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On the Exclusionary Scope of Razian Reasons

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Abstract. This article attempts to illustrate the originality, depth, and farsightedness of Joseph Raz's conception, especially his idea that legal norms provide us with *protected reasons* to act, that is, with first-order reasons to behave as they prescribe, and with second-order, *exclusionary reasons* not to act for reasons against what they prescribe. But the article also highlights some aspects that raise doubts in my mind, especially with regard to the *scope* of these exclusionary reasons. This in two ways: by asking, on the one hand, in what sense and subject to what limits legal norms provide exclusionary reasons for the organs entrusted with applying the law, especially for judges, and on the other hand, how and to what extent legal norms provide citizens with exclusionary reasons. So, in recognizing the strength of the Razian conception, the article also points to some of the difficulties it faces.

The awful daring of a moment's surrender.
Which an age of prudence can never retract.
—T. S. Eliot, "The Waste Land" (Eliot 1922)

1. Introduction

In replying to the points raised in a symposium dedicated to his work in 1989,[1] Joseph Raz said the following:

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[1] "Symposium: The Works of Joseph Raz," *Southern California Law Review* 62, nos. 3 and 4 (March–May 1989): 371–1235.

> Our understanding of law is greatly defective unless it includes and is based on a sound view of the role of law in practical reasoning. The first precept of legal theory is that law is practical, that its essential function is to play a role in its subjects' reasoning about what to do. (Raz 1989, 1154)

Raz was thus pointing to the reasons that law provides us with and how they are incorporated into the practical reasoning of its addressees, and this would become among the most original and enduring conceptions in his enormous contribution to legal, moral, and political philosophy. I remember that, thirty years ago, asked how he combined his dedication to legal theory with his dedication to moral and political philosophy, he said that while these two fields begin at different starting points, they ultimately tended to converge. And it is true that, in his work, this convergence comes out clearly.

This contribution is devoted to trying to show the originality, depth, and farsightedness of his conception, especially his idea that legal rules provide us with protected reasons to act, that is, with first-order reasons to behave as they prescribe, and with second-order, exclusionary reasons not to act for reasons against what is prescribed. But I will also highlight some aspects that raise doubts in my mind, especially with regard to the scope of these exclusionary reasons. This in two ways: by asking, on the one hand, in what sense and subject to what limits legal norms provide exclusionary reasons for the organs entrusted with applying the law the law, especially for judges, and on the other hand, how and to what extent legal norms provide citizens with exclusionary reasons.

I trust that, in this way, I will contribute to illuminating the indisputable merits of his position, while also, perhaps, usefully pointing out some of its limits.

2. Reasons, Authorities, and Sources

I will only briefly present Raz's ideas about how legal reasoning works, since these ideas are well known.[2]

Raz presents his ideas as a critique of the common view, the *orthodox* conception, we might say, of reasons for action. When, for example, I ask myself whether I should spend this afternoon finishing this article or visiting a friend or going to the movies, or what percentage of my Saturday morning shopping I should add as my contribution to the collection for the food bank, it is usual to consider that my reasoning is structured by assigning a certain weight to each of the various alternatives, according to the reasons that support them, and to decide in favor of that course of action which is backed by the strongest, most powerful reasons, the reasons that decide the matter in a particular direction. We can call this the model of the *balance or weighting of reasons*.[3] Raz formulates it as follows:

> P1. It is always the case that one ought, all things considered, to do whatever one ought to do on the balance of reasons. (Raz 1975, 36)

Raz, however, considers this an incomplete principle in accounting for our practical reasoning. For example, if I promise my daughter to take her to a Kathia Buniatishvili

[2] Raz's ideas are found, for example, in Raz 1975; 1979; 1986; 1989; 1990; 1994; 2004; 2009; and 2021.

[3] In several places Raz (e.g., Raz 1975, 36 n, and 1979, 3 n. 1) refers to Davidson 1969.

concert, then my promise is a first-order reason to take her, and it is also an exclusionary, second-order reason not to act for reasons other than the content of the promise. If, on the day of the concert, I feel more like going to play paddle tennis with some friends, that reason should not be balanced with the reason for going to the concert, because that reason is excluded by my promise. That is to say, reasons are structured on different levels. And that brings us to another principle of practical reasoning:

P2. One ought not to act on the balance of reasons if the reasons tipping the balance are excluded by an undefeated exclusionary reason. (Raz 1975, 40)

If, as Raz argues, P2 is valid, then P1 must obviously be revised. The introduction of exclusionary reasons implies that reasons can be displaced in two ways: They can either be superseded by other first-order reasons or they can be excluded by second-order, exclusionary reasons. This implies, according to his point of view, that P1 must be replaced by another principle:

P3. It is always the case that one ought, all things considered, to act for an undefeated reason. (Ibid.)

This idea of reasons is applied by Raz with great perspicuity to the reasons provided by legal norms issued by authorities. Such norms provide *protected* reasons to act—reasons to behave as the norm prescribes—and reasons that exclude at least some of the competing considerations for acting.[4] This makes it possible to argue that law claims authority: It claims that norms peremptorily bind us. When such authority is legitimate—and this is when it meets the requirements set out in the doctrine he calls *authority as service*—its norms reflect the underlying reasons we have for acting and achieve their purpose. This is the way in which Raz vindicates legal positivism: In order for norms to be able to exercise their function as protected reasons, it must be possible to identify them just by attending to their social sources, without resorting to moral argumentation.

Then, according to Joseph Raz's (1975) conception, as I was saying, legal norms are protected reasons, that is, (a) first-order reasons that prescribe behaving as the norm establishes and, at the same time, (b) second-order reasons that displace other first-order reasons by excluding them. Such a conception goes hand in hand with his conception of authority as service (Raz 1986, chaps. 2–4; Raz 1994, chap. 9), according to which the norms of legitimate authorities serve as mediators between our underlying reasons for acting (our moral reasons) and what we ought to do. On this conception, the fact that legitimate legal authorities have enacted certain norms changes our reasons for acting. That is, legal norms have practical relevance to the extent that they are endowed with authority.

This means that legal authorities are practical authorities, and a necessary feature of the nature of law lies in the law's claim to authority. Admittedly, not all legal authorities have legitimacy; however, all de facto authorities claim to possess legitimate authority. And according to Raz there are three theses as follows that characterize legitimate authority:

[4] The expression "*protected* reasons," referring to this double dimension or two-tier structure of the reasons supplied by the authorities, is one that Raz introduced after 1975, occasionally using it in works such as Raz 1979, 18, and 1990, 191.

[1] *The dependence thesis*: All authoritative directives should be based, among other factors, on reasons which apply to the subjects of those directives and which bear on the circumstances covered by the directives. Such reasons I shall call dependent reasons.
[2] *The normal justification thesis*: The normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, than if he tries to follow the reasons which apply to him directly.
[3] *The pre-emption thesis*: The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should replace some of them. (Raz 1994, 198; italics added, footnotes omitted)

On the one hand, then, the binding force of law—in cases where legal authorities are legitimate—derives from these robust normative facts, of a moral nature, that legitimize authority. That these facts are normatively robust is something that Raz, for example, argues as follows:[5]

All I am saying is that when it is assumed that any legal system is legitimate and binding, that it does impose the duties it purports to impose—and I will generally proceed in this discussion on the assumption that the legal systems we are considering enjoy such legitimacy—in such cases we cannot separate law from morality as two independent normative points of view, for the legal one derives what validity it has from morality. (Raz 2009, 189)

On the other hand, for law to fulfil its function in accordance with its nature, it needs to be identified without recourse to moral considerations, because when we resort to moral reasons, we are compelled to analyse all the reasons and to weigh them, and if for that reason the law loses its replacement character, then its directives are no longer protected: They are no longer exclusionary reasons.

Moreover, and this is a strong reason for attributing to Raz the thesis of law's metaphysical dependence on morality, when Raz refers to the question of the application of law he argues as follows:

Clearly, a theory of adjudication is a moral theory. It concerns all the considerations affecting reasoning in the courts, both legal and non-legal. In pronouncing which extralegal considerations have force and how much weight is due to them, it is engaged in moral argument. When the doctrine of the nature of law is identified with a theory of adjudication it becomes itself a moral theory. (Raz 1994, chap. 8, p. 193)

[5] Perhaps the current literature on grounding can help explain how legal obligations arising from norms dictated by legitimate authorities ultimately depend on robust moral reasons. Following the grounding ideas of authors such as Bennet (2011) and deRosset (2013), Plunkett (2019, 119–22, 125–30) conjectures that if facts B ground facts C, and facts A ground the fact that facts B ground facts C, then facts A also ground facts C. With this conjecture—which is not without controversy: see Dasgupta 2014—Plunkett suggests that, perhaps, Raz should be understood as saying that normatively robust facts ground the fact grounding the fact or claim that only social facts ground the facts of the content of law—a third-level grounding. Recently, however, Monti (2022) has argued that the relationship between moral facts and legal facts is not one of *grounding*, but one of *enabling*, i.e., moral facts enable legal facts as constituents of practical obligations, but do not ground their content. This interesting argument cannot, unfortunately, be analyzed here.

How is it possible for a theory of law to be acceptable only if the criteria for identifying the content of law do not refer to moral considerations, while the theory of the application of law is a part of moral theory? Well, what Raz (1994, chap. 14, pp. 310–24; 2004) suggests is that one must distinguish between the reasoning used to establish the content of law, subject to the sources thesis, and reasoning in accordance with the law, which may require judges' recourse to moral reasons. Again, Raz nods to the idea that, from the point of view of application, the law modifies our reasons for action on the basis of the moral impact of its directives, that is, legal directives only directly generate reasons for action when they are issued by legitimate authorities who, in such circumstances, manage to make their directives work as excluding reasons.

From Raz's conception of the reasons provided by law and his conception of authority derives his thesis on the social sources of law, a thesis which characterizes what is called *exclusive legal positivism*:

> A jurisprudential theory is acceptable only if its tests for identifying the content of the law and determining its existence depend exclusively on facts of human behaviour capable of being described in value-neutral terms, and applied without resort to moral argument. (Raz 1979, 39–40)

3. The Crack Generated by the Scope of Exclusionary Reasons

The notion of an exclusionary reason has set off a huge debate that is still underway.[6] Here, however, I will only refer to a problem that I consider crucial to the Razian conception of reasons. Raz acknowledges in several places that exclusionary reasons may, in some cases, exclude not *all* but only *some* of the first-order reasons. But how, then, is the scope of exclusionary reasons to be determined? Some authors, such as Gans (1986) and Bayón (1991), perceived a problem here very early on. In particular, Bayón pointed this out as follows:

> This notion of the "scope" of exclusionary reasons seems to me to be of the utmost importance, especially insofar as […] it represents a crack in Raz's construction through which an argument aimed at its global contestation can penetrate. I find it especially significant that Raz never explicitly clarifies how the greater or lesser scope of an exclusionary reason is determined: Referring to norms—which, as we know, are for Raz exclusionary reasons—he argues that while "the presence of a norm does not automatically settle practical problems," because "there may be other conflicting reasons not excluded by the norm" (i.e., falling outside its scope as an exclusionary reason), it can nevertheless be said that "for the most part the presence of a norm is decisive," since the conflicting reasons "are in most cases excluded" (Raz 1975, 79); but without an explanation of what determines the scope of the exclusionary reasons, these assertions are completely unsubstantiated. (Bayón 1991, 502 n. 366; my translation)

On the other hand, as Gur (2018, 55) has argued more recently, referring precisely to Gans (1986, 389–90), reasons that happen to be excluded, that fall within the scope of exclusionary reasons, cannot depend on the weight those reasons have,

[6] See, for instance, Adams 2021; Alexander 1990; Bayón 1991; Gans 1986; Gur 2018; Mian 2002; Moore 1989; Redondo 1996; Regan 1989; and Ródenas 1996.

because this would restart the cycle of deliberation on first-order reasons. As Gur (2018, 55) rightly says, "the weight of reasons is the one thing that the scope of exclusion cannot depend on."[7]

The problem, then, is the following: Legal rules provide us with exclusionary reasons to act when, according to the dependence thesis, they reflect the *underlying* reasons the rules' addressees have for behaving in that way,[8] and according to the normal justification thesis, if following what is established by the rules means that I will probably conform better to those underlying reasons than by following my own judgment, then according to the third thesis on the authority of law, namely, the preemption thesis, those reasons will act as replacement reasons in the reasoning of their addressees.[9] Now, the replacement function of such reasons is not absolute. Raz recognizes that only in some situations do they exclude some of the underlying reasons. Let us take a simple case: The legal obligation I have to stop my car at a red traffic light is based on the fact that traffic regulation by means of traffic lights improves safety and preserves the physical integrity of drivers and pedestrians. Now, when I find myself at a red light, the reasons I may have not to stop—that is, to run a red light because, for example, it doesn't seem to me that anyone is in any danger—are excluded reasons. But perhaps not all reasons are excluded: If in the passenger seat I have a pregnant woman who is about to give birth, then perhaps this scenario does not fall within the scope of the rule that requires stopping at a red light.

If this is so, we need to have a clear criterion by which to delimit the scope of exclusionary reasons, the set of underlying reasons they displace and replace. Moreover, we need a criterion that is independent of the recourse to the balancing or weighing of first-order reasons, because otherwise it will not have been shown that we should not always carry out a balancing of first-order reasons, of the underlying reasons.

In the next two sections I will try to show that Raz is not able to provide us with such a criterion, or rather, that the criteria he proposes always need to be applied to the underlying reasons, thus returning to the balance model. The next section, the fourth, will be devoted to the question of whether legal rules provide protected reasons for those who apply the law, or, to simplify, for judges. In the fifth section I will ask whether they provide such reasons for citizens in general.

4. The Razian Theory of Adjudication: *Even Judges Are Human*

For Raz, as we have seen, the theory of the application of law is part of moral theory. And the key question for him is not how morality enters into the legal reasoning of judges, but rather how the law enters into the moral reasoning of judges: As he says (Raz 2004, 2), "even judges are human."

[7] Chapters 3 and 4 in Gur 2018 have been of great use to me, especially the fourth devoted precisely to the scope of exclusionary reasons.

[8] "Underlying reasons" is how these dependent reasons are called in Raz 1989, 1161–2, for example. Much more recently, Raz (2021) called them "base reasons."

[9] Raz (1986, 47) clarifies that the dependence thesis does not state that the reasons for the authorities' rules always reflect the underlying reasons, but that they *should* reflect the latter. Moreover, he does not hold that the authorities' directives are binding only when they reflect such underlying reasons, but also when they err and fall short of reflecting such reasons but still comply with the normal justification thesis.

It might be thought that the way in which legal norms are introduced into judicial reasoning is the way of superseding reasons, that is, legal norms block access to the underlying reasons and thus justify the fact that judges' moral reasoning is opaque to the norms' addressees. But, without much nuance, this is not Raz's position.

For Raz, when law uses moral considerations, it defers to the discretion of judges. For example: "This is a consequence of the fact that by the source thesis courts have discretion when required to apply moral considerations" (Raz 1979, 75).

Let us look at two assumptions from the Razian literature: The first refers to the application of precedents by judges in the common law sphere, the second to the judicial review of the constitutionality of laws which, as we know, is present in many legal systems.

As to the former, Raz (1979, chap. 10) argues that when judges (in the common law sphere) apply precedents, something they do by their distinguishing and overruling activities, they have the function of modifying the law and creating new law, respectively. He says, for example: "Distinguishing and overruling are the two kinds of powers to change existing common law rules which the courts have" (Raz 1979, 191).

As to the latter, Raz argues as follows:

> Judicial review not only makes the block to the exclusion or modification of constitutionally protected moral considerations by legislation enforceable; in addition in conferring on the courts powers to enforce that block, it gives them, when adjudicating on the compatibility of legislation with the constitutionally protected moral considerations, the power to modify the application of those moral considerations themselves. So a second use of so-called incorporation of morality into law is to allocate powers among lawmaking institutions. (Raz 2004, 13)

But can judges carry out this activity without resorting to the underlying reasons? That seems difficult. And it seems so because, for example, in order to know whether in a specific new case it is necessary to make a new distinction, to consider as relevant a new property which the precedent to be followed did not consider, it is necessary to resort to the reasons underlying the fact of having the precedent available to us. Let's see how that works with a case brought under judicial review: To determine whether burning the Spanish flag, a crime of flag desecration under Art. 543 of the Spanish Criminal Code, violates the freedom of expression constitutionally recognized in Art. 20(1(a) of the Spanish Constitution,[10] it seems necessary to go to the underlying reasons that ground the recognition of that right, and we cannot delimit the scope of the reasons excluded by the criminal code without weighing them against what is established by the Constitution.

The problem is compounded when we realize that the application of the law is often subject to this type of mechanism. Contracts, for example, are valid so long

[10] The Spanish courts have held that the constitutionally protected freedom of expression does not extend to flag-burning, and the Spanish Constitutional Court has recently agreed: STC 190/2020, Dec. 15. This position is not shared by the Supreme Court of the United States, *Texas v. Johnson*, 491 U.S. 397 (1989), nor, apparently, is it shared by the European Court of Human Rights, *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, 13 June 2018, ECLI:CE:ECHR:2018:0313JUD005116815.

as they are not immoral (unconscionable). Which leads Raz to say the following:[11]

> Let us assume, for example, that by law contracts are valid only if not immoral. Any particular contract can be judged to be prima facie valid if it conforms to the "value-neutral" conditions for the validity laid down by law. The proposition "It is legally conclusive that this contract is valid" is neither true nor false until a court authoritatively determines its validity. (Raz 1979, 75)

Sometimes, on the other hand, Raz (1986, 101–2, for example) has considered that justificatory defences in criminal law provide reasons that justify noncompliance, in the sense that apparently guilty behaviours, such as homicide in self-defence, should not be punishable by law. Let us see how a Razian, such as John Gardner, explains the functioning of these justificatory defences with the support of the Razian idea that some legal permissions function as second-order reasons that cancel the force of the exclusionary reasons for not acting on some first-order reasons; in the example of self-defence, the idea that given certain conditions, we can act by doing less than the prohibition to kill (Raz 1975, 89–91). Gardner puts it as follows:

> What the law does, which nevertheless creates a role for some justificatory defences, is to provide us with cancelling permissions to perform, under certain specified conditions, the actions which it criminalises. This may seem like a rather surprising proposition. After all, it was argued above that justificatory reasons do not cancel but rather defeat the reasons against an action or belief. Now, by contrast, the claim appears to be that justifications arise in the criminal law precisely when reasons are cancelled by permissions. But the air of paradox is dispelled as soon as one realizes that the law's cancelling permissions do not cancel the reasons not to perform the criminalised action, but merely cancel the second-order protective reasons not to act for certain countervailing reasons. (Gardner 2007, 106–7)

The idea of conceiving justificatory defences as second-order reasons that cancel, and thus restrict, the scope of exclusionary reasons for not acting for reasons contrary to the criminally established prohibitions seems enlightening to me (see Moreso 1997). However, how can it be ascertained, in a specific case, whether a justificatory defence such as self-defence is applicable and cancels the reason that excludes acting for considerations against the prohibition on killing, or at any rate against causing physical injury to someone, without attending to the underlying reasons? It must be established, for example, whether there was an illegitimate aggression and whether or not the force exercised to repel the aggression was proportional; and in order to find out what falls outside the scope of the excluding reason and is included by the cancelling permission, we will have to turn to the underlying reasons, which means resorting to a balancing of first-order reasons (Moreso 2001a).

This seems to show that there is a tension between the Razian theses on the social sources of law, the authority of law, and adjudication in law (see also Atria 1999; Bayón 2002; Moreso 2001b).

[11] A passage that, very appropriately, has been described by Endicott (2003) as "the surprising part" of the Razian conception.

The foregoing casts many doubts on the sense in which the reasons provided by legal norms can be conceived as pre-empting reasons when they are addressed to judges. But perhaps the conception could be maintained for legal norms as addressed to citizens.

5. Conduct Rules and Decision Rules: *The Acoustic Chamber*

In a suggestive article elaborating on some of the ideas that Jeremy Bentham laid out in his early 1776 work *A Fragment on Government* (Bentham 1977), Dan-Cohen (1984) invites us to the following *Gedankenexperiment*: Imagine that between judges and ordinary citizens we can establish a total separation where (a) the two groups are subject to two different sets of rules—decision rules and conduct rules, respectively—and (b) neither group has any knowledge of the rules that apply to the other. Thus citizens are governed by a rule that prohibits killing, another one that obliges them to fulfil contracts, another one still that requires them to stop at red lights, and so on, while judges—in their acoustic chamber, completely cut off from citizens—have other rules they are to follow, such as the rule under which they are not to punish those who kill in self-defence, the rule that makes it possible not to enforce contracts entered into under mistake or duress, the rule that makes it permissible to run a red light when rushing to the hospital with a woman who is about to give birth, and so on.

It is obvious that such a situation wouldn't be possible in reality, since there would be continuous leakages between the two chambers, such that we would know that acting in self-defence is not going to be punished by judges, and this would influence the way we reason about criminal prohibitions, and so on in all sorts of cases. Suppose, however, that a world like the one Dan-Cohen proposes were possible. It could then be argued that conduct rules can provide citizens with *protected* reasons, because they are capable of excluding *all* first-order reasons against behaving as those reasons prescribe. Judges, for their part, by virtue of decision rules, could restrict the scope of the exclusionary reasons, but this fact would never be part of the reasoning accessible to ordinary citizens. The judges' discretion would lead them to the balance-of-reasons model, but ordinary citizens would remain in the protected-reasons model.

For reasons that I think can be deduced from what I have said, I do not think that this would be an attractive model from a normative point of view; but the question I wish to answer here is whether this would be the Razian model. And, for two reasons I will try to explain, I do not think it is that, either.

First, because not all authorities are legitimate, not all authorities comply with the three theses of the conception of authority as service. As Raz (1986, 46) says, the thesis that authoritative reasons do not come in addition to the other relevant reasons about what we ought to do, but replace some of them, is a thesis that, as we should remember, "is only about legitimate authority. It is relevant for the explanation of the character of *de facto* authorities because every *de facto* authority either claims or is acknowledged by others to be a legitimate authority. But since not every authority is legitimate not every authoritative directive is a reason for action" (ibid.). If this is so, then citizens must determine whether or not the authorities are legitimate, i.e., whether their directives reflect the reasons we already have for behaving in a certain way and, above all, whether our behaviour will normally be more likely to conform to those underlying reasons if we follow their directives than if we do not. I do not see, then, how private citizens can in

their reasoning determine whether the authority's reasons supersede their first-order reasons without turning to the underlying reasons, which are not excluded at least when it comes to determining whether or not the authorities are legitimate.

But let us suppose that we are dealing with legitimate authorities. Well, and this is the second reason why citizens cannot but turn to the underlying reasons, even toward legitimate authorities there is, according to Raz, no duty of obedience. And that is not because legal authorities, even those in reasonably just states, claim an authority that is more extensive than that which the dependence and normal justification theses protect. At the same time, as Raz (1986, 73) says, the normal justification thesis allows "maximum flexibility in determining the scope of authority. It all depends on the person over whom authority is supposed to be exercised: his knowledge, strength of will, his reliability in various aspects of life and on the government in question." And he adds:

> An expert pharmacologist may not be subject to the authority of the government in matters of the safety of drugs, an inhabitant of a little village by a river may not be subject to its authority in matters of navigation and conservation of the river by the banks of which he has spent all his life. (Ibid., 74)

Legal norms, then, do not, in these cases, operate as protected reasons. Thus for Raz, as is well known, there is no general obligation, not even *prima facie* (Raz 1979, chap. 12) to obey the law. Now, if the reasons provided by legal norms were always, and in all cases, protected reasons, then there would be an obligation to obey legitimate authorities. If there is not, it is because the scope of exclusion that the reasons endowed with authority claim to have is broader than what they really have. But in order to determine what obligations citizens really have, they will, I'm afraid, have to resort to the balancing of reasons.

6. Raz's View as Epistemic

My last conjecture (previously formulated in Moreso 2022a) is that the Razian thesis about the identification and limits of law must be understood as an epistemic thesis. I believe, and this is a suggestion also found in Plunkett 2019 and Monti 2019, that the social sources thesis is an epistemic thesis: It says *how* the content of law is to be identified; it does not say *in virtue of what* the content of law exists, which, for Raz, depends on his doctrine of authority and his conception of normatively robust reasons for action. Plunkett puts it this way:

> [Raz] argues [that] agents must be able to identify the content of the law without engaging in all-things-considered practical reasoning about what to do, or about what they really ought to do (where the "really" here is, again, meant to invoke the idea of robust normativity). This is an epistemological constraint, which Raz thinks supports a particular view of the metaphysics of law: namely, he thinks it supports exclusive legal positivism. (Plunkett 2019, 120)

And Monti puts it in this other way:

> [I]t should be noted that the Source Thesis is formulated in epistemological rather than metaphysical terms. The thesis is that the existence and content of law can be identified without resort to moral argument, not that legal facts do not depend for their existence on moral facts. (Monti 2019, 33)

However, if this is so, we may wonder, somewhat ironically, whether it will not turn out that the exclusionary character of law is a property that operates neither for judges nor for ordinary citizens, but only for legal theorists.

7. Concluding on Rules and Their Underlying Reasons

If legal rules do not provide exclusionary reasons in practical reasoning, how do they operate? One could conjecture that, in appropriate circumstances, legal rules activate the underlying reasons for behaving in a certain way, often going so far as to manipulate the reasons we already have and modify them in that way. This is what is known as the *triggering-reasons* conception (Enoch 2011a; 2011b). The idea could be complemented by a conception such as Mark Greenberg's (2014), on which the content of law lies in the impact that legal institutions exert, in an appropriate way, on our moral profile, even though, as must be clear, determining how and to what extent the norms that issue from institutions impact on our moral duties is crucial. My idea is that, using a Rawlsian insight to relate the idea of justice and that of the good (Rawls 1988, 252), while institutions draw the framework of our legal reasoning, morality—that is, the underlying reasons—reveals its point (Moreso 2022b).

Legal reasoning is, in my view, a kind of practical reasoning. It is practical because it is founded on and integrated into the practical reasons that affect us all. It is special because it is bounded by a set of *institutional hedges*. Both of these ideas are in accord with Raz's contribution, without which we could not have arrived where we are now. For this alone we owe his keen intelligence and immense insight an everlasting gratitude.

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