Routledge
Taylor & Francis Group

Jurisprudence
An International Journal of Legal and Political Thought

ISSN: 2040-3313 (Print) 2040-3321 (Online) Journal homepage: www.tandfonline.com/journals/rjpn20

# Too many rules

Nicolaos Stavropoulos

**To cite this article:** Nicolaos Stavropoulos (2024) Too many rules, Jurisprudence, 15:2, 154-163, DOI: 10.1080/20403313.2024.2323348

**To link to this article:** https://doi.org/10.1080/20403313.2024.2323348



Published online: 01 Jul 2024.

JURISPRUDENCE
2024, VOL. 15, NO. 2, 154–163
https://doi.org/10.1080/20403313.2024.2323348

Routledge
Taylor & Francis Group



# Too many rules

Nicolaos Stavropoulos

Faculty of Law, University of Oxford, Oxford, UK

**ABSTRACT**

The main thesis of Scott Hershovitz's recent book is in its title: Law is a Moral Practice. By this, Hershovitz means that legal practices aim to adjust people's moral relationships (and generally succeed in doing so). He further thinks that lawyers' arguments in court concern the precise moral effect of legal practices on the moral relationships of the parties. They are, in other words, moral arguments that aim to identify the parties' moral relationships, which implies that the rights and duties contested in court are moral rights and duties. To defend the thesis, Hershovitz focuses on cases or phenomena that seem best to fit the competing, nonmoral view, and show that, in spite of initial appearances, these too can be better accounted for by the moral practice view. This is a risky strategy for it does not allow for presenting the view at its strongest, and may encourage confusion over what the final position is. Indeed, it seems to me that Hershovitz ends up leaving an opening, an exit for his opponent that I think survives Hershovitz's arguments in favour of the moral practice view, and indicates that, in the end, the opponent has the better, more nuanced view.

**KEYWORDS**

Nature of law; legal and moral obligations; norms; rules; changing moral relationships

This is a remarkable book. Its main thesis is in its title: law is a moral practice. By this Hershovitz means that legal practices aim to adjust people's moral relationships (and generally succeed in doing so). He further thinks that lawyers' arguments in court concern the precise moral effect of legal practices on the moral relationships of the parties. They are, in other words, moral arguments that aim to identify the parties' moral relationships, which implies that the rights and duties contested in court are moral rights and duties. As Hershovitz points out, the ancestry of the thesis lies in at least some parts of Ronald Dworkin's seminal work as well as in more recent work by some other philosophers that Hershovitz also mentions (Hershovitz generously credits me alongside Mark Greenberg, Steven Schaus, and Jeremy Waldron).[1] However, Hershovitz's view is very much his own, and he has done more than any of these authors to explain it clearly and compellingly. The book lucidly articulates its main thesis about law, by showing how our moral relationships are contingent on social facts; how the

**CONTACT** Nicolaos Stavropoulos nicos.stavropoulos@law.ox.ac.uk

[1] *Law is a Moral Practice* (hereinafter *LMP*) 11. Numbers in parentheses that appear in the main text refer to page numbers in *LMP*.

social facts of legal practice, in particular, can affect our moral relations; and how legal institutions can harness and exploit that constitutive dependence of the moral on the social in order to shape our moral relationships in certain valuable ways – and often succeed beyond legal office holders' dreams.

Each of these claims faces strong opposition. First, though no longer a popular view, some may still be attracted to the idea that the law is in the business of power, not right. Legal practices are therefore not tools for creating or modifying genuine moral relations (if such things exist); they are at best tools for asserting and reinforcing relations of power and that's what lawyers' arguments in court are about. One reason that the view has few friends is that the law seems not to be an exercise of naked power but instead to set conditions of legitimacy or accountability for the exercise of power. As Hart suggested, though both law and a gunman can issue orders that compel action, it's only in the case of law that the orders are backed by authority rather than raw power such that the orders give rise to an obligation to comply.[2]

Second, while one may concede this point and accept that legal practices aim to change the normative situation, one may deny that the practices aim to change the *moral* situation. There are two well known ways of holding this combination of views. One holds that there are several separate, independent domains of normativity, with law and morality being two of them. This means that legal practices aim to adjust legal rights and obligations, and it's a further question whether the rights and obligations so adjusted may match moral rights and obligations. On the version of the view that we have from Hart, the normativity of all normative domains is a social construct all the way down. Its foundation is in all cases a social practice of treating certain standards as binding on a certain social group. While this allows for variation in the way in which the relevant standards are set or modified, in all cases the obligation to conform to the standard is equally genuine or robust.[3]

On a second version, which may be presented as Hartian in spirit, the normativity of the legal and other 'artificial' domains is a social construct, while robust, moral normativity is not fundamentally dependent on social practices. This version implies that legal rights and obligations are normative in some pale or thin sense, lacking the inherent force of moral rights and obligations.[4] This further implies that the rights and duties contested in court are merely legal, and it's a further question whether such rights are also binding, on other grounds, in the robust, moral sense.

A further aspect of both versions of the view in discussion is that the way in which the social contingencies of legal practice give rise to rights and obligations is primarily through the communication of standards.[5] This implies that the primary object of contest in court is the content of the relevant communication. We aim to identify the standards expressed by whoever is recognised in the social practice at the foundation of law as having the power to convey binding standards.

[2]HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 19–20.

[3]I discuss in detail the way in which, on this view, different social practices may give rise to separate but equally robust obligations in 'The Practice Theory' in L Green and B Leiter (eds), *Oxford Studies in Philosophy of Law: Volume 5* (OUP, forthcoming).

[4]See 'The Practice Theory' (n 3) for discussion of this alternative.

[5]See 'The Practice Theory' (n 3) and my 'Words and Obligations' in L d'Almeida, J Edwards and A Dolcetti (eds), *Reading HLA Hart's 'The Concept of Law'* (Hart 2013) 139–44 for discussion.

Third, one may reject the idea that normativity can be explained as the mere construct of what people do and think. A well known version of this view, developed by Raz, agrees with Hershovitz that legal practices aim to change the moral situation. We get this result in two steps. First, legal practices, in their nature, aim to make a normative difference, indeed a practical one: a difference in the reasons for action that apply to agents – and that is not ultimately a matter of what reasons agents accept. Second, given the stakes involved – given that the law's aim is not merely to make some or other practical difference but to interfere in important ways in people's lives (184) – the reasons in question could only be moral, themselves backed by moral reasons why law should have the power legitimately to interfere in those ways. However, on this view, there is a specific way in which legal practices aim to change moral reasons: they aim to do so by declaration. This means that they aim to place agents under moral obligations by telling agents what they have reason to do, obligations that are meant to obtain because the relevant legal institution said so. Law claims to have moral authority, which for Raz means the power to place others under duties by one's say so.[6] The result is that legal obligations are the moral obligations that exist on the hypothesis that the law has the authority that it claims, which are the moral obligations that the law says you have. It follows that lawyers' arguments in court concern, not the moral rights and duties of the parties, but the moral rights and duties that exist from the law's point of view, which is to say the rights and duties that law's institutions declared to exist. The bottom line is pretty much the same as Hart's: in court, lawyers fight about what legal institutions said or meant, not what the parties truly owe each other.

Hershovitz is well aware of the complexities of the opposition that he faces, though he explains them somewhat differently. He admits that the views that belong in the opposition have some appeal. He says that the phenomenon of morally pernicious laws we are all familiar with, such as the laws in antebellum America, may seem to be smoothly accounted for by a view that legal rights are not ordinary moral rights but instead belong in a separate normative system that includes rights and duties that we create through legal practices, a system that may or may not match morality (10). He says he sometimes feels 'tugged toward' such an account (10), though his considered view is that the account is mistaken. Another reason why the alternative may seem attractive compared to the moral practice view is the misconception that morality is not dependent on what we do; it requires what it does, and that is not contingent on any practices or the actions we may take within them. That is a mistake, says Hershovitz, because even though we do not have complete control over morality, there is much we can do to shape its demands (12).

Hershovitz's strategy however is not to attack alternatives to his moral practice view directly (though he does address some of these alternatives in notes and in an appendix entitled Q&A, pages 179–196). Instead of showing that the alternatives fail, he wants to make a positive case for the moral practice view, demonstrate its appeal, and show how, in spite of initial appearances, the view can actually account smoothly for pernicious laws, for the fact that legal responsibilities are contingent on and vary with legal practice, or for other aspects of legal practice that have encouraged philosophers to set aside the moral

[6]The reasons that might confer upon law this awesome power could only be powerful reasons of political morality. If they exist – if the law has the moral authority that it claims – these reasons in turn make it the case that the law's say-so is a moral reason for the agents to comply, in other words a reason to conform because the law said so.

alternative as a nonstarter. Instead of relitigating old disputes, he rather wants to develop what he rightly describes as the underexplored and widely misunderstood moral practice alternative and show its merits (11).

This is an admirable strategy though how well it may work depends on how exactly it is pursued. Let's say, roughly, that to develop his positive case for the moral alternative Hershovitz might focus on cases or phenomena which seem most amenable to the explanation offered by the moral practice view, which would allow him to display the view at its strongest. At the other end of the spectrum, he might focus on cases or phenomena that seem best to fit the competing, nonmoral view, and show that, in spite of initial appearances, these too can be better accounted for by the moral practice view. The upside of the latter approach is obviously that it would strengthen one's preferred view if one could show that it could deal with cases on their face most favourable to the opposing view. Hershovitz goes all the way for the latter, more challenging approach. However, this is a risky strategy for it does not allow for presenting the view at its strongest, and may encourage confusion over what the final position is. Indeed, it seems to me that Hershovitz ends up leaving an opening, an exit for his opponent that I think survives Hershovitz's arguments in favour of the moral practice view and indicates that, in the end, the opponent has the better, more nuanced view. I hasten to add that I don't think that, in fact, the opponent's view is the better one, only that Hershovitz misses an opportunity to nail down his case for why it isn't.

Hershovitz starts with the claim that legal practices are moral practices in the way other familiar practices are moral practices, and work to adjust moral relationships just like those other practices do. Hershovitz mentions promising (18), forgiving, excusing, waiving, claiming, and consenting (26), as examples of such familiar practices. With this move, Hershovitz establishes quickly and effectively that the phenomenon to which he appeals, of using some practice to reconfigure what we owe to each other, is not exotic or special to law or hard to defend, but something everyone will have experienced. He also establishes something less obvious: that the moral situation is to some extent subject to deliberate control. For the agents who choose to promise or to waive or to consent, or to decline to do any of these things, get thereby to exercise control over what they owe to or are owed by others.

A risk lies in the fact that all these familiar examples are widely understood to be exercises of normative powers.[7] It's uncontroversial that one is able deliberately to change one's own or others' normative situation by changing normatively relevant circumstances. You can change the tax that you owe by donating to charity or deferring the disposal of some asset. However, if agents have normative powers, they get to change the normative situation directly, by choosing to do so. Thus, an agent who exercises a normative power attaches a normative property or consequence to an act or object by fiat.[8] How do agents exercise the key choice? The dominant view in respect of all the examples cited by Hershovitz is that agents exercise the power by expressing an intention that the

[7]Though not without exception. Thomas Scanlon famously holds that promising places the promisor under some duty through changing the promisor's circumstances. Scanlon more broadly holds that all reasons for action or attitude have their source in reason, not the will. See T Scanlon, *What We Owe to Each Other* (HUP 1998) ch 7; T Scanlon, 'Reasons: A Puzzling Duality?' in R Wallace and others (eds), *Reasons and Value: Themes from the Moral Philosophy of Joseph Raz* (OUP 2006) ch 10.

[8]See 'The Practice Theory' (n 3) Part 4. See also *LMP* 75 and 212 n 31.

normative situation change in some specified way by the very act of expressing the intention. So, for example, by promising, one expresses an intention thereby – by the very act of expressing the intention – to be placed under a certain obligation owed to the promisee. One implication is that the normative foundation of the power does not affect the content of the obligations one incurs by using it. That's purely a matter of what intention one expressed each time one used the power or, more informally, what one said to the other person. And that's a troubling implication for the book's project, especially the book's headline claim that moral rights and duties, rather than words, are contested in court.

Although Hershovitz does not specifically mention normative powers in connection with the above examples of practices that give us tools for adjusting our moral relationships, he appeals to such powers to explain what he thinks of as the ability to create rules that are authoritative. He maintains that he has a normative power to create rules that are binding on Hank and contends that he has that power because it's an indispensable aid to discharging the duties that attach to parenthood (75). I think that Hershovitz doesn't have such a power and it's not really indispensable to raising children. It may be his duty to encourage Hank to eat different kinds of food, though bearing in mind how futile parents' efforts in that direction invariably prove to be, the idea that responsible parents have to do this is probably some sort of a parent anxiety management tool. Parents certainly get to prevent their kids from eating a ton of sugar, but in order to do that they need no normative powers, the harm that sugar does is reason enough to banish sugary snacks from the house. Similarly, perhaps Hershovitz has justifiably been putting some pressure on poor Hank not to leave the table before trying everything in his plate, but we don't need to appeal to any rules, let alone anything as fancy as the power to create authoritative ones, if such a power exists, to understand why. The possibility that if Hank tried more foods his tastes might develop in a healthier direction earlier than they otherwise would is probably reason enough for the restraint. And Hershovitz is surely entitled to act paternalistically towards Hank, to make choices or adopt goals on his behalf and monitor their pursuit. But none of that requires a power to make rules or otherwise to bind Hank by Hershovitz's say so. The idea of power to create binding rules is not part of common sense. It's a theoretical invention that may make sense in the institutional settings for which it was invented but sounds weird in the context of the family. Students of jurisprudence are of course familiar with the idea of powers to create rules, which may help explain certain important phenomena in law, but we should be sceptical about appealing to that idea outside the law.

We would still need an explanation of how it is that people can exercise power to bind themselves by promising or to release others from debt by waiving, and so on, and I think that Hershovitz is right that these are practices whose very point is to give us tools for reconfiguring the moral situation. But I don't think there is a generic, rule-creating practice the point of which is to make it possible to bind others by choosing to do so. At the minimum, the claim that appeals to rules is needed to explain some normative phenomenon must be established separately in each case.

Perhaps my difficulty with the notion of a power to create rules stems from the fact that Hershovitz works with a particularly weak concept of a rule. He thinks that a rule is a kind of norm. He says that a norm is a standard against which we might assess an action, attitude, event, *or anything else*, and that a rule is a norm that you use to assess

action.[9] This implies that a length of rope, E♭ above middle C, a cough, and a shot of mezcal, are all norms, since you can check whether some object is longer or shorter than the rope, a sound's pitch at or below or above that E♭, the sound louder or softer than the cough, or a quantity of some liquid bigger or smaller than the shot. But Hershovitz seems to have something more limited in mind. He addresses the idea that the law is a set of rules and he starts by discussing how one can make a rule. The discussion suggests that Hershovitz has in mind a linguistic phenomenon, not producing measuring rods or other physical objects.

He argues that one can create a rule by writing down the rule. He suggests that when we write down a rule, *the rule* comes to exist in some more robust way, compared to the existential status that it had prior to anyone's writing it down. He thinks that writing down rules is one way among many to 'engage' with the rules and mentions, inter alia, positing and printing as other examples. He suggests that we should be positivists about the rules that exist only by virtue of the fact that some agents have 'engaged' with them: in that sense of existence, surely their existence depends on (nonnormative) social facts alone. He thinks that rules exist in the most robust way possible when they are binding or authoritative, which means that people have reason to comply with them. He says that we can't be positivists about those. The rules' existence in that most robust sense could not depend on (nonnormative) social facts alone (71–74).

It is confusing to claim that by writing down a rule you thereby create, even a little, the rule. The rule by hypothesis preexisted your 'engagement' with it. If not, what did you engage with by writing it down?[10] Uttering or writing down or printing out the text of a rule makes no contribution to the existence of the *rule*. It does not lift the rule up from a situation where it existed weakly to existing a little more robustly, even if the engagement contributes to – indeed is the whole of – the existence of a *linguistic* object. Similarly, accepting or endorsing a rule makes no difference to the existence of any rule. It is a psychological event and adds to the inventory of such events. What is represented and accepted or endorsed remains a representation, mental or linguistic, of a rule. Thus, writing, uttering, printing, accepting, endorsing, and all the rest do not give rise to different sets of rules that come thereby to exist even in some attenuated, deflated sense, only to be reinflated to their full normative glory if the speaker or writer or endorser comes to have authority. Lawyers are of course prone to equivocation between rules and their formulations and that's fine. But when they produce legal texts, they bring it about that legal texts obtain, and obtain all the way, not that rules of any kind obtain some of the way.[11]

This is not to say that writing down the text of a rule makes no difference. By doing so, we might say that you made the rule a member of the set of written down rules (or maybe of the set of rules written down by you). Now, being a member of some set *may* be

[9] I believe that Raz's view is the opposite: that a norm is a rule that regulates action. See J Raz, *Practical Reason and Norms* (OUP 1999) 9.

[10] Why couldn't you have literally invented the rule, thus created it from nothing in the course of writing it down? Hershovitz accepts that, however original the formulation, the rules that are formulated already existed 'in the thin sense that they were present in the space of possible rules': LMP 74.

[11] Adding the fact that the speaker has authority does not transubstantiate a previously nonbinding rule, if such a thing exists, into a binding one. What the speaker's authority may do is help make it the case that the fact that the speaker said what they did bears in some way on what the audience has reason to do.

relevant to the rule's status as such. It can be that a rule is binding on some agents only on condition that it belongs to a certain set of rules, say those that have been written down (or uttered, or printed, and so on) by you. It remains the case that by writing things down you produce texts and by uttering you produce utterances, though the fact that *you* produced the linguistic object may be the condition in play.

The confusion would of course dissolve if a rule itself were a linguistic object, a form of words. In that case, it would make sense to say as Hershovitz does that by writing down the relevant form of words, one thereby partly created a rule. 'Partly' because you might think that, to subsist fully as a rule, the rule so created must also be binding on some agents and thus give those agents reasons for some action or attitude, and writing the rule down is but the first step. This would of course make for a particularly messy ontology – a rule which is a text which binds? – and I am not sure that Hershovitz would want to take that route.

The idea that some form of 'engagement' with a rule is a condition on the rule's being part of the law is of course one of the key claims of Hershovitz's positivist opponents.[12] Although he gives it a lot of space, in the end Hershovitz rejects it as a general condition on the existence of rights and duties in law.

> [W]hen Hart and others (like Raz) invoke 'existing law', they are picturing a set of norms that exists because of some sort of engagement – articulation, acceptance, or validation by a rule of recognition that is accepted. And nothing of that sort is needed to support a right or obligation, except in special cases covered by the principle of legality (or some other sort of clear statement rule). (90)

Even so, the idea that rules belong in sets that come to exist when some agent engages with the rules in some specific way (writing down, uttering, accepting, endorsing, enforcing, and so on), is helpful to Hershovitz's argument. It makes it possible for him to defend a kind of pluralism about sets of rules that each can be said to exist in some sense or other, weak or robust. Applied to law, this framework allows Hershovitz to say that the positivist was always right about something, namely sets of rules other than the authoritative one, though always wrong about the latter set – which Hershovitz thinks is what we are fighting about in court.

Hershovitz puts the key claim thus:

> I think it misleading to assume that there is a *single* set of norms properly called the law of a community. (72)

He quotes approvingly Dworkin (88–89), but, pretty clearly, Dworkin denies something different.

> I hope to persuade lawyers to lay the entire picture of existing law aside in favour of a theory that takes questions about legal rights as special questions about political rights, so that one may think that a plaintiff has a certain legal right without supposing that any rule or principle that already 'exists' provides that right. In place of the misleading question, whether

[12] J Gardner, 'Legal Positivism: 5 ½ Myths' (2001) 46 American Journal of Jurisprudence 200. For the original argument that for a certain type of norm, membership in a set – systemic validity – is a condition on the norm's having binding force – validity outright – see J Raz, 'Legal Validity' in *The Authority of Law* (OUP 1979). To say that a norm must have been engaged with is in this context equivalent to saying that the norm must have been posited.

> judges find rules in the 'existing law' or make up rules not to be found there, we must ask whether judges try to determine what rights the parties have, or whether they create what they take to be new rights to serve social goals.[13]

Hershovitz goes on to say:

> I hope you will see the similarity between the picture that Dworkin presses in this passage and the one presented in Chapter 1 and Chapter 2. (89)

That's not quite right. Hershovitz holds that no *single* set of norms is the existing law of the community, though many sets do hold claim to the title, and positivism is true of some of them. Dworkin holds that the very idea of existing law is misleading. *No* set of norms – none – is the existing law of the community, therefore having a legal right couldn't depend on a rule providing that right being part of such a set. No pluralism here. These are very different views.

The framing of the discussion in terms of norms and norms' membership in sets, combined with the claim that multiple such sets may properly be thought of as the law, exposes Hershovitz's view to a vulnerability to which Dworkin's more austere view is not open. Sure, there are plenty of sets of norms that are related to law and legal practice, a positivist might say, and only some of them are socially determined. It's also true that the set of norms that are authoritative is ultimately determined morally, as is at least in part the set of norms contested in court.

But the sets are related to each other and one of these sets is privileged, the positivist may continue: the set of norms that are endorsed or otherwise engaged with by legal institutions. This set is privileged because it is independently interesting to know what rights and duties follow from norms our institutions have endorsed (or otherwise engaged with; I will omit the qualification hereinafter). The fight over whom to appoint to institutions and offices, which is at the core of politics, is very much a fight about which norms these people promise to endorse. Thus, it's philosophically interesting to study at a high level of abstraction the conditions under which a norm gets to become a member of the set of institutionally endorsed norms – the heart of a positivist account of law. With such an account in hand, we could then explore the relations between the privileged set and the other sets Hershovitz mentions. We can ask, not which norms are authoritative or contested in court without qualification, as Hershovitz does, but which of the norms *that derive from the privileged set* are, in addition, members of the other, morally interesting ones.

Indeed, it's hard to see how the positivist's ambition could be limited to seeking to explain, in terms of social facts alone, the mere uttering or writing down or taking some attitude towards a certain form of words. *Of course* he can account for these linguistic or psychological facts in terms of social facts alone – linguistic or psychological facts *are* social facts in the relevant sense. Who would think otherwise? In jurisprudence, the game is to provide an account of legal norms that are authoritative. So the positivist's ambition must be to account for the norms that have binding force by appeal to some property or relation authoritative norms must bear to the norms that are institutionally endorsed. If the set of norms that Hershovitz concedes are socially determined were not so related to the norms that are authoritative, why should anyone care about them? The

[13]This passage is from R Dworkin, *Taking Rights Seriously* (HUP 1978) 293.

positivist really cannot but hold that the set of norms endorsed by institutions is related in that special way to the set of norms that are authoritative: they are what law presents as having binding force therefore only they, if they do have such force, count as binding legal norms.[14]

If so, the sets of morally binding legal norms, in which Hershovitz is interested, include two classes of norms. First, the institutionally endorsed ones that meet some further moral conditions that make them binding; and, second, norms that are binding but have no such social pedigree. Some of the latter might acquire social pedigree going forward, when and because some institution comes to endorse them, while others would remain in the realm of law as it ought to be. The positivist would say that in Hershovitz's model these important distinctions are lost. It would help the book's project clearly to reject the line of reasoning that gives rise to this sort of objection.

The claim that, in some sense, the law is a set of socially constituted norms implies that, in that sense, law and morality name different sets of norms. In a note, Hershovitz calls this implication 'the dominant view' (10–11, 69, 81) and criticises Dworkin for having embraced it in some of his writings (11; 199 n14). I am not sure that Dworkin did embrace it. Be that as it may, Hershovitz does too: in the relevant sense, in which the law is a set of social norms, it is of course different from morality. But if Hershovitz can embrace the claim, with the qualification that the law in that sense is not what is contested in court, why can't Dworkin do the same?

There are subtler drawbacks to framing the discussion in terms of rules and membership in sets. We get sucked into talking in terms that tacitly admit that law is in the business of (authoritatively) telling people what to do. Recall Hershovitz's master example: his telling Hank to eat everything on his plate (and, by implication, to eat veggies). This is pernicious because Hershovitz's real project – or at least the one his arguments best fit with – is to explain how political actions affect – control and regulate – how power may be used. In this picture, Hershovitz's telling Hank to do this or that makes a difference primarily not to what Hank must do, but what Hershovitz may do – especially to whether and when Hershovitz may force Hank to do stuff. And of course the framing makes law look like parenting, which completely misses an essential dimension of law: that it's supposed to make it possible for total strangers with fundamentally conflicting interests to live together. Overall, for a book whose main thesis is that law is a moral practice, the discussion often sails too close to the orthodox positivist wind, and the sails sometimes start clattering.

I am sure Hershovitz is aware of these tensions. The book among other things attempts a synthesis of (to put the point clumsily) Hartian, Razian, and Dworkinian impulses. I am sceptical that such a synthesis can succeed. I don't mean to take back what I suggested earlier: the book is a model of clear and insightful exposition of the subtleties of the jurisprudential positions that compete with the book's own. But I hope that my rough summary of the logic of the opposing views and of the ways in

[14]That is of course Raz's claim in 'Legal Validity' (n 12), cited above: that for a certain type of norm that includes legal norms, a norm's systemic validity is a condition on the norm's validity outright.

which the parts that make up each view are related to each other may help bring out an oddity of Hershovitz's strategy in arguing against them.

## Acknowledgements

I am grateful to Angelo Ryu for comments and suggestions on an earlier draft.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

## ORCID

*Nicolaos Stavropoulos* http://orcid.org/0000-0003-4442-1969