Thank you mr. Rector.

Dear Candidate,

Socio-legal studies have always had my keen interest, but personally I have never managed to make the full methodological swing, to feel sufficiently confident to do my own research in this field. Your study may not by itself have increased my competences, but it has certainly enhanced my eagerness to one day make the jump, or more actively seek suitable coalitions. I thank you for that!

The fact that I actually re-read your thesis, after having studied it when my assessment was asked for, is due, not only to this challenge of method, but also to the highly interesting and relevant subject matter itself. I can, however, still not make up my mind about the intriguing picture on the front jacket of your study. What is it trying to tell us? Are the raised hands expressing hope or rather desperation, or maybe even both? Perhaps you can elucidate.

More importantly though, I want to discuss the approach you take in what I regard as the core message you are trying to convey (on p. 152), that Weber’s proposition that hierarchy, such as of states, is critical to legal certainty, is false, because the architecture of multi-level regulatory spaces can secure legal certainty of stakeholders through participation in rulemaking.

To support your critique you apply a perspective in which you place Multi Level regulation (MLR) against Single Scale, Hierarchic Integrated Regulation (SSHIR), such as that of a nation state. It puzzles me why you chose to apply a concept which in my mind is best reserved to point only at multi-level tiers of governance and regulation, so to a vertical distribution of powers. You, however, apply it to the broader phenomenon of regulatory de-centring of the state by dispersed rulemaking (p. 54) both in vertical and horizontal ways, so also multi-actor.

My first concern is that your definition rhetorically pushes MLR well away from hierarchy, possibly even into the realm of ‘soft law’, whereas I think that in International and European Law, important domains of MLR, there is indeed hierarchically binding law and we should not easily suggest otherwise.

My second concern is that approaching the issue of legal certainty through the lens of MLR, may have kept you from looking into different modes of regulation following distinctive institutional environments of governance. Alternative to the Weberian logic of hierarchy, you could have modeled legal certainty of markets as built upon rules concerning information symmetry, such as of fair-trade and consumer protection, and legal certainty of networks as built upon inclusion of stakeholders. MLR would be a (mere) variable in the context of these environments - not ruling out a hierarchical framing of legal certainty.

Perhaps the distinction you make between governance and regulation has kept you from choosing this approach, but it may also have kept you from building upon network theory in analyzing types of network rulemaking and from performing empirical research more mindful of the fact that perception of certainty may vary with perceptions of regulatory ‘game-types’.
I think this point also has bearing on the distinction between your relational and the authoritative model of legal certainty, but for now, could you please state your point of view on your choice of the MLR approach in the light of my remarks. – and perhaps also explain the jacket, without throwing your own hands in the air.

*Back-up question (not asked)*

The ML architecture of regulatory spaces can support legal certainty of stakeholders. I agree. Your frame to make this point is to consider legal certainty as a relational concept, tied in with rules of inclusion and participation – which will hold substantive criteria for determining who is and who is not a (prime-)stakeholder. The New Approach directives underpin the architecture fitting to this relational conceptualization of legal certainty, and readily point at expertise as an important criterion for participation in rulemaking.

Your empirical research shows how legal certainty indeed comes with relationally relevant aspects such as access and participation. How do these perceptions relate to what you call the ‘legal effect’ of MLR? Would you go as far as to say that the relational perspective can also normatively support such legal effect? When we look at the authoritative concept of legal certainty, following regulatory hierarchy, then clearly the case of linking legal effect to legal certainty can be made. But in MLR or network rulemaking I am not so sure. If it leads to standards, what is their legal status? Is there legal effect to the extent that a court or administrative authority, away from the comfort-zone of negotiation, will or shall reward hitherto claims of legal certainty?

Under the New Approach regime, the legal effect of standards follows from the presumed conformity with ‘essential requirements’, but that is an authoritative argument, following – yes indeed – MLR-hierarchy! Thus perception meets normative safeguards. But do you agree that if such a framework does not exist, stakeholders may perceive legal certainty through participation, but ‘outside’, this need not be met with concurrent legal practice, building on hitherto norms – unless we accept that there is a legally relevant authoritative or at least assertory ground, such as expertise, which can support claims to legal certainty?