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THE INTERNAL POINT OF VIEW

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ABSTRACT. The most discussed theory of law of the twentieth century – HLA Hart's theory from *The Concept of Law* – is fundamentally *psychological*. It explains the existence of legal systems in terms of an attitude taken by legal officials: the internal point of view. Though much has been said about this attitude (what statements *express* it, what it is *not*, how Hart *ought* to have conceived of it, etc.), we nonetheless lack an adequate account of the attitude itself. This paper presents and defends an account of the internal point of view and shows how, when understood as the account suggests, this attitude can play the several roles that Hartian positivists need it to play.

After sixty years, it can seem like everything interesting that there is to say about HLA Hart's *The Concept of Law* has been said. In that book, Hart presents a theory of law that is fundamentally *psychological*.[1] The existence of legal systems is explained, among other things, by appeal to a special attitude or mental state.[2] But this psychological ingredient, which Hart calls 'acceptance' or 'the internal point of view' – even though it is thought by Hart to be central not only to law, but to other rule-constituted social practices, such as games, etiquette, fashion, etc. – remains surprisingly mysterious.[3]

Despite the fact that there is plenty of secondary literature about the internal point of view, we lack an adequate statement of what

[1] Of course, it is not *only* psychological. It is also behavioral, social, etc.

[2] H.L.A Hart, *The Concept of Law*. (Oxford: Oxford University Press, 1961), p. 116.

[3] *Ibid*., pp. 57, 86, 227, 234; also, in the postscript, published after his death, Hart makes it clear that he means for this practice theory of rules to apply only to "conventional" rules and to no longer apply to "morality, either individual or social."

exactly this attitude is.[4] After briefly discussing existing literature on the internal point of view, I present an original account of the attitude and show how this account makes otherwise overlooked merits of Hart's general theory of law newly visible.

The first place to look for an understanding of the internal point of view, obviously, is *The Concept of Law* itself. There, we are told that one takes the internal point of view toward rules when one "accepts and uses them as guides to conduct"[5] or "'has views' about the propriety"[6] of some kind of behavior. Taking the internal point of view involves considering rules to be "reason or justification"[7] or sources of "legitimacy"[8] for criticism and punishment of behavior. This attitude, we are also told, is paradigmatically expressed with the use of normative terminology.[9] And, countless times throughout *The Concept of Law*, Hart says that taking the internal point of view involves taking a rule as "a common standard" or "a general standard to be followed."[10]

Also, in Chapter 4, when first introducing the internal point of view, Hart describes it as "a reflective critical attitude."[11] But later, in Chapter 9, it is said to sometimes involve "an unreflecting inherited or traditional attitude."[12] There is, in fact, no contradiction here.[13] But it would be nice to have an explicit explanation – which, as far as I am aware, has not appeared anywhere in the philosophical literature – of why exactly the *prima facie* tension arising from the attitude being both "reflective" and "unreflecting" does not, in fact, amount to any kind of contradiction.

[4] I discuss existing accounts in Sections I and II. See also A. Hatzistavrou, 'An Epistemic Account of the Internal Point of View', in M.D.A. Freeman & R. Harrison, eds., *Law and Philosophy* (Oxford: Oxford University Press, 2007) and A. Perry, 'The Internal Aspect of Social Rules', *Oxford Journal of Legal Studies* 35 (2015): 283–300.

[5] Hart (n. 2), p. 89.

[6] *Ibid.*, p. 57.

[7] *Ibid.*, p. 11.

[8] *Ibid.*, p. 56.

[9] *Ibid.*

[10] *Ibid.*, pp. 56–57.

[11] *Ibid.*

[12] *Ibid.*, p. 203.

[13] I explain why in Section II.D.

Hart doesn't say much more than this about what exactly the attitude is. But if the internal point of view is going to be a linchpin – perhaps *the* linchpin – of the most discussed theory of law of the last several centuries, then we need answers to the questions that these brief and suggestive Hartian remarks leave unanswered. What exactly is being critiqued by this "critical" attitude? Rules? Instances of behavior? And what kind of criticism is this? Moral criticism? Non-moral criticism? If the attitude is "reflective," then what exactly is being reflected on? And in what sense can this same attitude also be "unreflecting"? The aim of this paper is to say what this attitude is, and to thereby answer these questions and, hopefully, many others.

In the secondary literature, many extended discussions of the internal point of view say not what it is, but what it ought to be.[14] For instance, Hart clearly thinks that taking the internal point of view does not require moral judgement.[15] But many have argued that the attitude should be reconceived as fundamentally moral.[16] Strictly speaking, there is no need to discuss this revisionary view here, since our goal is to explicate the internal point of view as Hart originally understood it. But showing how this revision goes wrong, as I do in Section II.D, sheds considerable light on Hart's original, unrevised view. And even those who reject Hart's conception of this mental state in favor of a moralized one might like to know what exactly it is that they are rejecting.

There are three other prominent secondary works that focus on the internal point of view, specifically as Hart understood it: Kevin Toh's *Hart's Expressivism and His Benthamite Project*, Scott Shapiro's *What is the Internal Point of View?*, and Matthew Kramer's book,

[14] N. MacCormick, *Legal Reasoning and Legal Theory* (Oxford: Oxford University Press, 1978); R. Holton, 'Positivism and the Internal Point of View', *Law and Philosophy* 17 (1998): 597–625; S. Perry, 'Hart on Social Rules and the Foundations of Law: Liberating the Internal Point of View', Fordham Law Review 75 (2006); P. Pettit, 'Social Norms and the Internal Point of View: An Elaboration of Hart's Genealogy of Law', Oxford Journal of Legal Studies (2019); A. Perry (n. 4).

[15] Hart (n. 2) pp. 202–203; H.L.A. Hart, *Essays on Bentham: Jurisprudence and Political Philosophy* (Oxford: Oxford University Press, 1982), p. 267.

[16] MacCormick (n. 14); Holton (n. 14); S. Perry (n. 14). Also see J. Raz 'Hart on Moral Rights and Legal Duties', Oxford Journal of Legal Studies 4 (1984), p. 129.

H.L.A Hart: The Nature of Law.[17] Toh argues that Hart was both an expressivist and a noncognitivist about internal legal statements.[18] If Toh is correct, then given his definition of noncognitivism, it follows that the mental state that such statements express – the internal point of view – is a conative or noncognitive mental state, like desire, rather than a cognitive mental state, like belief.[19] This is, of course, a constraint on what mental state the internal point of view is, but it leaves open many possibilities. The aim here, without being forced to take a stance on whether Hart was, in fact, an expressivist and noncognitivist about internal statements, is to say more about how Hart can understand what the internal point of view is.[20]

Shapiro's paper is indeed focused on Hart's own view, and it does contain a characterization of what the internal point of view is.[21] Also, the many misconceptions about the internal point of view that it corrects seem so misguided now largely because of how effectively it corrects them. But when the time comes to say what the internal point of view is, Shapiro says that one takes the internal point of view toward a rule when one:

> ...intends to conform to the rule, criticizes others for failing to conform, does not criticize others for criticizing, and expresses one's criticism using evaluative language.[22]

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[17] K. Toh 'Hart's Expressivism and his Benthamite Project' *Legal Theory* 11 (2005); S. Shapiro 'What is the Internal Point of View?' *Fordham Law Review* 75 (2006); M.H. Kramer *H. L. A. Hart: The Nature of Law* (New York: Polity Press, 2018). In addition to these, here are four other works where one might expect to find an account of the internal point of view as Hart could have understood it. Dennis Patterson's paper, *Explicating the Internal Point of View* (1999) is a criticism of the general idea of a psychological theory of law (along with some other insightful points), but it contains no sustained statement of what the internal point of view might be, as Hart understood it. Similarly, Philip Pettit's more recent paper, *Social Norms and the Internal Point of View: An Elaboration of Hart's Genealogy of Law* (2019) does attempt to shed light on the nature of the internal point of view, but it is explicitly not an attempt to characterize that attitude in detail, nor is it meant to be interpretive of Hart. Also, Adam Perry's *The Internal Aspect of Social Rules* (2015, 14, 18–19) is said by Perry to present a "revised" account of the internal point of view, and his aim is explicitly "not exegesis; [but] to work towards an adequate theory of social rules." Finally, Stephen Perry's *Hart on Social Rules and the Foundations of Law: Liberating the Internal Point of View* (2006) focuses on the claim that any attitude-based theory of law cannot explain the normativity of law, rather than stating in detail what attitude Hart has in mind. What it does say about the internal point of view is insightful but aimed at revising the attitude, not explicating it.

[18] For opposition see S. Finlay & D. Plunkett 'Quasi-Expressivism About Statements of Law: A Hartian Theory' in J. Gardner, L. Green, & B. Leiter, eds., *Oxford Studies in Philosophy of Law*, vol. 3 (Oxford: Oxford University Press, 2018); Kramer (n. 17); B. Leiter 'Theoretical Disagreements in Law: Another Look' in D. Plunkett, S. Shapiro, & K. Toh, eds., *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence* (Oxford: Oxford University Press, 2019).

[19] Toh (n. 17), p. 79. Indeed, I believe that Toh follows Gibbard in having a more specific type of non-cognitive attitude in mind. Still, there is a wide range of attitudes remaining.

[20] For more discussion of this, see Section IV.C.

[21] Also see S. Shapiro 'On Hart's Way Out', *Legal Theory* 4 (1998); S. Shapiro *Legality* (Cambridge, MA: Harvard University Press, 2011), pp. 81–82, 99–100, 183.

[22] Shapiro (n. 17), p. 1163.

This is a list of one mental state (an intention) and three types of behavior (criticism, lack of criticism, and language use). But it is not obvious how these items are connected to one another. Merely having the intention does not entail that one exhibits the forms of behavior, nor does it even make one disposed to exhibit these forms of behavior (intending to follow a rule *oneself* does not, for instance, cause one to criticize *others* when they do not follow that rule). So even if this is an accurate list of an intention and forms of behavior that are associated with the internal point of view, we might wonder why it is *this* intention and *these* forms of behavior that characterize the internal point of view. If the internal point of view is as explanatorily and theoretically useful as Hart thinks it is, then we might think it is not merely a label for a conjunction of an intention and three forms of behavior, which Shapiro accurately identifies, but is instead an underlying mental state that unifies them.[23]

Kramer's book presents a similar picture of the internal point of view as an "affect" that "manifests itself as a trio of behavioral

[23] I do not take this to be a knockdown argument against Shapiro's conjunctive characterization. Indeed, it is not an argument against it at all, but rather a call for more discussion. (Some of that discussion comes in Shapiro's 2011 book, which I discuss below.) The present paper attempts to provide this discussion, regardless of whether the characterization that results constitutes an alternative to Shapiro's conjunctive characterization or an elaboration of it. In his book *Legality*, Shapiro does give several glosses on the internal point of view, making it clear that he understands the attitude as a kind of *intention* (though Shapiro more frequently uses the word "commitment" in this context). The internal point of view is characterized as "the normative attitude of commitment to a social rule" and to take this attitude toward a rule is to "be committed to act according to the rule and to evaluate conduct in accordance with it" (Shapiro (n. 21), pp. 82, 99). Later, Shapiro contrasts Hart's understanding of the internal point of view with a stronger form of 'acceptance' that is required for Shapiro's Planning Theory of Law. In drawing this contrast, Shapiro characterizes the internal point of view as merely "committing to do one's part", whereas fully *adopting a plan* involves additionally committing to allowing others to do their parts(p. 183). This certainly counts as a characterization of the internal point of view, and it meets several of the criteria that an account of the attitude must meet (which I discuss throughout the paper and then enumerate in Section V). The aim of the present paper is not to refute Shapiro's view, but I will mention my central objection to it, which I discuss in Section 4.5: it is possible to have the relevant kind of intention or commitment toward a rule without ever acting on it, whereas that is not true of the internal point of view.

dispositions."[24] They are dispositions to (a) comply with a norm, (b) to criticize those who do not comply, and (c) to acknowledge the appropriateness of criticism of instances of their own non-compliance.[25] The idea is that the internal point of view causes a variety of behavioral dispositions, and is itself caused by a variety of motivating factors.[26] But Kramer's book – perhaps because it is focusing on several other dozen worthwhile tasks – does not identify the attitude itself. One reason for this might be that there is no single, underlying mental state to be identified. We might conclude that "the internal point of view" is a broad label for whatever attitudes result in those characteristic forms of behavior.[27] But before we settle on that conclusion, it is worth seeing if we can find a single mental state that fits with everything Hart says about the internal point of view and plays all of the theoretical roles that Hart needs it to play.

The goal of this paper is to identify that mental state. And there is no reason to keep the reader in suspense. Here is a brief, initial statement of what the internal point of view is. It is an intentional mental state directed at two objects: (a) a pattern of behavior thought of under a particular description and (b) particular instances of behavior.[28] To take the internal point of view toward a pattern of behavior is to normatively assess instances of behavior in virtue of the fact that those instances conform or fail to conform to the relevant pattern (i.e., fit the description under which the pattern of

[24] Kramer (n. 17), p. 47.

[25] My use of "rule" includes Kramer's use of "norm." I mostly use the former term throughout this paper, but I use "norm" here for fidelity of exposition.

[26] Kramer also points out that Hart never applies the internal point of view to power-conferring rules. (See Kramer (n. 17), pp. 46–50). And Kramer shows that it is very difficult to apply the internal point of view—when it is understood not as a mental state but as a collection of behavioral dispositions—to power-conferring rules. In the end, I think Kramer is basically right that the internal point of view does not comfortably apply to power-conferring rules, but the account of that attitude presented here does get us closer. That counts somewhat in favor of the account presented here, though the goal is to understand the internal point of view roughly as Hart understood it, and such that it can do everything that Hart intended it to do, not to understand the internal point of view such that Hart's theory avoids any and all objections. This is discussed again in Section IV.D.

[27] Or, alternatively, we could think of "the internal point of view" as a label for the collection of behavioral dispositions itself, rather than for the underlying attitude(s) that causes it.

[28] It is this feature of the internal point of view that keeps Adam Perry's proposal (2015) revisionary of Hart's view, rather than exegetical of it. Perry characterizes the internal point of view as the acceptance (in the philosopher of action's technical sense of the term) of the proposition that is a rule's content. This plausible and well-argued claim, as Perry himself notes, is best understood not as a characterization of the internal point of view as Hart understood it. And the reason, I suggest, is that while Hart's attitude is directed simultaneously at instances of behavior and patterns of behavior, Perry's attitude is solely pattern-directed. (Strictly speaking, of course, acceptance in Perry's sense is a propositional attitude, but it is not hard to re-construe a pattern of behavior as a proposition, namely, as the proposition either that the pattern is instantiated or that it ought to be.)

behavior is cognized or understood). This assessment can be moral or non-moral.[29] And the instances of behavior being assessed can be the behavior of the agent or of others. In the following pages, I say much more about what exactly this proposal means. But it is best to start by saying what role the internal point of view is intended to play.

I. THE ROLE OF THE INTERNAL POINT OF VIEW

The internal point of view, to repurpose Hart's own expression, is Janus-faced.[30] That is, in *The Concept of Law*, it is presented in two distinct ways.[31] The internal point of view is first introduced in Chapter 4, as part of a larger demonstration that Austinian habits are insufficient to explain the nature of legal systems.[32] In this context, it is part of the *explanandum*. Hart portrays "the *internal aspect* of rules" as a pre-theoretical fact about how legal officials think about law.[33] Austin's theory is ruled out, in part, because it is not up to the explanatory task. It cannot explain the fact that legal systems consist not just of habits, which are mere "fact[s] about the observable behavior of most members of the group," but of social rules, which differ from habits specifically in that they only exist when some people take the internal point of view.[34]

But later in *The Concept of Law*, the internal point of view is presented not as a pre-theoretical fact in need of explanation, but as part of the theory that does the explaining – the *explanans*.[35] However, here too, the internal point of view is understood in terms of its

[29] Note that Hart understands the internal point of view as being taken in entirely non-legal contexts as well as legal ones.

[30] Hart (n. 2), p. 117.

[31] Shapiro (n. 17), p. 1158, characterizes the internal point of view as playing *four* different roles for Hart. However, the 3rd and 4th roles that Shapiro identifies (accounting for the "intelligibility of legal practice and discourse" and making a "naturalistically acceptable semantics for legal statements") can be seen as consequences of the two roles discussed here.

[32] Hart (n. 2), p. 56.

[33] *Ibid.*

[34] *Ibid.*

[35] *Ibid.*, p. 116. See also R. Dworkin, *Taking Rights Seriously* (New York: Duckworth, 1977); J Raz, *Practical Reasons and Norms* (New York: Hutchinson, 1975); MacCormick (n. 14); N. MacCormick *H.L.A. Hart*, Second Edition (Palo Alto: Stanford University Press, 2008); M. Smith, *The Moral Problem* (New York: Blackwell, 1994); Holton (n. 14); B. Bix, 'Legal Positivism and "Explaining" Normativity and Authority', *American Philosophical Association Newsletter* 5 (2006); S. Perry (n. 17).

relation to the existence of social rules.[36] The internal point of view is the crucial ingredient in what is later dubbed Hart's "Practice Theory of Rules," which explains how social rules, including the rule of recognition, come to exist.[37] According to the practice theory, a social rule exists if (a) there is a regularity of behavior among a group of people and (b) enough members of that group take the internal point of view toward that pattern of behavior.[38] So whatever the internal point of view turns out to be, it should be something that Hart could have thought able to explain the existence of social rules – not only the rule of recognition, but also rules of etiquette, basketball, the yacht club, the faculty senate, etc. – in the way that the practice theory claims.[39]

The internal point of view does *not*, for Hart, play the role of explaining how law necessarily generates reasons, and this is because Hart does not think that law does necessarily generate reasons. The claim that law does not necessarily generate reasons is, of course, controversial. But the claim that Hart *believes* that law does not necessarily generate reasons is considerably less controversial. And it is this second claim that is taken for granted here. On this understanding of Hart's view of the normativity of law, law may still be said to necessarily generate *merely legal reasons*. But 'merely legal reasons,' in this sense, are not genuine reasons for action that, by their very nature, carry normative force in practical deliberation. The fact that law generates merely legal reasons is simply the fact that law has legal validity or, even more simply, that it exists. The

[36] So, if we like, we can say that the internal point of view only plays one role for Hart: the explanans of the existence of social rules. It is the social rules that are really the explanandum pointed out by Hart in his criticism of Austin.

[37] Raz (n. 16); Hart (n. 2) p. 256).

[38] Raz (n. 16); MacCormick (n. 35), p. 42. The practice theory is often presented as providing necessary and sufficient conditions, but for various reasons it is better to make the weaker claim that only provides sufficient conditions, as I have done here. See N. Southwood, 'The Moral/Conventional Distinction' *Mind* 120 (2011); N. Southwood & L. Eriksson, 'Norms and Conventions' *Philosophical Explorations* 14 (2011).

[39] And it is because of the practice theory that the task of this paper is not merely of exegetical/historical interest. The practice theory is very widely rejected by philosophers of law. (See G. J. Warnock, *The Object of Morality* (London: Methuen, 1971), pp. 45–46, 61–65; A. Marmor, *Positive Law and Objective Values* (Oxford: Clarendon Press, 2001), p. 3; A. Marmor, *Social Conventions: From Language to Law* (Princeton: Princeton University Press, 2009), pp. 14–15; Shapiro (n. 21, 2011), pp. 103–104; Perry (n. 17). But for opposition, at least to the Warnock counterexample, see M.H. Kramer, *In Defense of Legal Positivsim: Law Without Trimmings* (Oxford: Oxford University Press, 1999), pp. 251–253; L. Green, 'Positivism and Conventionalism' *Canadian Journal of Law and Jurisprudence* 12 (1999). There is, however, reason to think that this theory can be resurrected, in part, by getting clear on exactly what the internal point of view is.

internal point of view is indeed part of an explanation of how law necessarily generates *merely legal reasons* simply insofar as the internal point of view is part of an explanation of how legal systems come to exist. But if we understand ''reasons'' as considerations that are moral, or prudential, or in some other way carry normative force in rational practical deliberation, then Hart simply denies that law necessarily generates reasons.[40] This, of course, is related to his positivist separation of what law is and what law ought to be.[41] And it is a good thing that Hart is not trying to use the internal point of view to explain reasons in the more significant sense, since the mere fact that individuals are in a certain mental state seems inadequate to explain the existence of reasons in the significant sense.[42]

II. WHAT THE INTERNAL POINT OF VIEW IS NOT

We know how the internal point of view is expressed (i.e., with normative terminology) and the central role it plays for Hart (i.e., in the practice theory of rules). But before saying in detail what this attitude is, it is worth saying what it is *not*.

[40] Hart grants, as he must, that law sometimes and contingently generates reasons in the more significant sense. But everything generates reasons, in that sense, by triggering the application of underlying norms or reasons, and, therefore, generating reasons in this sense is not something that a theory of law must explain. See D. Enoch, 'Reason-Giving and the Law' in L. Green, & B. Leiter, eds., *Oxford Studies in Philosophy of Law* (Oxford: Oxford University Press, 2011); D. Enoch, 'Is General Jurisprudence Interesting?' in D. Plunkett, S. Shapiro, & K. Toh, eds., *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence* (Oxford: Oxford University Press, 2019); T. McPherson 'Against Quietist Normative Realism' *Philosophical Studies* 154 (2011); D. Plunkett & S. Shapiro, 'Law, Morality, and Everything Else: General Jurisprudence as a Branch of Metanormative Inquiry' *Ethics* 128 (2017); T. McPherson & D. Plunkett 'The Nature and Explanatory Ambitions of Metaethics' in T. McPherson & D. Plunkett, eds., *Handbook of Metaethics* (New York: Routledge, 2017); T. McPherson, 'Authoritatively Normative Concepts' in R. Shafer-Landau, ed., *Oxford Studies in Metaethics Vol. 13* (Oxford: Oxford University Press 2018); M. Berman, 'Of Law and Other Artificial Normative Systems' in D. Plunkett, S. Shapiro, & K. Toh, eds., *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence* (Oxford: Oxford University Press, 2019). Also, it should be noted that all of the reasons discussed in this section are practical reasons, as opposed to epistemic ones.

[41] Hart (n. 2), p. 211.

[42] J.L. Coleman & B. Leiter, 'Legal Positivism' in D.M. Patterson, *A Companion to Philosophy of Law and Legal Theory* (Oxford: Blackwell, 1996) p. 241; Perry (n. 17), p. 1176; Enoch (n. 40); A. Marmor, 'The Nature of Law' *Stanford Encyclopedia of Philosophy* (2008). Of course, this claim (that the mere presence of certain attitudes is inadequate to explain the existence of robust reasons for action) is controversial as well. See E.H. Atiq, 'There Are No Easy Counterexamples to Legal Anti-Positivism' *Journal of Ethics and Social Philosophy* 17 (2019).

A. *It is Not, Strictly Speaking, Directed at Rules*

Hart sometimes characterizes the internal point of view as an intentional mental state directed at *rules*. But we can already see from the role that the internal point of view plays in the practice theory of rules that this is, at minimum, misleading. Rather than being directed at a rule, the internal point of view is directed at a pattern of behavior (although it need not be a long-standing, and may even be a merely possible, pattern of behavior) and it is partly as a result of this fact that the pattern *becomes* or *gives rise to* a rule.[43] With this in mind, though, it is mostly harmless to follow Hart's shorthand by occasionally talking of the internal point of view as being directed at rules, especially since in many cases the patterns of behavior that the attitude is directed at are already transformed into social rules via the recipe laid out in the practice theory. (Hart also calls the internal point of view "acceptance." So saying that one "accepts a rule" is shorthand for saying that one takes the internal point of view toward a pattern of behavior.)

B. *It is Not Critical of Patterns or Rules*

Hart repeatedly says that the internal point of view is a "critical" attitude.[44] It involves some kind of evaluation. And, as we just saw, it is directed at a pattern of behavior or, less precisely, at a rule. So, it is natural to conclude that taking the internal point of view involves being critical of or evaluating *that pattern or rule*.[45] But this is a mistake, or so I claim. As I argue in Sections II.D and III, the things that are evaluated by those taking the internal point of view are not whole patterns of behavior, but particular instances of behavior in virtue of whether those instances fit the relevant patterns.

[43] Perry (n. 17), p. 1172, sees this point very clearly. What exactly it means for a pattern to "become" a rule is somewhat opaque. It could alternatively be said that a pattern comes to *count as* a rule, or, most straightforwardly, that a rule corresponding to the relevant pattern or possible pattern comes to exist.

[44] Hart (n. 2), p. 57.

[45] For an instance of this, see Holton (n. 14).

C. *It is Not the Insider's Perspective*

When the internal point of view is first introduced, the rules and rule-guided behavior that result from it are contrasted with Austinian habits of obedience.[46] And the central feature of Austinian habits is that they are behavioral patterns that can be identified by outside observers.[47] So we can see why, in this context, Hart is drawn toward the labels "internal" and "external." And since Hart has already introduced these labels, he sticks with them even when the more central role of the internal point of view is discussed later in *The Concept of Law*. This, however, has led many to assume that the internal point of view is either (a) distinctive to those inside a legal system or (b) a label for whatever attitude insiders happen to take toward certain rules within the system.[48] But it is neither.[49] Rather than thinking of the internal point of view in terms of the individuals who take it (though there is nothing wrong with acknowledging that it is more commonly taken by those within a legal system), it should be thought of as a specific mental state that can, in principle, be taken by anyone. Those within a legal system can take the external point of view (as Oliver Wendell Holmes's 'bad man' does), and those outside a legal system can take the internal point of view.[50]

D. *It is Not (Necessarily) a Moral Attitude*

The internal point of view involves evaluation, but this need not be *moral* evaluation. According to Hart, making a certain kind of moral assessment is one way of taking the internal point of view, but it is not the only way.[51]

On this point, there has been considerable resistance. Many philosophers have argued that the internal point of view must be

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[46] Hart (n. 2), p. 56.

[47] *Ibid.*

[48] S. Perry, 'Interpretation and Methodology in Legal Theory' in A. Marmor, ed., Law and Interpretation (Oxford: Oxford University Press, 1995), p. 99; B. Leiter, 'Rethinking Legal Realism' *Texas Law Review* 76 (1997), p. 295; G.J. Postema, 'Jurisprudence as Practical Philosophy' *Legal Theory* 4 (1998), p. 459; Pettit (n. 14), pp., 4, 13, 15.

[49] I do not dwell on this point because, with some exceptions, such as Pettit (n. 14), it is now well-enough established. See Shaprio (n. 14), p. 1158.

[50] O.W. Holmes, 'The Path of Law' *Harvard Law Review* 10 (1897), pp. 457, 459–461; S. Shapiro 'The Bad Man and the Internal Point of View' in S.J. Burton, ed., *The Path of the Law and its Influence* (Cambridge, UK: Cambridge University Press, 2000); Shapiro (n. 14), p. 1157.

[51] Hart (n. 2), pp. 202–203, 257; Hart (n. 15), p. 267. Also see Shapiro (n. 14) p. 1157.

understood specifically and exclusively as a moral attitude.[52] We do not need to discuss this literature at great length since the focus of the present paper is the internal point of view as Hart understood it, not as it supposedly ought to be understood. But a brief discussion of this view, which I argue is mistaken, sheds considerable light on the nature of the internal point of view.

The moralized version of the internal point of view was presented by Neil MacCormick in 1978 and developed in greater detail by Richard Holton twenty years later.[53] They both rest their claim on the following argument:

(1) To take the internal point of view toward a rule involves taking there to be some reasons in favor of that rule.[54]
(2) But, *contra* Hart, these reasons cannot be non-moral.
(3) Therefore, also *contra* Hart, taking the internal point of view toward a rule involves taking there to be moral reasons in favor of that rule.

The first premise deserves the most attention. Here is what is going on. Hart wrote *The Concept of Law* in the late 1950s and early 1960s, long before the word "reason" became ubiquitous in moral, political, and legal philosophy. Premise (1) is an attempt to translate what Hart says about the internal point of view into reasons talk. According to MacCormick and Holton, the claim,

'*S* takes the internal point of view toward *r*.'[55]

is properly translated into the vocabulary of reasons as

'*S* takes there to be reasons in favor of *r*.'[56]

This is not absurd. As mentioned previously, since the internal point of view is evaluative, and since it is said to be directed at rules, it is

[52] MacCormick (n. 14); Holton (n. 14); Perry (n. 17). Also see Raz (n. 16), p. 129, who denies that moral assessment is required for taking the internal point of view, but maintains that *pretending* to morally approve of a rule is required.

[53] MacCormick (n. 14); Holton (n. 14).

[54] There is some ambiguity as to whether what is involved is taking there to be reasons in favor of the rule existing or reasons in favor of taking the internal point of view toward the rule. Luckily, the difference won't matter for our purposes here.

[55] *S* is an agent and *r* is a rule.

[56] In Holton's (n. 14, p. 604) words, "Acceptance of the law, in Hart's terms, requires the belief that there are normative reasons for acceptance." Of course, there is a potential distinction to be drawn between there being reasons in favor of a rule and there being reasons in favor of accepting that rule. This makes no difference for our purposes, however, as Hart rejects the claim that either are essential to taking the internal point of view. MacCormick (n. 14, pp. 63–64, 139–140) thinks that taking the internal point of view necessarily and essentially involves taking there to be "underpinning reasons, reasons for accepting the system's criteria of validity."

reasonable to assume that what is being evaluated are rules. But a thorough reading of *The Concept of Law* makes clear that this is not how Hart thought about the relation between reasons and the internal point of view. To take the internal point of view involves seeing a rule not as an *object* of reasons, but as a *source* of reasons.[57] As Hart sees it,

> '*S* takes the internal point of view toward *r*.'

should be translated as

> '*S* takes *r* to be a reason for or against behaving in certain ways.''[58]

This is why Hart includes ''an unreflecting or traditional attitude'' when he lists considerations that might lead one to take the internal point of view.

> [I]t is not even true that those who do accept the system voluntarily, must conceive of themselves as morally bound to do so. In fact, their allegiance to the system may be based on many different considerations: calculations of long-term interest; disinterested interest in others; an unreflecting or traditional attitude; or the mere wish to do as others do. There is indeed no reason why those who accept the authority of the system should not examine their conscience and decide that, morally, they ought not to accept it, yet for a variety of reasons continue to do so.[59]

The internal point of view is ''reflective'' in the sense that it involves reflecting on behavior and evaluating it.[60] But it is ''unreflecting'' in the sense that it can be an attitude that one has thoughtlessly.[61] Just as one can believe something either as a result of careful contemplation or not (in the latter case perhaps because it seems obvious or because one was raised to believe it without ever being prompted to consider one's reasons for believing it), so too one can take the internal point of view toward a rule either as a result of careful contemplation or as a result of no contemplation at all. Of course, the analogy between belief and the internal point of view has

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[57] And, it is worth noting that these reasons, for early Hart at least, may be merely legal reasons, as opposed to more robust ones. See D. Copp, 'Moral Naturalism and Three Grades of Normativity' in P. Schaber, ed., *Normativity and Naturalism* (Berlin: Ontos-Verlag, 2005); D. Parfit, *On What Matters* (Oxford: Oxford University Press, 2011); McPherson (n. 40); B. Maguire & E. Lord, 'An Opinionated Guide to the Weight of Reasons' in B. Maguire & E. Lord, eds., *Weighing Reasons* (Oxford: Oxford University Press, 2016); McPherson and Plunkett (n. 40); Plunkett and Shapiro (n. 40); Berman (n. 40); Enoch (n. 40); Plunkett (n. 40).

[58] Others who translate Hart correctly include Dworkin (n. 35), p. 20; J. Raz, The Concept of a Legal System (Oxford: Clarendon Press, 1970), p. 235; Bix (n. 35).

[59] Hart (n. 2), p. 203.

[60] *Ibid.*, p. 57.

[61] *Ibid.*, p. 203.

many limitations. For instance, the internal point of view has a relation to reasons that belief lacks – it involves taking a rule or pattern to be a reason (or a source of reasons). But we should not slide from this to the conclusion that taking the internal point of view involves taking there to be reasons *in favor of the rule*. That would be to put the reasons on the wrong end, so to speak.

As a final piece of evidence that Hart accepts the latter translation, consider one exceedingly rare occasion in *The Concept of Law* when Hart does use the term "reason" in relation to the internal point of view.[62] For those taking the internal point of view:

> ...the red [traffic] light is not merely a sign that others will stop: they look upon it as a signal for them to stop, and so a reason for stopping in conformity to rules which make stopping when the light is red a standard of behavior and an obligation. To mention this is to...refer to the internal aspect of rules seen from their internal point of view.[63]

It is worth noting three things about this passage. First, as with all discussion of the internal point of view, we are talking not about what reasons there *are*, but about what reasons there are *taken to be*. Second, in this passage, the thing that is seen as a reason is not the rule, strictly speaking, but the red traffic light. However, the fact that the light is red is only relevant because it makes not stopping a violation of a rule. And this brings us to the third, and most important point: the reasons that Hart is discussing here in relation to the internal point of view are reasons that there are taken to be not in favor of the rule, but in favor of some behavior – in favor *of stopping*.[64]

[62] Hart also uses the word later on the same page, but there he is discussing a reason *for sanction*.

[63] *Ibid*., p. 90.

[64] There are two other features of the above selection from *The Concept of Law* that warrant some discussion and explanation. The first is Hart's reference to "the internal aspect of rules." What is meant by the use of the word "aspect" here? The answer is that this is Hart's preferred way of indicating the contrast between a pattern of behavior viewed from the external point of view and that same pattern viewed from the internal point of view. The pattern of cars stopping at red lights can be viewed in a predictive sense. One can use this pattern to predict whether a car will stop. This is the *external* aspect of the pattern or rule—what it looks like, so to speak, when seen from the external point of view. But the same pattern also has an "internal aspect"—i.e., it can be seen as a source or reasons or obligations. To talk about rules in this way—as a "standard of behavior and an obligation"—is to make reference to "the internal aspect of rules seen from their internal point of view." But this raises the other feature of this passage that warrants discussion: the fact that Hart uses the word "their." Why does he suggest that it is *the rule's* internal point of view? The answer to this question, I believe, fits particularly well with the account of the internal point of view presented in Section III. On that account, to take the internal point of view is to evaluate instances of behavior based on whether they accord with a pattern or rule. The instances of behavior are, in this sense, judged *from the perspective of the rule*. This is why, I believe, it makes sense to say that focusing on the internal aspect of rules is to see things, as it were, from *their* internal point of view. Although the account of the internal point of view presented here fits quite well with this otherwise puzzling word choice, I do not wish my defense of the account to rely too heavily on Hart's use of this one word.

III. SO, WHAT EXACTLY IS THE INTERNAL POINT OF VIEW?

The lesson to draw from the failure of the moralized interpretation of the internal point of view is not merely that the internal point of view does not necessarily involve moral judgement, though that is true. The lesson is also that, though the internal point of view is a form of normative assessment, it does not necessarily involve any normative assessment (moral or otherwise) *of the rule or pattern of behavior toward which the internal point of view is directed*. So, it is not true that:

> Members take the internal point of view when they regard the rules as legitimate standards of public behavior.[65]

Of course, one way to regard a rule as 'legitimate' is simply to positively evaluate the behavior that accords with it.[66] But another way to regard a rule as 'legitimate' is to evaluate *the rule itself*. And it is this latter attitude that is not part of the internal point of view. Those who take the internal point of view toward a rule do not necessarily regard that rule as a legitimate standard. Rather, they regard it, simply, *as a standard*. Or, perhaps it is better to say, they *use* it as a standard. That is, they make normative assessments of instances of behavior based on whether those instances fit with the rule.[67] Using a rule as a standard against which behavior is evaluated does not necessarily involve a view, on the part of the user, about whether that rule is *worthy* of being used as a standard. This is more generally true of using any tool at all. When using a rock as a hammer, it is a good idea to pause and consider whether the particular rock chosen is the right size and shape so as to be well-suited for use as a hammer. But this type of thoughtfulness is entirely

[65] Shapiro (n. 21, 1998), p. 489. Shapiro (n. 21, 2011), p. 93, also expresses a similar sentiment.

[66] This is ultimately what Shapiro seems to have in mind, in which case he is not mistaken. A contrasting sentiment is expressed by Perry (n.17), p. 1173, though this is open to multiple interpretations.

[67] This, it should be mentioned, is crucial for seeing how the internal point of view relates to committed and detached legal statements. The Razian committed/detached distinction is a distinction between different *statements* not different *attitudes*. See Raz (n. 58), p. 234; Raz (n. 35), p. 171–177; J. Raz, The Authority of Law: Essays on Law and Morality (Oxford: Oxford University Press, 1979), pp. 153–156. Raz, somewhat puzzlingly, takes committed and detached statements to both express the same normative proposition, but to have different truth conditions. Shapiro (n. 21, 2011), p. 415, has a helpful discussion of why this is puzzling. Crucially, detached statements, though most similar to committed statements in their outward appearance, are really manifestations not of some normative attitude on the speaker's part, but of what Hart would call the 'hermeneutic external point of view.' Uttering a detached statement—even one that is both true and sincere—does not involve making the kind of normative assessment that is central to the internal point of view.

optional. It is not necessary for, or constitutively part of, using a rock as a hammer that one must reflect on whether the rock makes a good hammer. And the same goes for purely mental tool use. One may use a mental image of a blue jay as a prototype for making a judgment as to whether some object is a bird. Is a blue jay a good prototype for this purpose? Asking oneself this question before using the blue jay as a prototype may be wise. But it is not constitutively necessary for using the mental image of a blue jay in this way. This is what Hart means when he says that the grounds for the internal point of view can be "unreflecting."[68]

But is it true that using a rock as a hammer does not necessarily involve *any* reflection on the rock's suitability for use as a hammer? It may not involve consideration of whether the rock is particularly well-suited, but, plausibly, in order to purposefully pick up a rock and use it as a hammer, one must conceive of the rock as meeting some *bare minimum* requirements for that task. This conception of the rock need not come in the form of a conscious, occurrent mental state that rises to the level of *belief*. But, in some implicit sense at least, one may need to take the rock to be a solid object, small enough to be grasped by the human hand, large enough to transfer sufficient force into the object being hammered, and so on. To reach over and pick up a rock with the intention of using it as a hammer, one cannot be conceiving of it as a cloud of gas or as an abstract entity like the number four. One must, in some implicit sense, take the rock to meet certain minimum requirements for serving as a hammer. And if this is true, then perhaps using a rule as a standard against which instances of behavior are evaluated does – contrary to what was said earlier – involve some kind of evaluation of the rule itself.

I think it is plausible that purposefully using a rock as a hammer does, on some level, involve taking the rock to meet certain minimum requirements. And it is correspondingly plausible that using a rule as a standard of evaluation involves taking the rule to meet certain minimum requirements for that task – it must be understood to be the kind of thing that can function as a standard of evaluation. We can accept, then, that this is a constitutive part of what it is to take the internal point of view. But, at least according to Hart, the

[68] Hart (n. 2) p. 203.

evaluation of the rule itself does not necessarily go very far beyond this. Of course, *sometimes* using a rule as a standard of evaluation involves thorough reflection on the suitability of the rule itself. But, on Hart's view, this is not *necessary* for taking the internal point of view. If one uses a rule as a standard for the evaluation of instances of behavior, then one may have to conceive of the rule as the kind of thing that can function as a standard of evaluation – it is a pattern of behavior, as opposed to a physical object like a table or an abstract entity like the number seven – but one need not do any further reflection on whether this particular rule is a good choice among all the other possible rules. Our best evidence that Hart thinks of the internal point of view this way, it seems to me, is that he says one's grounds for taking it can be "unreflecting."

To get a better sense of the internal point of view, consider the following example. A group of villagers consistently make negative normative assessments of grazing livestock on the communal field on Sunday. And they make positive normative assessments of grazing livestock on those fields on other days of the week. The normative assessments just involve regarding the relevant instances of behavior as, perhaps, *good* or *bad*, *correct* or *incorrect*, *permissible* or *impermissible*. But these individual normative assessments of instances of behavior will never be enough to generate rules. Say that many villagers assess several instances of livestock grazing behavior as *inappropriate*. What rule or rules do these attitudes generate? The answer is underdetermined because those assessments, even if they number in the thousands or millions, fit with an indefinite number of possible rules. Perhaps those villagers acted inappropriately because they *grazed their livestock on the communal field on Sunday*, or perhaps because they *grazed between 4 and 400 livestock on a hilly field on Sundays before the year 2127*, and so on. What we need is some mechanism that picks out the relevant pattern or rule, and leaves out the others. Hart's view is that that mechanism is contained within the internal point of view itself. That is, the attitude is directed not merely at instances of behavior, but also, simultaneously, at rules or patterns. So, in order for the villagers to take the internal point of view, and thereby create a social rule, they must make negative normative assessments of grazing livestock on the communal field on Sunday *because they see that behavior as fitting the pattern 'grazing*

livestock on the communal field on Sunday.' That is, the instances of behavior are not merely evaluated, but evaluated in virtue of the fact that they fit a description that the villagers have in mind. To take the internal point of view toward a pattern of behavior is to make normative assessments of instances of behavior in virtue of the fact that those instances accord or discord with the pattern thought of under a particular description.[69]

IV. CLARIFICATIONS

This section clarifies and extends the previous statement of the internal point of view in five ways.

A. What Counts as a Normative Assessment?

The assessments involved are not merely descriptive.[70] The villagers do not merely regard the relevant behavior as *common* or *uncommon*, *typical* or *atypical*, etc. Making these kinds of assessments, even doing so in virtue of the instances of behavior fitting a description of a pattern of behavior, is a way of taking the external point of view (though there are many other ways as well).[71]

The assessment must be normative. But different kinds of assessment might be called "normative". As we saw in Section II.D, Hart does not limit it to moral assessment. If one regards some instance of behavior merely as *correct* or *incorrect*, *permissible* or *impermissible*, then for our purposes, one counts as having made a normative assessment. The same goes for evaluative or deontic assessments that are specific to certain systems of social rules. When one regards some behavior as *rude* or as a *foul*, one has made a normative assessment in the relevant sense.

[69] It might be wondered whether Shapiro's intention-based view of the internal point of view from his 2011 book can capture this feature of the internal point of view. This paper is a presentation of an account of the internal point of view, and not an assessment of Shapiro's alternative conception, but it seems rather clear that Shapiro's view can be made to capture this feature of the internal point of view, but only on some understandings of intention.

[70] Distinguishing descriptive and normative concepts or forms of assessment is contentious and far from trivial. I do not wish to commit the project of explicating the internal point of view to any particular way of drawing that distinction, though the coherence of the attitude depends on *some* way of drawing that distinction being possible.

[71] Hart (n. 2), p. 89.

It is worth remembering that the internal point of view is meant by Hart to play the crucial role not just in the existence of legal rules of recognition, but in the existence of all social rules.[72] What makes it the case that there is a social rule in some society requiring men to remove their hats when entering a church?[73] In part, it is that enough members of the community regard hat removal as *courteous* or *gentlemanly* or simply as *appropriate*, and they regard hat non-removal as *improper* or *indecorous* or simply as *impermissible*. The normative assessment component of the internal point of view need not be loftier or more moralized than that.

That said, it *can* be lofty or moral. In fact, Hart points out that legal systems are at their "healthiest" when officials of the legal system take violation of the law not just to be *incorrect*, but *immoral*.[74] And it is good (for the plausibility of the practice theory) that the internal point of view can be moral, because there are social rules that seem to require moral assessment for their existence. Take, for example, systems of conventional morality – i.e., the believed moral code of a society. Systems of conventional morality, even the misguided ones, exist. They are systems of social rules, forbidding and requiring certain forms of behavior. There is a plausible Hartian story, though not one that I must commit to here, on which a rule of conventional morality exists precisely when enough members of a community follow the relevant pattern and take a moralized version of the internal point of view toward that pattern – regarding instances of behavior as *righteous* or *unjust* in virtue of those instances fitting or failing to fit the pattern.

Finally, not all uses of evaluative or deontic concepts count as normative assessments in the sense relevant to taking the internal point of view. Regarding some behavior as *immoral* or *inappropriate* are, for our purposes, ways of normatively assessing that behavior, as are judgements that someone has *murdered* or *acted inappropriately*. But to judge merely that someone *believes that so-and-so has murdered* or *regards such-and-such as inappropriate* involves the use of an evaluative or deontic concept, but it is not to make a normative

[72] *Ibid.*, pp. 57, 86, 227, 234.
[73] *Ibid.*, pp. 9–10, 55–58, 124–125.
[74] *Ibid.*, pp. 231–232.

assessment.[75] Hart is clear about the status of normative concepts or terms appearing in such intensional contexts in his discussion of the external point of view. The "extreme" external point of view is extreme in that it is maximally behavioristic, making no mention whatsoever of how behavior is thought of or regarded.[76] But what is later called the "hermeneutic" external point of view involves a description of the normative assessments of others: "Description may still be description, even when what is described is an evaluation."[77]

B. *The Importance of Patterns Thought of Under a Description*

As mentioned in Section III, making a normative assessment of this kind is not sufficient for taking the internal point of view. To take the internal point of view one must also have some description of behavior in mind, and the normative assessment must be made in virtue of the thing assessed fitting or failing to fit that description.[78] This is essential because it allows Hart's practice theory, of which the internal point of view is the crucial ingredient, to avoid a serious potential problem.[79]

It might seem that the practice theory renders any widely accepted reason as a rule. For instance, there is a very robust pattern of individuals not storing their smartphones in bowls of warm water. And it seems that we make (or would make) negative normative assessments of those who store their smartphones in bowls of warm water. If normative assessment were sufficient for taking the internal point of view, then the practice theory would generate the result that there are far more social rules than there in fact are. It would generate the result that there exists a social rule against storing smartphones in bowls of warm water, when there clearly is no such rule.

[75] This fits well with Hart's many examples of internal (e.g., "Such-and-such is illegal.") and external (e.g., "According to Canadian law, such-and-such is illegal.") statements.

[76] *Ibid.*, p. 89.

[77] *Ibid.*, p. 244.

[78] Pettit seems to be sensitive to this fact. See Pettit (n. 14), p. 14.

[79] It is worth remembering that the aim of this paper is not to mount a full defense of the practice theory, which has been attacked by many, but merely to best understand what the internal point of view is. For some of these attacks, see Perry (n. 17), p. 1173; Coleman & Leiter (n. 42), p. 241; Dworkin (n. 35), p. 19; Shapiro (n. 21, 2011), pp. 46–49, 103–104; Warnock (n. 39), pp. 45–46, 61–65; Marmor (n. 39, 2001), p. 3; Marmor (n. 39, 2009), pp. 14–15.

Before saying how the right understanding of the internal point of view allows Hart to avoid this problem, it is worth noticing something about the problem: *the strength of our intuition that a certain social rule does not exist correlates with the rule's degree of specificity*. So, I suggest, for instance, that we have a moderately strong intuition that there does not exist a social rule in our society against storing one's smartphone in a way that damages it. But we have a *stronger* intuition that there does not exist, in our society, a rule against storing one's smartphone in a bowl of warm water. And we have an *even stronger, unimpeachable, crystal-clear* intuition that there does not exist, in our society, a rule against storing one's Samsung smartphone in an antique earthenware bowl filled with 50% FIJI-brand bottled water and 50% tap water from Bangor, Maine at a temperature of 86.64-degrees Fahrenheit. The point is that even though in all three cases we have the intuition that there is no such rule, the strength of that intuition increases as the degree of specificity of the putative rule increases.

The fact that taking the internal point of view consists not merely in making normative assessments of behavior, but also in making those assessments in virtue of that behavior meeting or failing to meet a description that one has in mind, both (a) solves the above problem for the practice theory and (b) explains the gradational nature of our intuitions about when there do and do not exist certain social rules. There is no rule against storing one's smartphone in a bowl of warm water because virtually no one takes the internal point of view toward the pattern of not storing one's smartphone in a bowl of warm water. And no one takes the internal point of view toward that pattern of behavior because almost no one thinks in those terms. In order to take the internal point of view, one must have the relevant description of behavior, at some level, *in mind*.[80] If, of course, bowls of warm water began appearing near where we store our smartphones, then we would begin to think in terms of storing or not storing our phones in those bowls and would begin, perhaps, to take the internal point of view.

[80] I do not understand '*S* has a description in mind' to entail that *S* consciously entertains that description. Without dwelling on this point at too much length, one example of how one can have a description in mind without consciously entertaining it is in using an object for certain of its properties without attending to doing so. For instance, one might be engrossed in dinner conversation, paying no attention to one's food, but one still uses a fork to move the food to one's mouth, demonstrating that one is, in some minimal sense, conceptualizing it under the description *food*.

This explains why our intuitions about the existence of rules vary as they do. We become less and less certain that a rule exists, all else equal, as we become less and less certain that enough members of the relevant group take the internal point of view. And if the internal point of view involves thinking of behavior as fitting or failing to fit a certain description, then we become less and less certain that others take the internal point of view as that description becomes more and more detailed and bizarre. I am fairly confident that other members of my society do not think in terms of smartphones being stored in bowls of warm water. But I am entirely confident that almost no one thinks in terms of Samsung smartphones being stored in antique earthenware bowls of 86.64-degree water.

C. Normative Assessments Need Not be Cognitive

Even though this paper is about the internal point of view (a type of mental state) and not about internal statements (a type of linguistic expression), the nature of the latter does place some constraints on the former. Specifically, since the publication of Kevin Toh's paper, *Hart's Expressivism and His Benthamite Project*, some accept that Hart was an expressivist about internal statements.[81] Without taking a stance one way or the other, it is worth noting that the characterization of the internal point of view given here is compatible with expressivist, non-expressivist, and quasi-expressivist characterizations of internal statements.[82] If, for instance, Toh is right about internal statements, then the attitude expressed by those statements – the internal point of view – is a *conative* or *noncognitive* mental state, like desire, not a *cognitive* mental state, like belief.[83] The characterization

[81] Toh (n. 17). For opposition see Finlay & Plunket (n. 18); Kramer (n. 17); Leiter (n. 18).

[82] For the quasi-expressivist option, see Finlay & Plunket (n. 18).

[83] Toh (n. 17), p. 79.

of the internal point of view presented here allows it to meet this constraint.[84]

The internal point of view involves a normative assessment. This normative assessment, though, need not be a belief-like, cognitive mental state or event.[85] Indeed, one of the central arguments for noncognitivism is that judgements involving the application of (the relevant type of) normative concepts imply that the agent making the judgement possesses some reason or motive for action.[86] And this claim motivates the move to noncognitivism, which includes that view that normative judgements are not truth-apt in the traditional sense, but can still be called "judgements" or "assessments" in a broad sense. These normative assessments can, however, also be understood as cognitive mental states like belief, which might be required if we adopted another semantics of internal statements.

D. Is the Internal Point of View Practical?

Is the internal point of view a *practical* attitude? If the contrast being drawn here is between practical and theoretical attitudes, then the answer is an unequivocal 'yes'.[87] Attitudes that are practical in this sense are fundamentally action-concerning. And the internal point of view is certainly that.

But "practical" can also be understood more restrictively, to apply to attitudes that concern not just action, but specifically *one's own action*. Read this way, the answer can (misleadingly) seem to also be 'yes.' For instance, Hart often, perhaps more often than not, portrays one who takes the internal point of view toward rules as "using

[84] Of course, readers may ask: in what sense I have given an account of this attitude if I have not settled whether it is cognitive or non-cognitive? I have little to offer in response other than capitulation. How much something counts as an 'account' of some mental state is a matter of degree. And a more thorough account, I admit, would take a stand on this issue. But it seems to me that not only is there not enough in what Hart says to force a decision on this issue, but also that nothing in Hart's larger project that favors the internal point of view being understood as either cognitive or non-cognitive. I will not employ the common pretense of 'limitations of space' as my excuse for omitting a discussion of whether the internal point of view is cognitive or non-cognitive. The real reason I do not answer that question is because I do not know the answer (and that I think it is better to err on the side of accuracy rather than boldness). My hope, however, is that I have nonetheless said enough specific things, which I enumerate and review in the following section, about what the internal point of view is.

[85] Toh (n. 17), p. 82.

[86] W.D. Falk, '"Ought" and Motivation' Proceedings of the Aristotelian Society 48 (1947)' P. Railton, 'Naturalism and Prescriptivity' Social Philosophy and Policy 7 (1989).

[87] Shapiro (n. 17), p. 1160.

them to guide one's conduct."[88] That is, the pattern is taken as a standard for the evaluation of *one's own* past, present, or future conduct.[89] And this may well be a paradigm way of taking the internal point of view.[90] But there are two reasons why this cannot be the *only* way of taking the internal point of view: (a) it is possible to take the internal point of view toward power-conferring rules and (b) it is possible to take the internal point of view toward the behavior of others.

Hart introduced the duty-imposing/power-conferring distinction.[91] However, as Kramer points out, all of Hart's examples of the internal point of view involve duty-imposing rules. And Kramer presents an argument that persuasively shows that understanding the internal point of view merely as a collection of behavioral dispositions leaves makes it difficult or perhaps impossible to expand Hart's characterization of the internal point of view to satisfyingly apply to power-conferring rules.[92] But the characterization of the internal point of view presented here does seem to leave open the possibility of that attitude's application to power-conferring rules. Just as taking the internal point of view toward a rule imposing a duty to pay taxes involves normatively assessing behavior as *permissible* or *impermissible*, so too taking it toward a rule conferring the power to make a will involves normatively assessing behavior as *valid-making* or *invalid-making*. These assessments directly apply valenced concepts within a normative system, and therefore count as normative assessments in this context. However, such assessments are not practical in the action-guiding sense. From the fact that some way of behaving fails to create a valid will nothing follows about what one ought to do.[93]

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[88] Hart (n. 2), p. 89.

[89] And, moreover, one of the primary functions of a legal system, for Hart, was to guide action. See Shaprio (n. 21, 1998)p, p. 488. Of course, a system of rules can have as its primary function action guidance without it also being the case that the attitude fundamentally responsible for the existence of that system itself being, of necessity, a form of action guidance. Still, it may be natural to think of the internal point of view in this way.

[90] Shapiro (n. 21, 2011), p. 100; Shapiro (n. 21, 1998), pp. 472–473. Though Shapiro thinks of the internal point of view as primarily action-guiding, he does not think that taking that attitude toward a rule is identical with being guided by that rule. See Shapiro (n. 17), p. 489.

[91] Hart (n. 2), pp. 33–43.

[92] Kramer (n. 17), pp. 46–50.

[93] Though it is tempting to conclude therefore that such assessments are not normative, there is no way to reach that conclusion without insisting that power-conferring rules are not rules at all. This may be true, but it is not something that Hart could ever accept.

The second reason that the internal point of view is not necessarily practical in the action-guiding sense is that it can be taken not only toward one's own behavior, but toward the behavior of others.[94] The internal point of view sometimes involves seeing a pattern as a standard for oneself, and other times as a standard for others. Consider, again, Hart's example of a rule requiring men to remove their hats when entering a church.[95] Though the rule *applies* only to the behavior of men, it is a rule of a society consisting of women and others. A diverse cross section of this society takes the internal point of view toward the rule, and this involves evaluating the behavior of others.

This can be construed as a constraint on any account of the internal point of view: such an account must present a unified picture of the internal point of view, but one that allows both self-directed and other-directed mental states to count. The account presented here is designed to do just that.[96]

V. CONCLUSION

Here is a brief enumeration of what must be true of the internal point of view, followed by a statement of what the internal point of view is that allows all of these things to be true of it. The internal point of view must:

(1) plausibly explain the existence of both legal and non-legal social rules, via its role in the practice theory,[97]
(2) be directed both at instances of behavior and patterns of behavior, thought of under a description,
(3) in some instances be applicable to the behavior of the agent, and in some instances be applicable to the behavior of others,
(4) in some instances involve moral assessment, but in other instances involve non-moral normative assessment,
(5) and in some instances be accompanied by a judgment that there are reasons to take the attitude toward this pattern and transform it into a

[94] S. Perry (n. 17), p. 1171' Shapiro (n. 21, 2011), pp. 81–82.

[95] Hart (n. 2), pp. 9–10, 55–58, 124–125.

[96] This, it should be noted, is the best argument against an intention-based account like the one that is perhaps favored by Shapiro. See Shapiro (n. 21, 2011), pp. 81–82; Shapiro (n. 17), p. 1163.

[97] That is, our characterization of the internal point of view need not render the practice theory correct, but it should prevent that theory from being wildly implausible.

> rule, but in other instances not be accompanied by any judgement whatsoever about the patterns at which it is directed.

So, once more, to take the internal point of view toward a pattern of behavior (and thereby transform it into a rule in the way specified by Hart's practice theory of rules) is to normatively assess – and this assessment can be moral, prudential, legal, or of many other varieties – instances of behavior – either the behavior of the agent or others – in virtue of the fact that those instances conform or fail to conform to the relevant pattern (i.e., fit the description under which the pattern of behavior is cognized or understood). This is a rather broad mental state. But that is what it has to be in order to do what Hart needs it to do.

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