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LEGAL VALIDITY AND THE INFINITE REGRESS

ABSTRACT. The following four theses all have some intuitive appeal:

(I) There are valid norms.
(II) A norm is valid only if justified by a valid norm.
(III) Justification, on the class of norms, has an irreflexive proper ancestral.
(IV) There is no infinite sequence of valid norms each of which is justified by its successor.

However, at least one must be false, for (I)–(III) together entail the denial of (IV). There is thus a conflict between intuition and logical possibility.

This paper, after distinguishing various conceptions of a norm, of validity and of justification, argues for the following position. (I) is true. (II) is false for legislative justification and true for epistemic justification. (III) is true for legislative and false for epistemic justification. (IV) is true for legislative justification; for epistemic justification (IV) is true or false depending on the conception taken of a norm.

Our intuition in favour of (II) must therefore be abandoned where justification is conceived legislatively. Our intuition in favour of (III) must be abandoned, and our intuition in favour of (IV) qualified, where justification is conceived epistemically.

1. THE PROBLEM

The following four theses all have some intuitive appeal:

I. There are valid norms.
II. A norm is valid only if justified by a valid norm.
III. Justification, on the class of norms, has an irreflexive proper ancestral.

Roughly, the proper ancestral of a relation R is the relation that an object *X* bears to an object *Y* where *X* bears R to *Y* or bears R to something that bears R to *Y* or. . . . To say that a relation is irreflexive is to say that nothing bears the relation to itself.

IV. There is no infinite sequence[1] of valid norms each of which is justified by its successor.

[1] 'Infinite sequence' here means 'sequence with infinite range'. (IV) does not concern infinite iterations of finite numbers of elements.

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However, at least one of these theses must be false, for (I)–(III) together entail the denial of (IV).[2] There is thus a conflict between intuition and logical possibility. The purpose of this paper is to resolve the conflict.

If (I) is false, a form of nihilism is true: there are no valid norms. (II), construed as a material conditional, is equivalent to the proposition that no norm is valid but not validated by a valid norm.[3] If (II) is false, (I) is true and a component of a form of foundationalism is true: it is true, that is, that there is a norm which is basic in the strong sense that it is valid without being justified, or in the weaker sense that it is valid without being justified by a norm, or in the still weaker sense that it is valid without being justified by a norm which is in turn valid. A non-valid but justifying norm might itself be called basic. These claims constitute only parts of foundationalist theories of validity; a full theory will also state that, and how, valid non-basic norms derive their validity from a relation to basic norms. It is likely to characterize the derivation recursively. Note that the *truth* of (II) is compatible with other forms of foundationalism, for example to the effect that there is a norm which is basic in the sense that it justifies itself.

If (III) is false, there are norms forming a circle of justification; that is, there is either (a) a finite sequence of norms such that each

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[2] (I)–(IV) instantiate the premisses in a schema for any infinite regress argument:

(i) $(\exists x)(\mathrm{A}x)$
(ii) $(\forall x)[Ax \rightarrow (\exists y)(\mathrm{A}x \,\&\, x\mathrm{R}y)]$
(iii) Irr(*R/R)
(iv) $\sim(\exists s)[\mathrm{Inf}(R(s)) \,\&\, (\forall i)(i \in D(s) \rightarrow \mathrm{A}s_i \,\&\, \mathrm{A}s_{i+1} \,\&\, s_i\mathrm{R}s_{i+1})]$.

In earlier presentations I used two premisses in place of (iii), namely that R is irreflexive and that R is transitive, to derive (iv): see O. Black, 'Induction and Experience: an Alleged Infinite Regress', *Fundamenta Scientiae* 7, 3/4 (1987). The present formulation is more frugal, as (iii) is entailed by but does not entail the conjunction of those propositions. I owe this point to Dorothy Edgington.

[3] Kelsen would reject (II). One of the functions of the Grundnorm in Kelsen's thought is to be the source of the validity of all the norms in a legal system, and one reason for giving the Grundnorm this function is the belief that otherwise there would be an infinite regress of validation: 'The quest for the validity of a norm is not – like the quest for the cause of an effect – a regressus ad infinitum; it is terminated by a highest norm which is the last reason of validity within the normative system' (H. Kelsen, *General Theory of Law and State*, New York, Russell & Russell, 1961, p. 111).

is justified by its successor, if any, and the last is justified by the first or (b) – the limiting case where a circle contracts into a point – a norm which justifies itself and hence is basic in the sense noted above which is compatible with (II). If (IV) is false there are infinite sequences of the kind whose existence it denies.

2. THE CONCEPTS

Before the theses can be assessed, some explanation must be given of the concepts they contain:

2.1. Norms

There are four conceptions of a norm. On the simplest one, a norm is just a normative proposition: call this the propositional conception. But it may be held that, for a norm to exist, more it needed than a normative proposition. On the second conception, the proposition must be expressed. Call this, then, the expressive conception. On the third, which can be called the active conception, the proposition must stand in a certain relation to certain actions. On the fourth – the mental conception – the proposition must form the content of certain mental states.[4]

The last three conceptions have two versions. On one, they agree with the first conception that a norm is a normative proposition, but each adds a condition which such a proposition must meet in order to be a norm. On the other version they disagree with the propositional conception, instead representing a norm as a composite entity comprising both a normative proposition and certain further components. The simplest way to explicate the latter version is to say that on these conceptions a norm is an ordered pair whose first element is a normative proposition and whose second is the set of additional components. For example, on the active conception the second element will be the set of actions to which the normative proposition is appropriately related.

The two versions have different consequences for the identity of norms. On the former, the identity of a norm turns on that of a normative proposition, while, on the latter version, norms will

[4] Granted that having certain mental states is a necessary condition of performing an action, the active conception includes a version of the mental conception.

be distinct even if they comprise the same proposition, provided that they differ in their second element. There is little to choose between the two versions, but I shall adopt the former as it will simplify the discussion and is intuitively more attractive than the latter: we are inclined to think that the identity of a norm does not depend on the way the normative proposition is expressed, or on the ways people act or on their mental states. On all four conceptions, then, a norm is a normative proposition. This claim is intended in the strong sense that all norms are normative propositions and all normative propositions – or, in the case of the last three conceptions, all normative propositions meeting the relevant conditions – are norms. The class of normative propositions need not be precisely defined, but must be conceived narrowly enough to make the second of these universal statements true.

Some philosophers deny that propositions exist.[5] If they are right, either all four conceptions are wrong or there are no norms and hence (I) is false. I shall simply assume that propositions exist and, without going into their analysis, that they are abstract entities.

2.2. *Validity*

There are two main conceptions of the validity of norms. On the *deontic* conception, roughly, a norm is valid if and only if its subjects (i.e. the people to whom it applies) ought to comply with it.[6] On the *systemic* conception, a norm is valid if and only if it belongs to whichever legal system is in question.[7] I shall restrict the discussion to systemic validity (and shall usually omit the word 'systemic' from now on). Its characterizing biconditional, which is intended as an analytic truth, can be refined; for example, a distinction may be

[5] The denial might be expressed as an objection to the reification of propositions. Given the present account of norms as propositions, the objection generalizes the objection, discussed in part 4 below, to the reification of norms.

[6] This characterization is appropriate only to obligatory norms. It can be expanded to cover norms of other kinds.

[7] The distinction between deontic and systemic validity has been variously developed in the literature: see, e.g., J. Raz, *Practical Reason and Norms* (Princeton University Press, 1990), pp. 127–128, and M. Sellers, "The Actual Validity of Law," *American Journal of Jurisprudence* 37 (1992): 283ff. A question which cannot be pursued here is whether systemic validity is ever sufficient for deontic validity.

drawn between effective and obsolete or imaginary legal systems. Membership of effective systems is in question here.

A norm is a member of a legal system if and only if it is recognized by the courts of the system.[8] This is a synthetic claim: it gives a test, not an analysis, of membership. Again there is room for refinement; for example, it may not be clear whether a tribunal is a court,[9] and a norm may be recognized by one court but not by another, as when an interpretation is rejected on appeal. For simplicity I shall ignore differences among the courts of a legal system.

A court recognizes a norm if and only if it would act on the norm if the norm were in question before it.[10] This is an analytic claim and, like the characterizations of validity and membership, it can be refined, but the three biconditionals in their present rough form are adequate for this discussion. (I shall introduce a modification in part 5.2.2.)

2.3. Justification

The concept of the justification of norms covers two conceptions which, adapting Kelsen's terminology,[11] may respectively be called dynamic and static. They are distinguished by the fact that the concept of empowerment – not analysed in this paper – is included in the dynamic but not the static conception.

Dynamic justification includes legislative and judicial justification. To say that *X* legislatively justifies a norm means that *X* empowers a legislative authority to adopt the norm and the authority does adopt it. The authority might be a sovereign body such as the British

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[8] This follows the approach taken by Salmond, Raz and Hood Phillips: *Salmond on Jurisprudence: Eleventh Edition*, G. Williams, ed. (London: Sweet & Maxwell, 1957), pp. 40–41; J. Raz, *The Concept of a Legal System* (Oxford University Press, 1980), pp. 189 ff; O. Hood Phillips and P. Jackson, *O. Hood Phillips' Constitutional and Administrative Law: Seventh Edition* (London: Sweet & Maxwell, 1987), p. 3. Instead of recognition, enforcement – including more than specific enforcement – by the courts could be used as the test of membership. The tests yield divergent results for those norms, such as constitutional conventions, that are recognized but not enforced by the English courts.

[9] Indicia are given in *Halsbury's Laws of England: Fourth Edition*, vol. 10 (London: Butterworths, 1975), 'Courts', paras 701–702.

[10] This simplifies Raz's account of recognition: op. cit., p. 196.

[11] Op. cit., pp. 112–113, and H. Kelsen, *Pure Theory of Law* (2nd edn) (Berkeley and Los Angeles: University of California, 1967), pp. 195 ff.

Parliament, or have delegated power to legislate, as do government ministers and local councils.

To say that X judicially justifies a norm means that X empowers a court to recognize the norm and the court does recognize it.

Static justification includes logical and epistemic justification. To say that norm N_i logically justifies norm N_j means that N_i is valid and entails N_j. To say that N_i entails N_j means that necessarily anyone who complies with N_i complies with N_j.[12] 'Complies' is here used broadly, to cover not only the case in which one complies with an obligation or duty imposed by a norm, but also that in which one exercises a power, permission or right granted by a norm.

To say that N_i epistemically justifies N_j means that N_i is valid and the fact that N_i is valid is a reason to believe that N_j is valid. Usually N_i epistemically justifies N_j where N_i logically justifies N_j, but epistemic justification does not include logical justification, as the former is irreflexive (nothing epistemically justifies itself, since nothing is a reason for itself), while the latter is reflexive on the class of valid norms: every norm entails itself, so every valid norm logically justifies itself.

3. THE TASK

The variety of conceptions of a norm, of validity and of justification complicates the problem posed by theses (I)–(IV). The theses contradict each other if and only if the same conceptions are at issue in all the theses in which the concepts respectively subsuming them occur. The task therefore is to identify one or more false theses for each combination of conceptions, and our intuitions in favour of the theses must be modified accordingly.

The task is less daunting than this suggests, for the differences among the four conceptions of a norm are only relevant to thesis (IV) and I shall limit the task by restricting the range of conceptions of validity and justification. The conception of validity has already been fixed. As to justification, I shall deal only with the legislative and epistemic conceptions. A plausible hypothesis, which I shall not try to establish, is that the truth-values of the theses are the same

[12] There is a more detailed treatment of entailment between norms in G. von Wright, *Norm and Action* (London: Routledge & Kegan Paul, 1963), p. 155.

for judicial as for legislative justification and the same for logical as for epistemic justification. If the hypothesis is true, the results for legislative and epistemic justification generalize respectively to dynamic and static justification.

The position for which I shall argue is this. (I) is true. (II) is false for legislative and true for epistemic justification. (III) is true for legislative and false for epistemic justification. (IV) is true for legislative justification; for epistemic justification (IV) is true or false depending on the conception taken of a norm. Thus for each chosen conception of justification, and hence for any combination including that conception, I shall identify a thesis that is false and thereby solve the problem.

4. THESIS (I)

(I) says that there exist valid norms. This is obvious enough to be accepted without argument; indeed it is plausible to think that any argument for (I) would start from assumptions less certain than (I). Conversely, the view is plausible that any attack on (I) would use assumptions more controversial than (I). In that case the right response to such an attack would be to turn it on its head and argue by *modus tollens* that, since (I) is obviously true, one or more of the argument's assumptions is false.

To claim that (I) is obvious is not to be enslaved to ordinary language. It is compatible with recognizing that intuitive judgments may be abandoned, in the course of developing a theory, for the sake of satisfying methodological requirements such as consistency and simplicity. The problem posed by the tetrad (I)–(IV) may itself be seen as a moment in a dialectic between intuitions and theoretical constraints leading to a coherent view of norms, validity and justification: the fact that (I)–(III) entail the denial of (IV) forces a revision of intuitions in the interest of consistency. But this can be admitted without (I)'s being regarded seriously as a candidate for rejection. There are other theses to choose from.

It may be said that this blithe acceptance disregards an objectionable reification of norms that is implicit in (I): to say that norms – valid or not – exist is to imply that norms are things in the world like trees or stones. However, the charge of reification is unclear. The

statement that norms are things can be understood as a truism which no-one would deny. The objection to the statement must hence be construing it differently, as making some metaphysical claim. But the content of that claim is obscure. So therefore is the objection. There are various ways in which one might seek to explicate the claim: the most promising is to say that it denies the reducibility of norms. But there is no reason to interpret (I) as imply that norms are irreducible. The objection to (I) based on a rejection of reification is thus either obscure or irrelevant.

5. THESIS (II)

Thesis (II) is that a norm is valid only if justified by a valid norm. The intuition behind (II) combines four thoughts. First, a valid norm must get its validity from something. Second, the realm of norms is closed, so the source of a norm's validity must itself be a norm. Third, justification is the conduit through which validity flows. Fourth, a norm cannot give validity unless it has validity.

These are only rough and loosely connected ideas, not a rigorous argument. (II) now needs to be scrutinized by applying the different conceptions of justification.

5.1. Legislative Justification

To say that *X* legislatively justifies a norm means that *X* empowers a legislative authority to adopt the norm and the authority does adopt it. Expanded in terms of this definition, (II) becomes:

(II_{LJ}) For every valid norm *N*:
- (1) A legislative authority adopts *N*; and
- (2) There is an *X* such that:
  - (a) *X* empowers the authority to adopt *N*;
  - (b) *X* is a norm; and
  - (c) *X* is valid.

5.1.1. Custom

(II_{LJ}) is refuted by valid purely customary norms. Adoption, in the sense intended, consists of a formal decision, which is a datable

event. Purely customary norms are not adopted but gradually develop. These are analytic truths about the concepts of adoption and custom. It is true that one may properly talk of the adoption of a custom, but there 'adopt' is used in an extended sense to signify either the process of development or a threshold at which the process has gone far enough for the custom to have been established.

Purely customary norms therefore fail to satisfy clause (1) of (II_{LJ}). They are thus counterexamples to thesis (II) where the thesis is construed in terms of legislative justification.

5.1.2. Statute

Customary norms play a diminishing role in modern legal systems, so it is worth considering whether (II_{LJ}) is satisfied by norms of a more significant type. I shall take the paradigm of the modern legal norm, the statute.

To focus discussion, assume that *N* in (II_{LJ}) is a statute of English law, duly enacted by Parliament. Clause (1) then is true, for Parliament is a legislative authority and enactment is a form of adoption. As to (2), *X* might either consist of certain practices or be some constitutional principle. Taking the first hypothesis, the practices in question will be those that sustain Parliament as an effective institution; these include practices of Parliament itself and a network of other practices, notably the practices of the courts, the police and other agencies of enforcing legislation adopted by Parliament. But where *X* consists of practices (2)(b) is false, for practices are not norms. Hence, absent any other *X* for which (2) is true where *N* is an English statute, such statutes fail to satisfy (II_{LJ}), which in that case is false.

But, as noted, there is another candidate for *X*, namely a constitutional principle. Where *N* is an English statute the obvious principle is that of the legislative supremacy of Parliament, commonly expressed by the words 'Whatever the Queen in Parliament enacts is law'.

It might be contended that on the present hypothesis neither (2)(a) nor (2)(b) is true. Constitutional principles such as this, the argument goes, are not norms, so (2)(b) is false. Rather, they are descriptive propositions which characterize aspects of the legal system in question. Thus the sentence 'Whatever the Queen in Parliament enacts is law' should be read, in the light of the theory of validity in part

2.2, as expressing the proposition that the English courts recognize legislation so enacted. Such principles, being merely descriptive, do not empower legislative authorities in any way, so (2)(a) is also false.

This argument is right to recognize the distinction between a norm and a proposition describing a norm.[13] Sometimes it is unclear whether a sentence expresses one or the other. Now it may be conceded that the sentence 'Whatever the Queen in Parliament enacts is law' can be read in the manner indicated, but it can also properly be interpreted to express a norm. This might be conceived either as a norm granting power to Parliament to adopt norms or as a norm imposing a duty on English courts to recognize norms adopted by Parliament.[14] If *X* is taken to be the former, (2)(a) and (2)(b) are true. If *X* is the latter norm, (2)(b) is clearly true, but an argument, based on an analysis of empowerment, would be needed to establish (2)(a). Here let it be granted that the principle of Parliamentary supremacy, whether conceived in the first or the second way, is a norm which empowers Parliament to adopt statutes, and let *X* be the principle. (2)(a) and (2)(b) are therefore true.

That leaves (2)(c). Intuition is uncertain whether the principle of Parliamentary supremacy is valid in the sense of belonging to the English legal system. While we are inclined to say that it is valid, we are also inclined to say that it is neither valid nor invalid, that the question of its validity does not arise.[15] The issue is settled by the above account of validity, whereby the principle belongs to the English system just in case an English court would act on it if it were in question before the court. There are many cases in which English

[13] The distinction is well established in legal theory. See e.g. von Wright, op. cit., pp. 104–105; Kelsen, op. cit., ch. 3; Raz, op. cit., pp. 45–50. Compare Hart's distinction between statements made from the internal and those made from the external point of view: H. Hart, *The Concept of Law* (Oxford University Press, 1961), pp. 86–88.

[14] In Hart's terms (ibid., pp. 92–94) the first norm is a rule of change and the second a rule of recognition. Hart treats 'Whatever the Queen in Parliament enacts is law' as expressing a rule of recognition (p. 104), although there is room for doubt whether he regards this rule as imposing a duty on courts. According to MacCormick, Hart does so regard rules of recognition: N. MacCormick, *H.L.A. Hart* (London: Edward Arnold, 1981), pp. 21 and 109.

[15] See, Hart, op. cit., pp. 105–106.

courts have acted on the principle of Parliamentary supremacy,[16] which is therefore valid. Hence, where X is taken to be the principle, (2)(c), and so the whole of (2), is true.

The result is that, where N is taken to be an English statute, both clauses of (II_{LJ}) are true. English statutes thus satisfy (II_{LJ}) and so are not counterexamples to thesis (II) where the thesis is read in terms of legislative justification.

5.1.3. Constitutional Principle

The next step in the pursuit of a counterexample is to consider whether, given that the principle of Parliamentary supremacy is valid, the principle itself satisfies (II_{LJ}). That is, the principle is now taken to be not X but N.

It is plausible to say that on this hypothesis clause (1) is true, as Parliament adopted the principle either in the 1688 Bill of Rights or in the statute enacting the Bill.[17] On the other hand the Bill refers to the Lords and Commons 'vindicating and asserting their ancient rights and liberties' and the statute states that 'all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom', which suggests not that Parliament adopted the principle but that the principle was already a customary norm which Parliament merely acknowledged. Against this in turn it may be contended, first, that acknowledgement can be a form of adoption and, second, that the rhetoric of 'ancient' rights is inadequate evidence for the existence of a customary norm: rather, it merely created a convenient political fiction in an age which viewed antiquity as a token of legitimacy.[18]

I shall not here pursue the interpretation of the 1688 settlement but shall tentatively grant that, where N is the principle of Parliamentary supremacy, (1) is true. As regards (2), it might again be proposed that X consists of the practices that sustain Parliament as an effective institution. But then, as before, (2)(b) is false; hence, absent any

[16] Examples are *Lee v Bude and Torrington Ry* (1871) LR & CP 576; *ex p Selwyn* (1872) 36 JP 54; *R v Jordan* [1967] Crim LR 483, 9 JP Supp. 48; and *Cheney v Conn* [1968] 1 WLR 242.

[17] 1688 1 W&M session 2 cap. 2.

[18] Another possible response is that a customary norm can come to be adopted. This raises difficulties which will be discussed in part 6.1.1.

other X for which (2) is true where N is the principle of Parliamentary supremacy, the principle fails to satisfy (II_{LJ}), which in that case is also false.

But, again as in the previous case, there is another candidate for X, this time a principle of morality. Where N is the principle of Parliamentary supremacy, the most attractive candidate is some principle of representative democracy.

There is room for debate whether a democratic principle empowered Parliament to adopt the principle of supremacy. To decide this it would be necessary both to specify the democratic principle more exactly and to investigate the concept of empowerment. Let it be granted arguendo that (2)(a) is true where X is such a principle. (2)(b) is less controversial: the principle can be taken to be a norm.

As to (2)(c), it is clear that some moral principles are valid in English law; examples are the rules of natural justice and the maxims of equity. However, it is doubtful that they include any norm that might empower Parliament to adopt the principle of supremacy. By the account of validity in part 2.2, a principle of representative democracy belongs to the English legal system if and only if an English court would act on it if it were in question before the court. This test is hard to apply, for it would only be in a very unusual situation – a revolution perhaps – that a court would be presented with such a principle. But, again for argument's sake, let the heroic claim be accepted that some democratic principle satisfying (2)(a) and (2)(b) also satisfies (2)(c). In that case, where N is taken to be the principle of Parliamentary supremacy, both clauses of (II_{LJ}) are true and so this principle is not a counterexample to thesis (II) where the thesis is read in terms of legislative justification.

5.1.4. Moral Principle

The next step is to consider whether (II_{LJ}) is satisfied by valid moral principles. N can be taken to be one of the moral principles mentioned above whose validity, unlike that of principles of representative democracy, is uncontroversial.

This brings the discussion back to the position reached in part 5.1.1. On the present hypothesis clause (1) of (II_{LJ}) is false, for adoption is a datable event whereas moral principles usually are purely customary norms, developing gradually. Valid moral princi-

ples of this kind are thus counterexamples to thesis (II), construed in terms of legislative justification.

It may be objected that some moral norms are adopted, and not merely in the extended sense of 'adopt' that was dismissed in 5.1.1: such adoption might result from existential choice, religious conversion or military conquest. But this does not block the refutation. In the first place, it may be doubted whether an adopted norm could indeed be a moral norm; but, even if it is conceded that some moral norms are adopted, it is plain that not all valid moral norms are. For example, the maxims of equity evolved in the Court of Chancery.

5.1.5. Conclusion on (II) for Legislative Justification

Thesis (II) is that a norm is valid only if justified by a valid norm. Where legislative justification is at issue, (II) is falsified by valid customary norms, and by valid moral norms in particular. It has also been found difficult to reconcile (II), construed in terms of legislative justification, with the validity of the principle of Parliamentary supremacy, but I tentatively concluded that they are compatible. The thesis on this interpretation is not threatened by the validity of English statutes.

5.2. Epistemic Justification

To say that N_i epistemically justifies N_j means that N_i is valid and the fact that N_i is valid is a reason to believe that N_j is valid. (II) now expands as follows:

(II_{EJ}) For every valid norm N_j, there is a norm N_i such that:

(1) N_i is valid; and

(2) The fact that N_i is valid is a reason to believe that N_j is valid.

Note that the proposition forming part of (II), that the justifier is a valid norm, is a consequence of the definition of epistemic justification.

I shall examine two arguments that (II_{EJ}) is true. One appeals to internal relations between norms, the other to the relation between a norm and a meta-norm.

5.2.1. Internal Relations

The first argument runs as follows. For any norm in a legal system, there is another norm in the system which is internally related to it. So, by the account of validity in part 2.2, a norm is valid only if another valid norm is internally related to it. Where N_i is valid and internally related to N_j, the fact that N_i is valid is a reason to believe that N_j is valid. Therefore (II_{EJ}) is true.

This argument needs to be supplemented by an account of the concept of an internal relation. Raz, in *The Concept of a Legal System*, gives two characterizations which appear to be neither synonymous nor even extensionally equivalent:

> By internal relation between laws we mean relation between laws one or more of which refer to or presuppose the existence of the others.

> An internal relation exists between two laws if, and only if, one of them is (part of) a condition for the existence of the other or affects its meaning or application.[19]

There is no need to consider whether, on either of these conceptions, it is true that every norm in a legal system has another such norm internally related to it, for the argument clearly breaks down at the point where it connects internal relations with reasons. Taking the first of Raz's characterizations, it does not follow, merely e.g. from valid N_i's referring to N_j, that the fact that N_i is valid is a reason to believe that N_j is valid. Similarly, to take the second characterization, that conclusion does not follow merely from valid N_i's affecting the application of N_j.

Absent some different account of internal relations,[20] the argument thus fails to establish (II_{EJ}).

5.2.2. Meta-Norms

The other argument for (II_{EJ}) is this. The following three principles are true. First, for any obligatory norm N_i there is a meta-norm N_j to the effect that N_i's subjects shall comply with N_i. Second, validity of norms is closed under entailment, that is, any norm entailed by a valid norm is valid. The third principle is:

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[19] Pages 6 and 24.

[20] In *Practical Reason and Norms*, p. 112, Raz gives a different characterization again, which also fails to sustain a persuasive argument for (II_{EJ}).

(RE) If:

(1) N_i is valid;

(2) N_i is distinct from N_j; and

(3) N_i entails N_j;

then the fact that N_i is valid is a reason to believe that N_j is valid.

Consider a valid obligatory norm N_1 and its meta-norm N_2. N_1 and N_2 both entail and are distinct from each other. Since N_1 is valid and entails N_2, it follows by the principle of closure that N_2 is valid. Since N_2 is valid and both entails and is distinct from N_1, it follows by (RE) that the fact that N_2 is valid is a reason to believe that N_1 is valid. N_1 and N_2 therefore satisfy (II_{EJ}) where N_i and N_j in (II_{EJ}) are respectively taken to be N_2 and N_1. By the arbitrariness of N_1 and N_2, (II_{EJ}) is satisfied by all valid obligatory norms. Similar reasoning applies to non-obligatory norms. Therefore (II_{EJ}) is true.

Two objections to this argument need to be considered. The first is that the principle of closure sits uneasily with the theory of validity in part 2.2. That theory comprises three biconditionals: a norm is valid if and only if it is a member of the legal system in question; a norm is a member of a legal system if and only if it is recognized by the system's courts; and a court recognizes a norm if and only if it would act on the norm if the norm were in question before it. Now every valid norm N_i entails some vastly complex norm N_j constructed from N_i, and perhaps from other norms, by means of the logical connectives.[21] An example of such construction, though not of vast complexity, is the entailment from N_i to [(N_i and N_k) or (N_i and not-N_k)]. It may well be that, if N_j were in question before a court, the court would fail to act on N_j because N_j was beyond its intellectual grasp. In that case, by the theory of validity, N_j is not valid. But then validity is not closed under entailment.

The way to reconcile the principle of closure with the theory of validity is to introduce into the latter a condition as to the court's mental powers. This condition can be added to the right-hand side of either the second or the third biconditional. One suggestion is

[21] This claim assumes that compounds made of norms with the logical connective are themselves norms. The assumption may need qualification, but there is no need to go into details.

that the condition should ascribe ideal rationality to the court. Then the second biconditional for example might be rewritten as: a norm is a member of a legal system if and only if the system's courts would, if they were ideally rational, recognize the norm. But that makes the criterion of validity too strong, for courts make valid law in decisions which fall short of ideal rationality: some valid law is bad law. The solution is to restrict the new condition to the scope of the objection, that is, to the power of analysing logical compounds. Thus the right-hand side of the second biconditional can be rewritten as: the system's courts would, if they had sufficient powers of analysing logical compounds, recognize the norm. That answers the first objection.

The second objection attacks (RE). It is that, where clauses (1)–(3) in (RE) are true, it is not the mere fact, stated by (1), that N_i is valid which is a reason to believe that N_j is valid; rather, it is the fact stated by the conjunction of (1)–(3) which is the reason. But, if the consequent of (RE) is revised to accommodate this point, the argument is blocked.

A full answer would need to be based on a theory of reasons, but the objection is not compelling at an intuitive level. While it may be conceded that the fact stated by the conjunction of (1)–(3) is a reason to believe that N_j is valid, it can still be allowed that the fact stated by (1) on its own is such a reason.

In any case the objection can be avoided by modifying slightly the definition of epistemic justification. Say that the fact that-P is an *operative conjunct* of a reason to believe that-Q just in case, for some R, the fact that-R is not a reason to believe that-Q. and the fact that-(P & R) is a reason to believe that-Q. Now say that N_i *partly* epistemically justifies N_j just in case N_i is valid and the fact that N_i is valid is an operative conjunct of a reason to believe that N_j is valid. Partial epistemic justification may be regarded as including epistemic justification as a limiting case. In the consequent of (RE), replace 'a reason' by 'an operative part of a reason'. The argument from meta-norms, revised in terms of partial epistemic justification, is invulnerable to the second objection.

As already noted, however, the argument in its original form seems sufficient to establish (II_{EJ}). The result is that (II) is true for epistemic justification.

5.3. Conclusion on (II)

That completes the discussion of thesis (II). The thesis, which is that a norm is valid only if justified by a valid norm, is false for legislative and true for epistemic justification.

6. THESIS (III)

Thesis (III) is that justification, on the class of norms, has an irreflexive proper ancestral. This is equivalent to the proposition that no norms form a circle of justification; that is, no norm justifies itself and there is no finite sequence of norms such that each is justified by its successor, if any, and the last is justified by the first.

The intuition in favour of (III) has at least four sources. The first, which has greatest force in relation to legislative justification, is the reflection that the norms of a developed legal system form hierarchies: a judicial decision may fall under a ministerial order, which falls under a statute, which in turn falls under a constitutional principle, but the principle does not fall under the decision. It is of course a further step to the claim that these are hierarchies of justification.

The second thought, which has appeal in relation to both forms of dynamic justification, is that where one norm justifies another the latter is based on the former and that there are no circles of basing. To expand this idea into an argument, an analysis of basing would be necessary.

Third, it may be held that the justification of norms has the same structure as that of beliefs. This claim, which is most relevant to epistemic justification, only supports (III) if a foundationalist view is taken of the justification of beliefs.[22]

The fourth thought, which applies primarily to the two forms of static justification, is that there is an analogy between legal systems and formal deductive systems. In a system such as the propositional calculus, it may be said, there are no circles of deduction: inference from axioms to theorems, and from theorems to further theorems, is linear. By the analogy, the same linearity characterizes the justification of norms.

[22] See O. Black, "Infinite Regresses of Justification," *International Philosophical Quarterly* 28, 4/122 (1988).

Against this it may be contended that linearity is a property not of the propositional calculus itself but of the way in which it is standardly presented. This reply is supported by the fact that it is easy, although pointless, to include circles in a presentation and by the fact that different sets of axioms can be specified for the calculus, so that an axiom in one presentation is a theorem in another. It may also be objected, so far as epistemic justification is concerned, that legal reasoning has various features that call the analogy into question. For example the validity of a norm may be established by finding it analogous to, or weighing it against, other norms or by determining its relevance to certain facts.[23] I shall return to legal reasoning by analogy in part 6.2.

6.1. Legislative Justification

To say that one norm legislatively justifies another means that the first empowers a legislative authority to adopt, and the authority does adopt, the second. (III) is true when read in terms of legislative justification. Two explanations might be advanced for this, the first of which runs as follows. If N_i legislatively justifies N_j, N_i is adopted before N_j. So, if there are norms forming a circle of legislative justification, there exists a pair of norms each of which is adopted before the other. But that is impossible. So there is no such circle and (III) on this reading is true.

The second explanation starts from the premiss that, if N_i legislatively justifies N_j, N_i is adopted by an authority higher in the relevant legal system's legislative hierarchy than the authority that adopts N_j. (Compare the first thought supporting the intuition in favour of (III).) In that case, if there are norms forming a circle of legislative justification, there is a pair of norms each of which is adopted by an authority higher than the authority that adopts the other. But that is

[23] These features have been noted by several writers. On weighing, see T. Eckhoff and N. Sundby, "The Notion of Basic Norm(s) in Jurisprudence," *Scandinavian Studies in Law* (1975), pp. 128–129, and R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1978), pp. 26–27. N. MacCormick discusses relevance in *Legal Reasoning and Legal Theory* (Oxford: Clarendon, 1978), ch. 3.

impossible. So again there is no such circle and (III) on the present reading is true.[24]

6.1.1. Custom

In each explanation, only the first premiss is controversial. Each of these two premisses implies that a norm is a legislative justifier only if it is adopted. But it might be objected that purely customary norms legislatively justify norms: since purely customary norms are not adopted (see part 5.1.1), both premisses are false. The answer to this is that, even if some purely customary norms do legislatively justify norms, which is doubtful, they are irrelevant to the matter of norms forming circles of legislative justification, for in such a circle every norm is adopted. The premisses may therefore be revised, without loss of explanatory power and in a way that avoids the objection, by expanding the antecedent of each to 'If N_i *is adopted and* legislatively justifies N_j'.

It might now be objected that the two premisses are falsified by certain mixed norms, i.e. norms which are neither purely customary nor purely adopted. Consider a norm N_1 which first exists as a customary norm and is then – say as part of a policy of codification – adopted in legislation. Suppose that before N_1 is adopted it legislatively justifies N_2. By hypothesis, N_1 is adopted after N_2, so the first premiss of the first explanation is false. Suppose in addition that N_1 is adopted by an authority no higher in the legislative hierarchy than the authority that adopts N_2. Then the first premiss of the second explanation is also false.

This objection assumes that the customary norm N_1 is identical to the norm adopted at the time (call it T) of codification. The assumption is doubtful. There are four ways to describe the situation contemplated. The first is to say that there is a single norm which, until T, is customary but not adopted and from T is adopted but not customary; the second, that there is a single norm which until T is customary but not adopted and from T is both customary and adopted; the third, that there is a customary norm until T, at which time it ceases to exist and is replaced by an adopted norm; and the fourth, that a customary norm exists both before and after T and

[24] The second explanation assumes that no norm is adopted by more than one legislative authority in a given legal system. It can be revised to accommodate any unusual case that may falsify the assumption.

that at T an adopted norm is created which from then on exists in parallel with the customary norm. Only if the situation contemplated in the objection is appropriately described in either of the first two ways does it impugn the revised first premisses of the explanations, but a case can be made for either of the other two descriptions. The answer to the question which is the most appropriate description will depend on the conception taken of a norm (see part 2.1 above and parts 7.1.1–7.1.4 below). The propositional conception and some versions of the active and mental conceptions leave room for the first pair of descriptions, while one or other of the second pair is indicated by some versions of the expressive conception.[25]

A second reply is that the objection presents the alleged counterexample in schematic terms. In order to refute the two premisses, a specific example is needed of a norm with the properties of N_1. It might be suggested that the principle of Parliamentary supremacy constitutes the example required. The argument is this. Before Parliament proclaimed the 1688 Bill of Rights, the principle was a customary norm of the English constitution: this is indicated by the reference to 'ancient' rights in the Bill and its enacting statute (see part 5.1.3). While it was a customary norm, the principle legislatively justified various statutes enacted by Parliament. In proclaiming the Bill, or in passing the enacting statute, Parliament adopted the principle. The principle thus legislatively justified certain norms which were adopted both before the principle and by the same authority as – and hence by an authority no higher than – the authority which adopted the principle. The principle of Parliamentary supremacy therefore has the properties of N_1.

This argument is not persuasive, because it gives a strained interpretation of the settlement of 1688. The wording of the Bill and the statute is inadequate support for the claim that the principle of Parliamentary supremacy was previously a customary norm. As noted in part 5.1.3, it is plausible to hold that the rhetoric of 'ancient' rights merely created a political fiction suited to a traditionalist age.

The result is that customary norms, whether pure or mixed, fail to provide the basis of a good objection to the first premiss of either

[25] On the 'adoption' version, identified in 7.1.3 below, of the active conception, all four descriptions are inappropriate as there are no customary norms, pure or mixed.

explanation of the truth of (III) for legislative justification. I now consider each of the two premisses separately.

6.1.2. Temporal Precedence

The first premiss of the first explanation is that, if N_i legislatively justifies N_j, N_i is adopted before N_j. It might be objected that this is inconsistent with the existence of certain retrospective legislation. The most promising source of counterexamples is ratifying legislation. Consider the Indemnity Act 1920, which was designed to validate certain measures taken during the first world war. Section 4 provides that any proclamation or Order in Council of certain kinds, and any licence granted pursuant to such an order or proclamation, 'shall be, and shall be deemed always to have been valid', and section 6 makes similar provision for certain legislation made by an authority administering any territory under military occupation during the war. It may appear that sections 4 and 6 legislatively justify norms adopted earlier and hence that they refute the premiss.

The appearance is deceptive. This is not a case of legislative justification at all, for these provisions do not empower the authorities in question to adopt the measures to which they refer. This is indicated by the fact that the two sections differ from standard enabling provisions in that they do not explicitly grant power to anyone. On their true construction, sections 4 and 6 say not that the authorities in question had the power to adopt certain norms, but that those norms are to be deemed valid whether or not the authorities had such power.

Absent any other potential counterexample, the objection fails and the result is that the first premiss of the first explanation of the truth of (III) for legislative justification is itself true. Since the other steps of the explanation are uncontroversial, the explanation is a good one. It seems however that the first premiss is true only if construed as a material conditional, i.e. as asserting that there does not exist, not that there could not exist, a norm legislatively justified by a norm which was not adopted before it. If that is so, the explanation, although sound, is modest.

6.1.3. Legislative Hierarchy

The first premiss of the second explanation is that, if N_i legislatively justifies N_j, N_i is adopted by an authority higher in the relevant legal system's legislative hierarchy than the authority that adopts N_j. It

might be objected that this premiss is falsified by primitive legal systems in which there is no hierarchy of legislative authorities. But, without pursuing the question whether such systems have existed, it is plausible to suppose that any such system would likewise fail to contain a norm that is a legislative justifier. In that case, such systems are irrelevant to the premiss.

The premiss falls, however, to a second objection which extracts a true claim from the argument rejected in part 6.1.1 about the principle of Parliamentary supremacy. It has been granted in part 5.1.2 that the principle legislatively justifies statutes adopted by Parliament and, in part 5.1.3, that the principle was itself adopted by Parliament. But Parliament is not higher than itself in the English legislative hierarchy, and no other authority in the hierarchy adopted the principle. Hence the first premiss of the second explanation of the truth of (III) is false and the explanation fails.

6.1.4. Conclusion on (III) for Legislative Justification

The result is this. (III) is true when read in terms of legislative justification. Two explanations of this have been examined, the first concerning temporal precedence, the second concerning legislative hierarchies. The second explanation fails but the first one is sound.

6.2. Epistemic Justification

To say that one norm epistemically justifies another means that the first is valid and the fact that it is valid is a reason to believe that the second is valid. Since epistemic justification is defined only to relate norms, the qualification 'on the class of norms' in (III) is redundant where (III) is construed in terms of this conception of justification.

That (III) is false for epistemic justification can be seen by considering argument by analogy. This is a familiar form of legal reasoning: to establish the validity of a norm, one appeals to a relevant[26] analogy between it and some norm granted to be valid. Such reasoning embodies the principle:

[26] Raz proposes a test of relevance in *The Authority of Law* (Oxford: Clarendon, 1979), pp. 202–204.

(RA) If:

(1) N_i is valid;

(2) N_i is distinct from N_j; and

(3) N_i is relevantly analogous to N_j;

then the fact that N_i is valid is a reason to believe that N_j is valid.[27]

Consider any two norms each of which is valid and relevantly analogous to the other. By (RA) and the definition of epistemic justification, each norm epistemically justifies the other; so each stands in the proper ancestral of epistemic justification to itself; so the proper ancestral of epistemic justification is not irreflexive; so (III) is false for epistemic justification.

6.3. Conclusion on (III)

The result for (III) is the opposite of that for (II). (III) is true, and (II) false, for legislative justification. (III) is false, and (II) true, for epistemic justification.

7. THESIS (IV)

Thesis (IV) is that there is no infinite sequence of valid norms each of which is justified by its successor (call such a sequence a *j*-sequence). The discussion of (IV) can be broken into three questions:

(QIVA) Does there exist an infinite sequence of norms?
(QIVB) If so, does any such sequence comprise only valid norms?
(QIVC) If so, is any infinite sequence of valid norms a *j*-sequence?

[27] It was noted in part 2.3 that nothing is a reason for itself; hence the relation expressed by 'the fact that . . . is a reason to believe that . . . ' is irreflexive. Clause (2) is included in (RA) to square this point with the assumption that the relation of analogy is not irreflexive. Similarly clause (2) of the principle (RE) in part 5.2.2 accommodated the reflexivity of entailment. If the assumption about analogy is rejected (this is a matter of stipulation), clause (2) of (RA) is superfluous.

It may be objected to (RA) that, where its (1)–(3) are true, it is not the mere fact, stated by (1), that N_i is valid, but the fact stated by the conjunction of (1)–(3), which is the reason to believe that N_j is valid. This objection can be rebutted in the same way as the parallel objection to (RE) in part 5.2.2.

(IV) is true if and only if the answer to any of these questions is no.

7.1. (QIVA)

The answer given to (QIVA) depends on the conception taken of a norm. In part 2.1 I distinguished four: on the propositional conception, a norm is simply a normative proposition; on the expressive conception, a norm is a normative proposition which is expressed; on the active conception, a norm is a normative proposition which stands in a certain relation to certain actions; and on the mental conception a norm is a normative proposition which forms the content of certain mental states. I shall now show how the propositional and expressive conceptions yield different answers to (QIVA). For the other conceptions I shall state answers without presenting arguments.

7.1.1. The Propositional Conception of a Norm

On the propositional conception, the answer to (QIVA) is yes if and only if there is an infinite sequence of normative propositions. It is easy to specify such sequences. Grant that the proposition (N_1) 'Vehicles shall not be driven at more than 70 miles per hour' is a normative proposition.[28] Then so are the propositions 'Vehicles shall not be driven at more than 71 mph', 'Vehicles shall not be driven at more than 72 mph' and so on. The sequence of these propositions is infinite. Another example is the sequence comprising N_1 and the propositions (N_2) 'N_1's subjects shall comply with N_1', (N_3) 'N_2's subjects shall comply with N_2' and so on.

It may be objected that this is to take a naively realist view of abstract entities. Objects such as propositions, the objection runs, are constructs from our mental states and, since there are only finitely many mental states, there is only a finite number of propositions. Two replies to this objection are available. First, even if it is admitted both that propositions are constructs from mental states and that the number of such states is finite, it is unclear how the conclusion is meant to follow that there are only finitely many propositions. The obscurity of the inference results from that of the concept of construction which the objection employs. Second, even if the concept can be explicated in a way that sustains the inference, the construc-

[28] It is a simplified version of Regulation 3 of the Motorways Traffic (Speed Limit) Regulations 1974 (SI 1974/502).

tivist thesis is compatible with the existence of an infinite number of propositions provided that the mental states from which it takes propositions to be constructed include dispositions. For it is plausible to maintain that a person has infinitely many dispositions.

The answer to (QIVA) on the propositional conception of a norm is therefore yes.

7.1.2. The Expressive Conception of a Norm

On the expressive conception a norm is a normative proposition which is expressed. Propositions may be expressed in various ways, but it is enough to focus on the standard means of expression, by a sentence. The claim that a proposition is expressed by a sentence is ambiguous: it may mean either that the sentence is actually uttered ('utter' can be taken broadly, to cover not only speech but also writing and other tokenings) or merely that it is included in whichever language is in question. The former is the relevant sense here, first because it is the sense in which the expressive conception of a norm is naturally understood and second because it answers to a reason for preferring the expressive to the propositional conception. This is the thought that a norm, in contrast to an unexpressed proposition, is something public. The requirement that a norm should be public, in the intended sense of 'public', is not secured merely by the existence of an appropriate sentence in the relevant language: the sentence must in addition be uttered.[29]

The answer to (QIVA) on the expressive conception is yes only if (1) there is an infinite number of normative propositions and (2) each of those propositions is expressed by a sentence. Given the above reading of 'expressed', and given that a finite number of sentences cannot express an infinity of propositions, (2) is true only if (3) an infinite number of sentences is uttered. Given further that the number of utterers is finite, (3) is true only if (4) a single individual utters an infinite number of sentences. Since only utterers with finite powers are in question, (4) is false, so (2) is false, so the answer to (QIVA), on the expressive conception of a norm, is no.[30]

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[29] Utterance is still not sufficient for publicity. A norm uttered in a closed legislative council but not promulgated would not be public.

[30] If the other reading of 'expressed' were adopted, a case could be made for the answer yes. On that reading (3) would be replaced by the proposition that an

7.1.3. The Active Conception of a Norm

On the active conception a norm is a normative proposition which bears a certain relation to certain actions. There are two versions of this conception. On the first, a norm is a normative proposition *embodied* in actions. On one variant of this view, the actions are ones of compliance by the norm's subjects: this variant might be expressed by saying that a norm is a normative proposition with which the people to whom it applies by and large comply. On another variant the actions are ones of enforcement by officials: this variant might be expressed by saying that a norm is a normative proposition which is by and large enforced by the officials responsible for enforcing it.

On the second version of the active conception, norms are normative propositions which have been *adopted* through certain actions. The paradigm case of adoption is legislative enactment, but it might be argued that judges also adopt norms in their decisions.[31] It follows from what has been said in parts 5.1.1 and 5.1.4 that the present version implies that there is no such thing as a customary norm. That of course is a reason to reject this version of the active conception.

The answer to (QIVA) is yes on the embodiment version of the active conception and no on the adoption version. I spare the reader the details.

7.1.4. The Mental Conception of a Norm

On the most plausible version of the mental conception, the states of which norms form the content are states of assent. There are two variants of this version, parallel to the variants of the embodiment version of the active conception: one ascribes the states to the norm's subjects, the other ascribes them to officials. The variants might respectively be expressed by saying that a norm is a normative proposition to which those to whom it applies, or the officials responsible for enforcing it, by and large assent.

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infinity of sentences is included in the language. That proposition is arguably true for some languages.

[31] Just as the active conception includes a version of the mental conception (note 4), so it is plausible to hold that the 'adoption' version of the active conception, if the actions it contemplates are enactments or judicial decisions, includes the expressive conception. For it is plausible to say that an enactment or decision consists in an utterance, by an appropriate person in appropriate circumstances, of a sentence expressing a normative proposition. See further part 7.3.1.

On either variant, the answer to (QIVA) is yes, provided that 'assent' is understood to embrace dispositions as well as occurrent states. (Compare the response to the constructivist objection in part 7.1.1.) Again I pass over the details. The position is the same for any other kind of state that might, instead of assent, plausibly be used to explicate the mental conception. Hence the answer to (QIVA) on this conception is yes.

A theory which overlaps both the mental conception and the adoption version of the active conception is that a norm is a normative proposition which forms the content of an act of will.[32] The answer to (QIVA) on this theory is no, so to that extent it is better categorized as a variant of the adoption version of the active conception.

7.1.5. The Answer to (QIVA)

(QIVA) asks whether there is an infinite sequence of norms. The answer is: yes, on the propositional conception of a norm (part 7.1.1); no on the expressive conception (7.1.2); yes on the embodiment version of the active conception; no on the adoption version of the active conception (7.1.3); and yes on the mental conception (7.1.4).

7.2. (QIVB)

(QIVB) asks whether, on the assumption that there exists an infinite sequence of norms, any such sequence comprises only valid norms. (QIVB) arises only on those conceptions of a norm for which the answer to (QIVA) is yes, namely the propositional conception, the embodiment version of the active conception and the mental conception.

One approach would be to look for an argument that the answer to (QIVB) *must* be yes or that it must be no, but that is unpromising.[33] The answer yes can be straightforwardly established by examples. Two are the sequences already considered in part 7.1.1:

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[32] This theory is upheld by von Wright: op. cit., pp. 120–121. It is also arguably found in Kelsen's late work: see the contributions by O. Weinberger and J. Harris to *Essays on Kelsen*, R. Tur and W. Twining, eds. (Oxford: Clarendon, 1986).

[33] Kelsen's assertion that ' "an invalid norm" is a contradiction in terms' (*General Theory of Norms* (Oxford: Clarendon, 1991), p. 171) would form the basis of an extreme argument that the answer must be yes.

(S_1) 'Vehicles shall not be driven at more than 70 mph' (N_1); 'Vehicles shall not be driven at more than 71 mph'; 'Vehicles shall not be driven at more than 72 mph'; etc;
(S_2) N_1; (N_2) 'N_1's subjects shall comply with N_1'; (N_3) 'N_2's subjects shall comply with N_2'; etc.

These are infinite sequences of norms on all the relevant conceptions, so they establish the answer yes to (QIVB) if and only if all their elements are valid.

I shall focus on S_1. Refinements aside, N_1 is valid in English law. Now each element of S_1 entails its successor in the sense specified in part 2.3: to say that one norm entails another means that necessarily anyone who complies with the former complies with the latter. Moreover, as noted in part 5.2.2, validity of norms is closed under entailment: any norm entailed by a valid norm is valid. It follows that all S_1's elements are valid. The answer to (QIVB), which could have been reached by a parallel argument about S_2, is therefore yes.

7.3. (QIVC)

(QIVC) asks whether, on the assumption that there exists an infinite sequence of valid norms, any such sequence is a *j*-sequence, where a *j*-sequence is an infinite sequence of valid norms each of which is justified by its successor. (QIVC) arises only on those conceptions of a norm for which the answer to (QIVB) is yes. These are the same as the conceptions on which (QIVB) arises, namely those for which the answer to (QIVA) is yes – the propositional, the embodiment version of the active and the mental.

The answer to (QIVC) depends on the conception taken of justification. I shall use 'legislative *j*-sequence' to signify a *j*-sequence each of whose elements is legislatively justified by its successor, and shall talk correspondingly of epistemic *j*-sequences.

7.3.1. Legislative Justification

Here is a proof that no legislative *j*-sequence exists. Suppose one does exist. This means that there is an infinite sequence of valid norms each of which is adopted by a legislative authority empowered to adopt it by its successor in the sequence. It follows that either an infinite number of norms is adopted in a single action or there is an infinite number of actions of adoption by legislative authorities.

That the former never happens is particularly clear when adoption is conceived as legislative enactment (see part 7.1.3), for it is plausible to hold that enactment of a norm consists in an utterance (in the broad sense described in part 7.1.2), by an appropriate person in appropriate circumstances, of a sentence expressing the norm. In that case an infinity of norms is adopted in a single action only if either some single utterance is an utterance of an infinity of sentences or some single sentence expresses an infinity of norms: quod non.

Nor is there an infinite number of actions of adoption by legislative authorities. For suppose there is. Then, given that the number of such authorities is finite, a finite number of them performs an infinity of such actions. Since only authorities with finite capacities are in question, this never happens. Again this is clear when adoption is taken to be legislative enactment as characterized above, for then there is an infinite number of actions of adoption by legislative authorities only if a finite number of such authorities makes an infinity of utterance, which is impossible.

It follows that no legislative *j*-sequence exists. The answer to (QIVC) is therefore no for legislative justification.

7.3.2. Epistemic Justification

An epistmic *j*-sequence is an infinite sequence of valid norms each of which is epistemically justified by its successor. Consider again S_2 – the sequence N_1, (N_2) 'N_1's subjects shall comply with N_1', (N_3) 'N_2's subjects shall comply with N_2', etc. It has been seen (part 7.2) that S_2 is an infinite sequence of valid norms, on the relevant conceptions of a norm. Also, each element of S_2 is the meta-norm – in the sense characterized in part 5.2.2 – of its predecessor, if any. It was shown in 5.2.2 that every valid norm is epistemically justified by its meta-norm. Hence S_2 is an epistemic *j*-sequence. The answer to (QIVC) is therefore yes for epistemic justification.

7.3.3. The Answer to (QIVC)

(QIVC) asks whether, assuming that there exists an infinite sequence of valid norms, any such sequence is a *j*-sequence. The answer is no for legislative and yes for epistemic justification.

7.4. Conclusion on (IV)

(IV) is true if and only if the answer to any of the questions (QIVA), (QIVB) and (QIVC) is no. The truth-value of (IV) therefore depends on the conceptions taken of a norm and of justification. The answer to (QIVA) is no on the expressive conception and the adoption version of the active conception of a norm. For the remaining conceptions of a norm – the propositional, the embodiment version of the active and the mental – the answer to (QIVA) and (QIVB) is yes and the answer to (QIVC) depends on the conception of justification: it is no for legislative and yes for epistemic justification. Thesis (IV) is therefore true if and only if norms are conceived according to the expressive or the adoption version of the active conception and/or justification is conceived legislatively.

8. REVIEW

The examination of the four theses is now complete. The task, as explained in part 3, was to identify, for each combination of the chosen conceptions of a norm, of validity and of justification, one or more false theses from among the four. This has been accomplished, for I have shown for each selected conception of justification – and hence for any combination including that conception – that at least one of the theses is false. To summarize:

Fot legislative justification, (II) is false and the other theses are true. Our intuition in favour of (II) must therefore be abandoned where the justification of norms is conceived legislatively. For epistemic justification, (I) and (II) are true, (III) is false and (IV) is true or false depending on the conception taken of a norm. Our intuition in favour of (III) must therefore be abandoned, and our intuition in favour of (IV) qualified, where the justification of norms is conceived epistemically.[34]

[34] Thanks to Donald Franklin, Nigel Simmonds and John Watling for trenchant comments on drafts.