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Facts, Artifacts, and Law-Given Reasons

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This chapter revolves around law's capacity to constitute practical reasons. In discussing this theme, consideration will be given to law's artifactual character.[2] Preliminarily, I briefly distinguish different aspects of law relevant for a discussion of its artifactuality. Then, in Section 1, I critically examine a sceptical line of thought about law's capacity to constitute reasons for action, which draws, in part, on law's artifactuality. I offer support to a somewhat less sceptical (but still qualified) stance, according to which the fact that a legal directive has been issued can (notwithstanding the artifactuality involved) be a reason for action, yet one that is underpinned by bedrock values which (under certain conditions and constraints) law is apt to serve. In Section 2, I consider whether, and in what sense, law can acquire an even more 'robust' status as a source of practical reasons.

Let me begin, then, by noting (inexhaustively[3]) a few distinct aspects of law relevant for present purposes. When we speak of law's artifactual character, we should keep in mind the distinction between the following: first, 'law', the abstract noun often used in a discussion of the concept of law or the social practice we call law; second, a legal system; and, third, a legal directive[4] (a generic term that will be used here

[1] I am grateful to the editors for their perceptive comments and to Andra Tofan for her valuable work as a research assistant.

[2] In this avenue of inquiry, see also, e.g., B. H. Bix, Obligations from Artifacts, in L. Burazin, K. E. Himma, and C. Roversi (eds.), *Law as an Artifact*, Oxford UP, Oxford, 2018, pp. 163–76.

[3] A fuller list includes also, e.g., legal institutions such as courts and legislatures. Relatedly, for the claim that law is an institutional(/ized) artifact, see, e.g., J. Crowe, Law as an Artifact Kind, *Monash University Law Review* 40 (2014) pp. 737–57; K. Ehrenberg, Law Is an Institution, an Artifact, and a Practice, in L. Burazin, K. E. Himma, and C. Roversi (eds.), *Law as an Artifact*, Oxford UP, Oxford, 2018, pp. 177–91.

[4] The term 'directive', as intended here, encompasses different kinds of prescriptions, such as rules, decrees, and judicial rulings, issued by legal officials. Certain legal systems include laws that are not

interchangeably with 'legal requirement'). Focusing on the first, if we adopt John Gardner's terminology, 'law' (the abstract noun) can be seen as a genre of artifacts;[5] namely, it is a genre that consists of, and is instantiated by, more specific items, such as legal systems[6] and legal directives, seen by this approach as artifacts.[7] Turning to the latter two notions, legal systems and legal directives: while conceptually interconnected,[8] these two, as I will argue, differ (inter alia) in one respect particularly central to this chapter – that is, the sort of reasons they are capable of producing. What is meant here, in other words, is that the normative significance of a legal system is not fully expressible in terms of the reasons for action generated by its directives. More on this in Section 2.

1. LEGAL DIRECTIVES AND REASONS FOR ACTION

Can the fact that lawmakers require an action constitute a reason for its performance? That is, can the fact that the requirement has been issued by law-making officials in their capacity as such (or, at least, by law-making officials of a reasonably just and decent legal system) – independently of the merits or demerits of that specific requirement, and of the risk of suffering a sanction – be a reason for action? While jurisprudential opinion on this matter is far from uniform, sceptical views – sometimes referred to as 'deflationary' approaches to legal normativity[9] – seem to have become increasingly dominant in contemporary discourse.[10] Such views typically contend that

thus issued, such as customary laws – in this connection see, e.g., J. Crowe, Law as an Artifact Kind, *Monash University Law Review* 40 (2014) pp. 737–57, at pp. 739–40; D. Priel, Not All Law Is an Artifact, in L. Burazin, K. E. Himma, and C. Roversi (eds.), *Law as an Artifact*, Oxford UP, Oxford, 2018, pp. 239–67. Cf. L. Burazin, Can There Be an Artifact Theory of Law? *Ratio Juris* 29 (2016) pp. 385–401, at p. 395.

[5] J. Gardner, *Law as a Leap of Faith*, Oxford UP, Oxford, 2012, at pp. 180–1.

[6] See L. Burazin, Legal Systems as Abstract Institutional Artifacts, in L. Burazin, K. E. Himma, and C. Roversi (eds.), *Law as an Artifact*, Oxford UP, Oxford, 2018, pp. 112–35.

[7] J. Gardner, *Law as a Leap of Faith*, Oxford UP, Oxford, 2012, at p. 185.

[8] Ibid., at pp. 178–9 and 181.

[9] Though the label 'deflationary', in connection with legal normativity, can be used for a range of claims, including ones I do not discuss here.

[10] See, e.g., D. Regan, Authority and Value, *Southern California Law Review* 62 (1989) pp. 995–1095, at pp. 1003–33 and 1086–95; D. Regan, Reasons, Authority, and the Meaning of "Obey", *Canadian Journal of Law and Jurisprudence* 3 (1990) pp. 3–28; D. Enoch, Reason-Giving and the Law, in L. Green and B. Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 1, Oxford UP, Oxford, 2011, pp. 1–38. Cf. moderately deflationary elements (which are, I think, reconcilable with my claims) in A. Marmor, Norms, Reasons, and the Law, in K. E. Himma, M. Jovanović, and B. Spaić (eds.), *Unpacking*

while the law can be indicative of pre-existing reasons, or can trigger pre-existing reasons into operation, it cannot constitute new reasons.

One possible reasoning behind the foregoing view involves the artifactual character of law. It can be stated as follows. The utterance of a directive-issuer – his or her say-so – is no more than an artifact of the human will. As such, it may or may not reflect what is right, sensible, or desirable to do. And it cannot itself turn a false moral proposition into a true one, or determine by way of stipulation what is wrong (insensible, or undesirable) and what is right (sensible, or desirable).[11] So how, the sceptical may query, can a legal directive, or the fact of its issuance, itself be a reason to act or avoid an action?

It bears emphasizing that the view described above does not deny possible *relations* between law and our reasons for action. A proponent of this view may thus readily accept propositions such as the following. When the law requires an action, there will sometimes (perhaps even often) be reasons for its performance, and some such reasons may be related to the fact that the action is legally required (though the latter fact itself is not a reason for action). Thus, for example, in situations where my failure to comply with the law would likely result in a sanction, I have a prudential reason to comply – the reason to avoid a sanction. Moreover, insofar as the requirement's content coincides with what is anyway (regardless of the law) right or desirable – as is the case, for example, when the law requires us to avoid mala in se conduct such as murder, theft, or physical assault – clearly I have a content-dependent reason to act in conformity with the requirement. With regard to such reasons, the law can at best play an indicative role. And, finally, there will sometimes be reasons to comply that are not sanction-based and are (at least relatively) independent of the specific content adopted by the legal requirement. If, for instance, compliance will help me coordinate with my fellows, and if doing so is desirable, I have pro tanto a

Normativity: Conceptual, Normative, and Descriptive Issues, Bloomsbury Publishing, London, 2018, ch. 6. See also variants of deflationism in F. Schauer, How (and if) Law Matters, *Harvard Law Review Forum* 129 (2016) pp. 350–9 and B. Hass, The Opaqueness of Rules, *Oxford Journal of Legal Studies* 41 (2020) pp. 407–30 (I am not entirely sure if the extent of deflationism of the latter two can be reconciled with my claims).

[11] While the above wording may sound particularly harmonious with a cognitivist meta-ethical outlook, scepticism about law's reason-giving capacity can be couched in different terms consonant with other meta-ethical outlooks.

coordination-based reason to comply – as is the case, for example, with the rule that requires me to drive on the left (and as would equally be the case if the rule required me to drive on the right). But the reason in this example is not the rule itself, or the fact of its issuance, but the background desideratum of coordinating with my fellow drivers, which is antecedent and external to the law. All that the law does in this instance is to change the relevant factual landscape by affecting the likely behaviour of my fellow drivers, thus making it possible for me to satisfy a reason that lies in the background of the rule, namely a coordination need.[12] The very fact of there being a rule does not, on this view, constitute the reason.

In the following Section, I wish to highlight some aspects of the relevant conceptual terrain that can lend support to, or at least facilitate acceptance of,[13] a somewhat less sceptical (but still qualified) position. As indicated at the outset, according to this position the fact that a legal requirement has been issued can (despite the artifactuality involved) be a reason for action,[14] yet one that is underpinned by bedrock values that (under certain conditions and constraints) law is apt to serve. The set of notions that will be discussed or highlighted for this purpose includes a value-based conception of reasons as facts (Subsection 1.1); the facticity of artifacts and their possible serviceability to values (Subsection 1.1); a distinction between complete and incomplete reasons (Subsection 1.2); and David Enoch's notion of triggering reason-giving (Subsection 1.3). I will then consider and reject a possible objection – on behalf of a more deflationary approach than mine – according to which my position is guilty of a misattribution of reason-giving power (Subsection 1.4).

[12] D. Regan, Authority and Value, *Southern California Law Review* 62 (1989) pp. 995–1095, at pp. 1019–33. See also D. Enoch, Reason-Giving and the Law, in L. Green and B. Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 1, Oxford UP, Oxford, 2011, pp. 1–38, at pp. 4–5 and 26–33, who argues in a similar vein by reference to his notion of 'triggering reason-giving' (to be discussed in Section 1.3).

[13] I frame my objective rather modestly ('facilitate acceptance') because a fair amount of what I will say does not squarely establish the above view, but only draws attention to some notions against the background of which it becomes comparatively easy to accept it.

[14] Occasionally, I will speak of a legal requirement as a reason for action. I intend this as shorthand for saying that *the fact of there being* a legal requirement is a reason for action.

1.1. A Value-Based Conception of Reasons as Facts

Reasons for action, in the sense relevant to this discussion, are a normative kind; they bear on what we *ought* to do or avoid doing.[15] And, since deriving a genuine normative inference[16] from purely and exclusively non-evaluative premises would seem to involve an unwarranted leap, it appears plausible to think that reasons for action are grounded (at least partly) in some values or goods. I should hasten to add, by way of qualification, that the foregoing is a contested view of practical reasons, which finds its most notable rival in desire-based theories of practical reasons.[17] But my present focus will be limited to a value-based view of practical reasons. Confining the discussion to this ambit is commensurate with my modestly framed objective here, which is merely to highlight some (tenable, even if not uncontested) aspects of the relevant conceptual landscape in view of which it becomes easier to accept that artifactual legal requirements can form reasons for action.

Another clarification should be made about value-based conceptions of reasons. To say that reasons for action are grounded in values is not to say that reasons for action *are* values. To be sure, we sometimes speak of values as reasons – as when one says, for example, that the value of human life is a reason for stricter arms control, or that equal respect for persons is a reason against arbitrary discrimination. And, when making statements of this form, we are not likely to prompt the objection that we have misunderstood the concept of reasons – on the contrary, such statements may well accord with our intuitions about the concept. Nonetheless, to conceptualize reasons as values would fall considerably short of capturing the full range of common discourse

[15] I am not discussing reasons in the *motivational* sense, or what some writers label 'motivating reasons for action'. On the distinction between the normative and motivational senses of reasons, see, e.g., M. Smith, *The Moral Problem*, Blackwell, New Jersey, 1994, at pp. 94–8; J. Dancy, *Practical Reality*, Oxford UP, Oxford, 2003, at pp. 1–5 and 20–5; and D. Parfit, Rationality and Reasons, in D. Egonsson, J. Josefsson, B. Petersson, and T. Rønnow-Rasmussen (eds.), *Exploring Practical Philosophy*, Ashgate, Farnham, 2001, pp. 17–39, at p. 17.

[16] That is, such that one judges it to be warranted from the viewpoint of the normative universe at large, rather than merely identifying that it is supposed by some social practice or that it features in the perception of some people.

[17] I should note incidentally that, in comparison to value-based views of reasons, desire-based views of reasons seem to me, prima facie, to fit less smoothly into a discussion of law's normative force. For it is a salient and important feature of law that it seeks to address reasons for action even to those who have no (immediate or perhaps even ultimate) desire or want that corresponds to what it requires. But I express no stronger view on this matter.

and thought in which reasons feature. When we say that Jane's being late for work is a reason for her to hurry up, that the light bulb in Ali's table lamp being burnt out is a reason for him to replace it, or that Rosie's waiting for Claudine at the station is a reason for Claudine to go there, what we are referring to as reasons are *facts*.[18] And, indeed, the idea that reasons are facts, albeit a contested idea, enjoys a fair amount of support among writers on the nature of reasons,[19] including proponents of a value-based theory of reasons.

A terminological clarification should be added at this point. Herein I intend the term 'fact' in a sense similar to that which is employed in Joseph Raz's seminal book *Practical Reason and Norms*. Raz stipulates that he uses this term 'in an extended sense to designate that in virtue of which true or justified statements are true or justified'[20] and that by 'fact' he means 'simply that which can be designated by the use of the operator "the fact that …"'.[21] 'Facts' in this sense include, for example, 'the occurrence of events, processes, performances and activities'.[22] And using this sense of 'fact' also accommodates what was identified above as the intuitive appeal in treating values as reasons – for X's being a value can also be designated by the operator 'the fact that …' (as in: 'The fact that human life/equal respect for persons is a paramount value …').

Thus far I have briefly indicated some of the arguable merits of conceiving of reasons as facts and of thinking that they are grounded in values. These two views can be combined into something like the following understanding of reasons for action. Reasons for action are facts that count in favour of a certain action. Facts that constitute reasons for action are facts in virtue of which the action has some value (or its consequences do);[23] they are facts in virtue of which the action is, in some way, good

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[18] Or, at least, this is what we are referring to in the explicit part of our statement.

[19] On reasons as facts see, e.g., J. Raz, *Practical Reason and Norms*, 2nd edn, Princeton UP, New Jersey, 1990, at pp. 17–20. Factualist views of reasons are often contrasted with the position that reasons are some mental states (e.g., beliefs, pro-attitudes such as desires, or both) – a position sometimes referred to as a 'psychologistic' approach to reasons.

[20] Ibid., at p. 17.

[21] Ibid., at p. 18.

[22] Ibid.

[23] In defence of a value-based theory of reasons, see, e.g., E. J. Bond, *Reason and Value*, Cambridge UP, Cambridge, 1983 and D. Parfit, Rationality and Reasons, in D. Egonsson, J. Josefsson, B. Petersson, and T. Rønnow-Rasmussen (eds.), *Exploring Practical Philosophy*, Ashgate, Farnham, 2001, pp. 17–39. Raz, too, seems generally to support a value-based theory of practical reasons (J. Raz, *Engaging Reason*, Oxford UP, Oxford, 1999, at pp. 22, 29–31, and 63–4; J. Raz, *From Normativity to Responsibility*, Oxford UP, Oxford, 2011, at pp. 70 and 75–9), albeit with certain qualifications (J. Raz,

or desirable.[24] By way of illustration, the fact that it is raining today is a reason for me to carry an umbrella. For that fact is part of what makes carrying an umbrella an act that will effectively contribute to a desirable condition, that is, my not being drenched (and there are further explanations of why it is a desirable condition: otherwise I would be likelier to develop a cold, feel uncomfortable, have to waste time on changing clothes, etc.). A person may, directly or indirectly, refer to such a reason without fully stating why it is a reason, as when one says simply: 'It's going to rain today. I'd better take an umbrella'. But part of what one implies when making such a statement is that being soaked by the rain would be a bad thing.[25]

As indicated earlier, it falls outside the scope and aim of this chapter to make a case for the above conception of reasons for action. The point I wish to make instead is that under one notable conception of reasons – which holds a fair degree of intuitive appeal and congruence with the way reasons feature in ordinary discourse – it becomes relatively easy to see how the fact of there being a legal rule in place can be a reason for action. Under this conception, the fact that the law requires an action (φ) need not itself embody, or be a direct bearer of, value for it to be a reason for action. If it is the case that, due to the introduction of a legal requirement, my φ-ing would serve certain values (whose status and importance as values do not derive from the law itself) which it would not otherwise serve – say, values associated with the desirability of social coordination, social order and stability, or 'fair play' considerations that apply in mutually beneficial cooperative schemes – then, on the conception described above, the fact that the requirement has been issued is (at least pro tanto) a reason for action.

Engaging Reason, Oxford UP, Oxford, 1999, at p. 62; J. Raz, Value and the Weight of Practical Reasons, in E. Lord and B. Maguire (eds.), *Weighing Reasons*, Oxford UP, Oxford, 2016, at pp. 141–56).

[24] A notable alternative is Scanlon's 'buck-passing view', according to which reasons have an explanatory priority over value (T. M. Scanlon, *What We Owe to Each Other*, Harvard UP, Cambridge (Mass.), 1998, at pp. 95–100). But on this view, too, reasons are grounded in properties, or features of the world, external to the agent, not in the agent's subjective states, such as her desires. In this light, it has been suggested by Parfit that the buck-passing view is reconcilable with a value-based theory of reasons, so long as the latter makes no reference to 'value', 'good', or 'bad' save as abbreviations of reason-giving properties, such as safe, effective, painful, etc. (D. Parfit, Rationality and Reasons, in D. Egonsson, J. Josefsson, B. Petersson, and T. Rønnow-Rasmussen (eds.), *Exploring Practical Philosophy*, Ashgate, Farnham, 2001, pp. 17–39, at p. 20).

[25] See related comments in J. Raz, *Practical Reason and Norms*, 2nd edn, Princeton UP, New Jersey, 1990, at pp. 22–5 and J. Raz, *From Normativity to Responsibility*, Oxford UP, Oxford, 2011, at pp. 14–15.

[26] I should be quick to clarify that the claim just made is not that the fact of there being a legal requirement in place is always a reason for action, but rather that it is a fact that can be a reason when and insofar as certain conditions hold – namely, when and insofar as the law serves values such as those mentioned above through the compliance rendered by its addressees.

Above I have sought to lend initial support to law's reason-giving capacity by highlighting the way in which three factors – laws, facts, and values – can interrelate: that is, the issuance of a legal requirement is a fact, and facts can be reasons to perform (or avoid) an action (φ) if they make it the case that φ-ing (or ¬φ-ing) would serve some value. Now let us add law's artifactuality to this conceptual scheme. Does the artifactual character of law readily harmonize with the foregoing triangular nexus (of laws, facts, and values) or does it somehow disrupt it? I suggest that law's artifactual character is entirely compatible with the above triangular relation. This is because (1) artifacts (including legal artifacts) partake of facticity, namely the existence of a given artifact (and, by implication, its having been created) is a fact; and (2) the fact of there being a certain artifact can have the requisite relation to value which renders it a reason for action – namely it can be a fact in virtue of which doing (/refraining from) a certain action would serve some value or good. Thus, for example, the existence[27] of artifacts such as weapons of mass destruction means that certain defensive actions that would otherwise be uncalled for – such as developing suitable missile defence systems or building appropriately fortified shelters – become conducive to the assurance of valuable things such as human lives and bodily integrity. So the fact that those weapons exist is (at least pro tanto) a reason for such defensive actions. Or, to provide a legal example, the existence of an artifact such as a legal ban on car traffic on a given road during certain hours or days[28] would (assuming the efficacy normally enjoyed by legal systems) mean that refraining from driving on this road during the stipulated times serves or satisfies, inter alia, values associated with social coordination and 'fair play'.

[26] I am not discussing here whether – when certain prerequisites of legitimate authority are met – law generates Razian pre-emptive/protected reasons. I confine myself at this point to a more modest claim focused on reasons for action that are, in Raz's terms, first-order reasons. I have examined the pre-emption thesis elsewhere (N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, chs. 2–4) and will briefly refer to it in Section 2 below.

[27] And perhaps even the prospective existence.

[28] As is the case, e.g., on São Paulo's 'the Minhocão' highway.

So the fact that this legal ban exists can be (at least pro tanto) a reason to refrain from the proscribed driving. The facts cited in both these examples are the existence of artifacts, and yet this does not seem to prevent them from being reasons for action. Most relevantly for our specific interest in law, it appears that the artifactual character of legal directives is compatible with their capacity to constitute reasons for action.

1.2. Legal Directives as Incomplete Reasons

A further conceptual feature that can supplement, and moderately alter, the above picture is a distinction between complete reasons and different components thereof (which I will refer to as incomplete reasons). The distinction, as I characterize it below, draws on Raz's analysis in *Practical Reason and Norms*,[29] though the way I apply it to the question at hand is not strictly committed to, or intended to mirror, his views. An illustration may help explain the intuitive idea encapsulated by this distinction. Suppose Jenny buys a bunch of flowers for her grandmother on the way to visit her. Another person asks Jenny why she has bought the flowers. There is more than one way in which Jenny could conceivably respond (and her choice between alternative responses will depend on factors such as who asks the question, what their prior knowledge of the circumstances is, the specific way in which the question is understood, etc.). Thus, for example, she might say that (a) the flowers are for her grandmother, whom she is about to visit; or that (b) her grandmother would be happy to get the flowers; or that (c) making one's grandparent happy is a good thing. Although each of these possible responses would logically and structurally feature in the conversation as a statement of a reason for action, we regard them as interconnected considerations that operate

[29] J. Raz, *Practical Reason and Norms*, 2nd edn., Princeton UP, New Jersey, 1990, at pp. 22–5. According to Raz, a complete reason comprises either an 'operative reason' (such as the fact that X is a value: e.g., if respect for persons is a value, this fact is an operative reason, because my belief in this fact *entails* a belief that there is a reason to respect people) or a combination of an 'operative reason' and an 'auxiliary reason' (the latter of which is defined residually as a reason that is not an operative one) – ibid., at pp. 33–5. Examples of auxiliary reasons include 'identifying reasons', whose function is to 'help identify the act which there is reason to perform' (ibid., at p. 34), and 'strength-affecting reasons', whose function is to 'help determine the relative strengths of competing reasons' (ibid., at p. 35). As I understand Raz, he sees directives issued by a legitimate authority as operative reasons. But I leave this claim to one side, partly because the class of legal directives I discuss is not necessarily coextensive with directives issued by a Razian legitimate authority.

together – as different parts of one explanation of the action.[30] In other words, only their combination captures what we may call a complete reason for action (or, at least, comes closer to capturing it than does (a), (b), or (c) in isolation). A more formal expression of the idea of a complete reason is found in Raz's following statement:

> The fact that p is a complete reason to ϕ for a person x if, and only if, either (a) necessarily, for any person y who understands both the statement that p and the statement that x ϕ's, if y believes that p he believes that there is a reason for x to ϕ, regardless of what other beliefs y has; or (b) R(ϕ)p,x entails R(ϕ),q,y which is a complete reason.[31]

Thus, for example, Laura may believe that 'ϕ-ing in condition c would increase human happiness', and she may simultaneously believe that there is no reason to ϕ in condition c, without thereby making a *logical* mistake (though she may be making a moral mistake). But if Laura believes both (1) that 'ϕ-ing in condition c would increase human happiness', and (2) that 'human happiness is a value', she can no longer hold the belief that there is no reason to ϕ in condition c without making a logical mistake (or, at least, a mistake about the concept of reasons, assuming, as we are doing here, a value-based view of reasons).[32] Now, if we adopt the distinction between complete and incomplete reasons, and revisit Subsection 1.1's analysis in this light, it becomes apparent that our earlier observation requires some reformulation. Considered from this perspective, what has been observed is better expressed by saying that legal requirements can at most be *incomplete* reasons. Since legal requirements can only qualify as reasons for action by deriving this status from some deeper-level values or desiderata, they do not meet the criteria for being a complete reason as stated in the above quotation. We cannot say that y's belief that the law requires an action warrants a further belief in a

[30] The above statement refers to 'explanation', but the reasons referred to in the explanation are reasons that the agent believes to be normative, not merely explanatory in the motivational sense.

[31] J. Raz, *Practical Reason and Norms*, 2nd edn., Princeton UP, New Jersey, 1990, at p. 24.

[32] I set aside the possibility that Laura believes that the reason to ϕ has been excluded by another, second-order exclusionary reason. Note, however, that even reasons subject to Razian exclusion do not cease to exist (ibid., at p. 184).

reason for action *regardless of what other beliefs y has*, or that the mere fact that the law requires the action, in isolation from any other facts, entails a reason for action. Whether legal requirements are best seen as capable of being reasons *tout court* or merely incomplete reasons is not a question I seek to address here. My less ambitious purpose in invoking the distinction between complete and incomplete reasons is to highlight a variant way of conceiving the issuance of a legal requirement as a fact whose normative significance is grounded in values external to it, but which is capable of being a genuine reason for action (even if an incomplete one).

1.3. Enoch on Triggering Reason-Giving

In a notable essay entitled 'Reason-Giving and the Law', David Enoch has argued that when the law gives reasons for action it does so in a sense which he labels triggering reason-giving.[33] In this mode of reason-giving, law's normative significance is that it serves as a trigger for reasons; that is, it brings into operation reasons that were there in the first place, though in a dormant state. Enoch employs the following non-legal example to introduce this idea:

> [S]uppose your neighborhood grocer raised the price of milk. It is natural to say that she has thereby given you a reason to reduce your milk consumption. … But what the grocer did, it seems natural to say, is merely to manipulate the non-normative circumstances in such a way as to trigger a dormant reason that was there all along, independently of the grocer's actions. Arguably, you have a general reason (roughly) to save money. This reason doesn't depend on the grocer's raising of the price of milk. By raising the price of milk, the grocer triggered this general reason, thereby making it the case that you have a reason to reduce your milk consumption. Indeed,

[33] D. Enoch, Reason-Giving and the Law, in L. Green and B. Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 1, Oxford UP, Oxford, 2011, pp. 1–38, at pp. 4–5 and 26–33. See contra, e.g., H. Spector, Legal Reasons and Upgrading Reasons, in K. E. Himma, M. Jovanović, and B. Spaić (eds.), *Unpacking Normativity: Conceptual, Normative, and Descriptive Issues*, Bloomsbury Publishing, London, 2018, pp. 135–53, at pp. 143–6; E. H. Monti, Against Triggering Accounts of Robust Reason-Giving, *Philosophical Studies* 178 (2021) pp. 3731–53.

> perhaps you even had all along the conditional reason to-buy-less-milk-if-the-price-goes-up. … But the grocer can make the conditional reason into an unconditional one, simply by manipulating the relevant non-normative circumstances. And this is what she did by raising the price of milk.[34]

As noted above, Enoch maintains that the same mode of reason-giving is at work when law succeeds in giving reasons for action, even if the dormant reasons triggered by law are substantively different to that featuring in the above example. Thus, for instance, when the law requires an action (Φ) it sometimes manages to trigger reasons 'because it solves a coordination problem' or 'by creating expectations that you Φ, thereby triggering the general reason you have not to frustrate people's expectations', and so on.[35]

Although there is much that I agree with in Enoch's essay, I have some doubts, or at least reservations, about the idea of triggering reason-giving as characterized by him. My doubts will be expressed by reference to the milk scenario described in the above quotation, but they apply to the legal context too. Before stating my doubts, it is worth highlighting the following aspect of the milk scenario: connected with this scenario are two reasons, which correspond with two action descriptions at different levels of generality; at the more general level, there is a reason whose associated action description is 'save money' (that is, a reason to save money) and, at the more specific level, there is a reason whose associated action description is 'buy less milk' (that is, a reason to buy less milk). With this in mind, let's consider Enoch's analysis. A first point, of lesser pertinence to my purpose, relates to the general reason, namely the reason to save money. Enoch points out that this reason was a 'dormant reason'. However, this does not seem to me to describe successfully the status of that reason. It is a general reason – in that the action 'save money' is general – but it was not, I think, dormant,[36] at least not under ordinary life circumstances; indeed, it was not dormant partly *because* its associated action description is general – 'save money', which

[34] D. Enoch, Reason-Giving and the Law, in L. Green and B. Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 1, Oxford UP, Oxford, 2011, pp. 1–38, at p. 4.

[35] Ibid., at p. 28.

[36] Possibly it was *psychologically* dormant, but Enoch, as I understand him, means something else: that it was normatively dormant.

presumably you had both the need and opportunities to do, in all sorts of ways, before the grocer's action.[37] One might respond by saying that Enoch's reference to the reason to save money as dormant should only be understood to mean the following proposition: the reason to save money was not, at the time, instantiated as (part of) a reason to buy less milk. But even if this proposition is correct, I do not think it warrants describing the former reason as dormant because, once more, the action it is a reason for is the general 'save money' (rather than 'buy less milk'). Perhaps, however, Enoch would be willing to settle for another qualified proposition: namely, that the reason to save money *would be* dormant in a state of affairs where (although at some point in the future having extra money would be useful for you) you temporarily have no opportunities to save or spend money. While I am uncertain whether it is best to say, in such a state of affair, that the reason to save money is dormant or that it temporarily does not apply to you, I would in all other respects agree with the above proposition.

But more pertinent is the following point: I do not think that the second reason mentioned above, namely the reason to buy less milk, was merely triggered. If this is what Enoch is saying – and I am not entirely sure he is – I respectfully differ. Precisely because its action description is 'buy less milk' (as distinct from 'save money'), it is a specific reason that did not exist before the grocer raised the price – it is a new reason created by the price rise, albeit a reason grounded in the desideratum to save money. Enoch mentions a similar view at the start of the above quoted passage, but he then appears to reject it. He invokes (albeit tentatively) the idea of a conditional reason to-buy-less-milk-if-the-price-goes-up that was there all along. This idea apparently harmonizes with the triggering account, but there is, I think, an air of artificiality to it.[38] It seems to me less contrived to say that the reduction of milk consumption was simply not part of the relevant normative picture before the price rise than to say there was a conditional reason to-buy-less-milk-if-the-price-goes-up.

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[37] To wit, this reason was not dormant because, presumably, before the grocer's action and regardless of the milk price, you (like most people in ordinary circumstances) had at least some, and probably countless, opportunities and ways to save/spend money that would be useful in the future. As noted in the body text, however, I would agree that a reason to save money *could be* normatively inactive or temporarily inapplicable to you under some, unusual circumstances – e.g., if you are stranded on a desert island with no money (or remote access to money) and no need or opportunity to use money.

[38] And that doesn't seem to me to be changed by the distinction between 'wide-scope' and 'narrow-scope' conditionals about reasons. See D. Enoch, Reason-Giving and the Law, in L. Green and B. Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 1, Oxford UP, Oxford, 2011, pp. 1–38, at pp. 7–8.

Now, having expressed these reservations, I should point out an alternative way of interpreting Enoch. It is possible that he intends the idea of triggering reason-giving in a weaker sense, such that it is compatible with viewing the reason to buy less milk as a newly created reason. On this understanding, it is acknowledged that the reason to buy less milk had no antecedently existing dormant counterpart waiting to be triggered; the 'triggering' terminology, on this interpretation, is merely intended to signify that the reason is partly grounded in the desideratum to save money (which existed prior to the price rise – and which still exists – as a general, though not a dormant, reason). If this is what Enoch means by triggering reason-giving, I have no substantive disagreement with him on this matter.

In the following subsection, I consider a possible objection on behalf of approaches more deflationary than the one I have adopted. This objection insists that, even assuming the factualist value-based conception of reasons described earlier, it is wrong to think that the fact of legality itself can be a reason for action.

1.4. The Misattribution Objection

As clarified above, it is not suggested that the fact that law requires an action is invariably a reason for its performance, but rather that it *can* be under certain conditions, namely if and insofar as some values would be satisfied through compliance with the law (and the fact that the action is legally required is part of the explanation of why that is so). Against this background, the following objection might be raised: the reason-giving capacity that I ascribe to law is really attributable not to the fact of legality, but to certain qualities (e.g., the capacity to facilitate coordination) and circumstances (e.g., circumstances where coordination is desirable), which are sometimes present in conjunction with the law, but at other times not. Moreover, even insofar as law possesses some beneficial capabilities, they (or parallel ones with a similar function) can also be present in other, non-legal entities; for example, a charismatic citizen with a loud voice who emerges as an effective coordinator in an

emergency situation, say, on board a sinking ship.[39] Such capabilities are not, therefore, uniquely legal, and this – the objector might say – casts further doubt on my argument.

My reply to this criticism is as follows. At least some of the beneficial aspects of law's operation are attributable not simply to qualities that coincidentally may or may not be present in conjunction with the law, but to characteristics of law and legality (even if their beneficial potential is not operative in all circumstances). And, if that is so, it appears warranted, after all, to regard the fact that a legal requirement has been issued, at least under some conditions and circumstances, as a reason for action. By way of illustration, let us revert to law's coordinating function. There are contexts or situations wherein law is comparatively well suited to facilitate coordination between people due to attributes such as its social salience, the powerful coercive apparatus at its disposal, and people's (or some people's) disposition to comply with it as a matter of their normative attitudes towards the law.[40] These are characteristic attributes of law, or, at any rate, the combination of all of them in comparatively high measures is a characteristic attribute of law. Or consider, as another example, law's function in instituting and upholding mutually beneficial schemes of social cooperation through collective sharing of burdens or adherence to restrictions (for example, as regards the use of publicly accessible goods, such as parks, nature reserves, and beaches). Law is perhaps not always capable of adequately performing this function, but, to the extent that it has a comparative advantage in performing it, this is explicable in part by attributes such as its typical generality and impersonal mode of application, its relative persistence through time, and, again, the deference generally rendered to it (whether as a result of its coercive mechanism, normative attitudes towards it,[41] or both). These,

[39] This might evoke another sinking-ship example used by Robert Wolff to make a somewhat different point (R. P. Wolff, *In Defense of Anarchism*, Harper & Row, New York, 1970, at pp. 15–6).

[40] Attitudes whose formation and endurance may well be partly attributable to further characteristics (or perceived characteristics) of the legal system, such as its overall adherence to 'rule of law' standards and a reasonable level of fairness and justice displayed by its laws and adjudicative processes. See in this connection, e.g., T. R. Tyler, *Why People Obey the Law*, Princeton UP, New Jersey, 2006, at pp. 71–178; J. Sunshine and T. R. Tyler, The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing, *Law & Society Review* 37 (2003) pp. 513–47; N. Gur and J. Jackson, Procedure-Content Interaction in Attitudes to Law and in the Value of the Rule of Law: An Empirical and Philosophical Collaboration, in D. Meyerson, C. Mackenzie, and T. MacDermott (eds.), *Procedural Justice and Relational Theory: Philosophical, Empirical and Legal Perspectives*, Routledge, London, 2020, pp. 111–40.

[41] There are disagreements over the empirical questions of how common normative attitudes towards legality itself are, and what part such attitudes have in the causal explanation of people's compliance

once more, are characteristic attributes of law, or, at least, their conjoined presence in relatively high measures is a characteristic attribute of law. If that is true, there does not seem to be anything erroneous or strained in regarding the fact of there being a legal requirement (in circumstances of the type indicated above) as a reason for action.

The objection presented above refers also to the fact that certain bodies or individuals that do not operate on behalf of law or hold legal office may nevertheless possess attributes that allow them to perform (at least in some circumstances and to some extent) functions similar to those of law. I do not wish to deny that in certain contexts, and to some extent, functions such as conduct guidance and dispute resolution can be performed without the involvement of law. However, I should emphasize that a material part of my point refers to the *combination* of attributes associated with law (i.e., generality, endurance through time, coercive capacity, perceived bindingness, etc.) and the *degree* to which they are present in association with law. The conjunction of these attributes, and the relatively concentrated form in which they are found in legal modes of ordering, are normatively significant,[42] for they render law well suited to address certain problems of collective action that – given their large societal scale, and the type, intensity, and persistence of their cognitive and motivational precursors – other, non-legal practices or actors seem less (or not at all) capable of addressing.[43] In other words, the question of whether law can constitute reasons for action does not turn

with the law. The most notable study in this regard is Tyler's (T. R. Tyler, *Why People Obey the Law*, Princeton UP, New Jersey, 2006). This study has been criticized by legal theorists such as L. Claus, *Law's Evolution and Human Understanding*, Oxford UP, Oxford, 2012, at pp. 65–70 and F. Schauer, *The Force of Law*, Harvard UP, Cambridge (Mass.), 2015, at pp. 57–67 and 73–4. I have discussed this debate in N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, at pp. 184–92.

[42] Marmor has argued against the thought that there is some general feature of law that renders it normatively unique (A. Marmor, Norms, Reasons, and the Law, in K. E. Himma, M. Jovanović, and B. Spaić (eds.), *Unpacking Normativity: Conceptual, Normative, and Descriptive Issues*, Bloomsbury Publishing, London, 2018, at p. 95 and Sec. VI). His argument seems to focus on law's normative modality – namely, he argues that there isn't anything unique about *the way* law gives reasons for action, for similar modes of reason-giving can be found in other normative phenomena or practices. This argument does not stand in opposition to my claim here. I am not denying that law's normative modality – the way it gives reasons – is present also in some non-legal normative phenomena or practices. I am only suggesting that there are some situations where law (due to some of its attributes) is comparatively well placed to perform a socially beneficial function, and that, to this extent, it is capable of constituting reasons for action.

[43] Even insofar as a function performed by the law could also be performed by other means, this does not necessarily prevent law's requirements from constituting reasons for action—at least if those other, non-legal means are less readily available than legal means (e.g., because the latter are the method already in common use in one's society) or if there are other considerations that render the latter preferable.

on whether there exist beneficial attributes that generally, or in the abstract, or in a necessarily qualitative sense are unique to law; rather, it turns on whether there are situations in which – due to attributes present in law, or their combination, or their concentrated level of presence – law is comparatively well placed to fulfil a valuable function.

2. CAN LAW-GIVEN REASONS ACQUIRE (SYSTEM-WIDE OR LOCALIZED) VALUE-INDEPENDENT FORCE?

Implicit in my argument so far is a qualified type of content-independence of law-given reasons. In this qualified variant of content-independence the reason for action constituted by a legal directive, though (relatively) independent of the merits or demerits of the directive's content, derives from – and remains invariably dependent on – other values or desiderata served through compliance with the directive, be they coordination benefits, social order, fairness, or other. The question I now wish to consider is the following. Suppose that a given legal system (LS) is, overall, reasonably just and fair; and that LS, overall, serves reasonably well the kind of values or desiderata that law is suited to serve. Can we say that, as a result of LS's meeting the above (neither-trivial-nor-perfection-demanding) standard, its individual directives gain a more robust normative status than what has been advocated in the previous section? Namely, can we say that LS's directives thereby become reasons for action, such that their status as reasons for action crystallizes and persists independently of whether the values served by LS are applicable to the directive or case at hand?[44] I will offer a negative answer, following which I will touch upon two theses that involve more qualified elements of robust normativity.

I will cast my answer in terms of a value-based conception of reasons (keeping to the confines earlier set for this discussion), although a similar answer, I believe, can

[44] A similar question can be asked about a body of laws that forms only a *part* of LS (say, LS's commercial laws) and meets the above standard (i.e., it is reasonably just and fair, etc.). My comments in the following paragraph of the text refer to the system-wide question, but they are applicable, *mutatis mutandis*, to the domain-wide question too.

be arrived at on premises of a desire-based conception of reasons.[45] According to the former conception, reasons for action are ultimately grounded in values that are served or satisfied by the performance of the action. To be sure, reasons for action (as often seen by proponents of this conception) are facts, but they are facts that gain their status as reasons in virtue of their interaction with values or goods, namely because they make it the case that the relevant action would serve or satisfy those values or goods. And, thus, the fact that a legal directive has been issued can only be a reason for action when and insofar as it is present in conjunction with some applicable evaluative factors (that requisitely relate to the directive's issuance, such that their conjunction renders the action valuable or desirable). With this in mind, I find it difficult to grasp how the set of underlying values that is generally served by the operation of a legal system could somehow imbue the system's directives with a type of reason-giving quality that transcends, and essentially cuts loose from, its normative origins, such that those directives become a self-contained source of genuine reasons for action. It would take, I think, some rather mysterious form of normative alchemy for such a transition to be generated. Now, to this the following clarification is worth adding: I take no stance here regarding the possibility that the law *claims* to be – or that lawmakers *intend* their directives *to be taken as* – a self-contained source of genuine reasons for action in the above sense. My focus here is not on how the law presents or perceives its capacity to give reasons, but on its actual capacity to give reasons.[46]

Having expressed doubts about robust legal normativity of the kind described above, I will now highlight two different approaches that involve more qualified variants of robust normativity. As I have discussed them elsewhere at some length,[47] here I will only briefly comment on them. The first approach consists in Joseph Raz's service conception of authority.[48] Raz's service conception, it should first be noted, is

[45] According to which reasons for action are grounded in some ultimate desires of the agent to whom they apply.

[46] There are important senses in which law can be seen as a *normative* artifact (G. Tuzet, A Strange Kind of Artifact, in L. Burazin, K. E. Himma, and C. Roversi, *Law as an Artifact*, Oxford UP, Oxford, 2018, pp. 217–38, at pp. 226–7), e.g., in that it is partly comprised of norms, but these senses do not establish that law can actually constitute genuine reasons.

[47] N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, esp. Parts I and III.

[48] J. Raz, *The Morality of Freedom*, Clarendon Press, Oxford, 1986, ch. 3; J. Raz, *Ethics in the Public Domain*, Clarendon Press, Oxford, 1995, at pp. 211–15; J. Raz, The Problem of Authority: Revisiting the Service Conception, *Minnesota Law Review* 90 (2006) pp. 1003–44.

a set of claims focused not on law in general, but on legitimate authority. As such, it applies to instances of law only where and insofar as Raz's prerequisites of legitimate authority are satisfied. Now, Razian legitimate authorities possess a robust normative quality that finds its rational basis in Raz's distinctive view of the justification of authority. His justificatory conditions of authority make sense of the idea that the very fact that a legitimate authority requires an action is a reason for its performance (indeed, not just *a* reason, but, as will be noted below, a privileged type of reason which he calls 'pre-emptive' or 'protected'). The key condition, encapsulated in a thesis known as *the normal justification thesis*, is that for an ostensible authority (A) to gain legitimate authority over a subject (S), A must be apt to guide S to better conformity with reasons that apply to S (that is, reasons other than the directives of A) – in other words, it must be the case that S would be more likely to conform to reasons that apply to her by following A's directives than by trying to follow those reasons directly.[49] Now, if this is (at least part of) what it means for someone to qualify as a legitimate authority, it becomes easy to see why Raz arrives at his view on the normative force of legitimate authority: from a Razian perspective, precisely because the justification of authority lies in its ability and likelihood to reach decisions that better reflect background reasons, the fact that a directive has been issued by a legitimate authority is a reason for acting as the directive prescribes, as well as a reason to refrain from trying to act directly on background reasons which the authority had power to pronounce upon.[50] This idea finds expression in another thesis of Raz, known as the pre-emption thesis, which reads thus:

> [T]he fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.[51]

[49] For Raz's statement of the thesis, see J. Raz, *The Morality of Freedom*, Clarendon Press, Oxford, 1986, at p. 53.
[50] Ibid., at p. 59.
[51] Ibid., at p. 46.

On this sophisticated view, the normative force of authority is thought to have the following dual quality: on the one hand, it is thought to retain and never break the connection with what Raz sees as the basic rationale of authority – namely, the facilitation of conformity with background reasons – and, thereby, with the deeper level of values underpinning the background reasons (the connection being that the authority is better capable of correctly tracking those background reasons than the subject is);[52] on the other hand, there is a sense in which Razian authority-given reasons operate independently of, and indeed supplant, relevant background reasons and their associated bedrock values, in that the subject of a legitimate authority is not supposed to act on particularistic assessments (i.e., directive-by-directive or case-by-case) of whether the authority-prescribed action comports with those background reasons and values.[53]

While the ingenuity of Raz's conception is undeniable, its claims remain contested.[54] In a critique of this conception, which I have advanced elsewhere,[55] I have highlighted what I believe to be two of its principal deficiencies. First, I have argued that the modality of pre-emptive reasons, with its exclusionary character, involves too strong a type of bindingness by authority, such that it fails to adequately accommodate situations where (notwithstanding the authority's compliance with Raz's conditions of authority) it is justified to disobey in order to avoid a directive-specific or situation-specific serious immorality.[56] The Razian, I have argued, cannot successfully mark out such cases as ones that fall outside the exclusionary scope of pre-emptive reasons; for demarcating a scope that would entirely preclude those cases of justified disobedience could only be done by a demarcation criterion involving weight comparison of the

[52] Thus, e.g., he notes: 'No blind obedience to authority is here implied. Acceptance of authority has to be justified, and this normally means meeting the conditions set in the justification thesis. This brings into play the dependent reasons, for only if the authority's compliance with them is likely to be better than that of its subjects is its claim to legitimacy justified' (J. Raz, *Ethics in the Public Domain*, Clarendon Press, Oxford, 1995, at p. 215).

[53] Thus, e.g., after the passage in the previous footnote, Raz notes: 'At the level of general justification the pre-empted reasons have an important role to play. But once that level has been passed and we are concerned with particular action, dependent reasons are replaced by authoritative directives' (ibid.).

[54] There are multiple relevant writings. Some of the most notable ones appeared in a symposium in *Southern California Law Review* 62 (1989).

[55] N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018.

[56] Ibid., chs. 2–4.

competing reasons – which is not a criterion that pre-emptive or exclusionary reasons can coherently depend on.[57]

The second deficiency concerns the scope of legitimate governmental authority. Raz opts for a distinctly piecemeal test for the legitimacy of authority (a choice perhaps partly driven by a wish to mitigate the relative modal stringency of pre-emptive bindingness), which, in turn, yields a rather patchy scope of legitimate governmental authority. This outcome, I have argued, is unsatisfactory since, in reality, the need to organize, and place constraints on, the operation of individuals in a political community through governmental regulation is wider and more general than the scope of authoritative power Raz's test tends to produce.[58] The analysis that led me to these conclusions cannot and need not be repeated here.

The second approach that will be touched upon is what I have put forward and defended elsewhere under the label 'the dispositional model'.[59] The core claim of this model can be stated, in thumbnail form, as follows: the fact of there being a reasonably just and well-functioning legal system in place is a reason to adopt a certain attitude towards the law – namely, a relatively settled mental posture whose conative component is an (overridable) disposition to comply with the system's requirements. Instead of reiterating my explanation and arguments in support of this model, here I will only briefly highlight a couple of the model's aspects with particular relevance to the present discussion.

First, it should be noted that this model involves qualified aspects of value-independence (pertaining to the modus operandi of the foregoing disposition) alongside aspects of value-dependence (pertaining to conditions for adopting the disposition and its formation process). Starting with one of its value-dependent aspects, the dispositional model calls for adopting a law-abiding disposition on the condition that the legal system in question is a reasonably just and well-functioning system that is apt to serve valuable purposes and moral principles. And, accordingly, the model readily

[57] For the hallmark of exclusionary reasons is that they defeat the excluded reasons regardless of their relative weight (J. Raz, *Practical Reason and Norms*, 2nd edn, Princeton UP, New Jersey, 1990, at pp. 36, 40, 189, and 190).

[58] N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, at pp. 127–9 and 168–9.

[59] Ibid., chs. 7–9.

accepts that if a legal system descends to a pattern of repeated failures to live up to relevant moral standards (e.g., justice, fairness, and respect for persons) the result should be an erosion of its subjects' disposition to comply. On the other hand – and here I come to the qualified aspect of value-independence – once the disposition becomes a settled and relatively stable part of the agent's attitudinal profile, it operates with some degree of motivational and conative persistence.[60] It is not a mere momentary response to a particular situation or a fleeting state of mind, but rather an inclination that acquires relative embeddedness in the relevant agent and tends to endure through time. To this extent and in this sense, therefore, the motivational force it exerts gains independence of specific reasons for action as applicable to particular situations; it makes its force felt in a manner not conditional on those reasons.

At the outset of this section I rejected a type of value-independence whereby the directives of a reasonably just legal system (LS) become a self-contained source of genuine reasons for action that apply independently of whether the values served by LS are applicable to the directive or case at hand. Note that the dispositional model does not represent a departure from this position. For there is a difference between claiming (1) that LS's directives constitute reasons for action (i.e., the action that they require), and claiming (2) that LS's existence (and overall operation) is a reason for you to adopt a certain attitude or mental posture towards LS, such that you become generally disposed to comply with LS's directives. In claim (1), the reasons are ascribed to LS's directives, and what they are reasons *for* are the *actions* required by those directives. In claim (2), the reason is ascribed to LS's existence and general operation, and what it is a reason *for* is the acquisition of a general *attitude* towards LS – an attitude that, once settled, tends to endure and exert its influence in a manner that is not contingent on reasons for action as applicable to the specific case at hand.[61] And what makes this difference all the more pronounced are situations that appear to disprove the general truth of claim (1), but which cohere with claim (2) and instantiate its practical effects – one such example being the proverbial lonely traffic light scenario, featuring

[60] See ibid., at pp. 150–1 for further illustration of the distinction between an attitude's precursors and the triggering conditions of its behavioural manifestations.

[61] As such, it is not a mere reflection of some or all of the reasons for action that apply to us in a given situation.

a driver who comes upon a red traffic light where the road is clearly empty of other vehicles and pedestrians (the visibility is very good, the surrounding landscape is free of visual obstructions, and she can tell that there are no other vehicles or pedestrians within miles in any direction, etc.). In the latter scenario (or at least some appropriately refined version of it) the thought that there is a genuine reason for the action of stopping the car and waiting for the green light is hardly convincing, yet a driver who is generally disposed to comply with the law may be led by her disposition to act in precisely this way. While there may be good reason for adopting that general disposition, the action ensuing from it, in the foregoing scenario, is not supported by reason.

Now compliance in the lonely traffic light scenario is also compatible with the modality of Razian pre-emptive reasons (provided that Raz's prerequisites of legitimate authority have been met), but it is worth emphasizing that, alongside this commonality, there are several significant differences between the pre-emption thesis and what I call the dispositional model. I will highlight here just one, modal difference that renders these two conceptions incompatible.[62] A pre-emptive reason to perform an action (φ) is a reason to φ that excludes some of the reasons that would otherwise militate against φ-ing. This means that however weighty those (excluded) contra-φ reasons might be, they should not be acted upon. Insofar as I comply with the pre-emptive reason, then, those contra-φ reasons cease to play a role in determining whether I perform φ or refrain from it. Matters are different under the dispositional model, in that the exclusionary element just noted is absent from this model. The attitude envisaged by the dispositional model implies a behavioural disposition which is no more than a *tendency* or *inclination* to comply with legal requirements. As such, it remains overridable (or defeasible) by the weight of opposing reasons that might apply in particular cases, rather than exclusionary of opposing reasons. It does not exclude any reason against compliance, at least not in a sense that is not conditional on that reason's weight, which is the sense of exclusion Raz endorses.[63]

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[62] Another difference worth noting here is that pre-emptive reasons do not have the attitudinal focus that the reasons cited by the dispositional model have. See N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, at p. 155, n. 70, and p. 218, n. 92.

[63] J. Raz, *Practical Reason and Norms*, 2nd edn, Princeton UP, New Jersey, 1990, at pp. 36, 40, and 189–90. This is partly why I do not share N. P. Adams' view (expressed in N. P. Adams, Review of Noam Gur, Legal Directives and Practical Reasons, Oxford: Oxford University Press, *Modern Law Review* 82 (2019) pp. 1179–83) that it might be possible to reconcile the dispositional model and the

Finally, recall my earlier caveat about the need to distinguish between a legal directive and a legal system when discussing the reason-given capacity of legal artifacts. The main focus of the dispositional model is the latter of these two, not the former. In other words, the model's core claim, as described above, centres not on the normative bearing of a *legal directive*, but on the normative bearing of a *legal system*. To be clear, the model does not deny that artifactual legal directives can constitute reasons for action. Indeed, it acknowledges this notion.[64] However, the model stresses that a complete picture of law's normativity must include the *attitudinal* dimension as pertaining to a legal system. That is, it must take into account that (1) apart from ordinary reasons for action, we have reasons to adopt and cultivate certain attitudes and dispositions towards a legal system; (2) that such reasons are constituted not by this or that legal directive, but by the fact of there being a legal system which meets certain competence and quality prerequisites;[65] and (3) that such reasons are distinct from, and not reducible to, reasons for action constituted by individual directives.[66]

3. CONCLUSION

Several claims have been made here regarding the capacity of legal artifacts to constitute reasons. In conclusion of this chapter, three of these claims seem particularly worth highlighting.

First, I have noted that there is a factualist value-based conception of reasons for action that seems, prima facie, intuitively plausible, and that lends credence to, or makes it relatively easy to accept, the idea that artifactual legal requirements can

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pre-emption thesis. While their foci are not fully identical, the two models are irreconcilable because the attitude prescribed by the dispositional model is such that if an agent adopts it he/she will not treat authoritative laws as pre-emptive reasons (i.e., will not comply with the pre-emption thesis's prescription). Again, the attitude prescribed by the dispositional model involves treating the normative force of legal directives as overridable by the weight of opposing reasons. This weight-sensitive overridability is incompatible with exclusionary reasons, whose distinctive trait is that they win regardless of the weight of conflicting first-order reasons.

[64] N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, at pp. 137, 207–8, and 218.

[65] Namely, a system whose substantive laws, procedures, and design generally exhibit a reasonable level of conformity with morality as well as with principles of legality (the rule of law), and are in general reasonably apt to secure valuable goods. Ibid., at pp. 135–6, 138, and 179.

[66] Ibid., esp. at pp. 155–60.

constitute reasons for action (or, at least, incomplete reasons for action).[67] This is because, on the above conception of reasons, saying that a given fact (F) is a reason for action (φ) is compatible with saying that F's status as a reason for action is grounded in some deeper values (V) that do not reside in F itself. F's being a reason to φ only means that F (or F in conjunction with some other facts) makes it the case that φ-ing would serve or satisfy V – and this, at least sometimes, holds true in the relation between the fact that law requires an action and the values that would be served or satisfied by performance of the action. The artifactual character of (at least some) legal requirements, I have argued, is entirely compatible with the above conclusion, because (1) artifacts partake of facticity, namely the existence of a given artifact is a fact, and is thus eligible, in principle, for constituting a reason; and (2) the fact of there being a certain artifact can have the requisite relation to value which renders it a reason for action – namely it can be a fact in virtue of which doing (/refraining from) a certain action would serve some value or good.

Second, I have discussed some relevant arguments made by David Enoch in his essay 'Reason-Giving and the Law'.[68] While there is much that I agree with in Enoch's analysis, I have expressed certain reservations about his characterization of law's normative operation in terms of triggering reason-giving. Enoch is right to note that the issuance of a legal requirement often results in specific reasons for action (e.g., a reason to drive on the left) that emerge on the back of pre-existing general reasons for action (e.g., a reason to coordinate with other drivers). But I have offered a qualification to the thought that the latter, general reasons were dormant prior to the law's pronouncement,[69] and I have noted that, since the former, specific reasons pertain to a distinct action description (e.g., 'drive on the left', as distinct from 'coordinate with other drivers'), there is a genuine sense in which they can be seen as newly created, rather than merely triggered, reasons.

Third, I have expressed scepticism about law's capacity to give reasons for action whose normative operation gains independence of the underlying values or

[67] Subsections 1.1–1.2.
[68] Subsection 1.3.
[69] Namely, I have suggested that, since these reasons are general, they were not dormant if there were other ways (even if deficient ones) to satisfy or partly satisfy them.

desiderata served or satisfied by recourse to legal modes of regulation (e.g., coordination, social order, and fairness) – namely, reasons for action whose operation supposedly ceases to be contingent on whether those underlying values apply to the directive or situation at hand.[70] On the other hand, I have noted a different (qualified) form of robust normativity that pertains not to reasons for action given by specific legal directives, but to reasons for attitudes given by the existence of a legal system (provided it is a reasonably just and well-functioning system). This idea consists, more specifically, in reasons to adopt a (relatively settled, yet overridable) disposition to comply with the system's requirements – a disposition whose motivational and conative influence may persist and extend beyond the directive-specific or situational applicability of reasons for action, but which also remains overridable by compelling enough reasons for non-compliance when these crop up. This idea, which I have elaborated and advocated elsewhere,[71] complements my observations in this chapter to form a fuller picture of law's interaction with practical reasons.

[70] Section 2.
[71] N. Gur, *Legal Directives and Practical Reasons*, Oxford UP, Oxford, 2018, chs. 7–9.