

*The Pragmatics of Internal Legal Statements*

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Legal positivism is the view that the existence and content of the law ultimately depend solely on psychological facts — in particular, official acceptance of an ultimate standard of legal validity (a rule of recognition). So understood, positivism is a metaphysical thesis. Some legal positivists (such as the American legal realists) also adopt a semantic thesis according to which legal statements describe these psychological facts about official acceptance. But most positivists admit that legal statements, particularly those using normative language, cannot be understood as describing such psychological facts. Discussion of this problem has largely been undertaken in the context of exposition of H.L.A. Hart's idea of an internal legal statement (ILS).

One solution is to adopt a semantic account of ILSs as expressing the speaker's commitment to conformity with the standard in the rule of recognition. But expressivism cannot explain why an anarchist law professor can make an ILS without thereby taking himself to have any reason for conformity. Attempts to account for such "detached" ILSs as made hypothetically, from the perspective of a committed participant, have been unsuccessful.

Pragmatic accounts of ILSs are more promising, as well as probably being more in keeping with Hart's own views. Under one such account, the semantic character of an ILS is fully descriptive. An ILS describes a factual relationship to the standard in the rule of recognition. The expressive character of a legal statement is pragmatic, not semantic. In making a legal statement the speaker pragmatically expresses his acceptance of the standard in the rule of recognition. Committed and a "detached" ILSs have the same semantic content.

Pragmatic accounts of ILSs have been too narrow in their focus, however. Their goal has been explaining the relationship between ILSs and the speaker's disposition to conform to legal practices. This ignores the fact that Hart and some other positivists take it to be crucial to ILSs that the psychological facts about general official acceptance of the rule of recognition are pragmatically presupposed. To the extent that such psychological facts are described, one is not making an ILS.

There clearly is another role to be played by the pragmatics of ILSs, one tied to problems in the philosophy of the social sciences. The goal is explaining why people in a community — even those not committed to conformity with legal practices — are inclined to treat legal norms as not reducible to psychological facts about official legal practices. Hart seeks to do this through the presuppositions in an ILS, as an alternative to adopting a problematic Durkheimian social ontology. Systematic pragmatic presuppositions can explain how puzzling ontological commitments arise.