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Is Legal Cognitivism a Sort of Bullshit?

The paper explores whether legal cognitivism may be considered a sort of bullshit. The first section of the paper defends a version of legal cognitivism. According to this, there exists a pragmatic connection between legal cognitivism and rule of law. Rule of law materialises a dimension of the basic right to justification according to which every person affected by a decision is someone to whom reasons are owed. The inner morality of law and due process as components of the rule of law articulate a public space in which persons may ask for and give reasons for the application of a legal norm. The paper suggests that this public space pragmatically assumes the existence of right answers. Thus, observing the right to justification implies the defence of pragmatic legal cognitivism.

The second section deals with the challenge of considering pragmatic legal cognitivism a case of what Harry G. Frankfurt called bullshit. The problem arises because of the minimal epistemic content of legal assertions. Lawyers, public officials or citizens do not act presuming they know the truth, but rather as if they know it. Hence, it might be argued that legal actors do not have an actual commitment to the truth. This is an obstacle for an account which attempts to avoid sceptical positions without subscribing to metaphysical theses. Unless, of course, we are willing to concede that pragmatic legal cognitivism and rule of law rest on a sort of bullshit.