkin, identifying the appropriate method of interpretation requires engagement in considerations of a moral and political nature. Meanwhile, Shapiro argues that since the existence and content of a plan cannot be determined by facts whose existence the plan aims to settle, and since the primary task of the law, understood as a plan, is to solve problems arising from the deficiencies of morality and politics, the proper method of interpretation must be identifiable without the need to engage in moral and political considerations. However, the foundational premise of Shapiro's objection, which posits that legal meta-interpreter must not reference morality because the law is supposed to resolve problems arising from the inconclusiveness of morality, is a subject of controversy in legal theory. Mark Greenberg, for instance, argues that "once we are in the business of imputing or constructing the content of the relevant plan, we cannot avoid relying on values to do so." Therefore, he challenges the idea that while identifying an appropriate method of interpretation we should avoid moral considerations. The basis for this position might be that there is no compelling reason to believe that moral considerations do not provide some form of determinate answers.

A strong argument in favor of the planning theory is the fact that it allows – without engaging in considerations of a moral and political nature – to determine which method of interpretation is appropriate, even when there is no convention regulating this issue.[371] However, Leiter remains skeptical of the discussed theory as based on identifying the legal system with a plan. In this regard, Leiter points out that legal power arises, often enough accidentally, from a non-legal customary practice. But it implies that the idea of "planning" (the centerpiece of Shapiro's alleged alternative to Hart) is irrelevant to explaining legal statements about the law.[372] Consequently, there is no good reason to argue that the economics of trust – as a mechanism directly resulting from the idea of a plan – decides which method of interpretation is the proper one. Nonetheless, this claim does not appear to be conclusive. In this regard, the advocates of the

369 Shapiro, *Legality*, 312.
370 Shapiro, 312–13.
371 Shapiro, 382.
372 Brian Leiter, "Critical Remarks on Shapiro's Legality and the 'Grounding Turn' in Recent Jurisprudence," 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3700513.

planning theory may defend their position. For example, they may argue that the fact that legal authority originated from non-legal, unplanned practices does not imply that the concept of planning fails to offer a valid explanation for actual legal practices, and, consequently, the cognitive aspect of legal statements.

On the basis of these considerations, a claim that we may establish that there are no relevant alternatives to theory of meta-interpretation *M*, as all the alternatives are – in some sense – invalid, is question begging, if not fully flawed.

6.3. Parity of Theories of Meta-Interpretation

The above considerations show that determining the proper theory of meta-interpretation is a hard choice. Nonetheless, does it undermine the quasi-cognitive picture of legal discourse? It does, if it implies that the rational choice between theories of meta-interpretation is impossible within the legal domain. In this regard, we should consider whether there is a rational answer to the question of what meta-interpretive method of interpretation is the proper one. Consequently, we must consider what do we do when we face the choice between theories of meta-interpretation. In this regard, three seemingly attractive answers to the question may come to mind.[373] The first is the thought that we lack the needed information to choose a proper theory of meta-interpretation; our cognitive limitations concerning the often complex normative and nonnormative factors relevant to choosing make a choice hard. Reasons run out in hard choices because of our uncertainty or *ignorance*. The second is the idea that in hard choices there is no metric, such as money, in terms of which the values of the alternatives can be measured, and lack of measurability by a unit makes the choice hard. Reasons run out because the values at stake in the choice are *incommensurable*. Finally, it might be thought that choices are hard when the alternatives or the reasons for them cannot be compared. If the merits of the alternatives cannot be compared, on what basis could there be a rational choice? Reasons run out in hard choices because the alternatives are *incomparable*.

Perhaps the most widely accepted explanation of what makes a choice hard is that we are ignorant or uncertain of the relevant fact that makes particular theory of meta-interpretation the proper one. After all, the legal domain is particularly complex and multidimensional, and so how can we, limited creatures that we are, determine an answer to such an abstract question as which theory of meta-interpretation is the proper one? One may claim, then, that, at some level, it is possible to achieve such a theory which determines the correct theory of lower levels, which, consequently, will allow for determining the proper method of interpretation. We do not have

373 see Ruth Chang, "Hard Choices," *Journal of the American Philosophical Association* 3, no. 1 (2017): 1–21.

access to it at this moment, but it is accessible in suitable conditions. Therefore, our disputes about the proper method of interpretation are solvable, but we need to advance our considerations to achieve the proper level of reflection. Nonetheless, this answer seems to be *ad hoc*.

Therefore, maybe a choice is hard because theories of meta-interpretation are incommensurable? As Chang notes, two items – values, goods, etc. – are incommensurable with respect to V just in case there is no common unit by which they can be measured with respect to V.[374] If there is no cardinal scale of, say, goodness as a career, by which two values, such as intellectual satisfaction and financial security, can be measured, there are no interval or ratio differences between those values. And thus, we cannot say that the intellectual satisfaction you might get by being a philosopher is 1.18 times as great as or 10 flourishons greater than the financial security you would have achieved by being a lawyer. And it is true that theories of meta-interpretation are incommensurable – there is no theory of meta-meta-interpretation which could be used as such measure. Nonetheless, Chang argues that even if there is no unit by which we can measure the contribution to your well-being of apple pie as opposed to a lifetime achievement, it is clear that the latter is better than the former.[375] For one thing, we can have merely ordinal comparability between incommensurable items – we can rank order them. For another, we can have "imprecise" cardinality among incommensurable items. Although there is no unit that measures the value of two items, perhaps there are fuzzy units or an indeterminate range of precise units by which the value of items can be measured, what Derek Parfit calls "imprecise comparability."[376] Since it is compatible with alternatives being incommensurable that one of them is better than the other with respect to V, the choice between incommensurables could be easy: choose the better alternative. Thus, incommensurability is not what makes a choice hard.

This brings us to a third explanation of hard choices: incomparability. Perhaps choices are hard because the alternatives cannot be compared with respect to what matters in the choice. In this view, the reasons run out in that there are no all-things-considered reasons for choosing either of the alternatives. This explanation of hard choices looks promising. After all, if the alternatives – or reasons for and against choosing them – cannot be normatively ranked, then how could we rationally choose between them? We should start with a definition. Two items are incomparable with respect to V just in case no "basic" relation – the relations that exhaust the conceptual space of comparability between two items (typically 'better than', 'worse than', and 'equally good') – holds with respect to V. The explanation of hard choices may be compelling, especially when combined with the so-called *maximalism*, which states that it can be rational to choose among

374 Chang.
375 Chang.
376 Derek Parfit, "Can We Avoid the Repugnant Conclusion?," *Theoria* 82, no. 2 (2016): 110–27.

incomparables. This position states that an alternative is justified so long as it is a maximal alternative, that is, not worse than any of the others. And since being not worse is not a positive comparative relation, being maximal is compatible with being incomparable. Thus, if two items are incomparable, there is a justified choice between them. One is justified in choosing either since each alternative is not worse than the other.[377] The problem with this position is that, according to Chang, incomparable alternatives are not ones left standing in the arena of reasons; rather, they have not even gained entry to it. Consequently, in the case of incomparability, there is no *rational* response.

In this regard, Chang considers three notions: *choosing*, *picking, and plumping*. According to Chang, *choosing refers* to selecting of one alternative *over* the other on the basis of values and reasons that support selecting it *over* the alternatives. Thus, having most reason because one alternative is better than the other justifies choosing in this strict sense.[378] In contrast, *picking* refers to selecting of one alternative when alternatives are equally good. As Chang notes, when you pick, you act within the scope of practical reason. You pick rather than choose because you have equal reason to choose either, not because your reasons are silent as to what, all things considered, you should do.[379] Nonetheless, when reasons have "run out" – they are silent on the question of whether one has most or sufficient reason to choose either alternative – and, consequently, one's selection in that choice situation cannot be within the scope of practical reason, we might say that this person "plump" for one of the alternatives. In this regard, Chang states that *plumping*, like *picking*, is arbitrary selection, but only the latter is action within the scope of practical reason.[380] Consequently, the incomparability of alternatives in a choice situation blocks the possibility of a justified choice between them in that choice situation.[381] However, according to Chang it is, after all, plausible that paradigmatically hard choices between careers, places to live, whether to have a family and so on, occur within the life of rational agents and are appropriately responded to with an exercise of rational agency. Consequently, there are good reasons to doubt that incomparability among the alternatives is what makes them hard. The explanation of "hard choices" in terms of incomparability is inadequate, not merely in the wider discourse. When this account is employed to explain the choice among theories of meta-interpretation, it falls short of the criteria established by legal quasi-cognitivism. By suggesting that the choice among these theories is unjustifiable, it essentially conveys that none of the theories is the proper one.

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377 Ruth Chang, "Value Incomparability and Incommensurability," in *The Oxford Handbook of Value Theory*, ed. Iwao Hirose and Jonas Olson (Oxford University Press, 2015), 219.
378 Chang, 218.
379 Chang, 218.
380 Chang, 218.
381 Chang, 216–17.

How, then, should we comprehend hard choices, such these concerning the properness of theories of meta-interpretation? In response, Chang proposes that what makes a choice hard is a structural feature of the choice, and in particular, the way in which the alternatives relate to one another with respect to V. In a hard choice, neither alternative is better than the other, nor are they equally good. And yet they are comparable. They are on a par. In this regard, Chang notes that most philosophers have assumed the Trichotomy Thesis, the claim that the trichotomy of relations, "better than," "worse than," and "equally good" (or an equivalent set), forms a basic set of value relations; if none of the trichotomy holds between two items with respect to V, it follows that they are incomparable with respect to V.[382] Nonetheless, Chang thinks that *defining* incomparability as the failure of these three relations to hold is a mistake, as there is a *fourth* basic value relation beyond the standard trichotomy of "better than," "worse than," and "equally good," what Chang calls "on a par".[383] In this regard, Chang notes that even if two items are such that, with respect to V, neither is better than the other nor are they equally good, it does not necessarily follow that they are incomparable – they might be on a par.

In other to explain the concept of parity, Chang refers to the notion of *evaluative difference*.[384] In this regard, she notes that there are two kinds of broad answers to the question, "What is the evaluative difference between A and B with respect to V"? One answer is 'Nothing', and in that case A and B are incomparable. Another answer is 'Something', and in that case the items are comparable. If there is some evaluative difference, it will have various features – it might be a zero difference, for example. As Chang argues, a zero difference is a kind of difference and is distinct from there being no difference at all. What is important, an evaluative difference can have magnitude or lack it. If it lacks magnitude, even a zero magnitude, then the ranking to which it gives rise is merely ordinal; the idea that the evaluative difference between the items has magnitude does not apply. We can set aside merely ordinal evaluative differences (which is not to say that parity is only a cardinal relation). Our interest is in evaluative differences with magnitude; the ranking arising from such differences is *cardinal*. "Cardinality" is typically understood narrowly to refer to rankings of items that can be measured by a scale of units. As we've seen, however, it is implausible to think that there is always a scale of units that measures the value of items. So we should use "cardinal" more broadly to refer to rankings of items in which there is some magnitude of difference between items, but that difference may not be measurable by a scale of units. Our interest is evaluative differences that describe cardinal rankings in this broad sense.

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382 Chang, 212.
383 Chang, 213.
384 Chang, "Hard Choices," 11.

Evaluative differences with magnitude can, in turn, be analyzed along two dimensions: (1) whether they have "bias" or "direction," and (2) whether the magnitude of the difference is zero or nonzero.[385] Consider the evaluative difference in tastiness between, say, a bowl of lemon sorbet and a saucer of mud. The evaluative difference in tastiness between them has a bias, that is, it favors or "points" in the direction of the lemon sorbet since the lemon sorbet tastes better. Since it has a bias, it follows that its magnitude is nonzero; the difference in their tastiness, for example, is greater than the difference in the tastiness between lemon and pineapple sorbet, and it is not zero like the difference in the tastiness between lemon sorbet and itself. When one item is better than another, there is a biased, nonzero difference between them. When the difference between them is unbiased and zero, they are equally good. Now consider the evaluative difference in tastiness between a bowl of lemon sorbet and a slice of apple pie. There is an evaluative difference in their tastiness; after all, they both taste delicious, one in a tart, refreshing way and the other in a sweet, comforting way. However, the difference in their tastiness doesn't favor one over the other and so has no bias, nor is the magnitude of the difference between them zero – again, the magnitude of the difference in tastiness between the lemon sorbet and apple pie isn't the same as the magnitude of the difference in tastiness between the lemon sorbet and itself. The lemon sorbet and apple pie are on a par with respect to tastiness. Two items are on a par when their evaluative difference is unbiased but has nonzero magnitude.

Therefore, the notion of parity depends on the possibility of unbiased, non-zero evaluative differences. In this regard, Chang states that it is easiest to see that items with an unbiased evaluative difference can have a nonzero magnitude when the items are qualitatively very different with respect to some value V. A tart, refreshing pleasure is qualitatively very different from a sweet, comforting one, and so it seems plausible that the evaluative difference in pleasurableness between the two could be nonzero. In general, the more similar the two items are with respect to V, the more plausible it is to think that the evaluative difference between them could be zero. This is not to say that items that are evaluatively very different with respect to V can never have a zero magnitude of difference but only that the more evaluatively different they are, the more plausible it is that their evaluative difference can be nonzero. Therefore, sometimes, given their quantitative and qualitative manifestations of V-ness, items are in the same neighborhood of V-ness; roughly, the evaluative difference between them has magnitude but does not favor one item over the other. At the same time, the items are qualitatively very different in V-ness, and so that difference, in conjunction with the quantities of V-ness manifested, makes that evaluative difference in their V-ness nonzero. In short, two items may be on a par with respect to V if they are qualitatively very

[385] Chang, 12.

different in V-ness but nevertheless in the same neighborhood overall of V-ness. Being qualitatively very different in V and in the same neighborhood of V overall, taken together, are sufficient conditions for parity with respect to V. While these two conditions are by their nature not precise, we have an intuitive grasp of them. We don't understand the value of pleasure, for instance, without also understanding that a soothing pleasure we might get from lounging in the sun is qualitatively very different from a sharp pleasure we might get from winning the lottery. Our understanding of qualitatively very different values is built into our understanding of the values themselves. And the idea of being "in the same neighborhood" of value is also a familiar one. When you grade papers, you are assessing them with respect to their "goodness as a paper." You might give two papers a grade of B; they belong to the same category or neighborhood of "goodness as a paper" in that they are both good but not excellent. Sometimes, with respect to goodness as a paper, one B paper will be better than another. But sometimes two B papers will be on a par.

We can now see how hard choices might plausibly be thought to be choices between alternatives that are on a par. In paradigmatic hard choices between careers, places to live, and people to marry, the alternatives are in the same neighborhood of overall V-ness, and yet they are qualitatively very different in Vness. Suppose you face a hard choice over whether to pursue a career in philosophy. You could be a lawyer instead. The legal and philosophical careers before you are in the same neighborhood of 'goodness as a career for you'; if they were not, you could rationally conclude that one was better. At the same time, the careers manifest very different qualities of what makes a career good for you; the legal career, for example, might afford you the financial security you crave while the philosophical career gives you a life of intellectual excitement. Although the alternatives are in the same neighborhood with respect to 'goodness as a career for you', they are not equally good. If they were, the Small Improvement Argument would fail to hold of them – a small improvement in one career, say a higher salary or corner office, would make it better than the other. But this is not so, and it would be intrinsically irrational to choose between them by flipping a coin. The significant qualitative difference between the alternatives – along with their quantitative manifestations of V – make it implausible to think that they are equally good. A choice can be hard, then, because the alternatives are in the same neighborhood with respect to whatever matters in the choice, but neither is better than the other, and nor are they equally good. They are on a par.

On this basis, we might argue that choosing a theory of meta-interpretation is justifiable within legal discourse, as it involves a choice between comparable alternatives that are on a par. However, how can we explain such a relationship occurring between the discussed theories of

meta-interpretation? In response, we need to demonstrate that there are 1) unbiased, and 2) non-zero evaluative differences between them.

First, let's focus on the first requirement, stating that evaluative difference between theories under discussion needs to be unbiased. In this regard, the evaluative difference between conventionalism and integralist theory of meta-interpretation is unbiased, if it does not favor one over the other. This notion aligns with the concept of theoretical isosthenia that there is no fact (neither natural, nor conventional or intentional, anchored in the collective consciousness of society), determining that one theory of meta-interpretation is more accurate than the other ones.[386]

The more challenging aspect involves proving that the evaluative differences between theories of meta-interpretation possess a nonzero magnitude. Chang points out that it's easiest to understand that items with an unbiased evaluative difference can exhibit a nonzero magnitude when they are qualitatively different with respect to some value V. Hence, to argue that the unbiased, evaluative differences between theories of meta-interpretation possess a nonzero magnitude, it seems plausible to posit that there is something all these theories share as a start. In this regard, I share an account proposed by Tomasz Gizbert-Studnicki and Adam Dyrda, that all significant general legal theories are products of analyses of the concept of law and as such are dependent upon shared folk theories of law.[387] In this regard, they claim that folk intuitions embedded in platitudes constitute the common "understanding" of law and provide an ultimate criterion for determining limits of the concept of law.[388] It would follow that folk theory "genetically" delimits the scope of possible theories of law.

In order to illustrate this idea, they reference Joseph Raz's claim that there is no agreement about what constitutes the rule of law, and that this lack of agreement is common to important normative institutions and principles, like freedom of speech.[389] Nonetheless, they argue that the reasonability of any disagreement over these ideals would be dependent upon rooting particular theories in commonsense beliefs about law's institutionalized and authoritative mode of operation and its ability to guide human conduct. Therefore, they argue that limits of theoretical disagreements in jurisprudence are fixed by the same shared set of truisms of folk theory that delimit the scope of disagreements over law's internal virtues. Different ideals may be associated with them and articulated in a theory. This does not mean that disagreement is illusory for it is still

386 Dyrda, *Spory teoretyczne w prawoznawstwie*, 482.
387 Adam Dyrda and Tomasz Gizbert-Studnicki, "The Limits of Theoretical Disagreements in Jurisprudence," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 35, no. 1 (2022): 130–31.
388 Dyrda and Gizbert-Studnicki, 131.
389 Joseph Raz, "The Law's Own Virtue," *Oxford Journal of Legal Studies* 39, no. 1 (2019): 1.

rooted in a shared practical yet not-articulated understanding of law and its functions. That is what makes this disagreement reasonable even though there is no unique correct answer to the discussed question.

Therefore, it could be argued that competing theories of meta-interpretation are on a par, as they are qualitatively very different with respect to the *folk "understanding" of law, as the law – understood in this way* – has different qualities, which different theories of meta-interpretation can fulfill to varying extents.

On this basis, we may find out whether the application of the notion of parity to choice between methods of interpretation is adequate by demonstrating that quantitative and qualitative manifestations that give rise to an unbiased evaluative difference between theories of meta-interpretation can give rise to a biased evaluative difference between them. Consider a choice between a thimbleful of tart and refreshing pleasure, as manifested by lemon sorbet and a generous amount of sweet, comforting pleasure, as manifested by a big slice of pie. According to Chang, these two alternatives are on a pair, as a nice-sized bowl of sorbet and a regular slice of apple pie are "in the same neighborhood" of overall pleasurableness. As Chang notes, two items are in the same neighborhood of V-ness when there is some magnitude of difference between them, but the difference does not favor one over the other.[390] Being "in the same neighborhood" of V marks the idea that the evaluative difference in V-ness is not biased toward one item rather than the other. Nonetheless, having a tiny bit of the thimbleful of sorbet, is overall worse in pleasurableness than having a generous slice of pie. Therefore, the evaluative difference between two alternatives that are on a par, may give rise to a biased evaluative difference between them.

Therefore, we may say that actual quantitative and qualitative manifestations give rise to an unbiased evaluative difference between, for instance, conventionalism and integralist theory of meta-interpretation. However, these manifestations could give rise to a biased evaluative difference between these positions as well. Despite conventionalism and the integralist theory of meta-interpretation being 'in the same neighborhood' with respect to the folk understanding of law—with conventionalism resonating with the folk platitude regarding legal stability and the integralist theory aligning with the folk platitude that associates law with justice – if conventionalism was recognized for offering even greater stability than currently acknowledged, a bias may emerge, leading to a preference for conventionalism. Given this, there is no basis to question the adequacy of explaining the choice between theories of meta-interpretation in terms of parity. In this regard, questions regarding the properness of theories of meta-interpretation seem to have correct answers, or at least non-unique correct answers.

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[390] Chang, "Hard Choices," 13.

However, the issue is how to accommodate the parity of theories of meta-interpretation and, consequently, the fact that theories of meta-interpretation may be proper in a non-unique way, within the semantics of internal legal statements provided in Chapter 2. The problem follows from the fact that if theories of meta-interpretation may be proper in a non-unique way, then, derivatively, methods of interpretation may be proper in a non-unique way as well. In response to this problem, legal quasi-cognitivists may embrace a view that internal legal statements express a kind of disjunctive propositions. In this regard, the explanation of the content of legal statements such as "it is the law that capital punishment is prohibited" involves these methods of interpretation that are justified by theories of meta-interpretation that are on a par. Let's then assume that Dworkin's theory of meta-interpretation indicates interpretive method M_1, while conventionalist meta-interpretive theory indicates interpretive method M_2. Let us also assume that Dworkin's theory and conventionalist theory are on a par. Derivatively, M_1 and M_2 are on a par. Consequently, the content of "prohibition of capital punishment is the law" expresses a proposition that norm prohibiting capital punishment, based on sources of law, satisfies either the interpretive procedure set by the method of interpretation M_1 or the interpretive procedure set by the method of interpretation M_2. Therefore, even if there is no fact that makes one theory of meta-interpretation better than other ones, it does not inevitably lead to legal nihilism if we are ready to admit that legal statements may express such disjunctive propositions. Accepting that legal statements express such disjunctive propositions commits quasi-cognitivists to admitting that sometimes there is no one right answer to legal questions, and that officials are afforded a certain scope of freedom. Nonetheless, this freedom is still exercised within the space of legally relevant reasons. In this regard, legal quasi-cognitivists may admit that there are many different, yet equally adequate, theories of meta-interpretation (and, derivatively, methods of interpretation), and there is no fact (neither natural, conventional, nor intentional, anchored in the collective consciousness of society) determining that one of them is more accurate than the others. At the same time, legal quasi-cognitivists may deny that participants in legal discourse, while formulating internal legal statements as viewed by legal quasi-cognitivists, are systematically in error, since no such a fact determining that one method of interpretation is more accurate than the others is required for the properness of this method.

6.4. Conclusion

In this chapter, I examined the possibility of countering the Underdetermination Argument concerning the properness of methods of interpretation. In this regard, I have explored the possibility of identifying whether method of interpretation *M* is the proper one, and consequently,

whether it is a theory legal statements about the law refer to. I have discussed three possible answers to the argument under discussion. First, I have investigated whether identifying the proper method of interpretation is feasible if we accept a specific interpretive method as legally binding – either in virtue of being explicitly stated in legal texts or being a part of unwritten law. Nonetheless, I noted that while this approach offers a theoretical framework for future legal developments, it is seldom reflected in current legal practice, as it is rarely a case that particular method of interpretation is explicitly established as binding law. Furthermore, I noted that referring to the unwritten law of interpretation does little help when it comes to answering which method of interpretation is the proper one. Moving to the second solution, I have explored whether it is possible to choose one of many theories of meta-interpretation and, on this basis, answer the question of which method of interpretation is the proper one. In this regard, I argued that no knock-down argument was formulated against any of the theories of meta-interpretation. Finally, I have explored a third solution, which examines whether identifying the proper method of interpretation is feasible by acknowledging a parity among competing theories of meta-interpretation. In this regard, I have noted that the problem of choosing a proper theory of meta-interpretation may be regarded as rational, if we assume that it is a choice between alternatives that are on a par – that is, that there are unbiased, non-zero evaluative differences between theories under discussion. Based on this, I have argued that questions regarding the properness of theories of meta-interpretation (and, derivatively, methods of interpretation) do have correct answers, or at least non-*unique* correct answers. Nonetheless, this view implies that for any method of interpretation *M*, if *M* is favored by any such theories of meta-interpretation that are proper in a non-unique way, then *M* is the proper method of interpretation. This, in turn, commits quasi-cognitivist to accept that legal statements may express disjunctive propositions such as *norm N, based on the sources of law S, satisfies either the interpretive procedure set by the method of interpretation* M_1 *or the interpretive procedure set by the method of interpretation* M_2. Accepting that legal statements express such disjunctive propositions commit quasi-cognitivist to admit that sometimes there is no one right answer to legal questions, and that officials are provided certain scope of freedom. However, it also entitles legal quasi-cognitivists to deny that participants in legal discourse, while formulating internal legal statements (as viewed by legal quasi-cognitivists), are systematically in error, even if there is no such a fact determining that one theory of meta-interpretation is more accurate than the others.

7. Refutation of the Incoherence Argument

In this chapter, I will explore the possibility of refuting Incoherence Argument regarding methods of interpretation without abandoning any claims quasi-cognitivist is committed to. This argument states that for any interpretive procedure set by a method of interpretation *M* determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm, if such an interpretive procedure is to be set by a method of interpretation *M*, then *M* should contain no conflicting rules of interpretation. Nonetheless, as the argument unfolds, for any method of interpretation *M*, if *the* rule of interpretation R_1 belongs to *M*, then there exists another rule R_2 that conflicts with R_1 and belongs to *M* as well. Consequently, method of interpretation *M* is not capable of providing the interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm. Consequently, legal actors who formulate legal statements about the law – that is, statements expressing a proposition that norm *N* satisfies, in respect of sources of law *S*, the interpretive procedure set by the method of interpretation *M* – are systematically in error. It follows from the fact that norms such legal statements refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a procedure.

I will discuss two possible solutions to the argument under discussion. The first solution posits that the method of interpretation *M* is capable of providing the interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm, if we accept that there are higher-level rules of interpretation to resolve any conflicts between specific rules of interpretation. The second solution suggests that recognizing the parity relation between conflicting rules of interpretation unfolds the possibility of deriving from a given method of interpretation *M* more than one interpretive procedure, with each of these procedures being on a par with the others.

7.1. Higher-Order Rules

One may argue that what might appear as conflicts between rules of interpretation can actually be complementary perspectives. Legal interpretation is not always about choosing one rule over another; it can be about finding a balance or a synthesis of multiple rules. This approach recognizes the multidimensional nature of legal texts and the interpretive process. In order to find such a balance, one may refer to higher-order rules of interpretation.

In the so-called clarificatory method of interpretation, created by Wróblewski, conflicts between rules of interpretation are resolved using second-order interpretative rules.[391] Therefore, this position assumes that the legal interpretation proceeds on two levels. On the first level, the meaning of the text is established by separate considerations of the linguistic, systemic, and functional context. Here, interpreters apply first-order rules that serve to determine the meaning of the text being interpreted by referring to relevant contexts (linguistic, systemic, and functional). In turn, on the second level of interpretation, interpreters a choice is made between one of the meanings thus established. Here, interpreters apply second-order rules, which determine the order of applying first-degree rules (procedural rules) and indicate how the interpreter should make a choice in the event that the results of using first-degree rules are divergent (rules of choice).[392] "If a norm does not have a sufficiently defined meaning on the basis of linguistic directives, then systemic and logical directives should be applied, and if these also do not lead to the necessary clarification, functional directives must be applied" is a clear example of such a second-order rule.[393]

Sunstein adopted a similar approach to resolving disputes between various rules of interpretation by formulating a catalog of interpretation rules, distinguishing so-called principles of priority and principles of harmonization.[394] The principles of priority serve Sunstein in creating a hierarchy of interpretation rules. He indicates in this context that his ranking of such rules "is based on the foundation of particular rules of interpretation in the Constitution".[395] In that hierarchy of rules, as Sunstein claims, the presumptions in favor of decisions by politically accountable actors and in favor of political deliberation should occupy the very highest place, as these principles are, according to Sunstein, "basic constitutional commitments." Accordingly, other interpretive principles traceable to constitutional norms (…) should occupy the next highest position in the hierarchy. This category – as Sunstein notes – would include the norms in favor of broad interpretation of statutes protecting disadvantaged groups, against delegations of legislative authority, in favor of state autonomy, and in favor of narrow construction of interest-group transfers. Sunstein argues in this place that it is possible to create a kind of hierarchy within constitutionally based interpretive principles. Thus, for example, the principle in favor of state autonomy should occupy a lower place than the principle in favor of protection of disadvantaged groups, which is the product of the Fourteenth Amendment, a self-conscious attempt to limit the

391 Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, 399.
392 Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*.
393 Wróblewski, 404.
394 Sunstein, "Interpreting Statutes in the Regulatory State," 497.
395 Sunstein, 498.

scope of state power. According to Susntein, the lowest rung should be occupied by interpretive principles without constitutional status, precisely because the judgments they represent are not so closely connected with the foundational commitments of American constitutionalism. This category includes norms in favor of coordination and of proportionality, norms requiring consideration of systemic effects, norms against implied repeals, and norms against obsolescence. The second type of rules that aim to eliminate incoherence of the method of interpretation, that is, principles of harmonization, are designed not to rank interpretive norms but to minimize the number of conflicts among norms.[396] In this regard, Sunstein notes that courts should apply the proportionality principle differently when nonmarket values are at stake. In cases of economic regulation, translating costs and benefits into dollars, measured in terms of private willingness to pay, is entirely sensible. In cases involving non-monetary values, the fact that monetized costs and benefits are disproportionate is not controlling. Reflecting a similar understanding, the courts have interpreted statutes quite generously, and in a way that conspicuously departs from private willingness to pay, when aspirations and noncommodity values are involved. Another principle of harmonization would recognize that cases turn not simply on the applicability of interpretive norms, but also on the degree of their infringement. Thus, for example, an enormous grant of discretionary lawmaking power to a regulatory agency would argue more strongly in favor of an aggressive narrowing construction than a minor grant of such power. Moreover, if the norm in favor of limited delegations conflicts with the norm in favor of coordination of regulatory policy, the degree of the infringement on both norms would be highly relevant to the decision.[397]

Another way of answering the problem of conflicting rules of interpretation may be found in the derivational theory of legal interpretation, which supports a sequential model of legal interpretation. In this framework, the outcome of the interpretation of sources of law is established through the application of various rules of interpretation to the sources of law in a specific order.[398] In other words, as Zieliński writes, interpretive rules are not considered in parallel (side by side) without seeking their interrelations but are arranged sequentially (vertically) – the order of their application is strictly defined and determines the chronology of interpretative actions. Interpretive inconsistencies following from a conflict between rules of different types (e.g., between linguistic and functional rules) are resolved by including *conflict rules* within the adopted interpretative sequence.[399]

396 Sunstein, 499.
397 Sunstein, 499.
398 Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki*, 297.
399 Zieliński, 297.

Nevertheless, one might ask how the sequential model of derivational theory relates to a clarificatory model that, to resolve conflicts between interpretive rules, distinguishes higher-order interpretation rules. Gizbert-Studnicki points out in this context that the structure of the interpretation process in both models is essentially similar.[400] Gizbert-Studnicki points out in this context that the structure of the interpretation process in both models is essentially similar. In the sequential model, conflicts between different types of directives are eliminated by incorporating appropriate conflict rules into the sequence of interpretative actions. These rules, as Gizbert-Studnicki notes, establish a hierarchy of the significance of a given type of directives in the interpretation process and, on this basis, give priority to the particular result of interpretation of the interpreted term. Thus, the derivational conflict rules correspond to the clarificatory second-order rules of choice.[401] Just as was the case on the grounds of the theory of clarification, their application requires a prior determination of the meanings of the interpreted term, for example, based on linguistic and functional rules of interpretation, as their function is to indicate, in case of inconsistency of these meanings, which meaning should be given priority. "In a situation where the linguistic meaning disrupts (...) identified fundamental values, the linguistically clear meaning of the interpreted term should be modified in order to ensure axiological consistency" is a clear example of such conflict rule.[402] On this basis, Studnicki asserts that there is no significant difference between how the discussed models of interpretation deal with potential conflicts of interpretive rules.[403]

However, it is important to note that the solution under discussion only fulfills its role of supporting a quasi-cognitivist perspective if the proper method of interpretation includes such higher-level rules. This is because, within the framework of quasi-cognitivism, if a method of interpretation *M* were the proper one in a certain discourse but lacked such higher-order rules of interpretation, then participants in this discourse who formulate legal statements would be systematically in error.

7.2. Parity of Interpretive Procedures

In the previous section, I suggested that the problem of inconsistency within methods of interpretation, defined as a situation of conflict between its rules of interpretation, can be resolved by invoking higher-order rules of interpretation that determine the resolution of such conflicts.

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400 Tomasz Gizbert-Studnicki, *Dyrektywy wykładni drugiego stopnia* (Szczecin : Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, 2010), 65–66.
401 Gizbert-Studnicki, 67.
402 Zieliński, *Wykładnia prawa. Zasady - reguły - wskazówki*, 350.
403 Gizbert-Studnicki, *Dyrektywy wykładni drugiego stopnia*, 65.

This, however, raises a critical question: What happens when a particular method of interpretation lacks these higher-order rules? Does this absence condemn the legal discourse, in which such a method of interpretation is the proper one, to fall into legal nihilism? I argue that it doesn't necessarily lead to such a difficult outcome.

Consider a hypothetical method of legal interpretation *M,* which includes several rules of interpretation but lacks any higher-order rules. Within this theory, we encounter two conflicting rules: Rule R_1 and Rule R_2. These rules are such that, in certain cases, it is impossible to comply with both simultaneously, given all other things equal.[404] Consequently, when R_1 is preferred over R_2, the interpretive procedure established by *M*, in respect of sources of the law *S*, is met by a norm N_1 (for example, prohibiting capital punishment) but not by norm N_2 (for example, permitting capital punishment), and the inverse occurs when R_2 is preferred over R_1. This scenario illustrates that *M*, due to its internal conflicts, fails to provide a unique interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm. The skeptic may argue that lack of such unique procedure implies that participants in legal discourse are in systematic error while formulating internal legal statements.

Nonetheless, the principle of parity provides an escape from this predicament. If we accept that choosing between two interpretive procedures – the one derived from favoring R_1, and the one derived from favoring R_2 – involves a choice between comparable alternatives that are on a par, then the inability of M to establish a unique interpretive procedure does not necessarily result in legal nihilism. Instead, it becomes possible to evaluate – within the legal domain – whether norm *N* satisfies, in respect of the sources of law *S*, the interpretive procedure set by the method of interpretation *M*. Therefore, I argue that questions concerning the interpretive procedures established by the proper method of interpretation do indeed have correct answers, or at the very least, non-unique correct answers.

In this context, the parity of interpretive procedures derived from conflicting rules may be regarded as leading to the acceptance that internal legal statements express a kind of disjunctive propositions. Therefore, the statement "It is the law that capital punishment is prohibited" could be interpreted as articulating a proposition that the norm prohibiting capital punishment satisfies, in respect of the sources of law, either the interpretive procedure set by the method of interpretation *M*, (as derived from favoring R_1,) or the interpretive procedure set by *M* (as derived from favoring R_2.)

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404 In this regard, to analyze the notion of conflicting rules in a charitable way, I adopted a weak notion of incompatibility, which posits that for certain actions, it is not possible to comply with both conflicting rules simultaneously. However, one could argue that a stronger notion of incompatibility is more plausible, asserting that no action can conform to both conflicting rules at the same time. Nevertheless, adopting such a stronger notion would render the discussed argument concerning the incoherence of methods of interpretation less credible.

In this regard, a quasi-cognitivist can avoid collapsing into legal nihilism by accommodating the situation of conflicting rules in terms of the parity of interpretive procedures derived from them. Of course, this solution facilitates the success of actions involving the formulation of internal legal statements, implying that sometimes there is no single correct answer to legal questions and that officials are afforded a certain degree of freedom. Nonetheless, the essential point is that internal legal statements still possess determinate truth conditions that can be positively fulfilled and that are based on the law. This, in turn, it entitles legal quasi-cognitivists do deny that participants in legal discourse, while formulating internal legal statements (as viewed by legal quasi-cognitivists), are systematically in error, even if there are conflicting rules within a proper method of interpretation.

7.3. Conclusion

In this chapter, I have explored the possibility of refuting the Incoherence Argument regarding methods of interpretation without abandoning any claims that quasi-cognitivist is committed to. In this regard, I have discussed two possible solutions to the argument under discussion. The first solution posits that the method of interpretation *M* is capable of providing the interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm, if we accept that there are higher-level rules of interpretation to resolve any conflicts between specific rules of interpretation. However, I noted that this solution defends the quasi-cognitivist picture only if the proper method of interpretation contains such higher-level rules. Therefore, quasi-cognitivism entails that the legal discourse in which method of interpretation *M* is the proper one, but *M* does not contain such higher-order rules of interpretation, then a picture of legal discourse *M* belongs to collapses into nihilism. In response, I turned to the second solution suggesting that recognizing the parity relation between conflicting rules of interpretation unfolds the possibility of deriving from a given method of interpretation *M* more than one interpretive procedure, with each of these procedures being on a par with the others. Nonetheless, this solution implies that there are non-unique answers to the question of whether norm *N* is, in respect of sources of law *S*, a legally binding norm. This answer implies that legal statements such as "8th Amendment prohibits capital punishment" may be regarded as expressing a disjunctive proposition that a norm prohibiting capital punishment satisfies, in respect of sources of law *S*, either the interpretive procedure P_1 or the interpretive procedure P_2 set by the method of interpretation *T*. This solution facilitates the success of actions involving the formulation of internal legal statements, implying that sometimes there is no single correct answer to legal questions and that officials are afforded a certain degree of freedom. Nonetheless, it entitles legal

quasi-cognitivists do deny that participants in legal discourse, while formulating internal legal statements (as viewed by legal quasi-cognitivists), are systematically in error, even if there are conflicting rules within a proper method of interpretation.

Concluding remarks

This thesis ventured into the complexities of legal discourse, offering a quasi-cognitivist account that seeks to bridge the gap between the cognitive and practical dimensions of internal legal statements. Legal quasi-cognitivism, as outlined in this thesis, comprises three components. First, it introduces a relational semantics of internal legal statements, stating that content of these statements is constituted by a proper method of interpretation and the sources of law. Consequently, this view suggests that participants in legal discourse implicitly use rules of interpretation when formulating legal statements. Second, it explains the cognitivist appearances of internal legal statements by maintaining that they express propositions, which are the content of ordinary beliefs understood as attitudes with a mind-to-world direction of fit, and which explanation necessarily involves the subject matter of the law. Based on this, the account under discussion aligns with an intuition that internal legal statements are products of cognitive capacities of participants in legal discourse, that is, mental processes involved in the acquisition of knowledge, manipulation of information, and reasoning, and that they function as language-entry transitions. Third, it provides an explanation of the practical appearances of internal legal statements by stating that, in some sense, these statements express desire-like states of mind. However, it positions these states at the level of pragmatics rather than semantics. Based on this, internal legal statements appear to be the outcomes of conative processes occurring within participants of the legal discourse; what is more, they seem to function as language-exit transitions.

Consequently, a quasi-cognitivist picture of legal discourse implies that legal statements are not just reports of subjective beliefs. That is why we can disagree with someone who claims, "capital punishment is legally justifiable" and refuse to admit that this statement is true even if the author of this statement does, in fact, believe that capital punishment is not prohibited by the 8th Amendment. Neither are legal statements mere expressions of desire-like states of the speakers – that's why we can say that they are false, and – what is more important – explain their falsehood in virtue of the subject matter of the law itself, not merely our practical attitudes.

The dissertation then has engaged with several arguments that challenge the quasi-cognitivist picture of internal legal statements. These challenges aim to demonstrate that, on the basis of quasi-cognitivism, participants in legal discourse that formulate legal statements are systematically in error:

1) because of the incapacity of methods of interpretation to identify legal content (that is, to determine whether norm *N*, in respect of sources of law *S*, is a legally binding norm,)

due to the fact that the rules of interpretation constituting such a theory are themselves subject to further interpretations, *ad infinitum* (*Regress Argument*).

2) because the norms to which they refer do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a theory (*Underdetermination Argument*).
3) because norms they refer to do not satisfy the interpretive procedure established by a proper method of interpretation, due to the absence of such a procedure following from an inevitable conflict of interpretive rules (*Incoherence Argument*).

In Chapter 4, I have discussed alternatives to legal quasi-cognitivism that are not vulnerable to the negative consequences of aforementioned skeptical arguments. In this regard, the dissertation has illuminated the diversity of perspectives within legal theory and the challenges inherent in capturing the full range of cognitive and practical usage of internal legal statements. However, I have noted that despite the intriguing prospects these viewpoints offer, they also come with their own set of complex, problematic features. In response, Chapters 5–7 found that the quasi-cognitivist picture of legal discourse is within the reach of answers to aforementioned skeptical arguments.

Chapter 5 has discussed the Regress Argument. In response to this argument, I have proposed defining the content of rules of interpretation in terms of division of linguistic labor, implying that what expression *E* means depends on what legal experts mean by *E*. Nonetheless, I have investigated whether this approach is capable of facing the skeptical conclusion following from the rule-following problem that there are no genuine facts in virtue of which agents mean so-and-so. In this regard, I have noted that legal quasi-cognitivists, in order to refute skeptical attack on their position, need to affirmatively address three questions: 1) Is it possible to attribute a specific understanding of rules of interpretation to legal experts? 2) Can this understanding be effectively transferred to other participants in legal discourse? 3) May this understanding ground the ability of rules of interpretation to determine – without the need for further interpretation – whether norm *N*, in respect of sources of the law *S*, is a legally binding norm? In order to answer the first question, I have explored three prominent accounts participating in a philosophical discussion concerning rule-following problem: Kripke's skeptical solution, McDowell's naturalized platonism, and Brandom's meta-expressivist inferentialism. After a detailed examination of these perspectives, I discussed whether legal experts' meaning so-and-so by rules of interpretation (as viewed within aforementioned accounts) can be transferred to other participants in legal discourse in such a way that that rules of interpretation, as used by these participants, would be capable of determining – without the need for further interpretation – whether norm *N*, in respect of sources

of the law *S*, is a legally binding norm. In this regard, I have concluded that only McDowell's solution provide a satisfactory support for legal quasi-cognitivist refutation of the regress argument. Subsequently, I examined the credibility of McDowell's account, considering its potential impact on the credibility of legal quasi-cognitivism.

In Chapter 6, I have examined the possibility of countering the Underdetermination Argument. In response to this argument, I have discussed three possible solutions. First, I have investigated whether identifying the proper theory of meta-interpretation (and, derivatively, the proper method of interpretation) is feasible if we accept a specific theory of meta-interpretation (and, accordingly, a method of interpretation) as legally binding. Nonetheless, I noted that while this approach offers a theoretical framework for future legal developments, it is seldom reflected in current legal practice, as it is rarely a case that particular theory of meta-interpretation, or even method of interpretation, is explicitly established as binding law. Moving to the second solution, I have explored whether it is possible to choose one of many theories of meta-interpretation and, on this basis, answer the question of which method of interpretation is the proper one. In this regard, I argued that no knock-down argument was formulated against any of the theories of meta-interpretation. Finally, I have explored a third solution, which examines whether identifying the proper method of interpretation is feasible by acknowledging a parity among competing theories of meta-interpretation. In this regard, I have noted that a choice between theories of meta-interpretation may be seen as a choice between alternatives that are on a par – that is, that there are unbiased, non-zero evaluative differences between theories under discussion. In this regard, I have argued that questions regarding the properness of theories of meta-interpretation (and, derivatively, methods of interpretation) have correct answers, or at least non-*unique* correct answers. Accordingly, I have argued that internal legal statements may express disjunctive propositions such as *norm N, based on the sources of law S, satisfies either the interpretive procedure set by the method of interpretation* M_1 *or the interpretive procedure set by the method of interpretation* M_2. I have argued that this solution entitles legal quasi-cognitivists to deny that participants in legal discourse, while formulating internal legal statements (as viewed by legal quasi-cognitivists), are systematically in error, even in the absence of a fact determining that one method of interpretation is more accurate than the others.

Finally, Chapter 7 has explored two possible solutions to the Incoherence Argument regarding methods of interpretation. The first solution posits that the method of interpretation *M* is capable of providing the interpretive procedure determining whether norm *N* is, in respect of sources of law *S*, a legally binding norm, if we accept that there are higher-level rules of interpretation to resolve any conflicts between specific rules of interpretation. However, I have

noted that this solution defends the quasi-cognitivist picture only if the proper method of interpretation contains such higher-level rules. Subsequently, I have turned to the second solution suggesting that recognizing the parity relation between conflicting rules of interpretation reveals that questions about the interpretive procedures set by proper methods of interpretation may have correct answers, even if these answers are non-*unique*. In this regard, I have argued that this solution entitles legal quasi-cognitivists do deny that participants in legal discourse, while formulating internal legal statements (as viewed by legal quasi-cognitivists), are systematically in error, even if two (or more) conflicting rules of interpretation belong to the proper method of interpretation.

Based on this, I embrace a view that the quasi-cognitivist approach to legal discourse offers a compelling framework for understanding the cognitive and practical appearances of legal statements formulated by participants in legal discourse. Given that the most general point of legal quasi-cognitivism concerns the role of cognitive and conative processes in explaining the use of internal legal statements by participants in legal discourse, this thesis contributes to our better understanding of the processes underlying formulating legal statements. At the theoretical level, the view of internal legal statements developed within this thesis elucidates the actual roles that legal artifacts play in the explanation of success of actions consisting of asserting internal legal statements. In this regard, this thesis enhances our understanding of the relations of internal legal statements to the subjects of legal knowledge acquired (or should be acquired) through general and legal education. Moreover, by grounding the explanation of the cognitive appearances of legal statements in an external standard – the law itself – quasi-cognitivism reinforces the authority of legal norms and the capacity of the law to guide legal practitioners, policymakers, and scholars in navigating complex legal dilemmas.

While this work sheds light on cognitive and practical aspects of legal statements, it acknowledges the vast, uncharted territories remaining. The most obvious point of impact of this thesis concerns the nature of legal justifiability of judicial decisions, as internal legal statements may be seen as an inherent part of the reasoning in which legal decisions serve as conclusions. The considerations presented herein may also have practical implications. By addressing the question of what participants in legal discourse actually do while formulating internal legal statements, legal quasi-cognitivism may cast new light on the nature of legal disagreements, thereby contributing to innovative solutions for resolving them. Moreover, the research has the potential to enhance public understanding of foundational mechanisms of legal discourse, promoting a more informed citizenry. Additionally, it may help identify areas critical for legal reforms that endorse contemporary ethical standards and societal values, ultimately contributing to the development of more just legal systems. However, it is noteworthy that the lively discussions in metaethics,

especially those concerning hybrid forms of expressivism, suggest further avenues for alternative approaches to legal discourse, diverging from the quasi-cognitivist framework. Therefore, future research should explore alternative methodologies for explaining the cognitive and practical dimensions of legal statements and juxtapose these with quasi-cognitivism in order to elucidate their comparative strengths and weaknesses, ultimately enriching our understanding of legal discourse.

In conclusion, this dissertation contributes to the ongoing debates in legal philosophy by offering a nuanced quasi-cognitivist account that accommodates the complexity of legal thought and discourse. By explaining both cognitivist and practical appearances of internal legal statements, it provides a comprehensive framework that not only advances our theoretical understanding but also has practical implications for the interpretation and application of law. In doing so, it underscores the importance of continuing to explore and refine our theories of legal thought and discourse, ensuring that they remain responsive to the evolving landscape of legal practice and the multifaceted use of legal statements by participants in legal discourse.

Bibliography

Aarnio, Aulis. "On Truth and the Acceptability of Interpretative Propositions in Legal Dogmatics." *Rechtstheorie. Beihefte*, no. 2 (n.d.): 33–51.

———. *The Rational as Reasonable*. Vol. 4. Law and Philosophy Library. Dordrecht: Springer Netherlands, 1986.

Alexy, Robert, Ruth Adler, Neil MacCormick, Robert Alexy, Ruth Adler, and Neil MacCormick. *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification*. Oxford, New York: Oxford University Press, 2009.

Anscombe, Gertrude E. M. *Intention*. Oxford: Basil Blackwell, 1957.

Barak, Aharon. *Purposive Interpretation in Law*. Princeton: Princeton University Press, 2007.

Barak-Erez, Daphne. "Her-Meneutics: Feminism and Interpretation." In *Feminist Constitutionalism: Global Perspectives*, edited by Beverley Baines, Daphne Barak-Erez, and Tsvi Kahana, 85–97. Cambridge: Cambridge University Press, 2012.

Barker, Stephen J. "Is Value Content a Component of Conventional Implicature?" *Analysis* 60, no. 3 (2000): 268–79.

Bar-on, Dorit. "Origins of Meaning: Must We 'Go Gricean'?" *Mind and Language* 28, no. 3 (2013): 342–75.

Bartlett, Katharine T. "Feminist Legal Methods." *Harvard Law Review* 103, no. 4 (1990): 829–88.

Baude, William, and Stephen E. Sachs. "The Law of Interpretation." *Harvard Law Review*, no. 4 (130) (2017).

Bell, Bernard W. "Legislative History without Legislative Intent: The Public Justification Approach to Statutory Interpretation." *Ohio State Law Journal* 60 (1999): 1–97.

Bex-Priestley, Graham. "Higher-Order Expressivism: The Dyadic Nature of Moral Judgement." Phd, University of Sheffield, 2018.

Bianchin, Matteo. "Bildung, Meaning, and Reasons." *Verifiche: Rivista Trimestrale Di Scienze Umane* 41, no. 1–3 (2012): 73–102.

Blackburn, Simon. *Essays in Quasi-Realism*. New York: Oxford University Press, 1993.

———. *Ruling Passions: A Theory of Practical Reasoning*. Oxford: Oxford University Press, 1990.

———. *Spreading the Word: Groundings in the Philosophy of Language*. Oxford: Oxford University Press, 1984.

———. "Success Semantics." In *Practical Tortoise Raising: And Other Philosophical Essays*, edited by Simon Blackburn. Oxford University Press, 2010.

Boghossian, Paul A. "Blind Rule-Following." In *Mind, Meaning, and Knowledge: Themes From the Philosophy of Crispin Wright*, edited by Crispin Wright and Annalisa Coliva, 27–48. Oxford University Press, 2012.

———. "The Rule-Following Considerations." *Mind* 98, no. 392 (1989): 507–49.

———. "The Status of Content." *The Philosophical Review* 99, no. 2 (1990): 157–84.

Borg, Emma. *Pursuing Meaning*. Oxford,: Oxford University Press, 2012.

Boyd, Daniel. "Semantic Non-Factualism in Kripke's Wittgenstein." *Journal for the History of Analytical Philosophy* 5, no. 9 (2017).

Brandom, Robert. *Articulating Reasons: An Introduction to Inferentialism*. First Edition. Cambridge: Harvard University Press, 2001.

———. "Conceptual Content and Discursive Practice." *Grazer Philosophische Studien* 81, no. 1 (2010): 13–35.

———. *Making It Explicit: Reasoning, Representing, and Discursive Commitment*. First Edition. Cambridge, Mass: Harvard University Press, 1994.

———. *Reason in Philosophy: Animating Ideas*. Harvard University Press, 2009.

Burazin, Luka. "Can There Be an Artifact Theory of Law?" *Ratio Juris* 29, no. 3 (2016): 385–401.

Burazin, Luka, Kenneth Einar Himma, Corrado Roversi, Luka Burazin, Kenneth Einar Himma, and Corrado Roversi, eds. *Law as an Artifact*. Oxford, New York: Oxford University Press, 2018.

Burge, Tyler. "Perceptual Entitlement." *Philosophy and Phenomenological Research* 67, no. 3 (2003): 503–48.

Burgess, Alexis. "Mainstream Semantics + Deflationary Truth." *Linguistics and Philosophy* 34, no. 5 (2011): 397–410.

Byrne, Alex. "On Misinterpreting Kripke's Wittgenstein." *Philosophy and Phenomenological Research* 56, no. 2 (1996): 339–43.

Camp, Elisabeth. "Metaethical Expressivism." In *The Routledge Handbook of Metaethics*. Routledge, 2017.

Capone, Alessandro, and Francesca Poggi, eds. *Pragmatics and Law: Philosophical Perspectives*. Cham: Springer, 2016.

———, eds. *Pragmatics and Law: Practical and Theoretical Perspectives*. Cham: Springer, 2017.

Carpentier, Mathieu. "Legal Statements: Internal, External, Detached." In *Encyclopedia of the Philosophy of Law and Social Philosophy*, edited by Mortimer Sellers and Stephan Kirste, 1–8. Dordrecht: Springer Netherlands, 2023.

Carter, Adam, James H. Collin, and Orestis Palermos. "Semantic Inferentialism as (a Form of) Active Externalism." *Phenomenology and the Cognitive Sciences* 16, no. 3 (2017): 387–402.

Chang, Ruth. "Hard Choices." *Journal of the American Philosophical Association* 3, no. 1 (2017): 1–21.

———. "Value Incomparability and Incommensurability." In *The Oxford Handbook of Value Theory*, edited by Iwao Hirose and Jonas Olson. Oxford University Press, 2015.

Charny, David. "Hypothetical Bargains: The Normative Structure of Contract Interpretation." *Michigan Law Review* 89, no. 7 (1991): 1815–79.

Chrisman, Matthew. *The Meaning of "Ought": Beyond Descriptivism and Expressivism in Metaethics*. Oxford Moral Theory. Oxford, New York: Oxford University Press, 2015.

———. *What Is This Thing Called Metaethics?* New York: Routledge, 2017.

Coleman, Jules L., and Ori Simchen. "Law." *Legal Theory* 9, no. 1 (2003): 1–41.

Coliva, Annalisa, ed. *Mind, Meaning, and Knowledge: Themes from the Philosophy of Crispin Wright*. Oxford University Press, 2012.

Coliva, Annalisa, and Duncan Pritchard. *Skepticism*. Routledge, 2022.

Copp, David. "Realist-Expressivism and Conventional Implicature." In *Oxford Studies in Metaethics*, edited by Russ Shafer-Landau. Oxford University Press, 2009.

Cross, Frank B. *The Theory and Practice of Statutory Interpretation*. Stanford: Stanford University Press, 2009.

D'Amato, Anthony. "Can Legislatures Constrain Judicial Interpretation of Statutes?" *Virginia Law Review* 75, no. 3 (1989): 561–603.

Dancy, Jonathan. *Ethics Without Principles*. Oxford: Oxford University Press, 2004.

Davidson, Donald. "A Coherence Theory of Truth and Knowledge." In *Truth and Interpretation. Perspectives on the Philosophy of Donald Davidson*, edited by Ernest LePore, 307–19. Blackwell, 1986.

Davies, David. "How Sceptical Is Kripke's 'Sceptical Solution'?" *Philosophia* 26, no. 1 (March 1, 1998): 119–40.

De Brabanter, Philippe, and Bruno Leclercq. "From Semantic Deference to Semantic Externalism to Metasemantic Disagreement." *Topoi* 42 (2023): 1039–50.

Dreier, James. "Meta-Ethics and The Problem of Creeping Minimalism." *Philosophical Perspectives* 18, no. 1 (2004): 23–44.

———. "The Real and the Quasi-Real: Problems of Distinction." *Canadian Journal of Philosophy* 48, no. 3–4 (2018): 532–47.

Dretske, Fred I. "Epistemic Operators." *Journal of Philosophy* 67, no. 24 (1970): 1007–23.

Duarte d'Almeida, Luís. "On the Legal Syllogism." In *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence*, edited by David Plunkett, Scott J. Shapiro, and Kevin Toh. Oxford: Oxford University Press, 2019.

———. "What Is It to Apply the Law?" *Law and Philosophy* 40, no. 4 (August 1, 2021): 361–86.

Dworkin, Ronald. "Law as Interpretation." *Critical Inquiry* 9, no. 1 (1982): 179–200.

———. "Law, Philosophy and Interpretation." *Archiv Für Rechts- Und Sozialphilosophie* 80, no. 4 (1994): 463–75.

———. *Law's Empire*. Cambridge, Mass.: Harvard University Press, 1986.

Dyrda, Adam. *Spory teoretyczne w prawoznawstwie*. Warszawa: Scholar, 2018.

Dyrda, Adam, and Tomasz Gizbert-Studnicki. "The Limits of Theoretical Disagreements in Jurisprudence." *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 35, no. 1 (2022): 117–42.

Endicott, Timothy A. O. *Vagueness in Law*. 1st edition. Oxford: Oxford University Press, 2000.

Eng, Svein. "Fusion of Descriptive and Normative Propositions. The Concepts of 'Descriptive Proposition' and 'Normative Proposition' as Concepts of Degree." *Ratio Juris* 13, no. 3 (2000): 236–60.

Engelhardt, Jeff. "Linguistic Labor and Its Division." *Philosophical Studies* 176, no. 7 (2019): 1855–71.

Enoch, David. *Taking Morality Seriously*. Oxford: Oxford University Press, 2011.

Eskridge Jr., William N. *Interpreting Law: A Primer on How to Read Statutes and the Constitution*. St. Paul: Foundation Press, 2016.

Eskridge, William N. "Dynamic Statutory Interpretation." *University of Pennsylvania Law Review* 135, no. 6 (1987): 1479–1555.

Eskridge, William N., and Philip P. Frickey. "Statutory Interpretation as Practical Reasoning." *Stanford Law Review* 42, no. 2 (1990): 321–84.

Etchemendy, Matthew X. "New Directions in Legal Expressivism." *Legal Theory* 22, no. 1 (2016): 1–21.

Evans, Gareth. *The Varieties of Reference*. Oxford, New York: Oxford University Press, 1982.

Fallon, Richard. "The Meaning of Legal 'Meaning' and Its Implications for Theories of Legal Interpretation." *University of Chicago Law Review* 82, no. 3 (2015).

Faulkner, Paul. "Communicating Your Point of View." *European Journal of Philosophy* 30, no. 2 (2022): 661–75.

Field, Hartry. "Deflationist Views of Meaning and Content." *Mind* 103, no. 411 (1994): 249–85.

Fine, Kit. "The Question of Realism." *Philosophers' Imprint* 1 (2001): 1–30.

Finlay, Stephen. *Confusion of Tongues: A Theory of Normative Language*. Oxford Moral Theory. Oxford, New York: Oxford University Press, 2014.

Finlay, Stephen, and David Plunkett. "Quasi-Expressivism about Statements of Law: A Hartian Theory." In *Oxford Studies in Philosophy of Law Volume 3*, edited by John Gardner, Leslie Green, and Brian Leiter. Oxford: Oxford University Press, 2018.

Fish, Stanley. "Fish v. Fiss." *Stanford Law Review* 36, no. 6 (1984): 1325–47.

———. "With the Compliments of the Author: Reflections on Austin and Derrida." *Critical Inquiry* 8, no. 4 (1982): 693–721.

Fiss, Owen M. "Objectivity and Interpretation." *Stanford Law Review* 34, no. 4 (1982): 739–63.

Fletcher, Guy, and Michael Ridge, eds. *Having It Both Ways: Hybrid Theories and Modern Metaethics*. Oxford University Press, 2014.

Frank, Jerome. *Law and the Modern Mind*. New Brunswick: Routledge, 2009.

Geach, Peter. "Assertion." *Philosophical Review* 74, no. 4 (1965): 449–65.

Gibbard, Allan. "Reply to Blackburn, Carson, Hill, and Railton." *Philosophy and Phenomenological Research* 52, no. 4 (1992): 969–80.

———. *Thinking How to Live*. Cambridge (Mass.): Harvard University Press, 2003.

———. *Wise Choices, Apt Feelings: A Theory of Normative Judgment*. Cambridge, Mass.: Harvard University Press, 1990.

Ginsborg, Hannah. "Going on as One Ought: Kripke and Wittgenstein on the Normativity of Meaning." *Mind & Language* 37, no. 5 (2022): 876–92.

———. "Inside and Outside Language: Stroud's Nonreductionism About Meaning." In *The Possibility of Philosophical Understanding: Essays for Barry Stroud*, edited by Jason Bridges, Niko Kolodny, and Wai-Hung Wong. Oxford University Press, 2011.

———. "Meaning, Understanding and Normativity." *Proceedings of the Aristotelian Society, Supplementary Volumes* 86 (2012): 127–46.

———. "Primitive Normativity and Skepticism About Rules." *Journal of Philosophy* 108, no. 5 (2011): 227–54.

———. "Wittgenstein on Going On." *Canadian Journal of Philosophy* 50, no. 1 (2020): 1–17.

Gizbert-Studnicki, Tomasz. *Dyrektywy wykładni drugiego stopnia*. Szczecin : Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, 2010.

Goldberg, Sanford. "Experts, Semantic and Epìstemìc." *Noûs* 43, no. 4 (2009): 581–98.

Golub, Camil. "Representation, Deflationism, and the Question of Realism." *Ergo an Open Access Journal of Philosophy*, no. 7 (2021).

Grabowski, Andrzej. *Juristic Concept of the Validity of Statutory Law: A Critique of Contemporary Legal Nonpositivism*. Springer, 2013.

Gray, John Chipman. *The Nature and Sources of the Law*. Macmillan, 1921.

Greenawalt, Kent. *Law and Objectivity*. Oxford, New York: Oxford University Press, 1992.

Gregory, Alex. "Changing Direction on Direction of Fit." *Ethical Theory and Moral Practice* 15, no. 5 (2012): 603–14.

Grice, Paul. *Studies in the Way of Words*. Cambridge, Mass.: Harvard University Press, 1991.

Guardo, Andrea. "Meaning Relativism and Subjective Idealism." *Synthese* 197, no. 9 (2020): 4047–64.

Hale, Bob. "Can There Be a Logic of Attitudes?" In *Reality, Representation, and Projection*, edited by John Haldane and Crispin Wright. Oxford University Press, 1993.

Hart, H. L. A. "Positivism and the Separation of Law and Morals." *Harvard Law Review* 71, no. 4 (1958): 593–629.

———. *The Concept of Law*. Oxford: Oxford University Press, 1994.

Hart, Henry M., and Albert Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Edited by William Eskridge Jr and Philip Frickey. 1st edition. Westbury, New York: Foundation Press, 1995.

Hattiangadi, Anandi. *Oughts and Thoughts: Rule-Following and the Normativity of Content*. 1st edition. Oxford: Clarendon Press, 2007.

Hay, Ryan. "Attitudinal Requirements for Moral Thought and Language: Noncognitive Type-Generality." In *Having It Both Ways: Hybrid Theories and Modern Metaethics*, edited by Guy Fletcher and Michael Ridge. Oxford University Press, 2014.

Holmes, Oliver Wendell Jr. "The Path of the Law." *Harvard Law Review* 10, no. 8 (1897): 457–78.

Hopkins, Robert. "What Is Wrong With Moral Testimony?" *Philosophy and Phenomenological Research* 74, no. 3 (2007): 611–34.

Horwich, Paul. *Truth*. Oxford, 1998.

Humberstone, I. L. "Two Types of Circularity." *Philosophy and Phenomenological Research* 57, no. 2 (1997): 249–80.

Jackson, Frank. *Language, Names, and Information*. Wiley-Blackwell. Chichester, 2010.

Jackson, Frank, and Philip Pettit. "A Problem for Expressivism." *Analysis* 58, no. 4 (1998): 239–51.

Johnson, Drew. "A Hybrid Theory of Ethical Thought and Discourse." PhD Thesis, University of Connecticut, 2022.

Kallestrup, Jesper. *Semantic Externalism*. Abingdon, Oxon ; New York: Routledge, 2011.

Kappel, Klemens. "Expressivism about Knowledge and the Value of Knowledge." *Acta Analytica* 25, no. 2 (June 1, 2010): 175–94.

Kelsen, Hans. *General Theory of Law and State*. Cambridge, MA: Harvard University Press, 1949.

———. *Pure Theory of Law*. Berkeley: University of California Press, 1967.

Kiesselbach, Matthias. "Constructing Commitment: Brandom's Pragmatist Take on Rule-Following." *Philosophical Investigations* 35, no. 2 (2012): 101–26.

Köhler, Sebastian. "Expressivism, Belief, and All That." *The Journal of Philosophy* 114, no. 4 (2017): 189–207.

———. "Expressivism, but at a Whole Other Level." *Erkenntnis*, June 18, 2023.

Kramer, Matthew. *Objectivity and the Rule of Law*. Cambridge Introductions to Philosophy and Law. Cambridge: Cambridge University Press, 2007.

Kramer, Matthew H. "Hart and the Metaphysics and Semantics of Legal Normativity." *Ratio Juris* 31, no. 4 (2018): 396–420.

Kripke, Saul A. *Wittgenstein on Rules and Private Language: An Elementary Exposition*. Cambridge, Mass, 1982.

Kusch, Martin. *A Sceptical Guide to Meaning and Rules: Defending Kripke's Wittgenstein*. Montreal, 2006.

Leiter, Brian. "Critical Remarks on Shapiro's Legality and the 'Grounding Turn' in Recent Jurisprudence," 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3700513.

———. "Explaining Theoretical Disagreement." *University of Chicago Law Review*, no. 3 (2009).

———. "Legal Indeterminacy." *Legal Theory* 1, no. 4 (1995): 481–92.

———. "Legal Realisms, Old and New." *Valparaiso University Law Review* 47, no. 4 (2013): 949–63.

Llewellyn, Karl. "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed." *Vanderbilt Law Review* 3, no. 3 (1950): 395.

Llewellyn, Karl N. *The Theory of Rules*. Edited by Frederick Schauer. Chicago: University of Chicago Press, 2011.

Lynch, Michael P. *Truth as One and Many*. Oxford University Press, 2009.

MacCormick, Neil. *Legal Reasoning and Legal Theory*. Oxford, 1978.

———. *Rhetoric and the Rule of Law: A Theory of Legal Reasoning*. Oxford: Oxford University Press, 2005.

MacFarlane, John. "Pragmatism and Inferentialism." In *Reading Brandom: On Making It Explicit*, edited by Bernhard Weiss and Jeremy Wanderer, 81–95. Routledge, 2010.

Manning, John F. "What Divides Textualists from Purposivists?" *Columbia Law Review* 106, no. 1 (2006): 70–111.

Marmor, Andrei. *Interpretation and Legal Theory*. 2nd edition. Oxford: Hart Publishing, 2005.

———. *The Language of Law*. Oxford, New York: Oxford University Press, 2014.

Mazzarese, Tecla. "Norm-Proposition: Epistemic and Semantic Queries." *Rechtstheorie* 22 (1991): 39–70.

McBride, Mark. "Detached Statements." *Crítica: Revista Hispanoamericana de Filosofía* 49, no. 147 (2017): 75–90.

McDowell, John. "Avoiding the Myth of the Given." In *Having the World in View. Essays on Kant, Hegel, and Sellars*. Cambridge, Mass: Harvard University Press, 2009.

———. *Mind and World*. Cambridge, MA: Harvard University Press, 1996.

———. *Mind, Value and Reality*. Cambridge, Mass, 1998.

Miller, Alexander. "Kripke's Wittgenstein, Factualism and Meaning." In *The Later Wittgenstein on Language*, edited by Daniel Whiting. Basingstoke: Palgrave Macmillan, 2010.

———. "Rule Following, Error Theory and Eliminativism." *International Journal of Philosophical Studies* 23, no. 3 (2015): 323–36.

———. "Rule-Following Skepticism." In *The Routledge Companion to Epistemology*. Routledge, 2011.

———. "What Is the Sceptical Solution?" *Journal for the History of Analytical Philosophy* 8, no. 2 (2020).

Miller, Alexander, and Crispin Wright. *Rule-Following and Meaning*. First Edition. Montreal: McGill-Queen's University Press, 2002.

Mirza, Qudsia. "Islamic Feminism and the Exemplary Past." In *Feminist Perspectives on Law and Theory*, edited by Janice Richardson and Ralph Sandland, 187—208. Londyn: Routledge, 2000.

Molina, Sebastián Reyes. "Judicial Discretion as a Result of Systemic Indeterminacy." *Canadian Journal of Law & Jurisprudence* 33, no. 2 (2020): 369–95.

———. "On Legal Interpretation and Second-Order Proof Rules." *Analisi E Diritto*, no. 1 (2018): 165–84.

O'Connor, Gary E. "Restatement (First) of Statutory Interpretation." *New York University Journal of Legislation and Public Policy*, no. 7 (2003): 333–64.

Parfit, Derek. "Can We Avoid the Repugnant Conclusion?" *Theoria* 82, no. 2 (2016): 110–27.

———. *On What Matters: Volume II*. Oxford: Oxford University Press, 2011.

Patterson, Dennis. "Normativity and Objectivity in Law." *William & Mary Law Review* 43, no. 1 (2001): 325–63.

Perry, Stephen. "Where Have All the Powers Gone? Hartian Rules of Recognition, Noncognitivism, and the Constitutional and Jurisprudential Foundations of Law." In *The*

Rule of Recognition and the U.S. Constitution, edited by Matthew Adler and Kenneth Einar Himma. Oxford: Oxford University Press, 2009.

Poggi, Francesca. "Law and Conversational Implicatures." *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 24, no. 1 (2011): 21–40.

Pritchard, Duncan. *Epistemological Disjunctivism*. Oxford, New York: Oxford University Press, 2012.

Putnam, Hilary. "The Meaning of 'Meaning.'" *Minnesota Studies in the Philosophy of Science* 7 (1975): 131–93.

Raz, Joseph. *Between Authority and Interpretation: On the Theory of Law and Practical Reason*. Oxford, New York: Oxford University Press, 2009.

———. "Legal Validity." *Archiv Für Rechts- Und Sozialphilosophie* 63, no. 3 (1977): 339–53.

———. *Practical Reason and Norms*. Oxford: Oxford University Press, 1990.

———. "The Law's Own Virtue." *Oxford Journal of Legal Studies* 39, no. 1 (2019): 1–15.

———. "Two Views of the Nature of the Theory of Law: A Partial Comparison." *Legal Theory* 4, no. 3 (1998): 249–82.

Recanati, François. "Can We Believe What We Do Not Understand?" *Mind & Language* 12, no. 1 (1997): 84–100.

———. "Modes of Presentation: Perceptual vs Deferential." In *Building on Frege: New Essays about Sense, Content and Concepts*, edited by Albert Newen, Ulrich Nortmann, and Ranier Stuhlmann-Laeisz. Stanford: CSLI, 2001.

Ridge, Michael. *Impassioned Belief*. Oxford: Oxford University Press, 2014.

Rizzo, Mario J., and Frank S. Arnold. "An Economic Framework for Statutory Interpretation." *Law and Contemporary Problems* 50, no. 4 (1987): 165–80.

Rosenkranz, Nicholas Quinn. "Federal Rules of Statutory Interpretation." *Harvard Law Review* 115, no. 8 (2002): 2085–2157.

Ross, Alf. *On Law and Justice*. Oxford University Press, 2019.

Sawyer, Sarah. "VI—The Importance of Concepts." *Proceedings of the Aristotelian Society* 118, no. 2 (2018): 127–47.

Scalia, Antonin. "Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws." In *A Matter of Interpretation: Federal Courts and the Law*, by Antonin Scalia, 3–48. edited by Amy Gutmann. The University Center for Human Values Series. Princeton: Princeton University Press, 1997.

Scalia, Antonin, and Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts*. St. Paul: West Thomson, 2012.

Schauer, Frederick F. *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life*. Oxford: Oxford University Press, 2002.

Schlesinger, George N. *Metaphysics: Methods and Problems*. Illustrated edition. Oxford Oxfordshire: Basil Blackwell, 1983.

Schmidt, Eva. *Modest Nonconceptualism: Epistemology, Phenomenology, and Content*. Cham: Springer International Publishing, 2015.

Schroeder, Mark. *Being For: Evaluating the Semantic Program of Expressivism*. Oxford University Press, 2008.

———. "What Is the Frege-Geach Problem?" *Philosophy Compass* 3, no. 4 (2008): 703–20.

Settegast, Sascha. "Fineness of Grain and the Hylomorphism of Experience." *Synthese* 201, no. 6 (2023): 223.

Shapiro, Scott. "What Is the Internal Point of View?" *Fordham Law Review* 75, no. 3 (January 1, 2006): 1157.

Shapiro, Scott J. *Legality*. Cambridge, MA: Belknap Press, 2013.

Simpson, Matthew. "Creeping Minimalism and Subject Matter." *Canadian Journal of Philosophy* 50, no. 6 (August 2020): 750–66.

Skoczeń, Izabela. *Implicatures within Legal Language*. Cham: Springer, 2019.

Sliwa, Paulina. "In Defense of Moral Testimony." *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 158, no. 2 (2012): 175–95.

Smith, Michael. "The Humean Theory of Motivation." *Mind* 96, no. 381 (1987): 36–61.

Smolak, Marek. *Wykładnia celowościowa z perspektywy pragmatycznej*. Warszawa: Wolters Kluwer, 2012.

Solum, Lawrence B. "The Interpretation-Construction Distinction." *Constitutional Commentary* 27, no. 1 (2010): 95–118.

Spaak, Torben. "Legal Positivism, Anti-Realism, and the Interpretation of Statutes." In *Logic, Law, Morality: Thirteeen Essays in Practical Philosophy in Honour of Lennart Åqvist*, edited by Krister Segerberg and Rysiek Sliwinski, 127–45. Uppsala: Uppsala University, 2003.

———. "Legal Realism and Legal Reasoning: A Quasi-Realist Approach." In *Vienna Lectures on Legal Philosophy*, edited by Christoph Bezemik, Michael Potacs, and Alexander Somek, 113–39. Hart Publishing, 2020.

Stelmach, Jerzy. *Methods of Legal Reasoning*. 2006th edition. Dordrecht: Springer, 2006.

Sterelny, Kim. "Michael Devitt, Cultural Evolution and the Division of Linguistic Labour." In *Language and Reality from a Naturalistic Perspective. Themes from Michael Devitt*, edited by Andrea Bianchi. Chaim: Springer Verlag, 2020.

Stone, Martin. "Focusing the Law: What Legal Interpretation Is Not." In *Law and Interpretation: Essays in Legal Philosophy*, edited by Andrei Marmor, 31-96. Oxford: Clarendon Press, 1995.

Šumonja, Miloš. "Kripke's Wittgenstein and Semantic Factualism." *Journal for the History of Analytical Philosophy* 9, no. 3 (2021).

Sunstein, Cass. "There Is Nothing That Interpretation Just Is." *Constitutional Commentary* 30 (2015): 193–212.

Sunstein, Cass R. "Interpreting Statutes in the Regulatory State." *Harvard Law Review*, no. 2 (1989): 405–508.

Talmage, Catherine J. L. "Is There a Division of Linguistic Labour?" *Philosophia* 26, no. 3 (1998): 421–34.

Thornton, Tim. *John McDowell*. Montreal: McGill-Queen's University Press, 2004.

Toh, Kevin. "Hart's Expressivism and His Benthamite Project." *Legal Theory* 11, no. 2 (2005): 75–123.

———. "Jurisprudential Theories and First-Order Legal Judgments." *Philosophy Compass* 8, no. 5 (2013): 457–71.

Toppinen, Teemu. "Expressivism and the Normativity of Attitudes." *Pacific Philosophical Quarterly* 96, no. 2 (2015): 233–55.

———. "Hybrid Accounts of Ethical Thought and Talk." In *The Routledge Handbook of Metaethics*. Routledge, 2017.

Travis, Charles. "The Silence of the Senses." *Mind* 113, no. 449 (2004): 57–94.

Tresan, Jon. "De Dicto Internalist Cognitivism." *Noûs* 40, no. 1 (2006): 143–65.

Vermeule, Adrian. "Interpretive Choice." *NYU Law Review*, no. 1 (2000): 74–149.

Williams, Michael. "How Pragmatists Can Be Local Expressivists." In *Expressivism, Pragmatism and Representationalism*, edited by Huw Price, Michael Williams, Paul Horwich, Robert Brandom, and Simon Blackburn, 128–44. Cambridge: Cambridge University Press, 2013.

———. "Science and Sensibility: Mcdowell and Sellars on Perceptual Experience." In *John McDowell*, edited by Jakob Lindgaard, 152–75. Blackwell, 2008.

Wilson, George M. "Kripke on Wittgenstein and Normativity." *Midwest Studies In Philosophy* 19, no. 1 (1994): 366–90.

———. "Semantic Realism and Kripke's Wittgenstein." *Philosophy and Phenomenological Research* 58, no. 1 (1998): 99–122.

———. "The Skeptical Solution." In *The Legitimacy of Truth*, edited by Riccardo Dottori. Münster: Lit Verlag, 2003.

Wright, Crispin. "Kripke's Account of the Argument Against Private Language." *Journal of Philosophy* 81, no. 12 (1984): 759–78.

———. *Rails to Infinity: Essays on Themes from Wittgenstein's Philosophical Investigations*. Cambridge, Mass: Harvard University Press, 2001.

———. "Rule-Following Without Reasons: Wittgenstein's Quietism and the Constitutive Question." *Ratio* 20, no. 4 (2007): 481–502.

———. *Wittgenstein on the Foundations of Mathematics*. Cambridge, Mass.: Harvard University Press, 1980.

Wróblewski, Jerzy. "Justification of Legal Decisions." *Revue Internationale de Philosophie* 33, no. 127/128 (1979): 277–93.

———. "Legal Decision and Its Justification." *Logique et Analyse* 14, no. 53/54 (1971): 409–19.

———. "Obowiązywanie Systemowe i Granice Dogmatycznego Podejścia Do Systemu Prawa." *Studia Prawno-Ekonomiczne* 36 (1986): 23–36.

———. *Zagadnienia teorii wykładni prawa ludowego*. Warszawa: Wydawnictwo Prawnicze, 1959.

Zalabardo, José L. "Wittgenstein on Accord." *Pacific Philosophical Quarterly* 84, no. 3 (2003): 311–29.

Zieliński, Maciej. *Interpretacja Jako Proces Dekodowania Tekstu Prawnego*. Poznań: Wydawnictwo Naukowe UAM, 1972.

———. *Wykładnia prawa. Zasady - reguły - wskazówki*. Wolters Kluwer, 2008.