JOSEPH RAZ

Joseph Raz

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elected Fellow of the British Academy 1987

by

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Summary. Joseph Raz was for half a century the outstanding investigator of legal normativity's logic and relations to the normativity of morality, aesthetic standards, and epistemic criteria. His influential early monographs *Practical Reason and Norms* (1976) and *The Morality of Freedom* (1986), and seven substantial thematic collections of essays, published at intervals between 1979 (*The Authority of Law*) and 2022 (*The Roots of Normativity*), most of them widely translated, all exemplify his originality and power in argumentation and teaching and inventively expound an influential liberal philosophy of politics, law and adjudication, and life.

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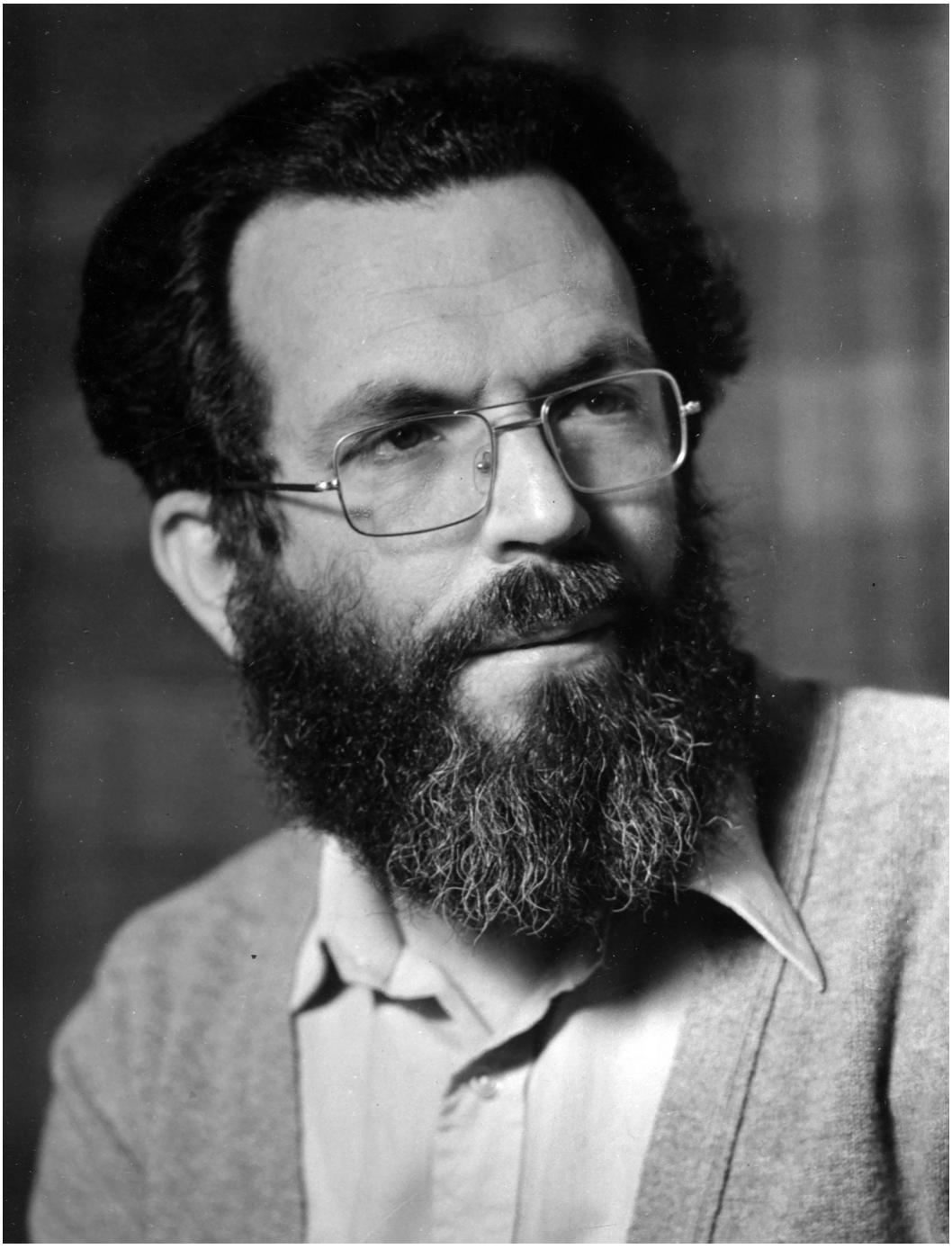

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Joseph Raz, outstanding investigator of legal philosophy during the last half-century, consolidated and deepened its mainstream's integration into wider philosophical searches for explanation of the kinds of reason and values normative for individual and social decisions and action, particularly (but not only) into moral and political philosophy. His formidable teaching and writings inculcated and exemplified newly demanding standards of analytical, intricately argumentative precision, including constant use of varying imaginative but low-keyed examples to reveal explanatory conceptual connections and enhance understanding of persons, their practical reasoning, and what he came to call their 'Being in the World'. Pinned down in textbooks and encyclopedias as the proponent of legal 'positivism' and liberal 'perfectionism', he eventually pushed away those identifiers and many of their connotations. Rejecting attempts to base morally substantive political philosophy on principles of equality or on neutrality (or its surrogates) about human values (goods), he proposed and defended ideas of autonomy, moral worth, respect, and well-being to argue, in jurisprudence and in political ethics alike, for liberal positions somewhat more radically progressive than those of Hart, Rawls, or Dworkin.

Life and career

Raz was born Joseph Salzman, on 21 March 1939, in Haifa, and died in hospital in London on 2 May 2022. He was the only child of Samuel and Sonia, who each had come to Palestine sometime in their early youth, his father from, it seems, western, his mother from eastern Ukraine (whether then in Russia or the Soviet Union). Sonia, a qualified nurse, had a senior position in the Jewish labour union health centre near the family home in the Hadar HaCarmel district, halfway up Mount Carmel's slope in central Haifa; his father was an electrician in a large glass factory (on the estuary flats just east of RAF Haifa airport) founded in 1934 and from 1941 owned ultimately by the same Zionist labour union. In the house 'a Zionist atmosphere prevailed', according to the warmly informative account given to the memorial event in Balliol's hall in late 2022 by Aharon Barak, former President of Israel's Supreme Court, Raz's slightly senior colleague in the Law Faculty of the Hebrew University of Jerusalem, 1967–70. In a stern critique (published in 2000) of a judgment in which Barak upheld the legislative-constitutional declaration that Israel is a 'Jewish and democratic state', Raz appealed to 'the original ideals of the Zionist movement', which 'found its most inspiring expression in Herzl's *Altneuland* ...'[1] That novel, published in 1902, when Haifa was a fishing town of a thousand or two, enticingly envisaged a secular, inter-communally harmonious Palestine

[1] Joseph Raz, 'Against the Idea of a Jewish State', in M. Walzer, M. Loberbaum & N.J Zohar (eds), *The Jewish Political Tradition:* vol. I *Authority* (Newhaven: Yale University Press, 2000), p. 512.

50 years in the future, and Haifa – narratively first seen from the sea – a gleaming white city vastly developed and sweetly transformed by immigration. The Haifa of Raz's childhood was indeed urbanising rapidly as the country's principal port and industrial zone, but the British Mandatory administration and military's withdrawal from Palestine in May/June 1948 was through a Haifa scarred by months of small-arms and mortar fire and the departure or flight of nearly half the 140,000 inhabitants.

For 12 years from 1945, Joseph attended the Hugim School near his home. Most of the teachers at this liberal school for boys and girls were over-qualified for school-teaching; there was until 1952 only one university in the country. His literature teacher, Baruch Kurzweil, later became Israel's leading literary critic, and his biblical studies teacher, Yehuda T. Radday, an internationally distinguished professor in Jerusalem and pioneer of computerised stylometric analysis (famously, of *Genesis*). Among Joseph's school friends several went on to national or international cultural distinction, one (besides him) in Philosophy at Oxford. Though his classmates thought him reserved and elevated, 'Zaltsie' took a lead in organising class social activities. A kindergarten and school friend – one of three who corresponded with him to the end of his life – remembers his easy, rather disengaged prowess in mathematics, and the lawyer-like brilliance in Talmudic studies of this child of an entirely irreligious family—an irreligion that he seems never to have abandoned. The only books in the home were those Joseph brought in, but both parents encouraged his studious pursuits; and when, late in life, he told Penelope Bulloch (the Balliol Librarian and later Fellow who was his partner in work and life from 1978 on) which four people he would like to talk with in a future life, his father was one.[2]

In the mid–1950s, Peter Hacker and Joseph organised a philosophy club or discussion group with four other school friends (including Rina Yerushalmi, later internationally renowned in avant garde theatre direction; Yuvi Zaliouk, who would be resident conductor at Covent Garden, conducting Nureyev and Fonteyn, while Joseph was a doctoral student in Oxford; and two others who became professional philosophers); the six would meet under a tree in the garden of Peter's grandfather's house on Mount Carmel, and do what they could with early dialogues of Plato, some Berkeley, and Spinoza's *Ethics*. Joseph became Israel's only child subscriber to *Iyyun*, a journal of philosophy published quarterly in Hebrew from the Hebrew University of Jerusalem. As it happened, the journal's executive editor was Edward Poznański, philosopher of logic and science from Warsaw who from 1946 to 1964 coupled running the academic administration of the Hebrew University of Jerusalem with lecturing in the Philosophy department, and when

[2] The other three were H.L.A. Hart (FBA), Jerry (G.A.) Cohen (FBA), and Yael Rapeport's father. 'We become aware of the world, if we are lucky, in the bosom of strong attachments': Joseph Raz, *Value, Respect, and Attachment* (The Seeley Lectures, 2000; Cambridge: Cambridge University Press, 2001), p. 13.

Joseph, near the end of his three years' military service (artillery instructor, sergeant), made a weekend trip to Jerusalem with an administrative question about transiting from the part-time legal studies he had latterly begun in Tel-Aviv to degree studies in Law in Jerusalem, he found himself addressing the question to Poznański, who identified him as that onetime child-subscriber:

> He encouraged me to pursue my studies in philosophy, saying that they needed someone in legal philosophy (not a branch of philosophy I had ever heard of). Some years later, when I graduated [having kept in touch with him and taken his courses in two of my subjects], he arranged for me to continue my studies in Oxford under the supervision of H.L.A. Hart. It was all his idea, and he secured both admission to Oxford and a scholarship to finance my studies there. I owe him more than I can say.[3]

During the two years between graduating in Law *summa cum laude* and beginning doctoral research in Oxford in October 1964, Joseph pursued the BA in Philosophy[4] with Hebrew Literature, married a Philosophy student, Yael Rapeport[5] (together they took the name Raz – from the first letters of their surnames spelt phonetically, and Hebrew for 'a secret'), interned for 18 months with a Supreme Court justice, and was for six months a teaching assistant in Administrative Law.

Hart had been the Professor of Jurisprudence since 1953 and when Raz began work with him was a year into his three years' supervision of Hacker's thesis on 'Rules and

[3] Between his retirement from the University's administration in 1964 to his death in the first days of 1974, Poznański devoted his time to the Philosophy Department and the journal. So Raz on his return from Oxford to a lectureship in both the Law and Philosophy departments will have been a colleague at the Hebrew University. The *Encyclopedia Judaica* entry on Poznański brings out his importance (a) in the Lvov-Warsaw School of logicians and philosophers (or methodologists) of science, (b) as Polish prime mover during the 'thirties in the Friends of the Library of the Hebrew University of Jerusalem, sending the library tens of thousands of Jewish books from Poland, and (c) as 'instrumental in defining the university's policy for enabling younger scholars to visit great universities abroad and return with enhanced experience and deepened scholarship to join the ranks of the Hebrew University faculties'. A photographer, especially of participants (including children) in the educational work with orphans of his friend the renowned Jewish educator Janusz Korczak), Poznański and a colleague were alone in rejecting the School's general subscription to a kind of realism that deployed a correspondence theory of truth; as Jan Woleński's entry on the School in the *Stanford Encyclopedia of Philosophy* puts it: 'A radical form of anti-realism was developed by Poznański and Wundheiler in the 1930s. They pointed out that verification in empirical science is cyclic and principally anti-fundamentalistic. In particular, it is not possible to identify any data without a reference to theories. Hence, truth in science cannot consist in a correspondence with facts.'

[4] It seems clear that, like his friend Avishai Margalit, he there was much influenced by the lectures of the philosopher and logician Yehoshua Bar-Hillel, pupil and follower of Carnap, an influence evident in Raz's DPhil thesis and first book.

[5] Barak's memoir used 'Rappaport' and other like sources use variants, but Noam Raz informed me that Yael's father was quite particular that it should be spelt 'Rapeport' and so she and the rest of the family still kept to this. The spelling of family names in this memoir follows Raz's in his application for admission to Oxford.

Duties', and halfway along supervising David Hodgson's on 'Consequences of Utilitarianism', and mine on 'The Idea of Judicial Power'. Raz (with Yael) and I were the only students to stay to the end of William Kneale's clear, dry, and initially well-attended 16 lectures on 'Moral Concepts', in the Schools on Tuesdays and Thursdays at 10am; at noon, Hart's more animated and better attended lectures on 'Rights and Duties' were in a larger room upstairs. Honoré's British Academy memoir of Hart quotes from lively, stylish accounts Raz gave him of Hart's lecturing, and of the afternoon seminars Hart did with Rupert Cross and Nigel Walker, accounts referring also to the post-seminar pub discussions in which Raz with other graduate students celebrated these occasions. In a 1991 interview, Raz would underline the excitement and sense of high discourse in which he felt immersed in the Oxford of those graduate years: lecturers such as Berlin, Ryle, Ayer and above all Strawson and Grice, to mention only the philosophers among them.

Raz completed his doctorate on 'The Concept of a Legal System: An Introduction to the Theory of Legal System' in the summer of 1967. In the uneasy but, in Jerusalem, transformed aftermath of the June Six-day War, he returned to a lectureship in Jurisprudence and in Moral and Political Philosophy. He became briefly involved in politics, then as later a strong critic of the Occupation which that war had initiated; ever afterwards, he would not visit the Occupied territories without an invitation from a non-Israeli inhabitant.

In 1970 OUP published his thesis just as he became a Senior Research Fellow at Nuffield (with a project of writing about Principles and Rights), on unpaid leave of absence from Jerusalem, arrangements that were extended into a second year, when he tutored at Balliol as 'lecturer in Philosophy'. Ronald Dworkin, translated in mid–1969 from Yale's to Oxford's chair of Jurisprudence, saw enough of Raz both face-to-face and in action in seminars and discussion groups to support enthusiastically his application for a CUF tutorial fellowship in Law at Balliol, notwithstanding the imminent publication in *The Yale Law Journal* of Raz's refutation, not too diplomatically worded, of Dworkin's 1967 trumpet blast against Hart's 'legal positivism'. Hart too wrote to Balliol, beginning his assessment: 'Raz is unquestionably the ablest and most interesting student that I taught or supervised during my tenure of the Chair of Jurisprudence, and indeed I have not met anyone of equal power or originality as a philosopher of law or student of jurisprudence.' Raz's appointment was announced in March 1972, with effect from October.[6] His early lectures were on 'Law and Norms', and 'Rights and Duties',[7] and

[6] He resigned his position (by then tenured) in Jerusalem; Yael Rapeport, who had begun studies in Oxford during the Nuffield period, returned to Israel; Joseph assumed the responsibility of raising their son and only child, Noam. Acquiring UK citizenship early in 1981 (remaining a citizen of Israel), he arranged similar dual citizenship for Noam.

[7] His lectures were always on the Philosophy lecture list and he was from at latest 1977 an elected member of the Sub-Faculty of Philosophy.

soon he was examining in Law Moderations, chairing the Moderators in 1975. At Balliol he would tutor not only in Jurisprudence but also in black-letter case-law subjects such as Tort and Administrative Law. Since Dworkin was very selective about undertaking supervision for advanced degrees in Jurisprudence, the supervising of the more and more numerous doctoral and masters' students fell to others, notably Raz.

In 1985 the University advertised a novel round of appointments to *ad hominem* professorships with the duties and constraints of established chairs; Raz's application's success[8] entailed giving up College tutoring (and with it his Balliol house in North Oxford).[9] During those dozen years he had published some 40 substantial articles and essays and his important monograph *Practical Reason and Norms* (1975, expanded 1990). In 1977 Hacker and he had put together with 14 other contributors *Law, Morality, and Society: Essays in Honour of H.L.A. Hart*, celebrating (on his reaching seventy) Hart's 'great achievement in philosophy' and particular responsibility for 'the renaissance of legal philosophy'. With *The Authority of Law* in 1979, Raz had initiated what became seven such OUP books in each of which he would integrate and supplement around a dozen already published essays of his with fresh ones on a set of related topics in practical (mainly moral and political) philosophy,[10] legal philosophy,[11] or both.[12] And he was near publishing his most substantial monograph, *The Morality of Freedom* (1986), begun when in 1980 OUP suggested he write 'a book on political theory'. In 1987, he was elected to the British Academy, in both the Jurisprudence and the Philosophy Sections.[13]

In January 1973, Dworkin, Raz and I began the graduate seminars in Jurisprudence and Political Theory that would continue in Hilary term almost every year for about twenty years; the only ground-rule was stipulated by Raz: that our approach not be historical (as Hart's equivalent seminar had been). After Dworkin departed for less jurisprudential seminars, the other two of us carried it on until Raz retired from Oxford teaching in 2002,[14] the year when his visiting professorship at Columbia

[8] For his professorship's name he chose Professor of the Philosophy of Law, but generally preferred the synonym 'legal philosophy'.

[9] The next and last round of *ad hominem* appointments, a few years later, reversed the conditions: successful applicants must continue their College duties and so could retain concomitant benefits such as rent-free College-owned housing.

[10] *The Morality of Freedom* (1985); *Engaging Reason: On the Theory of Value and Action* (1999); *From Normativity to Responsibility* (2011); *The Roots of Normativity* (2022, edited with an Introduction by Ulrike Heuer, and published two months before his death).

[11] *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (2009).

[12] *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (1994; expanded 1996).

[13] And in 1992 to the American Academy of Arts and Sciences as a Foreign Honorary Fellow.

[14] In 'Value: a menu of questions', in John Keown & Robert P. George (eds), *Reason, Morality, and Law* (Oxford: Oxford University Press, 2013), p. 1, Raz wrote:

Law School (annual since 1995) became a chaired professorship that he held[15] until 2019, when ill-health obliged him to dispose of the apartment (overlooking the Hudson River) that his accomplished architect son had remodelled for him decades earlier.

Over those decades, Raz conducted at Columbia a seminar modelled not on the three-decade Oxford one above-mentioned, but rather on the longstanding seminar run by Dworkin and Thomas Nagel at New York University School of Law. In Oxford, one or other of the three (or two) academics would talk (with or without a paper) for some 50 or 60 of the 100 minutes, followed by off-the-cuff responses or observations by the other two (or one); the students were encouraged to raise questions along the way (but rarely did) and then to press questions and observations. At Columbia, Raz adopted a different and better scheme: each fortnight, a visiting academic would defend a paper sent in time for Raz and his students to spend the previous week's session discussing it, after which Raz would compose a detailed set of observations, issues and questions for the visitor to address during the two-hour seminar. Each of these formats allowed him to exercise the analytical-pedagogical powers tellingly attested to by many of his numerous Oxford doctoral supervisees too.

In 2018, Raz was awarded the third biennial million-dollar Tang Prize in Rule of Law, for his 'path-breaking contributions to the rule of law, and for deepening our understanding of the very nature of law, legal reasoning, and the relationship between law, morality and freedom'. In the video made for the occasion, Raz featured a portrait photo of Poznański; and, speaking first in the garden beneath Hart's 1960s room in University College, Hacker recalled early phases of the Oxford portion of their long association and collaboration; and five noted academics whom Raz had taught testified to the interest of his ideas and to his eminence as a scholar and strictness, fierceness and humanity as a teacher.

For a long time John Finnis and I taught a joint seminar every year. Many students were lured to attend expecting to witness fierce intellectual conflicts between two academics known to adhere to diametrically opposed philosophical traditions. I would like to think that their disappointment at the general absence of the expected clashes was compensated for by an example of productive debate among people with diverse opinions. But that is too self-congratulatory a view. Perhaps closer to the truth is that while we tend to have radically different views on many specific moral and political issues we share a general approach to the understanding of theoretical ethics and practical reason.

[15] This enabled him to acquire a flat in Marylebone and move his domestic base in England from Oxford to London permanently. From 2011 he was a Research Professor in the School of Law at King's College London, sharing a room there. In each of his last years, though his strength was failing, he and Ulrike Heuer ran a graduate seminar on Rationality and Normativity, along the lines of his seminars at Columbia.

Prefaces and retrospects

Here are excerpts from three characteristic prefaces and a retrospect:

> One is forever seeking understanding, and the further one travels the further off the goal appears. Most of the [17] essays in this book [*Ethics in the Public Domain* (1994/96)] were started with the intention to use them to illustrate the application to one or another political or jurisprudential problem of general views about morality and the law which I have argued for elsewhere. More often than not, in the course of writing I realized that the problems I was addressing gave rise to difficulties that I did not anticipate, and that I had not directly addressed before. Luckily (or was it a delusion?) I felt that the general approach I have been presuming in previous writings was also suitable for dealing with these, to me, new difficulties. The result is – I hope – that the general position I espoused is enriched and strengthened by these new reflections.[16]

> When I re-examine this book [*The Authority of Law* (1979)], in the year of its thirtieth birthday, my reaction is not unlike my feeling about my other books. They all feel like stages in a journey. They develop, and sometimes bring to completion, not the proper treatment of a subject, but my treatment of it, and they open out new topics, focus on new problems, new not to the world but in my work, which will be further explored in later work. There is never a terminus; there are merely temporary resting points along a never-ending route. With every step of the journey new destinations come into view, and the journey becomes more challenging and more interesting.[17]

> This [*From Normativity to Responsibility* (2011)] is not the book I hoped to write. It is part of that intention. ... This chapter is in part about what the book I have written does not include. Perhaps there will be another. ... There is no compelling starting point, especially as the journey is long, and I visit many ports en route. So I will start with action.[18]

To these unaffected self-assessments, a good many others could illuminatingly be added, from interviews by email, and responses to critiques: one, a fragment of Raz's final response in a 2014 written interview, will have to suffice.

> For various reasons this ['Have you changed your mind about anything fundamental to your philosophical position during your time as a philosopher ...?'] is for me a difficult question. One is that I am not terribly interested in the question, and perhaps partly as a result, am often surprised when people point out, with actual quotations, what I wrote on some points in years past. One way in which I am sometimes surprised when

[16] Joseph Raz, *Ethics in the Public Domain* (Oxford: Clarendon Press, 1996), p. v.
[17] Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 2nd edn (Oxford: Oxford University Press, 2009), p. v.
[18] Joseph Raz, *From Normativity to Responsibility* (Oxford: Oxford University Press, 2011), p. 1.

> confronted with previous writings is that I clearly remember that I felt tentative about this issue or that, and meant to express a partial or a tentative view only, and lo and behold: that is not how I wrote. I sound very definite. Have I changed my mind, or am I one of those people who tend to sound confident when they are not?[19]

Legal philosophy: a first pass

The Concept of a Legal System (1970) is 'an introduction to a general study of legal systems', that is, of 'the systematic nature of law' and 'the presuppositions and implications underlying the fact that every law necessarily belongs to a legal system'.[20] 'It seems that the study of the theory of legal system is still in its infancy, because the nature of the problems involved in it has not been fully understood, nor has their importance been clearly apprehended.'[21] Raz lists four problems: existence, and furnishing criteria of existence; identity, and criteria determining the system to which a given law belongs; structure, the patterns of relations among laws belonging to the same system; and content – are there laws recurrent in every, or every important, type of legal system? Analytical jurists hitherto, he goes on, have neglected all four, not realising that there can be no adequate definition of 'a law' without a theory of legal system. And such a theory will explain 'the three most general and important features of the law ... that it is normative, institutionalized, and coercive.'[22] It will distinguish, as analytical jurists had hitherto failed to distinguish, between the way the four problems and three features apply to a momentary legal system (a system's laws at a given moment), and the related but different way they apply to the non-momentary, continuous system to which any such momentary system belongs, and whose continuity is 'not necessarily disrupted by the creation of new original laws'.[23] If a new original law is, however, 'a constitutional law of great importance', such as a law granting a territory independence and authorising for it a constituent assembly, it may mark discontinuity and the replacement of one non-momentary legal system by a new one. But because 'legal systems are always legal

[19] 'Joseph Raz: "From Normativity to Responsibility"', in Richard Marshall, *Ethics at 3:AM* (New York: Oxford University Press, 2017), pp. 54–71 at p. 71 (which continues: 'But there are other difficulties with the question. …`). A particularly rewarding set of reflections, partial retractions, qualifications, statements of purpose, and so on, is Joseph Raz, 'Comments on *The Morality of Freedom*', *Jerusalem Review of Legal Studies*, 14:1 (2016), 169–81, e.g. at 171: 'An important motivation ... was to avoid adherence to a party; to deflate the importance of any resemblance to a party or a school.'

[20] Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (Oxford: Oxford University Press, 1970), p. 1.

[21] Ibid., p. 121.

[22] Ibid., p. 3.

[23] Ibid., p. 86.

systems of complex forms of social life' and 'serve as one, but only one, of the defining features of these', 'the criterion of identity of legal systems is ... determined not only by jurisprudential or legal considerations ... but [also by] considerations belonging to other social sciences'. It is reasonable for jurisprudence (legal theory) to focus, therefore, on *momentary legal systems*, provided it remains aware that neither the identity not the existence of a momentary system can be determined without reference to 'other momentary systems of the same legal system'.[24]

In critical dialectic with John Austin, Kelsen and Hart, the body of this notable first book is largely devoted to contesting their typologies of the various kinds of rule that will be found in characteristic legal systems. Much of it feels like a logic book. But as the passages just quoted indicate, its horizons are far broader, and its balance sure. The postscript added in 1980 deftly shifts focus towards the concerns that had in the interim yielded Raz's ground-breaking and career-defining *Practical Reason and Norms* (1975): 'a theory of the nature of legal systems ... together with a theory of adjudication ... provides the conceptual foundation of our understanding of the law as a social institution of great importance ... [and] the basis for the critical evaluation of the law which is the other part of legal philosophy'.[25] And 'the law is an aspect of a political system, be it a state, a church, a nomadic tribe, or any other. Both its existence and its identity are bound up with the existence and identity of the political system of which it a part. If the book is at fault it is in not emphasizing this point enough.'[26] But, Raz adds, one must not make 'the reverse mistake'. Law has a special role in the political system. Since it can be conceived of as a system of reasons for action, the question of its identity is the question which reasons are legal reasons of one and the same legal system.' Three features are 'necessary to make a reason a legal one'. It is applied and recognised by a system of courts, 'authoritative law applying institutions'. It is a reason which these courts are bound to apply 'in accordance with their own practices and customs'. (These two features 'account for the institutional character of law' and 'provide the cornerstone of Hart's doctrine of the rule of recognition' – a doctrine several details of which, we may add, Raz's thesis/book had irrefutably criticised.)

The third feature necessary if a reason for action is to be a legal reason is picked out in '*the sources thesis*': 'legal reasons are such that their existence and content can be established on the basis of *social facts* alone, without recourse to moral argument.'[27] Here Raz's 1980 postscript adds: 'It is tempting to regard the thesis as marking the difference between those notorious protagonists the legal positivists who accept it and the natural lawyers who reject it. But while the thesis has no doubt a strong connection

[24] Ibid., p. 187.
[25] Ibid., p. 209.
[26] Ibid., p. 211.
[27] Ibid., p. 212.

with that historical division, it cannot be claimed as the exclusive property of either school.'[28]

Despite this wise counsel against temptation, it has been Raz's fate to be exhibited – usually with acclamation – in the textbooks, encyclopedias and law journals as an archetypical 'legal positivist', indeed a 'hard' or 'exclusive' (as opposed to 'inclusive') positivist. His first law journal article in English, in 1971, plainly contrasts certain proper tasks and methods of 'the legal theorist' with the goals and methods of 'positivist jurisprudence' and 'the great positivist legal scholars'.[29] On the other hand, in 'Legal Positivism and the Sources of Law', written for his *The Authority of Law*: *Essays on Law and Morality* (1979), he certainly had 'argued for' a 'version of positivism that ... is a moderate one which need not conflict with the natural lawyer's view' concerning two of the three 'issues' or 'theses' he identified as 'at the centre of the controversy' between legal positivists and 'their opponents'.[30] The remaining, third issue was the sources thesis. The 1980 postscript to *The Concept of a Legal System* marks a shift when it acknowledges that even the social-fact sources thesis, even in the 'strong' form promoted in the 1979 book, can be held by 'either school' and 'seems compatible with the writing of prominent natural lawyers' (citing works of 1964 and 1980).[31] As Raz's 2009 preface to the second edition of *The Authority of Law* will put the matter:

> the progress achieved through intense scrutiny often makes traditional divisions curiously off the mark. It is ... odd and misleading ... to regard writers, like myself, who deny many traditional legal positivist theses, as legal positivists. Doing so is not so much committing a falsehood, as endorsing a classification which – given the progress made in the matter – serves to obscure difficult issues ...[32]

What had led him in the 1970s to endorse an 'odd and misleading' position was, it seems, the incautious thesis of *Practical Reason and Norms* that there are 'natural law theorists' who think it 'a necessary truth that law, every law, has moral worth' – 'that it is the nature of law as law which is sufficient to establish its moral validity' – and who offer to explain the 'conceptual link between law and morality' by a 'definitional method' that Raz saw many good reasons to reject.[33] The question remains whether any such theorists can be found (Raz once or twice vaguely pointed to Locke); any mediaeval or modern philosophers classifiable as natural law theorists characteristically deny that 'every law is

[28] Ibid., pp. 212–13.
[29] 'The Identity of Legal Systems', *California Law Review* (1971), 795 at 800 = *Authority of Law*, p. 84.
[30] *Authority of Law*, pp. 39, 37.
[31] *Concept of Legal System*, p. 213n.
[32] *Authority of Law*, 2nd edn (2009), p. vii, also pp. 317, 335. Recidivist traces remain, e.g. at p. 327n: 'Legal positivists are more likely than natural lawyers ... to affirm that sometimes courts have (moral) duties to disobey unjust laws.'
[33] *Practical Reason and Norms* (London: Hutchinson, 1975), pp. 162, 164.

morally valid', and affirm that legally valid laws all too often are devoid of moral worth.[34]

In these middle- and late-period discussions of law, the distance Raz had put between himself and Kelsen and even Hart is apparent from such statements as:

> legal discourse is moral discourse. ... even those who believe that [the established legal standards] are not morally binding use moral terminology in discussing the law. After all, they are dealing with powerful institutions which hold the standards to be legally binding... they have no choice (exceptional cases apart) but to address them on the supposition that their standards are really binding (ie morally binding).[35]

> Legal reasoning is an instance of moral reasoning.[36]

> Doctrinal [legal] reasons, reasons of system ... should always give way to moral considerations when they conflict with them. But they have a role to play when natural reason runs out [because it identifies various incommensurate options which are good, but none of which is better than the others]. ... When morality runs out ... legal doctrine takes on a life of its own. There it is quite properly independent of – rather than having to reflect – moral considerations. Within these bounds legal reasoning is autonomous.[37]

[34] The 1975 book cited no natural law theorist, instead referring readers to 'a critical evaluation of such theories'; but even the work he cited actually says that part of the 'the common core of the various natural law theories' is the thesis that 'Positive law in conflict with natural law [= principles of political ethics which are objectively true] constitutes "unjust law," morally wrong *though legally valid*.' Felix E. Oppenheim, *Moral Principles in Political Philosophy* (New York: Random House, 1968), p. 44 (emphasis added). Probably the real source of Raz's belief that there is or was a natural law theory of the kind he had in mind was Kelsen: the section entitled 'Kelsen and Natural Law Theory' in Raz's main essay on Kelsen (1974) is the only section making no criticism of that remarkable jurist, and says: 'Kelsen correctly points out that according to natural law theories there is no specific notion of legal validity. ... Natural lawyers ... cannot say of a law that it is legally valid but morally wrong.' *Authority of Law*, p. 130. The Clarendon Law Series book contradicting these theses of Kelsen and Raz, *Natural Law and Natural Rights*, came out only in 1980, and although Raz saw in 1977 (and commented critically and amicably upon) its draft chapters on Authority and on Obligation, and in 1978 had the whole book in draft, his ink annotations on that typescript suggest that he was at that time able to read only its first chapter (against value-free social/legal theory) – which, as it happens, he later cited more than once, with approval: e.g. Joseph Raz, *Between Authority and Interpretation* (Oxford: Oxford University Press, 2009), p. 69.

[35] *Between Authority and Interpretation*, pp. 4–5.

[36] Joseph Raz, *Ethics in the Public Domain* (Oxford: Clarendon Press, 1996), p. 340 (1992/3). (This book was published in hardback in 1994; when issued in paperback in 1995, it had a new chapter 2, and chapters and pagination were renumbered; but cross-references within that edition of the book, and countless citations by other authors thereafter, are rendered misleading.)

[37] Ibid., pp. 339–40 (emphasis added).

Concepts and their explanation

Introducing Raz's last book – on the role of values and reasons in the explanation of practical normativity – Ulrike Heuer writes that all his work 'is guided by a methodological assumption: the aim of much of philosophy, and, at any rate, his, is to elucidate practices and concepts as we find and already understand them.'[38] That sound account of his philosophical aim and method can be supplemented.

Raz's aim is explanation, as he says in responding to three eminent philosophical critics of his 2001Tanner Lectures at Berkeley, 'explanation of concepts that are central to our practical thought, to our understanding of ourselves as persons, capable of intentional action'. Underlining that 'in explaining a concept we explain aspects of that of which it is a concept' and that 'explanation of the concept of value is a (partial) explanation of the nature (that is essential properties) of value' – of 'being a value, and of having value or being of value'[39] – he there calls in aid his 1998 essay on the nature of legal philosophy (synonymously 'legal theory', 'jurisprudence', and 'philosophy of law'): 'a theory about the nature of law attempts to elucidate a concept, the concept of law, and what is the elucidation of a concept if not an explanation of its meaning? And what could that be if not the explanation of the meaning of the concept-word?' But equally: 'an explanation of a concept ... consists in setting out some of its necessary features, and some of the essential features of whatever it is a concept of', and 'involves explaining the feature through which it applies to its object or property, but also explaining more broadly the nature of the object or property that it is a concept of.'[40]

Concepts, moreover, are likely to be 'parochial', that is, 'a product of a specific culture'; a culture which lacks a concept may have nevertheless have the reality which that concept is of. For instance, when doing legal theory, 'what we are really studying is the nature of institutions of the type designated by the concept of law. ... While *the concept* of law is parochial, i.e. not all societies have it, our inquiry is universal in that it explores *the nature* of law, wherever it is to be found.'[41]

[38] Joseph Raz, *The Roots of Normativity* (Oxford: Oxford University Press, 2022), p. 1.

[39] Joseph Raz, *The Practice of Value* (Oxford: Clarendon Press, 2003), p. 121 (under the heading: 'More on explaining value' and sub-heading: 'Methodology and Ontology'). 'My use of the term ['value'] is uninhibitedly inflationary': *Value, Respect, and Attachment*, p. 43. And more generally: 'explanation is always relative to a puzzle, and these essays seek to explain some of the puzzles which preoccupied me, explaining them in ways which, however incompletely, satisfy me.' Joseph Raz, *Engaging Reason: On the Theory of Value and Action* (Oxford: Oxford University Press, 1999), p. 1.

[40] Joseph Raz, 'Two Views of the Nature of the Theory of Law: A Partial Comparison', *Legal Theory*, 4 (1998), 254–6.

[41] *Between Authority and Interpretation*, pp. 32, 42 (his emphases). 'Some concepts are different. Arguably, since gifts are gifts only if intentionally given *as such* there cannot be gifts among people who do not possess the concept of a gift. ... something like this is true of rules.' (ibid., p. 42). Conversely, there are

The course and content of most of Raz's scholarly work was foreshadowed in his introduction to *Practical Reason and Norms* (1975): 'This is a study in the theory of norms. ... an analysis of the different types of norms and their main logical features ... I shall explore a few kinds of normative system and show how their unity consists in certain patterns of logical relations among their norms. ... The key concept for the explanation of norms is that of reasons for action.' A theory of norms needs to help clarify 'the other main concepts of the philosophy of practical reason (or practical philosophy for short)'.[42] Practical philosophy has a 'substantive or "evaluative" part' and a 'formal part concerned with conceptual analysis'. This book, he notes, will be 'primarily an essay in conceptual analysis'; it will scarcely attend to 'arguments designed to show which values we should pursue, what reasons for action should guide our behaviour, which norms are binding, etc.'; it 'is not concerned in any way with ultimate values', and so can 'disregard the sceptical arguments' and 'related epistemological problems' about 'the possibility of establishing the validity of ultimate values'.[43] (Later in the book, 'ultimate reasons' and 'fundamental values' appear as synonyms for 'ultimate values'; similarly, Raz's contemporaneous *Mind* essay 'Reasons for Action, Decisions and Norms', reiterating that it will be exclusively 'conceptual analysis', contrasts it with practical philosophy's other part, 'an epistemological part concerned with the criteria by which the validity of reasons is established'.) There is a sense – to be neither exaggerated nor minimised – in which the self-declared, severe restriction of these defining, brilliant early works is true (as Heuer recorded) of his nine succeeding books. And a sense in which these are all works of a logician.

Thus, in *The Morality of Freedom* (1986) Raz will classify ultimate values as those intrinsic values 'that are referred to in explaining [and justifying] the value of non-

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concepts 'access to which is coextensive with the capacities to have knowledge and to act intentionally', and only these are non-parochial: Joseph Raz, 'Comments and Responses', in Lukas H. Meyer, Stanley L. Paulson & Thomas W. Pogge (eds), *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* (Oxford: Oxford University Press, 2003), p. 258.

[42] The book studies 'the logical features of concepts like value, reason for action or norm and the nature of the rules of inference governing practical reasoning', a study 'based on the belief that it is possible and necessary to develop a unified logic of all the concepts belonging to normative theory' – not only 'ought', 'may' and 'prohibited' but also 'concepts like rules, justice, duty, authority, responsibility, rights, virtue, etc.' – 'and that the most fundamental part of such a logic is not deontic logic' (for it cannot handle conflicting reasons) 'but the logic of reasons for action.'

[43] *Practical Reason and Norms*, pp. 9–10. The postscript to the second edition (1990) begins: 'Not long after the original publication of this book in 1975, and somewhat to my regret, my work changed direction and drifted away from consideration of practical reasoning. ... This postscript is an opportunity to reassess the credentials of the book's central new idea concerning practical reason. That idea is of the importance of exclusionary reasons for the understanding of some rules and related normative concepts.' (p. 178). This 'rethinking' and defence tacitly rebuts critiques advanced by Michael Moore in many seminar discussions with Raz.

ultimate goods' (including goods that are intrinsic but not ultimate). He illustrates intrinsic goods (whether ultimate or non-ultimate) by works of art the existence of which is intrinsically valuable, and is, moreover, 'a constituent of the good which is a life including the experience of works of art'; it is 'the quality of life with art which explains' the intrinsic value of art and is the relevant ultimate value – or at least 'we here assume [so] for the sake of the example'.[44] So here, too, the project is intended more as formal and conceptual than as substantively evaluative. Whether personal autonomy – assuming always that it is a value (for Raz an intrinsic value), not a given of adult human existence – is or is not an ultimate value seems to be left in the air, though it is the value displayed, illustrated and explored in this strenuously thoughtful book as one that its author 'believes in'. It is 'a distinct ideal', can be pursued in various but not all societies, and 'is, to be sure, inconsistent with various alternative forms of valuable lives.'[45]

In short, all Raz's books and most of his essays will be primarily conceptual analysis. Constantly alluding to and exploring implications of the 'values we should pursue', and of 'reasons for action', they do not undertake to argue for, propose or justify an articulated substantive system or ordered set of human goods, practical reasons, or binding norms. (He perhaps judged that there is no such system or set to be found.) *The Morality of Freedom* states its 'whole purpose' as defending 'a theory or doctrine consisting of moral principles' and, as a resultant or 'product', 'a concept of political freedom'.[46] The book indeed proposes certain substantive positions in political ethics, as do Raz's works on the Rule of Law, on multi-culturalism, on the self-determination of peoples, and on some more radical implications (as he judged) of valuing individual autonomy. But even these discussions lean towards conceptual analysis, elucidation and explanation, and away from any systematic principled justification seeking to go all the way down.

Values and the ultimacy of reasons: a watershed

Still, such primarily conceptual studies soon made notable advances. *Practical Reason and Norms* is Raz's first exposition of a philosophy of law in which the explanation of norms and other rules is not (as in Kelsen) by acts or expressions of will, but by *reason* and *reasons* (shunned by Kelsen for fear of falling into what he saw as the myths and superstitions of natural law theory). Kelsen's strategy of reducing institutions (courts, legislatures ...) to norms is reconceived and made reasonable by Raz in the course of demonstrating that the structure of legal system, the positivity of law, and law's irreduc-

[44] Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 200–1; also p. 177n.
[45] Ibid., pp. 394–5.
[46] Ibid., pp. 14–16; also pp. 150, 168, 244.

ibly institutional character can all be elegantly explained as deployments or resultants of *exclusionary reasons* (for action) – 'second-order' reasons that direct various classes of acting persons *not* to follow certain kinds of reason. The identification of exclusionary reasons, and of their common presence as elements in *protected reasons* (reasons that require or direct a certain kind or class of action and are protected, by an accompanying exclusionary reason, from competing or countervailing reasons), is the most obviously substantial of Raz's original contributions to legal philosophy. Being explanatory concepts, 'exclusionary' and 'protected'[47] reasons do not obviate the need for each legal system to make its own provisions and determinations to stipulate *how far and in what respects* its own system-defining exclusionary and protected reasons exclude few, or many, or even all countervailing reasons. But as an explanatory concept, 'exclusionary reasons' was immediately adopted and integrated into other substantial work characteristic of post-Hartian (and Hart's own late-period) theory of law, and has proved its worth against some strenuous opposition.[48]

To acknowledge the creative originality of the concept, and of its deployment in Raz's account of law and legal systems, is not to overlook the ground breaking by Hart, whose explanations in his masterwork *The Concept of Law* (1961) of the 'internal point of view' (so crucial to his replacement of predictivist 'legal realism' and of Benthamite, Austinian, and Kelsenian imperativisms) achieve their goal of elucidation – to an extent not made fully explicit there – by recalling and highlighting the way legal and other social rules function *as reasons* for action: the central case of following rules is one's accepting and treating them as reasons for one's action. This fundamental, strategic aspect of Hart's major work seems somewhat passed over in Raz's many allusions to Hart, which tend to present that work instead as a 'practice theory' (or 'institutional theory') of rules and normativity, a theory the deficiencies of which demand its replacement by a theory explaining normativity by reasons, particularly exclusionary reasons.

At any event, it is in a 1981/2 paper preparatory for *The Morality of Freedom* that Raz's published work makes the main conceptual advance internal to it, an advance decisive for his whole philosophy of action and practical reason: a clean break with any notion that desires or wants are reasons (as was still unapologetically entertained in *Practical Reason and Norms* and in his important introduction to his 1978 anthology,

[47] The name 'protected reason(s)' is not bestowed until *The Authority of Law* (1979), p. 18, but the idea so named – of a first-order reason to act (whether because of one's decision or promise, or a mandatory legal rule) combined with an exclusionary reason (having the same source) – is clearly outlined in the 1975 book and *Mind* essay. *Authority of Law,* p. 18.

[48] See n. 43 above. As in substance his last publication, Raz posted on SSRN a characteristically modest but firm defence of the concept only six months before his death.

Practical Reasoning).[49] Henceforth, desires or wants are not reasons: 'we want what we want for reasons'; 'wanting something is not a reason for doing it'; 'people pursue goals and have desires for reasons'.[50] As he put it in 1992: 'one's likes and wants are not reasons for one's action (though they may be reasons for others). This is Aristotle's position, powerfully revived by G.E.M. Anscombe, *Intention* ...'.[51] And from 1981/2 it is, generally speaking, Raz's.

This clarifying and deep-going change of position involved or facilitated liberation from both Humean and Kantian theses on the ultimate motivations for human action, and is strongly related to the stand that Raz will, from at latest the mid–1990s, start taking in relation to the 'naturalist' world-view as source of sceptical and/or Humean or Kantian denials of the objectivity of reasons (and thus of values and moral norms).

A paradigmatic rebuttal of such denials and of 'constructivist' ('Kantian') misconstruals of ultimate or intrinsic reasons is Raz's long 'The Myth of Instrumental Rationality' (2005), now in *From Normativity to Responsibility* (2011). Its key thesis: 'The fact that one has an end does not provide reasons for its realization, nor to take the means for its realization.' It is the reasons for having that end that provide reasons for its realisation and for taking the means to realising it. Already in 1998/9 Raz had rejected the 'division between substantive and procedural rationality' that 'took hold among philosophers [he quoted Parfit] who doubted that reason is directly involved in the choice of ends ...'. 'In fact reason affects our choice of ends and the desires we have just as much as its affects our deliberations and our beliefs. We cannot have a desire except for a reason.'[52] And in 'The Myth ...' he identifies the primary reason why many hold that instrumental rationality is particularly unproblematic: they 'find it difficult to find a place for normativity (for values and reasons) in the world in which, they think, everything can be explained by the physical sciences ...'; some of them think that 'normativity can and should be explained away in favour of accounts relying on motivations, subjective preferences, coherence relations among one's attitudes or the like ...'[53] Already in his

[49] See *Practical Reason and Norms*, p. 203 ('*Desires as reasons.* ... Since desires in general are reasons ...'); Joseph Raz (ed.), *Practical Reasoning* (Oxford: Oxford University Press, 1978), pp. 4, 17 n.3.

[50] *Morality of Freedom*, pp. 316, 389, 140; the last is from a paragraph that appears verbatim in Joseph Raz, 'Liberalism, Autonomy, and the Politics of Neutral Concern', *Midwest Studies in Philosophy*, 7 (1982), at 100 and 118n.17. The reasons referred to are not 'explanatory reasons' mentioning some state of mind of persons who have acted to explain why they did so, but rather 'guiding reasons' regarded and/or to be regarded as valid grounds for action: for this distinction see e.g. *Practical Reasoning*, pp. 2–4; *Ethics in the Public Domain*, p. 114n.

[51] *Ethics in the Public Domain*, p. 336n = *Ratio Juris*, 6:1 (1993), 1 at 11n.

[52] *Engaging Reason*, p. 73; for the demonstration of the text's thesis, Raz cites the preceding chapter, first published in 1998. The footnote adds: 'though occasionally people have urges which are unreasoned'. And there are false desires: 'Facing Up: A Reply', *California Law Review*, 62 (1989), 1153 at 1213, 1216.

[53] Joseph Raz, *From Normativity to Responsibility* (Oxford: Oxford University Press, 2011), pp. 167–8.

Tanner Lectures, Raz had said that, unlike most of these and other such writers, he is 'not concerned with reconciling evaluative knowledge with a naturalistic metaphysic'.[54] Though he indeed has 'the aim of explaining the coherent relations between our practical thought and other domains of thought', he is 'not confident of the cogency of the ideal of "a naturalistic world view"'.[55] 'Can basic moral principles change?', a previously unpublished chapter in his final book, confronts 'the core doubts' about our 'ability to explain normative properties, if they are real non-naturalistic properties', given that 'the explanations that enable us to understand the world around us, namely scientific explanations, do not apply and cannot be used for explaining normative properties'. Raz's response begins by pointing out how even people with a poor knowledge of the sciences 'know and understand much of the world around them in ways that are independent of the sciences, and that the natural sciences do not explain, and this includes their understanding of themselves and other living beings, and of social practices and institutions, and the culture and economic opportunities, or lack of them, that those social practices and institutions sustain.'[56]

Objectivity of value and morality

Perhaps most striking among Raz's dissociations of his thought from 'naturalist' metaphysics and 'empiricist' epistemology is his assessment of the part played by philosophy of language in Hart's work as a philosopher of law. Written for a 1998 philosophical symposium on the Postscript that Raz and Penelope Bulloch had edited from Hart's posthumous papers and added to a second edition (1994) of *The Concept of Law*, this assessment prefaced an explanation of 'why Dworkin was wrong to think that Hart and others were concerned with the meaning of the word "law"'. Hart had thought of semantics and the philosophy of language generally as 'central to his investigation', but when the story of his 'forays into philosophy of language' is told, 'it strikes me as a sad one': none of the 'problems with the explanation of responsibility, ... corporations, the nature of rights and duties, the relations between law and morality – none of them was solved nor their solution significantly advanced by the ideas borrowed [by Hart] from philosophy of language.' It was not that those ideas were bad, or that Hart misunderstood them. Rather, 'Hart's failure on all [those] points ... resulted from his adherence to naturalism [according to which the only things there are (or ... whose existence has duration) are things located in space, knowledge about which is gained from the natural sciences, or

[54] Joseph Raz, *The Practice of Value* (Oxford: Clarendon Press, 2003), pp. 57–8.
[55] Ibid., p. 123.
[56] Joseph Raz, *The Roots of Normativity*, p. 123. See also, on the absence, so far, of any scientific explanation of the existence of rational capacities, *From Normativity to Responsibility*, pp. 7–8.

at any rate is subject to correction by them] and to empiricist epistemology and his rejection of evaluative objectivity.'[57]

As an assessment, that does Hart's work a good deal less than full justice,[58] but it highlights several of Raz's own philosophical concerns. It was part of the ninth of Raz's ten relatively extended free-standing critiques of Dworkin,[59] the earliest published in

[57] *Between Authority and Interpretation* (Oxford: Oxford University Press, 2009), pp. 49, 50, 52 = 'Two views of the nature of the theory of law...', *Legal Theory*, 6 (1998), 249 at 250, 252–3. The footnote adds: 'Once [the objectivity of value and morality] is admitted there is no reason for accepting Hart's analysis rather than the view that legal statements and utterances are just like all other statements.'

[58] It reduces Hart's explanatory concept of 'the internal attitude [or viewpoint]' to 'endorsement', omitting to mention the attitude's orientation to reasons (for compliance), the feature carefully identified in P.M.S. Hacker, 'Hart's Philosophy of Law', in P.M.S. Hacker & J. Raz (eds), *Law, Morality, and Society*, (Oxford: Clarendon Press, 1977), pp. 13–16; and indeed in Joseph Raz, 'H.L.A. Hart (1907–1992)', *Utilitas*, 5 (1993), at 147–48.

[59] Among these ten there is little or no redundancy or (save between (iii), (iv) and (v)) overlap, and though Raz's exegesis could sometimes have been more sympathetic, all these critiques (like the many shorter observations in other works) seem substantially successful (as do some of Dworkin's critiques of Raz). In our three-man Oxford seminars, we virtually never alluded to any of them. Chronologically: (i) 'Legal Principles and the Limits of Law' (1972: against a soon-abandoned 1967 argument of D.'s for the thesis that principles of law cannot be accounted for by legal positivism); (ii) 'Prof. Dworkin's Theory of Rights' (1978: against the theories, in *Taking Rights Seriously*, of the nature of moral/political rights; of the foundations of political theory/philosophy; and of law, especially D's 1975 'Hard Cases' thesis understood as requiring courts to decide on the basis of the moral-political theory which best justifies the existing enactments and precedents); (iii) 'Legal Reasons, Sources, and Gaps' (1979: against D's thesis that legal positivism cannot explain gaps, indeterminacies, and conflicts in the law); (iv) 'A Postscript [to 'Legal Principles and the Limits of Law']' (1983: D. has abandoned his 1967 position, and treats as law all and only standards that the courts have a moral duty to apply); (v) 'The Problem about the Nature of Law' (1983: including another critique of D's assumption that 'all the considerations which courts legitimately use are legal considerations' and that a theory of law is just a theory of adjudication; (vi) 'Authority, Law, and Morality' (1985: incorporating a critique of D's method for identifying the law and judicial duty as tweaked in 1977 and reinterpreted by Raz as calling for both conformity to ideal morality and sufficient fit with the country's legal history – a method incompatible with both the 'service conception of authority' and the 'pre-emptive' [exclusionary, peremptory] import of any exercise of authority); (vii) 'Dworkin: a New Link in the Chain' (1986: *A Matter of Principle*'s recasting identification of the law as 'the best interpretation of the country's legal history' leaves unresolved the tension between the conservative 'communication [or speaker's meaning] model' and the idealist 'coherence model' that puts or displays the country's legal materials in 'the best possible moral light'; (viii) 'Liberalism, Scepticism, and Democracy' (1989: brief refutation of Dworkin's 1977–83 position, refuted more thoroughly by Hart in 1979, that 'external preferences' [about 'the assignment of goods and opportunities to *others*'] are not to be counted; (ix) 'Two Views of the Nature of the Theory of Law' (1998: refutation of *Law's Empire*'s claim that Hart and other positivists 'were concerned with the meaning of the word "law",' sought '[semantic] criterial explanations', and based their theory of law on the false belief that lawyers and judges must 'share factual criteria about the grounds of law'; concluding that *Law's Empire* 'contains a theory of adjudication rather than a theory of (the nature of) law' and misconceives 'the tasks and method of jurisprudence'; (x) 'A Hedgehog's Unity of Value' (2016). There are a good many brief arguments or critical observations in other works of Raz, e.g. in many parts of *Morality of Freedom*.

1972,[60] the latest in 2016. And this last critique, fittingly enough, concerned the fragility of Dworkin's defence, in *Justice for Hedgehogs* (2011), of the objectivity and truth of true evaluative beliefs (whether about norms, practical reasons, virtues, or values in a narrow sense). Raz argues that such a defence, if its effort of interpretation is not to fall into some sort of Kantian constructivism, must bring out each value's intelligibility and reality not merely by 'epistemic' evidence such as testimony but also by pointing to 'constitutive' or 'grounding' ('truth-making') reasons, as we perhaps do when, as often, we display something's value by showing it to be analogous to one or more other objects or options of value, and seek thereby to help each other 'see' the reasons for judging both or all these objects or options to be valuable.[61]

Raz's confidence in the truth-making interdependence of reason, reasons, values (aspects of the world that, as valuable, constitute reasons for action by showing action to be good – or ill – in some respect), normativity, and reason-responsive intending (willing), was displayed in his 1999 essays *Engaging Reason*,[62] the last three of which argue, first, that there is no 'context-free theoretically interesting difference between moral values and others', between 'morality and other practical domains'.[63] 'I believe that evaluative arguments, moral and otherwise, are like all arguments, a matter of tracing the implications of the structures of our beliefs, in all the ways we know.'[64]

The value of autonomy

At least as important as reason's capacity for objectivity and truth, in Raz's understanding of action, emotion and desire as guided by reason, is one's capacity – one's reason's capacity – for *creating oneself* (being or becoming 'author of one's own life') by successive choices of valuable options, that is, reason-guided projects and goals. His political morality of freedom, elaborately outlined in the eponymous book, rests on an idea or ideal of the autonomous life of such self-creating choices made possible by appropriate

[60] Strictly, the earliest is his Hebrew article ['Legal Principles and Judicial Discretion'] in *Mishpatim* (1970).

[61] Joseph Raz, 'A Hedgehog's Unity of Value', in Wil Waluchow & Stefan Sciaraffa (eds), *The Legacy of Ronald Dworkin* (New York: Oxford University Press, 2016), pp. 3–22; a little earlier: *Ethics at 3:AM*, pp. 57–8.

[62] The primary sense of the punning title (a phrase not used in the book) is: by engaging one's reason (and other rational powers, notably one's will), one can understand values and either (a) engage with them by [engaging in] action, as distinct from (b) merely respecting (without engaging with) them. The distinction between (a) (active) and (b) (passive) is explained and thematised only later, in *Value, Respect, and Attachment*.

[63] *Engaging Reason*, p. 3.

[64] Ibid., p. 302.

'negative freedom, i.e. freedom from coercion' and, equally or more important, 'positive freedom, i.e. of autonomy as capacity' – inner cognitive capacities (power to absorb, remember and use information, reasoning abilities ...), emotional and imaginative make-up, health and physical abilities and skills, and character traits such as stability, loyalty and ability to form personal ties. *One's well-being is determined largely by success in pursuing the valuable goals one has autonomously chosen.* This success is substantially dependent on the existence of *collective* goods such as an educated, tolerant, open society, a free market ... Individualism, which denies the inherent/intrinsic value of any collective good, is false. Our duties to each other, which define our rights, are duties to respect each other and each other's well-being. So: our morally-politically significant duties include not only duties to respect and contribute to collective goods, but also autonomy-based duties, negative (to refrain from coercion and manipulation) and positive (to help create in others the above-mentioned inner capacities and character traits, and create for others an adequate range of options for them to choose from).[65]

Raz often underlines that the key elements in this conceptual network depend upon reasons, and upon one's reason's capacity to judge the reasons for adopting such-and-such a goal for its value. Desires and emotions enable us to determine what to do only when, as is 'the normal case',[66] reason has identified incommensurably desirable/valuable alternative options; but even in this normal case the action decided upon and done is *willed*, that is to say, is settled by exercise of a rational capacity responsive to the reason(s) for *that* action as opposed to its incommensurable alternative(s).

Choosing

A theme of *Engaging Reason* and all the later work is that reasons to *believe* – epistemic reasons – are not practical reasons, reasons for action, for they leave no room for choice: 'we cannot decide what to believe'.[67] But this important distinction is compatible with there being many choices we may need to make both in forming our beliefs where the reasons to believe are neither negligible nor decisive, and in overcoming 'fear, or self-deception, or wishful thinking, and other motivated irrationalities'.[68]

More generally, Raz's later works thematise, more than his earlier writing had, the reality and significance of the possibility of *choosing* (deciding) between rationally eligible options, and of the need, 'on many occasions, I am inclined to say in normal circumstances', to choose because 'there would be more than one response supported by

[65] *Morality of Freedom*, pp. 407–9, 253 (free markets a collective good), 265, 295–320.
[66] Ibid., p. 302.
[67] *Engaging Reason*, p. 7. Occasionally, Raz draws a fine distinction between deciding and choosing.
[68] Ibid., p. 9; see also pp. 95–6, 278, and cf. *Roots of Normativity*, p. 83.

reasons, with none of them supported to a higher degree than any of the others'.[69] The express purpose of the last two books is 'to describe and explain essential aspects of our experience.'[70] *All* reasons 'have a requiring aspect', for in making certain options eligible 'they also rule out responses as ineligible.' Indeed, 'the explanation of normativity is the explanation of reasons, and of the way they function to make some responses eligible and others ineligible, thus requiring their omission and the realization of some alternative (if only the alternative consisting in the disjunction of all responses that are not ruled out).'[71] The experience of having to *choose* between options each shown by one's reasoning to be, in reason, eligible undermines the thesis (found in Aristotle and, seemingly, in Anscombe) that practical reasoning terminates in action, or at any rate in intention.[72] What is true is that reason (the capacity) includes not only understanding and reasoning but also the power to form intentions and decisions/choices.[73] The underlying 'classical' (roughly: Aristotelian) conception is sound, the 'rationalist' (roughly Humean and Kantian) unsound: will, 'the ability to choose and perform intentional actions',[74] is a rational capacity, responsive to reasons (not – pathologies aside – to desires: 'there is always a reason for any desire'[75]). This all supports an original and striking case for widespread incommensurability of values and of options, such that of two values or options, 'neither of them is better than the other nor are they of equal value.'[76] And in the succeeding essays 4 and 5 of *Engaging Reason*, on explaining normativity, Raz provides his perhaps most muscular exploration of how it is that – given that 'aspects of the world can constitute reasons for cognitive, emotive, and volitional responses' – 'we can respond appropriately' when we 'come to realize that certain cognitive, emotional, or volitional responses are appropriate in various circumstances, and inappropriate in others.' Explaining 'the nature of reasons and of normativity' explains how reason motivates and, indeed, how the normal motivation of one's actions is (what one takes to be) some reason or reasons.[77]

[69] *From Normativity to Responsibility*, p. 5.
[70] Ibid., p. 3.
[71] Ibid., pp. 5–6.
[72] Ibid., pp. 140; 130–33. Indeed, neither intentions nor actions can be the conclusions of reasoning: pp. 82–93.
[73] Ibid., p. 88.
[74] *Engaging Reason*, p. 48.
[75] Ibid., p. 56.
[76] Ibid., p. 46; and pp. 47–66.
[77] Ibid., pp. 67, 90. And, likewise but more radically, 'there is no viable conception of self-interest or prudence according to which it is a source of value or reasons.' Ibid., p. 3.

Legal philosophy: a second pass – authority, political authority, and obligation

That Raz's first book on authority was published a couple of years before the watershed in his thinking about reasons for action is a factor in accounting for what in retrospect seems the book's limited success in achieving its explanatory aims. Another factor was Raz's still operating concern, repeatedly signalled in the preface, to affirm 'legal positivism' against 'the claim of the natural lawyer that law is inescapably moral', and to discuss 'the picture of the law which emerges from the pursuit of legal positivism' (to the extent that such discussion is compatible with the book's 'primary aim ... to examine arguments for the moral authority of laws').[78] As already mentioned, this distracting concern was soon to be overcome, and as early as 1980 Raz began indicating dissatisfaction with the 'positivism' versus 'natural law' classification.[79] The preface to *The Authority of Law*'s second edition would later reflect:

> sometimes writers do get dug into an issue and their contribution over a relatively short period of time deepens our understanding of concepts, problems, and doctrines, often leading to subtle transformations through successive refinements. It seems to me that the debate between so-called legal positivists and their opponents has undergone such a transformation by being subjected to intense scrutiny, and that legal philosophy has gained as a result.[80]

In any event, the 1979 book's six essays around legitimate authority and the obligation to obey the law (essays 1 and 11–15, all belonging 'essentially to political philosophy' and previously unpublished) are far surpassed, only six years later, by the 90 pages in part I of *The Morality of Freedom*.

In 1979, the discussion of authority did affirm that reasons are the ultimate basis for the explanation of all practical concepts, and that utterances are authoritative when they exercise a normative power to change persons' reasons by establishing or changing a second-order, 'protected' reason – one that is neither absolute nor merely prima facie but, in proposing or stipulating a reason for action, *excludes* some other reasons and, at a minimum, excludes both acting 'on the merits' (the balance of first-order reasons as the agent sees them) and acting on present desires inconsistent with the authoritative reason.

[78] *Authority of Law,* pp. vi-vii (2nd edn, pp. x-xi).
[79] *The Concept of a Legal System* (2nd edn, 1980), pp. 212–13; at n. 31 above.
[80] *Authority of Law* (2nd edn, 2009), p. vi. In a 2007 essay added to this second edition, Raz says (ibid., p. 317) that he is 'inclined to accept' that 'legal positivists can be natural lawyers, and vice versa, that is that the classification of theories into legal positivist and other is misleading and unhelpful.'

But then, after noting that the law claims to have this normative power, the discussion leapt forward to the vindication of the stark, surprising thesis (A) that, even in a good society with a just legal system, there is no obligation to obey the law, 'not even a prima facie obligation'.[81] The obligation thus denied is 'a general obligation applying to all the law's subjects and to all the laws on all the occasions to which they apply' (taking into account all legally recognised excuses for departing from their terms).[82] Raz said 'the appearance of paradox is illusory.'[83] In a good legal system one will know that one has independent moral reasons to do as the laws require. More directly relevant to dissolving the paradox: the law functions not only by sanctions against moral evils but also by 'marking in a publicly ascertainable way' certain standards 'required by the organized society' and thus is 'instrumental in setting up and maintaining schemes of social co-operation'; but 'the moral reasons affecting such cases derive entirely from the factual existence of the social practice of co-operation and not at all from the fact that the law is instrumental in its institution or maintenance.'[84] (This last claim aroused critique, and was quietly withdrawn and contradicted in Raz's 1984 essay on the obligation to obey.)[85]

Also confessedly paradoxical in appearance, but perhaps more tenable, was the accompanying thesis (B), in the adjoining essay 'Respect for Law', that 'those who respect the law are subject to an obligation' – to obey the law – 'from which others are exempt'. Indeed (Raz says sardonically), this thesis 'is in fact paradoxical given some of the common assumptions of current analytical moral philosophy.'[86] Here Raz was presumably alluding to his sub-thesis that although (i) an attitude of respect for state X has (as an attitude of belonging) intrinsic value and so, if adopted (and as long as it persists), entails obligation to obey X's law, nonetheless (ii) it is entirely permissible not to have or adopt such an attitude. At any event, the thesis that entirely optional respect generates obligation is defended in 1979 and 1984 as analogous to the 'one clear orthodoxy' of 'modern political theory' at its birth 'in the seventeenth and eighteenth centuries', that 'if there is a general obligation to obey the law, it exists because it was voluntarily undertaken.'[87]

Seven years later, in *The Morality of Freedom*, the question of obligation to obey the law has a reduced and subdued role. Thesis (B)-type obligation arising from a 'voluntary or semi-voluntary' attitude of respect becomes the primary theme, and the paradoxical

[81] Ibid., p. 233.
[82] Ibid., p. 234.
[83] Ibid., p. 245.
[84] Ibid., 245–6, 248–9.
[85] *Ethics in the Public Domain*, pp. 347–50; likewise p. 337 [1993]; and *Between Authority and Interpretation*, pp. 346–7.
[86] *Authority of Law*, pp. 250–51.
[87] *Ethics in the Public Domain*, p. 354.

(A)-type denials of any even prima facie obligation are merely cited – are vestigial if present at all. Obligation from respect is acquired through people's 'conduct of their own lives, as part authors of their own moral world', and is acquired not only by consent but also, 'in a reasonably just society', by simple 'belief in an obligation to obey the law', i.e. by the very common 'belief in a defeasible obligation to obey the law' – a belief 'often condemned', mistakenly (Raz judges), 'as blind acceptance of authority without any reason'.[88] The former sub-thesis (B)(ii) that 'nobody does any wrong in not respecting the law even in a good state'[89] is watered down: those who withhold consent or respect 'are not necessarily guilty of any wrongdoing. ... Sometimes people have reason to undertake [obligations by consent or respect], but only exceptionally does one do wrong in not undertaking them.'[90]

Even this weakened denial of a defeasible – in other words prima facie – obligation to 'obey the law as it requires to be obeyed' sits uneasily with the 1986 book's greatly enhanced explanation and more affirmative vindication of practical authority in general and political/legal authority in particular. A legitimate authority's normative power to pre-empt, by directives giving protected reasons that replace some of the reasons the subjects would or might otherwise have, '*should* be based on reasons that independently apply to the subjects' – Raz called them 'dependent reasons'.[91] The 'normal justification' of A's authority over S is that S 'is likely better to comply with reasons that apply to him ... if he accepts the directives ... as authoritative and tries to follow them, *rather than by trying to follow the reasons which apply to him directly*.'[92] In the case of *political/legal* authority, that 'normal justification' depends upon the authority's 'ability to co-ordinate the activities of large populations' in a way that serves its ultimate basis: 'the moral duty individuals owe their fellow human beings'.[93] That duty is to respect their fellows' safety and contribute appropriately to their well-being, responsibilities that can be fulfilled only by cooperating in forms of coordination that reduce collisions and promote mutual assistance. It is unclear how much room is left for morally justifiable withholding of such cooperation and respect, if – as Raz held, often calling it 'the Service Conception of authority' – (*a)* political/legal authority is legitimate by reason of its provision of this service to individuals of enabling them each to perform the (moral) duties they all owe each other, and (*b*) its success in providing this service is to some significant extent dependent on the willingness of its subjects to acknowledge (*c*) at least a defeasible moral duty to comply with its directives (laws) to the extent directed by the law (including

[88] *Morality of Freedom*, pp. 87–98.
[89] *Authority of Law*, p. 258.
[90] *Morality of Freedom*, p. 99.
[91] Ibid., pp. 46–7.
[92] Ibid., p. 53 (emphasis added).
[93] Ibid., pp. 72–3.

all its excusing provisions and doctrines) – defeasible by the immorality or injustice of particular regimes or directives or applications to particular groups or individuals.[94]

In his last published full-dress discussion of law's authority and obligation (from 2003), Raz came to accept that prominent contemporary 'espousers of a general obligation to obey all law' in fact 'emphasized the possibility of marginal cases of law to which the duty does not apply'.[95] He directed his critique, however, at a variety of other positions such as: 'Necessarily everyone has a duty to obey the law of his own country'. All such positions fallaciously try to 'derive a moral property which applies equally to each and every law from systemic properties of the law as a whole, or of some kinds of legal system'[96] – fallaciously, for (by analogy) from the truth that 'the practice of promising is a morally valuable practice because it is one which can achieve valuable goals', 'it does not follow that all promises bind.' Law, like promising, has a specific, essential moral task. 'Does it follow that it is by its nature an essentially valuable institution?' No, because when we say that promising is a morally valuable institution, even though in some countries perhaps most promises are of doubtful character, 'we are judging the abstract institution, not the way it is put into practice in one country or another.' 'Not so when we say that the law is a valuable moral institution. "The law is..." is, in most contexts, short for *the law of the country of which we speak*'[97] or at most for 'one or some or all of *actual* legal systems', some or all of which may be immoral and unjust.[98] 'Therefore, "the law is a moral institution" ... refers to the way it is actually implemented in history. But that is not a claim that can be warranted.'[99]

This interpretation of 'Law is ...' as synonymous with 'The law is ...', and the interpretation of the latter as 'The law (and each law) of this country now is ...', was all the more surprising in an essay whose title is 'About Morality and the Nature of Law', and whose last sentence is: 'all law must enjoy legitimate authority, or it fails in meeting its inherent claim to authority.'[100]

The Tang Prize lecture, 'The Law's Own Virtue', Raz's last publication in philosophy of law, did sustain that new-found synonymy of 'law' and 'the law', but, it seems, only verbally. For the lecture finely re-articulated, reflectively, his justly famous 1977 analysis of the elements of the Rule of Law, as law's specific capacity to foster human well-being by maintaining the intelligibility, stability and predictability needed – above all in the

[94] See e.g. *Between Authority and Interpretation*, pp. 346–7.
[95] Ibid., p. 171.
[96] Ibid., pp. 175–6.
[97] Ibid., p. 179 (emphasis added).
[98] Ibid., p. 181 (emphasis added).
[99] Ibid., p. 179.
[100] Ibid., p. 181. Likewise, p. 344: 'the law is a social institution that claims moral authority over its subjects and is, in principle, *by its nature*, capable of enjoying such authority.' (emphasis added)

effecting of change – if persons are to feel at home within its framework and have the confidence and self-reliance to chart their own way. 'It is for this reason that the content of the rule of law is foundational to the project of law, in a way that other goods that are said to be of universal application are not.'[101] And nothing is here restricted to 'the country of which we speak' or 'all countries today', or is less universal in essence or principle than the concededly morally valuable institution of promising.

Legal philosophy: a third pass – interpretation

Raz waited more than a decade before publishing an assessment of Dworkin's *Law's Empire* (1986), and when it came[102] it abstained from discussing that book's vast effort to recast law and jurisprudence as interpretation of 'legal materials'. By that time, Raz had published all his main work on interpretation, beginning in 1989 with assessment and rejection of Walzer's recasting of morality as interpretation, and moving on to law in a set of essays from 1993–98.[103]

'Originalism' Raz always dismissed without ceremony or definition. But his own account of the interpretation of law's social-fact sources, especially legislation and the state's constitutional document(s), accepted fully the main premise of 'originalist' doctrines of interpretation: that it is possible to identify and successfully elucidate the meaning of what was recently enacted and promulgated. In all but anomalous cases, a 'basic conserving interpretation of all legislation' can be identified.[104] It 'should reflect the intentions of its law-maker',[105] not because investigating those intentions is the right path to interpreting but because recognising them is essential to the doctrine of legiti-

[101] Joseph Raz, 'The Law's Own Virtue', *Oxford Journal of Legal Studies*, 39 (2019), 1–15 at 2.
[102] Joseph Raz, 'Two Views of the Nature of the Theory of Law: A Partial Comparison', *Legal Theory*, 4 (1998): 249–82 = *Between Authority and Interpretation*, pp. 47–87.
[103] One of these seems to allude to *Law's Empire* when it says it 'will have nothing to say of the use of the term ['interpretation'] in some philosophical writings which can be taken seriously only on the assumption that in them "interpretation" is taken to be a term of art with stipulated meaning' – adding: 'Even less is there a philosophical interest in studying interpretation as used as a term of art in jurisprudential or some other discipline. Since interpretation became the flavour of the decade, the term has been used to convey any meaning which takes anyone's fancy.' *Between Authority and Interpretation*, p. 267.
[104] Ibid., p. 289.
[105] Ibid., p. 275 ('The Authoritative Intention Thesis', pronounced at p. 287 to be valid, but 'not ... an aid to interpretation. Once we know what the legislation means we know what the legislator meant. He meant that.' And p. 288: 'The thesis requires one to understand the legislation as meaning what the legislator said. What the legislator said is what his words meant, given the circumstances of the promulgation of the legislation, and the conventions of interpretation prevailing at the time' – excluding, of course, those 'interpretive conventions ... regarding when the meaning of the legislation can be disregarded in the light of other factors ...'

mate authority and to legitimating the law as source-based.[106] 'Only when its legislation is interpreted in this way does the authority really have control over the law.'[107]

But those were only 'interim conclusions'. 'The question of why and when should the courts use innovative interpretation as the morally correct way of deciding cases remains to be answered. Where courts' decisions are innovative (i.e. not based on respect for authority), why should they be interpretive at all?'[108] Posed in 1996, the question is firmly answered in 1998: 'it is frequently appropriate for courts to adopt an innovative interpretation even when there is a conserving interpretation they could adopt instead.'[109] 'Courts can [legitimately] develop the law even when it is determinate. They can [legitimately] and often do simply change it.'[110] Since—

> moral reasons motivate all interpretive decisions, both conserving ones and innovative ones ... merit considerations may justify an innovative interpretation even when a conserving interpretation is possible, that is even when the issue is settled by the constitution as it is. That would be the case when the need to improve the law is greater than the need for continuity on the point, and when there is an interpretation that improves the law.'[111]

Far more nuanced than a summary can indicate, Raz's discussion either endorses or licenses what a good many courts have endorsed and practised under the crude label: 'living instrument' interpretation. His discussion's frankness is admirable, though 'continuity' and 'stability' seem thin terms for the morally grounded presumption that judicial and executive fidelity to retrievable legislative or constitution-making intent/meaning is defeasible only by substantial injustice. Raz hinted at an awareness that these high-period affirmations – of judges' moral liberty to improve the law *even when* conserving it unchanged is a morally undefeated option – have shifted some way from the embedding, in his early- and early-middle period, of his 'sources thesis' about the nature of law and legal norms (a thesis he never renounced) in a descriptive thesis about deliberative (law-making) and executive (law-applying, particularly judicial) institutions.[112]

[106] '... interpretation in accordance with legislative intention is demanded by any realistically conceivable theory of authority. ... Intention legitimates, but conventions interpret.' Ibid., p. 298.
[107] Ibid., p. 85.
[108] Ibid., p. 298.
[109] Ibid., p. 369 ('On the authority and interpretation of Constitutions: some preliminaries' [1998]).
[110] Ibid., p. 359 (the bracketed insertions seem warranted by the general context of the essay).
[111] Ibid., pp. 367–8.
[112] E.g.: 'Naturally questions of identification may turn on moral issues ... Clearly when this is the nature of the question it belongs, by definition, to the deliberative stage [in the debate as to how members of a society should behave]. Only when the identification of the required action does not depend on moral arguments does it belong to the executive stage. ... the distinction [between two stages] ... is a necessary condition for the existence of law. Law exists, according to the sources thesis, only in societies in which there are judicial institutions which recognise the distinction ... When this is the case the courts will not

Perhaps this shift was stimulated by his judgment that, at least in our times and cultures, 'the doctrine of liberty ... is as much about the balance of powers between the different powers of the government as about anything else', and 'increases the power of the courts'.[113]

The public ethics of autonomy, disrespect, and insult

Three or four topics fairly illustrate Raz's 'political morality of liberalism': multi-culturalism (and national self-determination); voluntary euthanasia; and 'gay' or other inherently non-marital sex. His positions on them were advanced and definite, though as is recalled in the prefatory framing of the theory or conception itself: 'A complete political morality must include a doctrine of justice. But any plausible view of justice rests on principles and doctrines which are neither uniquely liberal nor derivable from specifically liberal principles.'[114] The published works scarcely include a doctrine of justice, though they provide ample and rewarding critique of doctrines based on neutrality (or its surrogate, 'public reason') about human goods, on maximisation of utility or good consequences, or on equality.

Multiculturalism

'Multiculturalism: a liberal perspective', a 1992 conference presentation at Leiden, improved by the 'trenchant and helpful objections' of 'Dr P.A. Bulloch', superbly exemplifies Raz's wit and power as a philosopher publicly engaging with reasons, and audiences. Prepared for in its principles by *The Morality of Freedom*, and reaffirmed trenchantly in 1998 at Bremen,[115] Raz's 'liberal multiculturalism' proposes a precept, applicable to contemporary societies, that 'calls on us radically to reconceive society,

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entertain moral arguments about the desirability of regarding a certain fact (*e.g. a previous enactment*) as a reason for a certain action but will once the existence of the relevant fact has been established through morally-neutral argument hold it to be a reason they are *bound to apply*.' *Concept of Legal System* (2nd ed. Postscript), pp. 213–14 (emphases added). The footnote on p. 215 adds: 'It is also possible that some courts are allowed a restricted power to revise legal considerations on the basis of some extra-legal considerations.' So the shift is in tone, emphasis, and theoretical-discursive context (from descriptive-analytical to political- evaluative).

[113] Joseph Raz, 'Liberty and Trust', in Robert P. George (ed.), *Natural Law, Liberalism, and Morality* (Oxford: Clarendon Press, 1996), p. 117.

[114] *Morality of Freedom*, pp. 1, 2. Moreover: 'there are special reasons to regard controversy as a mark of error in matters of value. First, there are no moral experts. There is no moral science, no hidden, yet-to-be-discovered bits of moral evidence.' *Ethics in the Public Domain*, p. 108.

[115] Joseph Raz, 'Multiculturalism', *Ratio Juris*, 11 (1998), 193.

changing its self-image' so that we 'learn to think of our societies as consisting not of a majority and minorities, but as constituted by a plurality of cultural groups.'[116] Provided an incoming culturally different group is large enough to sustain its own culture, it and its members are entitled to do so, and to have their language and history taught throughout society as much as the language and history of the historic and still-majority population. This is required by its members' entitlement to respect and dignity, which would be denied and insulted by a requirement that the children of those who chose to immigrate be – like all children involved in state-certified schooling – educated in the society's historic and still-majority language, a requirement that would 'forcibly detach children from the language of their parents' and would 'show that the state, their state, has no respect for their culture, finds it inferior and plots its elimination.'[117] At the same time, Raz eloquently acknowledged each polity's need for common bonds – for a 'free and willing', 'totally instinctive and unproblematic' sense of proud identification with their polity[118] – and resultant willingness to share: 'Re-distributive taxation, regional policies, and all the institutions of the welfare state are examples of state institutions imposing sacrifices on some for the sake of others. The willingness to share is not purchased easily. Without it a political society soon disintegrates, or has to rely on extensive use of force and coercion.'[119] So each polity needs a common culture, but Raz judged it a matter of common knowledge that such a culture can exist without shared religion, shared ethnicity, or even (though its absence 'can be a nuisance') a shared language.[120]

These addresses state and respond to many objections, but not perhaps to the objection that a requirement (say) of formal education in the language and history of the historic and subsisting majority might be motivated exclusively by concern to maintain the conditions of common culture, proud identification, etc., needed for willingness to share, and if so could well involve no even tacit judging of the incomers' language(s) or culture(s) as 'inferior', no 'plot to eliminate' it or even a hope to discourage its perpetuation by familial and other 'communal' formation, and nothing else reasonably assessable as insulting. Nor to the further objection that, if 'it is only through being socialized in a culture [that] one can tap the options which give life a meaning',[121] many children of immigrants might prefer that they be socialised at school in the majority culture, precisely as a way of enhancing the range of their options while retaining also the hope that their continuing involvement in the culture of their home community will give them some further options too.

[116] Ibid., 200.
[117] Ibid.; *Ethics in the Public Domain*, p. 178.
[118] 'Multiculturalism', at 203.
[119] Ibid., 202.
[120] Ibid.
[121] *Ethics in the Public Domain*, p. 177.

Raz's essays brilliantly opened up such issues of fact and judgment while challenging his audiences with the thought that 'universal values are realised in a variety of different ways in different cultures, and that they are all worthy of respect' in some respects (for all are flawed with one or more elements that are worthy of neither adoption or respect).

> I see the universal and the particular to be complementary rather than antagonistic, and the point has always been clear in the best philosophical tradition, that is the one descending from Aristotle: The universal must find expression in the particular and the particular can only get its meaning from the fact that it is subsumed under the universal. In placing multiculturalism in that tradition I am placing it firmly beyond what mere toleration will vindicate.[122]

Voluntary euthanasia

Raz's one publication on this is again an application, sober, clear, and intricately constructed, of his autonomy-based doctrine of respect, concluding that –

> The capacity for rational agency ... is the basis of a duty to respect those who have it, a respect that extends, *within certain bounds,* to the exercise of that capacity, namely to the way people lead their lives. And that includes its exercise to determine when and how to end one's life. Having that option is valuable, and therefore it is protected by the right to euthanasia. The right to life protects people from the time and manner of their death being determined by others, and the right to euthanasia grants each person the power to choose themselves that time and manner.[123]

'Within certain bounds': the need thus to qualify the right lends force to the question whether a public policy adopted on the premise that justice to all the vulnerable demands prohibition of facilitating suicide – or indeed of any intentional killing – disrespects the rational capacity of persons desiring to be killed (or helped to kill themselves). Still, one cannot but admire and learn from Raz's frank and careful teasing out of the logic, and some of the human implications, of permitting and facilitating euthanasia, and of standard liberal proposals (all less radical and more makeshift than his).

Marital and non-marital sex

A main thesis of the 1998 essay on multiculturalism – that condemning and combating a culture's flaws is fully compatible with regarding and treating that culture as valuable, and respecting those who live it – was illustrated with a proposed example: 'Many

[122] 'Multiculturalism', at 204.
[123] Joseph Raz, 'Death in Our Life', *Journal of Applied Philosophy*, 30:1 (2013), 8 (emphasis added); background: *Value, Respect, and Attachment*, chap. 3 ('The value of staying alive').

cultures are flawed in similar ways: The suppression of sexuality, at least in some of its forms, is common to many, to give but one example.'[124] 'Repression' of sex acts, and 'oppression' of those who engage in them or publicly avow desire to do so, are again and again denounced without qualification in Raz's writings,[125] which on this matter can seem to remain – as far as the argumentation goes – on the far side of the above-mentioned watershed. And 'pornography' is held out as a 'most important' instance of 'speech' that should be free because, whether or not it is 'worthless, degrading, depraved, etc.', it is 'often a part of a good way of life, or at any rate one which should not be condemned by society through its official organs.'[126]

Raz rejected not only paternalist laws and policies in such matters but also, without clearly identifying and assessing it, the alternative classic position (still in possession in the pre-millennial decades in which he wrote): that though prohibition of adult, private, consensual non-marital sex, and discrimination against persons for engaging in it, is a paternalism morally ultra vires (beyond the authority of just laws and governments), the preservation of a public culture which – especially but not only in education and formation – is promotive of authentic marriage is rationally sufficient ground for a regime of 'public order' holding inducements to unambiguously non-marital sex to be legally or voluntarily censorable, etc., as 'contrary to public morals'. For Raz, such prohibitions and discouragements are 'manifestations of bigotry [which], where officially sanctioned or socially widespread, condemn gay men and lesbians to second class status in their own society', such that they 'do not enjoy full citizenship'.[127] With a clarity all but unique among liberals at that time, he stated that legally and socially recognising 'committed unions of gay men or lesbians' on 'the same footing as committed unions of people of differing genders', recognition which he strongly favoured, 'merely requires the passing away of the current type of marriage, which is exclusive to people of differing genders'.[128]

The moral and legal policies Raz favoured came rapidly into possession, not least by judicial initiatives of a kind he gave some favour. But one may still wonder whether his own thesis – that condemning and combating a culture's flaws is fully compatible with treating that culture as valuable, and respecting those who live it – does not disqualify his contention that even reasons-based restrictions, conceived and intended purely to protect public morals and formation of the young against a deformation (of reason) damaging to individual well-being and this people's continuance, were insulting, bigoted, or

[124] 'Multiculturalism' at 204 (the context establishes that the capital 'T' does not cancel the force of the colon).
[125] E.g. *Practice of Value*, pp. 152, 153n.
[126] *Ethics in the Public Domain*, pp. 154–5, 160–61 ('Free Expression and Personal Identification', 1991).
[127] 'Liberty and Trust' (n. 113 above) at p. 126.
[128] *Ethics in the Public Domain*, p. 23 (1994); earlier, *Morality of Freedom*, pp. 392–3.

incompatible with respect for the dignity, value and moral citizenship of those whose public expressions were accordingly restricted and whose unions were given no legal and public social recognition as such.

Coda

The Balliol memorial event heard five substantial addresses, each evoking Joseph Raz's powerful and sympathetic individuality of presence and his shyly convivial Being in the World, whether in Jerusalem, Oxford, Columbia or London. Downstairs were exhibited a selection of his striking photographs (of objects and places), from among the many to whose making he had dedicated high technical skills as well as thought, spirit and artistic judgment. (Over 30 Raz photos appeared on covers of OUP books.) All, always, were images in black-and-white, processed by him – for many years, in one of his four dark-rooms, and latterly by digital methods – from his colour shots. Only on the final page of his last iteration of the personal website he had long curated there appears a single colour photo, undated and unlocated: an exquisite pastel composition looking across a long expanse of beach under restless turn-of-tide, the distant shallow sea in palest green and then shaded blue out to a horizon of low misty clouds; and in the extreme left foreground six black posts, and a seventh.[129] His son's technical sleuthing shows it was taken, on a walk (recorded in his diary as 'tiring but wonderful') with Penny, in early afternoon in mid-August 2014, where the South Downs and the Cuckmere river meet the Channel, and cropped by Joseph to leave unseen by his viewers both cliff and estuary.

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Note on the author: John Finnis was from 1966 to 2010 a Law Fellow of University College Oxford, and from 1967 to 2010 a member of Oxford University's Faculty of Law, as Reader in the Laws of the British Commonwealth and the United States from

[129] https://sites.google.com/site/josephnraz/home

1972 to 1989 and as Professor of Law and Legal Philosophy *ad hominem* from 1989; from 1984 he was a member of the Sub-Faculty of Philosophy. He was elected to the British Academy in 1990 and since 2012 has been a cross-member of the Philosophy Section.

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