External Reviewer's Report

Having the Law Both Ways: A Defense of a Quasi-Cognitivist Picture of Internal Legal Statements

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I am pleased to recommend the thesis of Mr. Michał Wieczorkowski for admission to the final examination for the degree of the Ph.D. in Law, at the Adam Mickiewicz University, Poznan. The thesis of Mr. Wieczorkowski has proven the level of maturity that pertains to a doctoral researcher. He is capable of identifying research questions that are original and have the capacity to set the agenda for future research in his field. He engages confidently with literature in law and the core areas of philosophy and discusses it critically. Finally, he can present confidently his own arguments and ideas and articulate them at a very high level of clarity and sophistication.

Below I offer some additional feedback for my assessment:

Research Agenda

The thesis develops a quasi-cognitivist account of internal legal statements which aims to reconcile their cognitive with their volitional/motivational dimension. It relies on the Humean intuitions which inform much of contemporary work in metaethics, to explain the practical significance of legal discourse but without giving up the referential role and truth-aptness of legal statements which are needed for truth and objectivity. The novel and controversial proposal developed is that quasi-cognitivism assigns the account of the practical features of internal legal statements to the *pragmatics* of legal language, not its *semantics*. In this way it aligns itself with (Humean) expressivism and the view that internal legal statements are expressive of noncognitive attitudes, but unlike expressivism, holds this to be an entirely pragmatic feature of these statements.

The thesis unfolds over 7 substantial chapters, spanning 200 pages of densely argued text. It opens with a discussion of the phenomenology of legal statements which generates a set of explanatory demands that are subsequently used to develop in detail the quasi-cognitivist account (chs 2). The remaining of the thesis (CHs. 3-7) mostly deals with objections to quasi-cognitivism, some of which touch upon highly complex, foundational issues for which the author mobilises rigorous and detailed philosophical argument, underpinned by extensive knowledge of the literature in core philosophical areas (language, metaethics, epistemology). In fact, I have rarely experienced in a Ph.D. thesis this level of command of the literature across not one but two disciplines (law & legal theory, and philosophy) which, moreover, is employed with exemplary rigor and sophistication, on a par with some of the best work done in the tradition of *Law and Philosophy*, the mainstream approach of contemporary analytical authors.

Research design, Originality and Significance

The project is ambitious but well-defined. The focus on internal legal statements makes it possible to engage the

key positions in analytical jurisprudence (both classical and contemporary) in a well-defined manner but also to critique and expand them in the light of cutting-edge scholarship in metaethics, the philosophy of language and epistemology. The interdisciplinary dimension of the thesis contributes to distinctive and original positions in the field of legal theory, both during the interpretation of key jurisprudential positions and the mapping of their in-between relations, but also in terms of developing the contours of a highly original account of quasi-cognitivism in legal theory. The upshot is a refreshing and significant contribution to analytical legal philosophy, but also a striking demonstration of the relevance of metaethical debates for an applied domain such as law.

Language and writing style

The text reads effortlessly, and the writing style is appropriately analytical; the manuscript has been carefully edited and only very few typos and/or solecisms were detected.

Critical Remarks

Below I list in a mixed order more and less important suggestions, some of which I will look to raise during the viva-voce examination:

1. Although the Humean puzzle sets the dialectical point against which quasi-cognitivism is developed, it seems to me that the thesis is not so much concerned about the difference in 'direction of fit' between desires and beliefs, but about the danger of subjectivity that is lurking in Humean explanations of normativity. If that's true, I am somewhat unclear about the role left to Humean motivation after the cognitivist dimension of legal statements has been established: either the Humean, volitional layer will come too late, because the normatively significant pattern of behavior is depicted by the cognitivist semantics of legal statements (see N Stavropoulos's critique of N MacCormick's hermeneutical point of view in his *Objectivity in Law,* OUP 1996); or if the Humean layer continues to operate as a separate ground of the normative content of the rule, then the threat of subjectivism survives and one would need some other, additional strategy to combat it; e.g. see M Smith's effort to improve on B Williams idea of internal reasons, by exploring facts about idealized counterfactual desires (see M. Smith's essay 'Internal Reasons').
2. I very much liked how the author tries to challenge contemporary accounts, such as that of Plunkett and Finlay (p 27-28), especially by referring to classical debates in legal reasoning which often English-speaking authors tend to neglect (Wroblewski, Alexy, Aarnio, Peczenik). However, on this particular occasion I wasn't sure whether Plunkett & Finley actually deny that interpretation plays a role in internal statements. My conjecture is that in their view the Rule of Recognition (RoR) is the *very* interpretive model that 'maps' the sources of the law on to the content of the law (legal norms). This is how Greenberg has presented the issue in How Facts Make Law (part I and II) since 2004 and to my knowledge his view still is mainstream (see Chilovi and Pavlakos, Law-Determination as Grounding, *Legal Theory* , 2019; and their The Explanatory Demands of Grounding in Law, *Pacific Philosophical Quarterly* (2022).
3. P 45n. It would be intriguing to compare the account of legal normativity based on the idea of conversational implicatures to the pragmatic claims in the discourse theory of law (Alexy) which are

grounded in performative contradictions.

4. CHs. 5-7. I was not convinced that the problems discussed in these three chapters can be as clearly distinguished as the thesis suggests. The regress of interpretations, the lack of a method of interpretation (underdetermination argument), and the problem of coherence seem to me to be closely related. All three are linked to role that rules and methods of interpretation play in trying to bridge something like an explanatory gap that arises between legal norms and their more fundamental constituents (sources). At the surface level we find more particular interpretive rules (e.g. in constitutional law about statutory interpretation etc), whereas at the most fundamental level such interpretative standards take the shape of general jurisprudential theories (Hartian positivism, Interpretivism etc.). I am inclined to believe that we can unify the phenomena using the idea of the 'gap', which then manifests itself at different levels of abstraction (interpretive rules/less abstract and on the surface; jurisprudential theories/more abstract and foundational). See for the levels of rules and theories of interpretation: M Greenberg, *The Moral Impact Theory, the Dependence View and Natural Law* and his entry on 'Interpretation' in the *Stanford Encyclopaedia of Philosophy*. For the gap see Chilovi and Pavlakos, The Explanatory Demands of Grounding in Law, *Pacific Philosophical Quarterly* (2022).
5. A structural comment: chapter 5 although formidable and very informative is at the same time too long. Should the candidate try to develop the thesis into a book, which I strongly recommend, chapter 5 should be shortened. Instead, chapter 2 should be expanded and should also be linked with chapters 5-7 better, in the sense of bringing the conclusions and arguments of CHs. 5-7 to bear directly on quasi-legal cognitivism. In this way the lessons drawn from the later chapters will be re-connected to quasi-cognitivism and help fleshing it out further.

Recommendation: I confirm that the doctoral thesis by Michał Wieczorkowski titled 'Having the Law Both Ways: A Defense of a Quasi-Cognitivist Picture of Internal Legal Statements' demonstrates the candidate's general theoretical knowledge in the field of legal sciences, their ability to conduct independent research, and presents an original solution to a scientific problem. It therefore meets the requirements set for doctoral theses as specified in the Act of July 20, 2018, The Law on Higher Education and Science. Based on this, I recommend that the candidate be admitted to the subsequent stages of the doctoral process.

Further I recommend that the thesis be awarded with distinction.

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