

**Raz on Political Obligation**

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### **Thesis Abstract**

The thesis discusses Raz's accounts of practical reason, obligation in general and political obligation (within political obligation, treating only the obligation to obey the law, the area of the subject on which Raz concentrates).

Raz's accounts of practical reason and obligation in general are explained and defended. Some changes are suggested to the notions of exclusionary reason and preemptive reason. Some problems with his account of obligation are considered, regarding the condition that obligations include a categorical reason and that the validity of this reason depends on the obligation's having intrinsic value in a form of life.

I try to assess the merits of Raz's account of political obligation. This includes tracing the roots of Raz's account in his accounts of practical reason and of obligations in general. The success of the latter accounts, as far as that goes, is taken to establish them as a useful basis for assessing Raz's account of political obligation. It is claimed that the account of political obligation does not properly reflect the problematic condition mentioned above in relation to the account of obligation, concerning intrinsic value. I comment on how far this is dealt with in Raz's treatment of "secondary" justification of authority grounded on respect and consent. No satisfactory way is found for incorporating the "problematic" condition in the account of political obligation. It is suggested that the condition itself might be too strong, and that obligation in general might be sufficiently well grounded in categorical other-directed reasons, allowing those to be either instrumental or noninstrumental.

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## Raz on Political Obligation.

### *Introduction*

#### *Approach to the problem of political obligation*

I shall examine Joseph Raz's account of the obligation obey the law, the aspect of political obligation on which he concentrates. I shall use "political obligations" as shorthand for "obligations to obey the law". When I speak of "the obligation to obey the law", this is qualified by a silent "if any" unless it is clear that such an obligation is presupposed. I shall not distinguish between obligations and duties, for reasons given below.

Raz considers that there is normally no general obligation to obey the law, but that there can be obligations on individuals to obey specific laws. In the abnormal cases in which there is a general obligation, the obligation is justified in a "secondary" way. I shall examine some difficulties with this account, but I begin by saying something about why there are *problems* of political obligation, and how Raz's account responds to these problems. These opening remarks are loose, their purpose being to show the direction from which I try to approach Raz's account in the subsequent chapters.

One problem is that it is puzzling why there should be so much disagreement about what our political obligations are (some evidence for this is offered below). There is no corresponding widespread disagreement about what we are required to do by promises, even though there is disagreement about *why* promises bind us.<sup>1</sup> The puzzle is why it should be different with *political* obligation, why we disagree about what we are required to do by it.

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<sup>1</sup> Godwin is a rare exception. He holds that we should not make promises and that promises do not bind us, for we should follow the right course and which course is the right one is unaffected by our promising (discussed in Green (1988), p.34). This view denies or overlooks the value of promises, their usefulness and their intrinsic value in personal relations. To deny their intrinsic value, it seems that one has to deny that trust is intrinsically good – this is a measure of Godwin's eccentricity.

Some areas of political obligation carry great authority for nearly all of us, for example the law of murder. It's not merely that we consider the law to be correct in treating murder as a wrong. We also respect and, nearly always, would comply with the law in all the ways it bears on murder (detection, trial, punishment, etc.). When some consider an aspect of the law of murder to be unjust, say as regards the scope of the defence of provocation, there is generally pressure to reform the law, not to find ways of getting round it. Controversy about the law of murder as it stands is very limited. However, this attitude of respect and compliance is not matched for all areas of the law. For example, among those who have the opportunity, tax evasion seems to be commonplace. According to a survey reported in the Los Angeles Times, quoted recently in *The Week* (348), the proportion of US citizens who say that they believe it is "OK to fiddle our taxes" has risen from 13% to 24 % in the past two years. Some of those who evade payment of taxes may say they recognise the obligation, but that it is outweighed by other obligations, such as to provide well for their families. Then they disagree with the orthodox view about the stringency of the obligation to obey the law. The obligation to pay taxes is no marginal matter in relation to political obligation in general - governments need an income. So it seems that we don't all accept that there is a general obligation to obey even the important laws, still less that it is a stringent obligation.

In recent philosophical literature, the majority view appears to be that there is no general obligation to obey the law. (Edmundson quotes two other philosophers to this effect (Edmundson, p.31).) This view is consistent with holding that one may be obliged to do the things required by the law, if it is held that the legal requirement is not the ground of the obligation. It is also consistent with holding that the legal status of an action may be relevant to its being obligatory, but that its legal status has no *intrinsic* moral significance (Regan, p17). On this view, I am obliged not to drive on the wrong side of the road because other drivers are reasonably relying on me not to do that, given which it would be dangerous; driving on the wrong side of the road is not constituted a wrong *directly* by infringing a requirement of the law. Then, if it was the enactment of a law that led to general acceptance of present definitions of the right and wrong sides of the road, driving on the wrong side is now wrong because of certain consequences of the enactment of the law, namely the other drivers' expectations etc. On the other hand, on this view, if this law was enacted in order to reinforce existing social convention, the most that can be said is that it correctly

classes as wrong certain actions which are wrong for other reasons, namely that they are dangerous etc. The relation between law and social convention is discussed below.

Some writers argue that we *have* political obligations. Some accept Simmons' view that obligations can only derive from voluntary actions, while also holding that we generally undertake the relevant kinds of action. Among recent writers, perhaps Margaret Gilbert is closest to claiming this; she says that we can and do incur political obligations by having "*intentionally* expressed the readiness to be jointly committed in the relevant way" (Gilbert (1999), p.252). Horton takes another approach, holding that we can be "born into" political obligations - they form part of the identities we grow into, rather than resulting from action (Horton, p.150). Dworkin considers that political obligations are a species of "associative obligations", resulting from actions which are intentional but are undertaken for a purpose other than the creation of an obligation. He speaks of "acts that *attract* obligations, without the agents intending to assume obligations" (Dworkin (1986), p.197). (If Horton's "obligations partly constituting one's identity" could be created as associative obligations, and this seems to be consistent with much of his account, then the mysterious idea of being "born into" obligations could be dispensed with. As far as I can see, purely filial obligations to natural fathers with whom one has had no contact are the only sort of obligation which this would fail to account for, but it may be that there are no such obligations.)

### *To whom are political obligations owed?*

The views briefly described in the previous paragraph have this much in common (with the possible exception of Horton's view): they are consistent with political obligations being relations between the people obliged ("obligors") and those to whom they are obliged (obligees"). Some writers, such as Brandt, hold that we can have obligations without there being any obligees (although Brandt holds that there must be obligees when "obligation" is used in its oldest or "paradigm" senses (Brandt (1964), p.380). This question, whether obligations are essentially relations between obligors and obligees, is a key one in a discussion of Raz's view of political obligations. The relation is fundamental in his account of obligation in general (Raz (1977)), but secondary in his main account of political obligation (Raz (1986)). At the end of Raz (1977) there are the following remarks (which I have here re-ordered). He speaks of "the intrinsic desirability of forms of life in which people create or

acknowledge special bonds”, many of these being “constitutive elements of special human relations”, such that “all kinds of obligations ... depend for their validity on the value of” these bonds (p. 218). This implies that it is their value in relations between obligors and obligees that validates obligations. However, the later Raz explicitly gives this only a “secondary” role in political obligation (see below).

### *Raz on reason and autonomy*

The first problem of political obligation mentioned above was: If there is no political obligation, why do so many of think that there is, and why is there disagreement or uncertainty over key questions, such as whether, how, to whom, and to what extent we have political obligations. The more fundamental problems of political obligation are those embedded in these disagreement/uncertainty questions: are we so obliged and, if we are, how did that happen, to whom are we obliged and to what extent? Raz gives a clear answer to the first of these questions (it is less clear how he answers or would answer the others.) His answer to the first question comes from applying his “normal justification” of authority in general. The answer is that we are obliged to obey authority in areas in which obedience makes it more likely that we will conform to the reasons which already apply to us prior to the law making its requirements. This holds provided that in those areas it is “more important” to conform to reason than to exercise personal autonomy. The claim is that we are obliged to the extent that authority *serves* the reasons which already apply to us, but only in areas in which autonomy is not more important than conformity with those reasons.

This sets up two further questions: does Raz give the correct account of reason, and are there any areas in which conforming to it is “less important” than having personal autonomy? The later Raz sees “reason” and “autonomy” as the fundamental forces in tension in political obligation. A large part of the dissertation is therefore given over to Raz’s account of reason and of the relation between reason and obligation, including political obligation. It is necessary along the way to keep returning to the 1977 claim that *all* obligations depend for their validity on their value as “special bonds” figuring in a valuable form of life. On the face of it, this is missing from the “normal justification” of authority.

It is possible also to read into Raz a resolution of the first and less fundamental problem of political obligation, namely the disagreement/uncertainty problem. The



answer is that *ignorance* is the root of our disagreement and puzzlement. Raz holds that obligations are complex structures, their elements being reasons operating on different levels (as explained in detail below). Apparently, pre-Raz, we had not understood the nature or the complexity of obligation, or indeed the conditions for having obligations. We are liable to suppose that a promise gives rise to an obligation just because that is what we intend when we promise – that our intention is sufficient – but Raz claims that this is a mistake. He claims that there is the further necessary condition that it be a good thing for people to create obligations by promising. This is discussed in more detail below. Therefore, if Raz is correct, there is a large gap in our understanding of obligations: we don't understand their structure as complexes of reasons and we don't fully understand the conditions on which they are valid.

Since a typical individual has a minor role (if any) in creating political obligations, and may form few intentions about their creation, he is liable to wonder how he incurs political obligations if it is claimed that he does that without intending it. Of course, we may know a great deal about the roles and intentions of *others* (mainly politicians and judges) who purport to create our legal obligations, but then the question is: "What is that to me? Why am I obliged by what they say?" I know how I can create an obligation for myself, and how others may purport to put obligations on me, but it remains to be seen why *their* roles and intentions impinge on me, other than in so far as they have power over me. Raz says that if such a person understood why promises create obligations, he could also see why for similar reasons he has political obligations.

So, if we understand only the roles and intentions aspects of the creation of obligation, there is a large gap in our understanding of obligation in general, and this leaves political obligation looking particularly mysterious.

### *Raz and the disagreement problem*

There are at least three bold claims in this attempt to read into Raz a solution to the problem of disagreement over political obligation. The first two are ones made by Raz himself, namely that our understanding of obligation has the large gap described above, and that his account would fill this gap, or at least reduce its size. (Raz says that obligations are two-level complexes of reasons and on this he bases an explanation of how obligations arise and how they bind us.) The third is a claim

which I suggest follows on naturally from these, namely that the gap leaves us especially badly placed to understand *political* obligation. If this is correct, Raz's account of obligation in general should help one to understand political obligation. To this end, I shall look carefully at both accounts. Their connections need close attention as the account of political obligation does not emerge mechanically from the account of obligation in general.

### *Raz's three different views of the foundations of political obligation*

Like any worthwhile account of political obligation, Raz's makes it out to be more than a matter of being subject to a power. Nevertheless, by applying his normal justification he interprets political obligation as a certain relation to the powers that be. The obligation is to do what this power requires, in so far as that best serves reason when that is more important than autonomy (in accordance with his "normal justification thesis"). Then, the basis of the obligation is the reasons which apply to us independent of law. This is Raz's first view. (He adds to it a view about an alternative, "secondary" basis of political obligation, which he holds capable of extending the scope of obligations if *some* political obligations are validated by this first view. I pass over this secondary view for now. Here I am considering different views which he gives about the very foundations of political obligation.)

A second view is indicated when he says that "Public authority is ultimately based on the moral duty which individuals owe their fellow humans" (Raz (1986), p.72). He holds that authority and obligation are "correlative", so this implies that political obligation has the same "ultimate basis" in the "duty which individuals owe their fellow humans". These two accounts are not explicitly integrated; the former accounts for political obligation based on reasons, the latter based on a duty, and we don't know how the duty sits with the relevant reasons.

Thirdly, there is the remark in Raz (1977), noted above, to the effect that *all* obligations are validated by their value as relations figuring in intrinsically desirable forms of life. This is integrated with neither of the first two views. First, the normal justification gives no essential role to relations with other people; it merely leaves open the possibility of such reasons figuring in a normal justification of authority. In arguing for the normal justification, nothing is said about any essential role for

relations with other people. Second, Raz offers us nothing about the place of the “duty to fellow humans” in “desirable forms of life”.

It is therefore worth examining closely each of these three different views about the foundations of political obligation, in the hope of fitting them together. This occupies much of the dissertation.

*Summary of theses here defended*

I argue that Raz’s account of practical reason is good, that the account of obligation in general is a broadly successful application of the account of practical reason, and that the account of political obligation inherits considerable power from the former two accounts but has some problems. I try to identify ways in which those problems could be addressed.

## Chapter One: Raz's accounts of practical reason and obligation

### *Introduction*

Raz agrees with Hume's claim that there is a genus "obligation", of which obligations under promises and political obligation are different species. This thought lies behind Hume's statement that "... allegiance ["or obedience to magistrates"] and fidelity ["or a regard to promises"] stand precisely on the same foundation, and are both submitted to by mankind, on account of the apparent interests and necessities of human society" (Hume, p.287). Raz provides an impressive account of this genus, obligation in general (Raz, (1977)). He develops the account from an analysis of promises, but he agrees with Hume that not all obligations share all the features of obligations resulting from promises, in particular, they are not all entered into voluntarily by the individuals who have them.

There are some obligations such that, to have one of them, it is not essential to have entered into it voluntarily, nor must one have done *anything* voluntarily in order to have it. As examples, we have obligations not to lie and not to inflict pain on children for fun. Positively, there is a restricted obligation to help those in need and a conditional obligation to do something if one has promised to do it. If the last of these examples seems just to be word-play, a more obviously substantive claim can be made by pressing the point that an individual promisor has limited control over many of the terms of his promise.<sup>2</sup> We are subject to social norms which regulate, for example, what counts as an adequate excuse for breach of promise, the scale of the compensation due for a breach and the extent of the onus on a promisor to avoid making rash promises. These are but three areas not fully within the promisor's control. That promises are a social institution makes a promise-obligation *more than* a voluntary commitment, in that the terms on which a promisor comes to be required to do something are not fully defined by what he had in mind in volunteering.

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<sup>2</sup> Green makes the same point in relation to the marriage contract: "The content of the duties is external to the will of the parties" (Green, p.204). The point seems good for all the familiar kinds of obligation.

One response to this is to accept that there are some non-voluntary natural commitments, but to distinguish these as duties rather than obligations. These are “natural duties”, as distinct from “acquired obligations” (Waldron, p.3). However, Raz makes nothing of any distinction between obligations and duties (see below), and I shall follow him in this, for two reasons. First, if the distinction is made, the argument about political obligation has to be run a second time, as one about political duties. Even if all obligation is voluntary and we don’t volunteer for political obligations, it remains to be seen whether we have duties to obey the law. Second, we cannot settle whether a certain requirement is valid just by considering it first as something voluntarily undertaken, and secondly as something with no voluntary element. As noted, obligations can have a mixed character, e.g. obligations under promises, which are fixed in part by conditional duties concerning what is required from those who make promises, and in part by what we promise to do. That is, what I have to do as a result of making a particular promise would be a complex of obligation and duty, if those were thought to be respectively the voluntary and involuntary kinds of requirement. The requirement to obey the law might be another such complex. So, if it were shown that there is neither a purely voluntary obligation nor a purely involuntary duty to obey the law, it would remain open whether we were nonetheless required to obey the law under a complex of “acquired obligation and natural duty”.

Raz steers clear of this problem, and all controversy about how duties may differ from obligation, by examining at a general level the *mandatory* character of the reason we have to obey the law, calling it duty and obligation indifferently. I shall follow this line, although I generally speak of our “obligations” in order to minimise changes in the terms of the discussion. In this chapter, I first consider Raz's account of reasons for action, on which he bases the account of obligation in general, and then I consider the account of obligation. If it succeeds in *explaining* the obligations which we generally recognise, such as those in relation to promises, that will tend to validate it for use in *determining* our political obligations. The account of obligation turns out to be broadly successful. Then, in chapter 2, I go on to consider the account of political obligation.

### *Exclusionary reasons and the multi-level structure of practical reason*

Here, I rely mainly on Raz's *Practical Reason and Norms* (Raz (1975)), in which he argues that practical reasoning has a multi-level structure. *Exclusionary* reasons are "the book's central new idea concerning practical reason" (quoting from the start of his postscript added in 1990). Briefly, they are reasons not to act for certain first-order reasons. This ultimately leads to an account of obligations as being, in part, exclusionary reasons: obligations bind us by defeating conflicting reasons, which they do by excluding those reasons. Exclusionary reasons are a distinctive *kind* of reason, so this new notion gives Raz a basis for accounting for (a) the distinctive feel of obligations and of conflicts between obligations and other reasons, and (b) how we have political obligations. He approaches (b) by considering how certain reasons may best be served by obeying political authority and, as already noted, the upshot is that we are normally obliged to conform to the law to the extent that that is more likely to serve reason than not conforming to the law.

Proceeding more slowly, the multi-level account of reasons goes as follows. (For the time being, page references are to Raz (1975), except where otherwise stated.) A first-order reason to do X is a reason with which one conforms simply by doing X. The point is that one conforms with this reason regardless of the reason *for which* one does X. Raz holds that reasons are facts, so, for example, *that the child is hungry* may be a reason to feed it, whatever anyone thinks about the matter, and this reason would be conformed with by feeding the child, regardless of *why* one feeds the child. Any action fairly described as "feeding the child" conforms with this reason, whatever the agent's reason for so acting and, it would seem, whatever his understanding of what he has done. So, if one puts nourishing food on his plate in the false belief that it will poison the child and for that purpose, one conforms unwittingly with the hunger reason for feeding the child. (I shall not go any further than this into the metaphysics of first-order reasons.)

Raz says that exclusionary reasons are "reasons for acting in ways the full specification of which essentially refers to other reasons" (Raz (1990) p.185), and the same would go for higher-order reasons in general. For simplicity, in setting out his account of higher-order reasons I shall speak of one reason, rather than its specification, as "referring" to another. *First-order* reasons are ones that do not refer

to other reasons. They are in this respect the simplest reasons. They are also called *underlying* or *fundamental* reasons (the terms are inter-changeable). Reasons on a higher level refer to reasons on a lower level. In general, reasons can refer to reasons at any lower level – going up, there can be third-level reasons and beyond. However, the two-level model is sufficient for Raz's accounts of obligation and political obligation.

Some of Raz's critics deny that there are any exclusionary reasons. Heidi Hurd says that they are “conceptually incoherent” and that no credible examples can be found (Hurd, p.1622). (Here, she is speaking directly of “protected reasons”, which are explained below, but this implies that the same objections would hold in relation to exclusionary reasons.) Her objection is that it is irrational to “exclude” a reason, so there cannot be a reason to do just that. Therefore, I need to say enough to make it plausible that we have such reasons. As a quick, *ad hominem*, point against Hurd's line, it leads her to deny that promises give one reasons and to claim that promise-keeping is not rational (p.1625), which can be turned back as a refutation of her position by *reductio*. Following Raz, the best tactic seems to be to show that, when the character of these reasons is explained, we can recognise some of our reasons as having this character. I shall not consider theoretical objections to the possibility of exclusionary reasons. If we recognise that some of our reasons are exclusionary, as I claim that we can from Raz's examples, then those objections are beside the point.

Positively, a *second-order* reason is one to act for another reason. Exclusionary reasons are the negative kind of second-order reason, namely reasons *not* to act for another reason. Exclusionary reasons are reasons to exclude the influence of another reason on one's actions. Raz offers the example of “spouses promising their partners to decide how to spend the weekend in the light of their own desires, disregarding what they think their partners want” (Raz (1989), p.1158). This reason excludes “I think that that [spouse] would like this” as a reason for making a suggestion about how to spend the weekend together. Each spouse can conform to this exclusionary reason either by not making any proposal or by proposing things for any reason apart from that the other spouse would like that (p.39).

When I fast for medical reasons, the medical reason for fasting defeats hunger as a reason for eating simply by being the stronger reason. Raz's novel idea is that there is an additional way for one reason to defeat another, namely by exclusion. Raz

shows that they can bear on actions which involve no one other than the agent. In another of his examples, hunger can also be defeated by a reason to fast for the sake of self-denial; here, self-denial is an exclusionary reason (Raz (1990), pp.183/4). In being defeated in this way, hunger is an *excluded* reason.

Raz normally says that simple reasons are at the *lowest* level, consistent with their being underlying and fundamental. In the same vein, such reasons are also called *first-order* reasons. Then, reasons which refer to other reasons are *higher-level* reasons, and those referring to first-order reasons are *second-order* ones. At odds with this, he has also described some non-basic reasons as “lower” ones at p.221 in Raz (1977), where he says that rules, a kind of non-basic reason, “seem to belong to the middle and lower level of practical reason. They do not share the heights which values, principles and ideals share.” When ascribing levels to reasons I shall always call the basic reasons *lower* (or *first*)-level reasons and the other reasons *higher* (or *second*)-level reasons.

This multi-level account picks up a fact about a kind of reason we take ourselves to have. Raz does not claim that the multi-level account *has* to be adopted, just that we do adopt it. “It is not claimed that it is impossible to justify on the basis of a logic of first-order reasons all the practical conclusions that people wish to justify. The claim is that this is not the way we *actually* go about justifying our practical conclusions” (Raz (1990), p.204, emphasis added). We need Raz’s account, or something like it, to make sense of the reasoning going on in the self-denial and spouses examples. The self-denial/ hunger conflict is not intelligible as a conflict of reasons on the same level. The aim in self-denial by fasting is not to avoid food for reasons which, as it happens, come into conflict with the normal reasons to eat (for nourishment and pleasure). Rather, the aim is to defeat those normal reasons. In this way, the self-denial reason *refers* both to the normal reasons to eat and to its own clash with them, and the latter reasons are *internal* to it. So, there is an asymmetry: the ordinary reasons to eat do not refer to the reason of self-denial, or to the clash of reasons, and the self-denial reason is not internal to the ordinary reasons. A picture of different levels helps explain how the different kinds of reason interact: to be a higher-level reason is just to refer to a lower-level reason.

The hunger/self-denial example also lends some plausibility to Raz's claim that, when the higher-level reason defeats the lower-level reason, it does so by excluding the lower-level reason, not by outweighing it. (Here, and in what follows,



let's suppose that the hunger-reason is entirely desire-based and that the only problem with fasting is that it will be uncomfortable.) If I am moderately hungry and have a moderately strong reason for self-denial by fasting, a weights-based account of the conflict between these reasons cannot explain how they are rationally resolved at the level of action. If the relative weights of these reasons could be understood, both would be "moderate" given how the case is described. However, in the case as described it would definitely be irrational to eat. Therefore, the relative weights cannot determine what it is rational to do here.

It might be objected that the above shows only that a moderately strong reason for self-denial is a stronger reason than moderate hunger. If so, try to imagine the two reasons moving towards being in balance: that is, hunger grows and/or the self-denial reason decreases in strength, and there is a point at which the reason to eat becomes stronger than the reason to deny oneself. However, this leaves out of the reckoning the fact that the hungrier one becomes, the greater the amount of self-denial that is involved in not eating. So, greater hunger may not, at first, move the reasons any nearer to being in balance. Here again we note the asymmetric character of the relation between the reasons, which Raz's account captures. A single-level account of the relation must claim that, as a matter of fact, greater hunger adds to the weight of each of the conflicting reasons. But what happens is not a matter of fact: it is a matter of (broadly) logical necessity that greater hunger increases the weight of the self-denial reason for fasting, when the hunger is initially only moderate and the self-denial reason is more than a tiny one (more than a fad). This necessity implies some internal relation between the two reasons. Raz's notion of *reference* gives us a relation which is suitable in this respect, unlike the relation of *conflict* between forces which are opposed on the same level and are logically unconnected.

Raz has been criticised for his choice of peculiar examples, but I take it that this somewhat odd example of his succeeds in showing that, even as solo agents, we experience conflicts between reasons operating on different levels, in which one reason refers to the other. That is worth noting as a fact about our psychology. Later, we shall consider two-level relations between reasons involving more than one agent, such as a command made by A to B, who is under his authority. Here, there is further evidence for the two-level theory, but the point to note now is that the two-level structure of the reasons in play in such examples is not peculiar to social contexts.

Finally, in this summary of Raz's account of reasons, some useful jargon should be noted:

- (a) A *complete* underlying or fundamental reason for doing X refers to some value and explains why that value is served by doing X in the relevant circumstances (p.34, where Raz says a complete reason may also be grounded in desires or interests but allows that these may be treated as "subjective" values in order to save the claim that all complete reasons are grounded in values). For example, "I need to eat bread now and there is bread in the fridge" is a complete underlying reason for me to go to the fridge, nourishment being the value to which it refers.
- (b) "There is bread in the fridge" is an *incomplete* underlying reason for going to the fridge, as it does not refer to any value.
- (c) The part of the complete reason which refers to the value (here, "I need to eat now") is an *operative* reason, and the remainder of the reason is an *auxilliary* reason (pp. 33/4).
- (d) A *protected* reason to do X is a reason to do X combined with one or more exclusionary reasons excluding reasons for *not* doing X. The latter defend or protect the reason to do X.

### *Decisions and plans*

In Raz's example of a one-level conflict of reasons concerning a medical reason to fast - nourishment and pleasure versus medical necessity - it is rational not to eat when medical necessity provides the stronger reason. However, the example can be plausibly analysed as a *one*-level conflict between reasons only if the time dimension is ignored. Before the medical procedure has been carried out, there is greater reason to fast than to eat. Afterwards, the reason to eat ceases to be opposed, so, in the terms of a one-level account, the balance of reason suddenly shifts. However, what if X had starved to death before the medical work was done? It might be said that the reason to eat would have become the stronger one long before that point was reached, but this is to make the agent too passive in relation to reasons. Assuming that X knows when the work is to be done, he is likely to have a plan about when to eat – "stop eating at time t, resume eating after the trip to hospital, provided that [etc.]". Perhaps he came up with the plan himself, perhaps he was given it by someone else. Then, the plan itself figures in X's reasons, or is one of them. (For simplicity, I shall say that the plan is a reason. By analogy with what he says about rules as reasons, Raz would say

that strictly it is the *fact* that there is a certain plan which is the reason (Raz, 1977, p.219).

According to basic planning theory, a plan is a decision about what to do later. (If we may take it that to make a decision about what to do is to form an intention, Bratman agrees: “Plans ... are intentions writ large” Bratman (1987), p.29). To adopt the plan is to adopt some rules governing which reasons will become effective from time to time and subject to other conditions, such as how the medical work progresses. The plan determines which reasons should actuate the agent and when. What he rationally does from time to time is determined by what is the dominant reason at each time, but he does not merely attend to and conform with the different reasons as those vary in strength over the period covered by the plan. The plan is a higher level reason, referring to the fundamental reasons. It regulates the operation of the different reasons.

It seems equally sensible to say either that the plan excludes certain reasons during periods when the agent is not to act on them, or that the plan achieves the same result by varying the relative strengths of the different reasons which figure in the plan. However, it is more difficult to dispense with the notion of exclusion in accounting for the agent’s attitude to the plan in its entirety. In “Buridan’s Ass” examples, when the rational agent should choose between indifferent alternatives, it seems natural to hold that, after the choice is made, the reason to make a choice is a reason for not acting on the reasons in favour of the rejected alternative. That is, it is an exclusionary reason. The story according to the “strength” alternative would be that the agent is able to strengthen the reasons in favour of one of his alternatives, but there is no good account of how he would do that. If we make such choices through an extra-rational “tie-break” mechanism, Raz’s multi-level picture explains how, after the tie has been broken, we have reason to prefer the selected alternative. That is, the reason to prefer *some one* of the alternatives is a reason not to act on the reasons in favour of the rejected alternative. (For Raz, exclusion is all or nothing. An exclusionary reason either excludes another reason or it doesn’t. It may be that there is advantage in admitting degrees of exclusion into the model; one way would be to follow Perry’s suggestion that we can have reasons to act as if other reasons had a particular weight (noted in Raz (1989), at p.1178). However, I shall not pursue this complication.)

Raz, like Bratman, regards a decision as a kind of commitment (Raz (1975), p. 65 *et seq.*). “To make a decision is to put an end to deliberation”, and so making a decision creates an exclusionary reason, one which excludes the reasons “overruled” by the decision. The scope of this exclusion is relatively weak, in that one needs to be open to some extent to new evidence and to new ideas that come unbidden. However, it cannot be exactly right that decisions “put an end to deliberation”, as one can make a decision while knowing that one will keep it under review, and one can be acting on the decision while continuing with the deliberation which Raz says the decision stops. It is rather that making the decision implies being ready to act in a certain way, based on the deliberation undertaken thus far, if action is called for in the meanwhile. It also provides a reason for getting on with what one has decided to do. It can definitely be irrational to keep reconsidering one’s decisions, when there are new ones to be made which have a better claim on one’s time, or to delay acting for too long in order to reconsider a decision.

By finding in plans and decisions another role for exclusionary reasons, Raz has offered an explanation of how a plan or decision may in this way also rationally constrain subsequent practical reasoning. Bratman speaks of having a *disposition* to reconsider one’s decisions only to a certain degree: too great a readiness is fickle, too little is stubborn and there are rational positions between the extremes. Raz’s position is similar, in that he holds, in effect, that we have reasons not to act in ways which are fickle or stubborn.

I note below how Raz links this to political obligation. (Briefly, laws are a kind of rule or norm, and rules figure in our practical reasoning like earlier decisions.)

### *Obligations and exclusionary reasons*

When we reach Raz’s account of political obligation, his line is that we have certain political obligations but that there is no general obligation to obey all laws. One of the key aims in his account of political obligation is to explain the *mandatory force* of such reasons as we have to obey the law. That is, he is as interested in explaining the *compelling* quality of these reasons as in explaining their validity as reasons. He considers that they compel us by *binding* our judgements. That the law is mandatory, up to a point, and not merely advisory, is an important issue in political obligation, so to understand Raz’s treatment of it we must understand his account of obligation.

His main account of obligation is set out in the paper “Promises and Obligations” (Raz, 1977), which focuses mainly on promises. The account rests on two basic ideas. First, there is a claim about the structure of the reason-complex created by a promise: a promise to do X creates both a new reason to do X and reasons which exclude certain reasons not to do X. (In this combination, the first reason is called a *protected* reason.) The new reason is *categorical* in that it is independent of the agent's goals and desires. It is in virtue of having this structure that promises *oblige*, are *binding*. (Raz says that the agent’s judgement is bound in two ways: he has reasons to disregard what would otherwise be relevant reasons, these being the excluded reasons, and, as the promise is grounded in a categorical reason, it binds him by bearing on him regardless of his goals and desires (Raz (1977), p.224).

Second, there is a claim about *why* making a promise creates such reason-complexes.

“The fact that by promising one communicates an intention to undertake an obligation does not ‘produce’ an obligation by any form of magic which then can be ‘intuited’. Indeed, some such communications do not create any obligation, e.g. when the promise is induced by threats to life. If others do impose obligations that can only be because of the validity of some (PO) principle to the effect that if one communicates an intention to undertake, by that communication, an obligation to  $\phi$ , then one has an obligation to  $\phi$ , provided some further conditions are met. It is the fact that there is such a valid (PO) principle which is the reason to keep those promises which fall under it. It is this fact together with the fact that one promised to  $\phi$  that is a [complete] reason for  $\phi$ -ing” (Raz (1977), p.218/9).

What Raz here calls a (PO) principle is, in turn, validated in two ways. First, it is good that people should bind themselves in this way, for reliability reasons. Second, such obligations are intrinsically valuable as elements in “intrinsically desirable forms of life” and in personal relations. At the end of the paper, Raz says that the second of these two aspects – the intrinsic value of an obligation – is itself a necessary part of what validates *all* obligations. Therefore, reliability and other instrumental considerations are not sufficient for validation of *any* obligations.

Instead of the first of these “basic ideas”, why not suppose that promises can only *outweigh* conflicting reasons – why suppose, with Raz, that they *exclude* conflicting reasons? One answer is that, having made a promise, such reasons will, within certain limits, count for nothing - they will have *no* weight. This means more

than that they should be disregarded, although it is normally true that they should be disregarded, for it usually isn't appropriate to deliberate about what harm would be done if one broke a promise. However, Raz notes that there is nothing wrong with *thinking* about reasons excluded by a promise, it's just that it is not right to allow such reasons to guide one's action. The promise is a reason not to be guided by, not to act for, the reasons which it excludes. They are excluded not from thought but from any practical relevance. (Not all reasons conflicting with a promise are excluded by it, as when a trivial promise turns out to conflict with some very important reason, which may defeat it.)

It is worth comparing this with a remark by Bernard Williams. He says that obligations are connected with "what people should be able to rely on" and that "The institution of promising operates to provide portable reliability, by *offering* a formula that will confer high *deliberative* priority on what might otherwise not receive it" (Williams (1985), pp. 183 and 185, emphasis added). "High deliberative priority" isn't quite right. Williams notes that desisting from murder after giving some thought to it is not very good, and the same point is made in Raz (1990) (p.181). Likewise, people should normally keep their promises without deliberating about whether to keep them. (Perhaps deliberation about whether to keep a promise is only justified by considerations not known to the promisor when he promised.) So the promisee expects more than priority for the promise in the promisor's deliberations.

The point of a promise is, rather, that the promisee may regard the promisor's course of action as fixed and settled, within certain limits.<sup>3</sup> It is therefore rash for S to promise to do X if he does not know that he can do X, and he should not normally need to deliberate, after promising, about *whether* to do X. If there should be a clash with the promisor's other activities and resources, then the promise commitment would deserve a high priority in deliberation about resolving the clash. That is a conditional *consequence* of the commitment made by making the promise rather than, as Williams says, something *offered* in the promise. (If it was something offered, it should not worry the promisee if the offer were made explicit. Surely, it *would* be worrying to be told that the significance of the promise one had just received was that it would get "high priority" if it turned out to conflict with any other reason?)

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<sup>3</sup> Whatever doubt there may be about the extent of the reasons excluded by promises, they certainly exclude *desires* not to do the thing promised (Raz (1977) (irrespective of the description under which the thing is desired, one might add).

According to Raz, the promisee can rely on the promise because the exclusion of conflicting reasons is not conditional on their being less important than fulfilling the promise. Having promised, one should not then decide what to do on the balance of the fundamental reasons, such as the harm that will be done by breaking the promise, for the promise itself has to count for more than this allows. “It is not that people ought to keep their promises come what may. The presence of reasons of a certain kind will justify breaking a promise. ... [B]eing under an obligation is consistent with being at liberty to disregard it in certain circumstances, provided that one is not at liberty to disregard it whenever one finds that on the balance of [first-order] reasons it would be best to do so” (PR+N, pp. 140/1). The scope of the exclusion zone also determines the extent to which the promisee may rely on the promise.

This is part of how one is *bound* by the promise. The agent may be aware that the balance of first-level reasons points one way, but that he is obliged to go the other way. Then, “This conflict of the results of two levels of hierarchically related evaluations creates the sense of being bound against (one-half) of one’s own self (Raz (1977), p. 224).”

### *Peremptoriness*

Raz speaks of obligations as “peremptory”, which captures better than Williams’ “high deliberative priority” the priority which they give to the relevant actions. The nearest that I can find to an explicit gloss from Raz on “peremptory” is the following. “To justify a rule is ... to justify not acting ... on the balance of [first-order] reasons. It is to justify assigning a peremptory status to the rule” (Raz (1977), p.221). So, apparently, a peremptory reason is one sufficient to justify action against the balance of first-order reasons and, therefore, knowledge that one has a peremptory reason justifies acting on it without consideration of the balance of first-order reasons. (Compare Williams’ idea of an obligation’s having priority *in* deliberation.) When S knows that there is a peremptory reason, he knows enough to be justified in acting on that reason. Then, a protected reason (the combination of a reason to do X and exclusionary reasons for not doing X) can be peremptory, if the scope of the exclusionary reason element, the extent of the reasons it excludes, is wide enough. For the reason to be absolutely peremptory, it would seem that it must exclude

reasons of all the kinds which the agent should think could otherwise be relevant, to pre-empt any reason for him to check whether there are actual reasons of those kinds. Then, I suggest that, if he knows this much, he may act straightway on the peremptory reason without irrationality.

Raz also suggests that a reason's being peremptory has something to do with its being *pre-emptive*, one of Raz's concepts that I have not yet introduced. I discuss this below.

A different explanation of the peremptory and binding character of obligations would be that an obligation is always a *strong* reason. However, as Raz notes, this is not true to the facts, for we also have minor obligations. He mentions "the obligation to keep promises of a trivial nature, or some obligations of porters." (Raz 1977, p.223) That is, obligations do not trump all other reasons, and importance (or strength) is not the key to their distinctive character as reasons. They are minor if they exclude relatively few reasons, but they are obligations nonetheless, because they exclude *some* reasons. (So minor obligations are less likely to be peremptory, as the agent is more likely to have conflicting reasons which they do not exclude.)

Peremptoriness of a reason is a property of how it *should* figure in practical reasoning. If it is to figure in the ways described, it and its peremptoriness have to be recognised by the reasoner. This chimes in with some further points below about the need for certain kinds of recognition of obligations, if they are to count as obligations at all. It is one thing to agree with Raz that reasons are facts, existing independently of whether they are noticed, but another to accept this for obligations. This difference is implicit in Raz's remarks, noted above, about how obligations are validated by their place in intrinsically desirable forms of life in which people "create or acknowledge" the obligations. That our form of life *would* be improved by creation or recognition of obligations of a kind unknown at present does not imply that we *now* have those obligations, I shall argue.

### *Dependence and pre-emption*

Raz discusses these further concepts at length in relation to political obligation in Raz (1986). In Raz (1990) he briefly applies them to the earlier accounts of rules and obligations. Although I shall only discuss them in relation to political obligation, below, they apply to obligation in general.



### *Rules or principles which validate obligations under promises*

Raz claims that if there were no institution of promising, B could in effect make a promise to A, just by communicating to A “his intention to undertake by the very act of communication ... an obligation to perform an action and confer a corresponding right” (Raz (1977), p.214). That is, he believes in effect that we could make promises on a “DIY” (Do-It-Yourself) basis, if there were no established social institution of promising. This claim seems not to recognise the complexity of promises. When we use this social institution, we are aware that it includes provisions about the scope of the obligation, concerning the circumstances in which the promisor is excused, the promisee's rights to compensation and the promisor's inability to revoke the promise. (However else a promise may be invalidated or lapse, there is never a way to revoke a promise.)

These scope provisions are not mentioned in Raz's DIY formula for promising. It is implicit in the very notion of obligation that there are some such limits, but not where they lie. It is unlikely that one could work the limits out for oneself, from scratch, as it is unlikely that they could or should only have lain where they now lie. This takes us back to Raz's claim that the complete reason why one should keep one's promises includes as an operative reason the fact that there is a valid principle (“PO”) that one should keep one's promises. The point to note now is that any such PO principle is relative to the particular social rules in force for promises from time to time. He says that we do not “‘produce’ an obligation by any form of magic”: promises are validated as special bonds in intrinsically desirable forms of life. It therefore seems that validity is not governed by reference to ideally-defined promises: our actual promises, defined by our actual social rules, are made valid by their place in desirable forms of life. It hardly matters how valuable they would be to other folk, so the test must be whether they are valuable in our actual form of life. (We had better assume that it is desirable.)

When we get to political obligation, it will be seen that Raz's main test of *its* validity is whether we conform better with reason by complying with authority's directives than by acting independently of them. Nothing is made there of the value of such bonds in our form of life. *A fortiori*, nothing is made of the terms of the bonds. If the analogy with promising were good (as Raz implies it should be in Raz

(1977) by saying that *all* obligations depend for their validity on their value in forms of life), it would follow that a sharper test of the validity of political obligations could be obtained by applying the result of the previous paragraph. That is, we would have to take the terms of the obligation *as they were actually understood* in social life, and consider the value of obligations *on those terms* in our form of life. The test would not be based on some ideal notion of political obligation. This is very close to saying that political obligations are valid only to the extent that they are generally recognised and, so, that we are only bound by them to the extent that we consent so to be bound, something Raz entirely denies. This claim could be made in relation to society in general – that general acknowledgement is necessary for the obligation to be valid. However, why would your recognition of them make them intrinsically valid in my form of life? Should one require acknowledgement by each individual who is to be bound? That is too lax, for my form of life is one I share with others, the question is whether the bond is recognised in that form of life, and I do not have sole authority as to that. (To end this story with a valid general obligation under the laws of the state, it would be necessary that each person partook in a form of life which spanned the state, and I do not know what that would amount to.)

### *Obligations in general*

The account of obligation in general given in Raz (1977) is presented as a development of his account of the obligations created by promising. The development is made by generalising from the PO principle, the one which Raz said validated promise-obligations and was itself validated by the (instrumental) value of being able to rely on promises and the (intrinsic) value of promise-obligations forming a strand in personal relations. Raz's generalised principle is that for any putative obligation to be valid – to be a real obligation - it must be entailed by some valid principle or rule. The principle or rule must also be a categorical one, as is the PO principle – the values which justify it must be independent of the obliged agents' goals and desires. For example, we are obliged not to tell lies, because the principle "Don't tell lies" is itself validated by values similar to those which validate the PO principle (say, by the utility of warranted trust and by the intrinsic value which trust has in personal relations). So, behind any obligation, there is a valid categorical rule or principle.

Generalising from Raz's earlier name for the principle behind promises, the "PO" principle, I shall call a principle of obligation an "O" principle, whether it is valid or not. Then, using a formula used by Raz elsewhere, his account is that S has an obligation to do X in C circumstances (C is a *type* of circumstances) iff:

- (a) there is a valid O principle which entails that there is a categorical reason for S to do X in circumstances C; and
- (b) S is in C circumstances.

On Raz's account, conditions (a) and (b) are each necessary and they are jointly sufficient for S to have an obligation to do X. Obligations under promises are an instance of this general formula: PO is an instance of O, and having made a promise is an instance of C. The formula is consistent with obligations being *defeasible*, because it leaves open the possibility that, in S's particular circumstances, he has other reasons not to do X which defeat the reason to do X given by the obligation, being neither outweighed by it nor excluded by the reasons that defend it.

### *The defeasible "ought"*

Raz holds that even when an obligation is defeated by other reasons it may be true that one *ought* to fulfil it, because he treats "ought to do X in circumstances C" as being logically equivalent to "there is a reason to do X in circumstances C which is not defeated by other reasons in *every* case of C" (Raz (1990) p.213, emphasis added). That is, "ought" is not "ought, all things considered". However, as indicated, he holds the same to be true of reasons too. So, when there is a defeated reason to do X and a defeated obligation to do Y, it is equally true that one ought to have done X and that one ought to have done Y (assuming satisfaction of Raz's "every case" proviso just mentioned). Yet, there is a sense in which it is worse when an obligation is defeated than when a reason is defeated. Something is wrong when an obligation is defeated – that should not normally happen. If someone regularly has good reason not to fulfil his promises, there is reason to suspect that he is being careless either in his promising or in how he manages things after he makes a promise. There is nothing to explain this in the bare bones of the categorical, protected reason account of obligation. I do not see what is missing, but there seems no reason to doubt that, whatever the extra factor is, it could be added to the account as it stands. (Perhaps the extra factor is to do with a requirement on all agents to avoid the forms of carelessness mentioned.)

### *Categorical reasons and forms of life*

As noted above, Raz says that it is in virtue of the place in intrinsically desirable forms of life of the special bond created by a promise that PO is a valid *categorical* principle (Raz (1977), p.228). An equivalent claim is implicit for obligation in general. There is no argument for these claims, and they can only be taken as an interesting hypothesis. Raz's discussion shows only that there being a place for a certain bond in intrinsically desirable forms of life is one way for there to be a categorical reason to do what one is bound to do. Until the final page of the 1977 paper, Raz's account is that a PO principle (and, more generally, an O principle) is validated just by being a categorical reason. However, this is not enough for the account to track accurately our concept of obligation. Consider my categorical reason to eat in order to survive. This is a good reason, whatever my goals and desires. Yet, I only have an *obligation* to eat in order to survive if others depend on my survival, such as a young family. Apparently there is only an obligation if there are other-directed reasons – it is not sufficient that the reason be categorical. Perhaps Raz is right that these other-directed reasons are associated with bonds which make our form of life more valuable, and that the latter is indeed the fundamental idea in obligation, but, again, as he has presented this, it is no more than an interesting speculation. In chapter 2, I consider a little evidence that may be strong for political obligation and therefore for obligation in general.

## Chapter two: Raz's account of political obligation

### *Introduction*

Raz's fullest account of political obligation appears in Raz (1986). This develops the account of reasons, norms and rules in Raz (1975), which also includes an early account of authority. Most of the new material on obligation in Raz (1977) is not incorporated in the account of political obligation in Raz (1986). Below I consider inconsistencies between the 1977 account of obligation and the 1986 account of political obligation.

Raz (1975) tells us that laws are rules, a species of norm, which, if valid, are (a) reason to do what they require and (b) exclusionary reasons which "defend" those reasons by excluding some or all of the reasons with which they conflict (section 4.3). Valid laws therefore are *protected* reasons. This can be traced from the thoughts about decisions noted above, concerning how decisions also create protected reasons. In one argument for finding the same to be true of rules, Raz notes that an accepted rule (e.g. "Do X") figures in an agent's practical reasoning somewhat like an earlier decision (e.g. "to do X"). This holds irrespective of whether he ever made a decision to follow the rule or was led into following it through upbringing or just drifted into following it (Raz (1975), p.71/3). Expressing a similar thought, Raz also says that rules "represent a partial conclusion concerning what ought to be done in certain situations, bringing together various, sometimes conflicting, considerations" (Raz (1977), p.223). The thoughts are similar in view of the similarity between reaching a conclusion and making a decision: both result in forms of commitment, and typically result from deliberation.

Clearly, laws are rules, so this leads to the emphasis in Raz (1986) on how valid laws, too, may be reasons. However, this is a shorthand: "Since rules are objects and only facts are reasons rules are not, strictly speaking, reasons. The fact that there is a rule that p is a reason and not the rule that p itself" (Raz (1975), p.51).

According to the 1986 account, any authority is normally to be justified, if it is justified, based on the *reasons* which its requirements give to its alleged subjects. It is further argued that justified authority can create *duties* or *obligations* for its subjects. (In the work I have studied, Raz does not distinguish between obligations and duties. He uses these words inter-changeably. In Raz (1977) he says that he "will make no

attempt to draw a systematic distinction between them” (p.210).) The 1986 explanation of how authority creates duties leaves out much of the account of obligation in Raz (1977). However, before trying to find out what has happened to the 1977 material, I shall explain the 1986 account of political obligation in more detail.

Raz (1986) presents several “theses” about authority, two of which (the “normal justification” and the “dependence” theses) appear the most fundamental, in that they “present a comprehensive view of the nature and role of legitimate authority.” These theses also “articulate the service conception of the function of authorities, that is the view that their role and primary normal function is to serve the governed. ... [Their role] is to help [the governed] act on reasons which bind them” (at pp.55/6: for the time being, all page references will be to Raz (1986) except where otherwise indicated.) (When Raz speaks of claims to have authority and of A’s having authority, in either case, “authority” means “legitimate authority”, which is to say “authority whose claims are (up to some point) valid”. To say that X is an “illegitimate authority” is either contradictory or, when it is claimed that X is an authority, it is a denial of that claim.)

Comments on p.23, along with many others, indicate that in such a context Raz uses “bind” or “bound” when he is speaking of the binding character of obligations, so “reasons which bind” are obligations. Therefore, according to the service conception, the role of government is to help its subjects fulfil their obligations. However, it is also said that government can convert what are merely sufficient reasons *into* duties (p.60). So, “to help [the governed] act on reasons which bind them” is misleading in its suggestion that all these reasons were already binding before the government started helping us. There is much else in the account to suggest that Raz does indeed see the role of government as being to help subjects conform with reasons, in part *by* making those binding on the subjects. To get things clearer, we need to work through Raz’s views on the character of the reasons which valid laws represent for those subject to them. In a moment, I shall discuss in turn each of these two theses which Raz says articulate the service conception.

Before that, it may be helpful to note something Raz later said about the style of presentation of these and other theses in Raz (1986). “No full-fledged moral argument is called for at this stage. What is required, and what I attempted to provide, is an account which shows how the various features of authority hang

together (the service conception), how they are free from objections, and how they capture the most important features of the concept [of authority] as we know it ...” (Raz (1989), p.1185).

As a final preliminary, I should note that Raz defends the thesis of the “correlativity” of authority and political obligation. That is, he holds that these are two sides of the same coin: authority is valid to the extent that its subjects are obliged to conform to its directives. Whether this is correct is an issue I shall consider only briefly, near the end of the chapter. My interest is in Raz’s theory of political *obligation* – what are the conditions for being obliged to obey the law. The significance of Raz’s adoption of the correlativity thesis is that whenever he speaks of political authority he speaks of some person’s or institution’s capacity to issue a directive which its subjects have a (possibly defeasible) obligation to obey just because they are its subjects. (The idea derives from Hart’s idea of a content-independent reason. The subject is given the reason not because of the content of what the authority requires but just because this is what it requires (Raz (1986), p.35).) Mostly, I shall follow Raz in this, speaking of authority as the obverse of obligation to obey. Thus, when I discuss the conditions for authority I am in fact discussing the conditions for someone or something to have the capacity to issue directives which someone else, over whom the “authority” may be exercised, is obliged to obey.

Later, I briefly consider evidence in Raz’s account which counts against the correlativity thesis.

### *Normal justification thesis (NJT)*

The NJT is a thesis about the justification of any authority, political or otherwise. Towards the end of Raz (1986), Raz says the following, which is a helpful gloss, applying the NJT to political authority: “... that the state considers something to be valuable or valueless is no reason for anything. Only its being valuable or valueless is a reason. If it is likely that the government will not judge such matters correctly, then it has no authority to judge them at all.” To this is attached the following footnote: “This is the burden of the normal justification thesis ... “ (page 412).

The “official” statement of the NJT is that “the normal way to establish that a person has authority over another person *involves* showing that the alleged subject is

likely better to *comply* with reasons which *apply* to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them rather than by trying to follow the reasons which *apply* to him *directly*” (p.53; the original text is all in italics). This key text is not entirely clear, so I shall attempt some exposition, concentrating on the words left in italics above:

(a) “involves” makes it unclear whether the indicated method is only a necessary part of a normal justification or is the essence of the normal method of justification. Raz speaks of “justification in accordance with the NJT”, as though it were more than a necessary condition (e.g. p.90), but it is clear from its place in the full theory that it can only be a necessary condition. This is confirmed in Raz (1989): “compliance with the normal justification is not sufficient for the legitimacy of an authority. One also needs to show that there are no defeating contrary reasons. [In particular] ... the matter (over which someone is said to have authority) [must not be] one on which it is more important that people should decide for themselves than that they should decide correctly” (p.1180). Again, “If both the [NJT] and the condition of autonomy are fulfilled then, in general, the alleged authority is legitimate” (Raz (1989), p.1181). (This last remark also confirms that the NJT is not meant as a statement about good technique for persuasive demonstration that authority is justified. It concerns the conditions for someone or something to have authority.)

(b) This use of “comply” does not accord with Raz (1975), since for purposes of “normal justification” it is not relevant to consider how well the subject acts *for* “the reasons which apply to him”. (In the 1975 terminology, the question is whether it is likely that, by accepting the directives of an authority, the subject will *conform* better with reasons etc.)

(c) The second time it is mentioned, the phrase “reasons which apply to him” means “all reasons other than the directives”. (In both these uses of the phrase, “which apply to him” adds little, except that if it were deleted we might mistakenly read “reasons” as “some reasons”.)

(d) The hint in this text that authoritative directives are themselves reasons raises the “double-counting” problem, which Raz addresses in his *pre-emption* thesis (see below).

(e) “directly” seems misplaced: I have not seen anything elsewhere in Raz about direct versus indirect application of reasons, so I doubt that “directly” should



qualify “apply” as it might be thought to here. Raz speaks elsewhere of the acceptance of authority as an “indirect strategy” for better conformity with reason (e.g. at p.51). It is likely that we have the same thought here, in which case the minimal change needed to clarify the text would be to re-order the words so as to read something like “rather than by trying directly to follow those reasons ...”.

So there is reason to prefer the following later gloss on the thesis to the above official statement: the NJT is a claim “that the normal and primary argument for the justification of authority must show that conforming to its directives is more likely to lead one to conform better with reason than acting independently of it would” (Raz (1989), p.1179).

This is very close to saying that for S to have authority over T is for S to be a good guide for T. I explain below Raz's view of how these two statements in fact differ (under the heading “*The recognitional concept of authority*”).

The NJT develops a remark in Raz (1975) about the reasons for having any authorities: these “must always be reasons to have the matter decided by someone else. This is, typically, either because there is reason to change the reasons confronting the agent (e.g. for him to escape from a Prisoner's Dilemma-type situation) or because he is more likely to conform to reason if he does not attempt to work out what reason requires but follows someone else's more expert judgement” (p.193). In Raz (1986), much emphasis is also placed on a third kind of “typical” circumstance, namely the reason to have a convention established or supported as a solution to a problem of social coordination. So, he identifies three kinds of circumstance in which it is likely that reason is better served by following authoritative directives than by ignoring them and in which, therefore, it may be possible to justify authority in accordance with the NJT: Prisoner’s Dilemmas, coordination problems, and expertise deficits.

The NJT is a thesis concerning how to justify authority relative to each of the separate subjects of the authority: to be generally justified, an authority would have to pass the test for each of its requirements for each of its subjects. The NJT evidently admits the possibility that authority may be justified for some subjects and not for others. Raz claims further that “the normal justification thesis invites a piecemeal approach to the question of the authority of governments, which yields the conclusion that the *extent* of governmental authority varies from individual to individual ... (p.80,

emphasis added).” In this further claim, the new thought about the “extent” of authority concerns *how many* of the authority's requirements each subject is obliged to try to follow. Raz does not claim that variations in the extent of authority are merely variations in the *stringency* of obligations which are universally binding to some degree. That it, the justification of authority need not be all or nothing in relation to each individual subject. It is possible for *some of the requirements* of an authority to be justified while some are not, and the requirements need not divide in the same way for each person subject to them.

In Raz's examples of the piecemeal character of political authority, he considers individuals who know better than the legitimate authority what to do about some matter. In one example, an engineer is well able to make his car fit for the road without being guided by the law on car-safety (p.178). He can safely break some of these laws, so he may do so. The general claim as to the piecemeal character of political authority can be put as follows, in terms similar to those of the NJT: the government has authority over an individual *over matters regarding which* that individual is likely to conform better with reason if he accepts the requirements of the government [etc.].

So, the focus is on the relation between each subject and the authority. *I* am bound to obey to the extent that obedience makes *my* actions more likely to be reasonable. If the engineer were to tell his friends how to make their cars safe without full compliance with the law, on the Razian account it might seem that they too would be under no obligation to obey the law in those details, for, in fact, conformity with the law would not make it more likely that they conformed with reason. Pushing at the bounds here, this might seem to follow from the NJT even if the engineer's friends do not *know* him to give reliable advice on car safety, so long as he does in fact give them good advice. However, this would be a mistaken interpretation of the NJT. As for the engineer, so for each of his friends: the NJT test of authority focuses on each individual's performance, with and without guidance from the authority. In making the test, the proper comparison is between the outcome if he is guided by the law and the outcome if he follows reason independent of the law. Blindly following an engineer whom one does not know to be reliable would be to follow neither reason nor the law.

Raz is surely correct that the NJT supports a piecemeal approach to political authority. However, other aspects of his account of political authority pull in the

opposite direction. I shall return to the piecemeal/general issue after introducing those other aspects later on.

Having explained the NJT and some of its consequences, I now turn to the other fundamental thesis.

*Dependence thesis (“DT”)*

This is that “all authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive” (p.47). As Raz notes, this thesis is close to the NJT. If NJT is correct, then DT “merely claims that authorities should do that which they were appointed to do.” (More literally, it is that NJT implies that DT claims that authorities should do that which they have authority to do.) While if DT is correct, NJT “merely states that the ... justification of any authority has to establish that it is qualified to follow with some degree of success the principles which should govern the decisions of all authorities” (p.55).

The reasons on which directives are based are called “dependent” reasons, as are the reasons given by the directives themselves. I shall call the former reasons “depended-on”, to avoid confusion. Of the kind of reason which we are both calling “dependent”, Raz says that such a reason “is not one which does in fact reflect the balance of reasons on which it depends: it is one which is meant to” (p.41). This is apparently because authoritative requirements may be valid reasons to do what is required even when the authority gets it wrong, so long as authority usually gets things right. Authority may be a better judge than its subjects without being infallible. When it slips up, and subject S is unable to identify the case as of a type such that authority is more likely than he to err in cases of that type, then S is still obliged to obey. The authority has therefore succeeded in giving him a dependent reason, even though that reason fails to reflect correctly the balance of the reasons on which it depends.

Here it is worth noting that it is a *balance* of underlying reasons which is said to be depended-on, not just the reasons which individually support the dependent reason. On p.42 and again on p.60 Raz also confirms that it is the balance which is *pre-empted* by a dependent reason. Therefore, dependence and pre-emption cover reasons both *for and against* what authority requires, when these are included in the

balance of reasons which is the basis for justifying the requirement. This is an important difference from the treatments in Raz (1975) and (1977), which I follow up below.

*“No difference” thesis*

This is a thesis denied by Raz, according to which “the exercise of authority should make no difference to what its subjects ought to do, for it ought to direct them to do what they ought to do in any event” (p.48). At this point, his arguments are all framed in relation to *political* authority. He argues that denying the no difference thesis is consistent with upholding DT, for (in relation to law) the law makes a difference to people's reasons even though it is based on reasons which, in the logical order, pre-date it (pp.48-51). That is, the law gives us reasons which make a difference to what we should do, all things considered, even though they are dependent reasons. The first two of his three lines of argument rely on the difference between “based on” and “identical to”. The third notes that a law which makes a difference may be based on independent *reasons to change our reasons*. I try to examine these and related issues closely because the discussion in Raz (1986) of the “no difference” thesis and of the *dependence* and *pre-emption* concepts is, I shall suggest, flawed or at best unclear. This is worth clearing up in order to establish, as I claim can be done, that the problems can be fixed without undermining the key ideas in Raz’s accounts of reason and obligation. The three lines of argument are as follows.

First, the law can be appropriately based on a reason which under-determines what the law should require. For example, there may be a reason for there to be a law of a certain sort, and there may be several eligible laws of that sort, but it may yet be that “reasons are insufficient to establish the superiority of one option over the others” (p.49). If we also have reason to have a single such law, then, within the limits of the reasonable options, we have reason to obey whichever law authority chooses. Raz offers the example of a law concerning when tax payments are to be made: within limits, it doesn’t much matter when we pay, but there need to be some rules, if only for administrative reasons. Therefore, authoritative promulgation of any suitable set of such rules gives us new reasons about when to pay our taxes, which depend on the reason that there need to be some such rules.

Secondly, a law may be justified by its contribution to the solution of a coordination problem (e.g. traffic codes). Although Raz does not say so, this is an instance of the more general kind of “under-determination” case mentioned in the previous paragraph. When we need to adopt a new convention and none of the most eligible options is best, we may look to government to break the tie. Then, an authoritative requirement that we support the selected convention gives us a new reason. We already had reason to adopt some one of the suitable conventions, now we also have reason to adopt one of them in particular.

Thirdly, law may change the situation of people in a “Prisoner’s Dilemma”. That is, in their *ex ante* situation, they have reason (call it a “meta-reason”) for their reasons to be changed. A law which changes their reasons will provide new reasons which are based on the meta-reason. Here, the law validly “makes a difference” just *because* there is a reason (on which the law is based in accordance with the dependence thesis) to have a new law which would make a difference to our reasons.

#### *The recognitional concept of authority*

This is a notion rejected by Raz in arriving at the “no difference” thesis. It is an alternative explanation of the three kinds of apparent difference considered above (although Raz discusses it only in relation to the second kind of difference, that which he says is made by laws supporting conventions). This rejected notion is that “authoritative utterances are reasons, but they are reasons for belief, not for action” (p.29). “Practical authority is ... theoretical authority concerning belief in deontic propositions” (p.30). That is, utterances of practical authorities “are not themselves reasons for action ... . They merely provide information about the balance of reasons as they exist separately and independently of such utterances” (p.29). Raz considers that this notion implies the “no difference” thesis, and is therefore false along with the no difference thesis. (Again, as with the no difference thesis, this discussion focuses primarily on *political* authority.)

Raz claims that there is at least “one central function of authority which the recognitional conception cannot explain” (p.30). This is the “tie-breaking” role of authority in selecting among equally suitable conventions (the second of the three areas considered above in which Raz claims that laws can provide new reasons). “[I]f their action is regarded as a reason to adopt that course of action, then a successful

resolution of the problem is found. Since solving coordination problems is one of the important tasks of political and many other practical authorities, and as their relative success in it can *only* be explained by regarding authoritative utterances as reasons for action, one must reject the recognitional account of practical authority” (pp.30/1). The crux here is whether “*only*” (which I italicised) is correct.

It has been claimed that authority can also meet this need if its pronouncements are accepted as good reason for thinking that such-and-such will shortly become a convention (Green, pp.111/5). This could be just because each of us generally knows that we will all usually adopt conventions prescribed by government, perhaps for the very reason that we know this. Then the recognitional concept can explain why we have reason to do what government requires: we take the requirement as evidence that it will be conformed with, and we take the likelihood of *that conformity* as our reason for conforming. So, it is not *only* through acceptance of its practical authority (defined as its capacity to issue directives which, of themselves, give us reasons to do what we are directed to do) that we can take a useful lead from government. If this is sound, as it seems to be, Raz is wrong in claiming that our readiness to take a lead from authority in such matters shows that we take ourselves to be given reason to do X by the mere fact that authority issues a directive that we are to do X.

Later, in acknowledging Green’s views at p.50, Raz says that “Conventions can arise in other ways and authorities can do other things. But one way of generating and protecting or stabilising conventions is by authoritative intervention. Sometimes it is the best or even the only feasible way.” This is weaker than the earlier claim (pp.30/1), that government’s success at solving coordination problems can *only* be explained by regarding authoritative utterances as reasons for action. Apparently, the earlier claim is incorrect. He offers no argument for this weaker claim. Even if it is accepted as correct, it would only establish that there are *some* occasions when government gives us new reasons for acting; “action-reason-giving” might then only be a marginal function of government.

Raz’s argument depends on cases in which actual conventions could only have been introduced by authority giving us new reasons for acting: his separate claim that this may sometimes be the *best* method of introduction is not directly relevant to the proof, which he seeks to offer, that we do, in fact, take authoritative requirements to

be action-reason-giving. Whether, regardless of this, we *should* take authoritative requirements to be action-reason-giving is another matter, to which I return below.

Raz's other two arguments against the "no difference" thesis might also be re-deployed against the "recognitional" concept (that law is worth following but only as a guide to independent reasons), but as redeployed they would remain open to similar objections. Argument one, "under-determination of law by reason", is a generalisation of argument two, whose refutation may itself be generalised. Argument three, "Prisoner's Dilemmas", would fail because government can resolve such dilemmas in cruder ways, e.g. by imposing a system of rewards and punishments.

Raz's view that expertise also justifies the law is no help to him here. It would be natural to treat expertise-justified law merely as a sign that independent reasons will be served by conforming to the law, those being the reasons which moved the experts.

All this leaves it open whether laws give us *obligations*, rather than mere reasons. In fact, Raz later acknowledged that the arguments against the no difference thesis noted above could only establish that law gives us new reasons, not that it gives us obligations (Raz (1989), p.1189). In making this acknowledgement, Raz offered a new argument for why valid legal authority *obliges* us. In this later discussion, he argues against the view that laws are "indicator rules", which is substantially the same target as that of his previous argument, the "recognitional concept". In his overall account of political obligation, there are several independent threads concerning how we can be given obligations rather than mere reasons, and I look at these threads together below, but it is best first to consider here the new argument against the "indicator rule" conception, as it builds on the argument against the recognitional concept.

Raz here makes the new claim that, in issuing directives about solutions to coordination problems, governments exercise authority and impose obligations to the extent that their subjects follow a valid rule that they should conform with such directives. It is valid general rules about how to respond to specific directives which make those directives binding as obligations. If such rules are generally adopted, we have a "coordinative practice". Then, it is a question of fact whether such coordinative practices are justified, whether the rules are valid. (The rules are "O principles" in the terms in which I discussed Raz's account of obligation in chapter 1.)

This turns on the value of having “a coordinative authority ... capable of authoritatively determining when there is a coordination problem and what to do about it ... . Such practices ... are rules which justify the legitimacy of an authority (within proper bounds) in accordance with the [NJT]. They enable all of us to solve coordination problems better than we might when we try to judge for ourselves ...” (Raz (1989), p.1193).

The idea of such a general rule, governing our response to what authority requires and validating those requirements if they are valid, clearly pulls somewhat against the piecemeal approach to authority of 1986. I return to this later. I conclude below on what Raz achieves by this new notion of a rule and a coordinative practice. (Briefly, it seems not to be an essential part of the obligation/authority relations between the governed and their government, but if there is such a rule it would play a role in validating the authority of the government.)

### *Pre-emption thesis*

If laws are both dependent reasons and make a difference, there is a potential double-counting problem when weighing up the overall strength of the dependent and depended-on reasons. This problem is to be solved by the pre-emption thesis. “The whole point and purpose of authorities ... is to pre-empt individual judgement on the merits of a case” (p.47/8). The thesis is that “authoritative reasons are pre-emptive”, in that “the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.” (p.46. All of the text in the third quote is italicised in the original.) By excluding and taking the place of the other reasons, it pre-empts them. Note that the pre-emptive reason is said to pre-empt *and exclude* all other reasons that are *relevant* to *assessing what to do*, and not just those reasons which, individually, support the pre-emptive reason. (This echoes the statement noted earlier that dependent reasons depend on a *balance* of reasons, not just on reasons by which, individually, they are supported.)

Raz derives the pre-emption thesis from the NJT and DT, through the need to avoid double-counting, as follows. From the denial of the “no difference” thesis, dependent reasons to do what authority requires make a difference to what a subject ought to do, but from the “dependence thesis”, those reasons are based on “depended-



on” reasons, from which they “derive their force”. “Whatever force they [the dependent reasons] have is completely exhausted by those underlying considerations”. (In Raz (1977), the same notion is described as a “relaying” of the force of underlying reasons to what the later text calls “dependent” reasons.) Therefore, depended-on reasons “are replaced rather than added to by [the reasons given by authoritative directives]” (p.59). It would be a mistake to add all these reasons together in order to assess what to do, because that would lead to double-counting, given that the dependent reasons derive all their “force” from the depended-on reasons. Hence, the dependent reason “pre-empts” the depended-on ones, the latter are therefore excluded from the count, and there is no double-counting.

I need to look closely at the concept of pre-emption, because its relation with the multi-level account of reason is not clear. Does “exclude and take the place of” imply that pre-emptive reasons are, as such, exclusionary? If not, Raz has been careless, given the prominence of exclusionary reasons in his writings. If it does imply that they are exclusionary, this is problematic, for it would follow that a law requiring one to do X is a reason for not doing X for any other reason. Pre-empted reasons, it is said above, are to be excluded when one is “assessing what to do”. By considering examples, I try to show below that this leads to nonsense.

Some of the material quoted above in explaining “reason pre-emption” conflicts with Raz’s (1975) and (1977) accounts of exclusionary reasons. In this earlier work, rules or obligations and, in general, any exclusionary reason, were said to exclude only the reasons which *conflicted with* the reason defended by the exclusionary reason. E.g. “The fact that [there is] a valid rule that one ought to  $\phi$  is both a reason for  $\phi$ -ing and a reason for not acting for certain reasons for not  $\phi$ -ing” and “[such a fact] is a reason for not acting on certain conflicting reasons, and this explains its independent force as a reason” (Raz (1977), p.221).

In trying to sort this out, I need to return to the account of reason. I noted in chapter 1 that this would be delayed until later because nearly all the relevant material on pre-emption from Raz is embedded in his account of political obligation.

*Is pre-emption the same as “exclusion”?*

In the 1986 book, Raz says that pre-emptive reasons “exclude” all the reasons reckoned in arriving at the balance of reasons on which they depend. If this translates

directly into the old language, a pre-emptive reason is (really, “is in part”, but I shall simply say “is” in what follows) a second-level reason not to act either for the reasons which conflict with it *or* for the depended-on reasons which support it. This is, on the face of it, bizarre: it would follow that a law against sending children up chimneys, if a valid law, is a reason *not* to refrain from sending them up chimneys for the reason that it is cruel – one should only refrain from sending them up chimneys because the law so requires. The thinking would be that “That sending children up chimneys is cruel” is a reason weighed by authority along with other reasons, such as economic and personal autonomy reasons, in arriving at the law. The whole package of those depended-on reasons is excluded by the reason given by the law, and therefore, the law is a reason not to act for any of those depended-on reasons. Therefore, if the law against sending children up chimneys is valid, it is irrational to refrain from doing that for the reason that it is cruel.

This is clearly nonsense, but what has gone wrong? Substantively, there seems to be some confusion between the effect of there being a valid law on (a) the reasons which a judge in his robes may weigh and (b) the reasons for which an ordinary agent may rationally act. Formally, the problem is the notion that pre-emptive reasons exclude *for all purposes* the depended-on reasons which individually *support* the pre-emptive reason (call these “supportive depended-on reasons”).

I hoped for enlightenment by following up the two references in Raz (1986) to the treatment of pre-emptive reasons in his earlier work. However these are not helpful. One of these references is dealt with below, in relation to obligation. The other is as follows: “In ch. 1 of [Raz (1979)] I explained some of the formal features of pre-emptive reasons” (p.42) It is difficult to assess this, as the term “pre-emptive reason” does not appear in ch. 1 of Raz (1979). There is a discussion of *protected* reasons (the combination of a reason to do X and reasons that exclude reasons *not* to do X). These lie in the same territory as pre-emptive reasons but are not, on the face of it, the same for it was not claimed in the earlier work that protected reasons also exclude supportive depended-on reasons. However, if Raz in fact identifies protected and pre-emptive reasons, then when he speaks of pre-emption as a form of exclusion he is invoking his earlier concept of exclusionary reason. I now consider this further, working up to the conclusions that the new claim about the pre-emptive reasons given by the law is only half-correct - a more restricted claim about the pre-emptive character of those reasons should be made. They exclude supportive reasons only in

certain contexts, such as some contexts in which an attempt is made to provide a justification of the pre-emptive reason.

At p.41/2, in the course of remarks intended to give us a first look at pre-emption in relation to authority, Raz considers the process of arbitration. He says that the authority of an arbitrator's decision implies that, once the parties to the arbitration have his decision, they are at liberty to *think* about the pre-empted reasons but not to act on them: "It is merely action for ... these reasons which is excluded". Also, "Because the arbitrator is meant to decide on the basis of certain reasons, the disputants are excluded from later relying on them." Thus the arbitrator's decision excludes *all* the reasons considered by the arbitrator in arriving at his decision. This seems to make better sense than the corresponding claim about reasons excluded by law against boy sweeps. Why the difference?

#### *Amending the definition of exclusionary reasons*

The problem is an obscurity in the notion of exclusionary reason. The original definition (noted above, from Raz (1975) is: "An *exclusionary reason* is a second-order reason to refrain from acting for some reason." This is too easily misread as "An exclusionary reason is a reason not to perform *any* act for *a certain* reason". Going back to the beginning of the story on exclusionary reasons, my self-denial reason only excludes *eating* for the reason that I am hungry. There are other acts whose performance for the hunger reason is not excluded by self-denial, such as going to look fondly at some food, or buying food now in order to eat it after the fast is over.

Raz's focus is often on the exclusion of *reasons*, but it seems that, in fact, an exclusionary reason excludes something more complex, namely *certain actions for certain reasons*, things which form a set of ordered pairs.<sup>4</sup> More accurately, it should be "certain actions for certain reasons, or for any reasons, or for no reason". As regards "no reason", suppose I carelessly waive my arm – I was just squirming, but it starts a riot. It would be reasonable if the law against breach of the peace excluded this negligent act (I don't know whether it does), which I performed for no reason in

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<sup>4</sup> Raz speaks both of exclusion of reasons and of actions: e.g. "q [an exclusionary reason] is a reason for not  $\phi$ -ing for the reason that p" and "exclusionary reasons may vary in scope; they may exclude all or only some of the reasons which apply to certain practical problems" (Raz (1977), p.40). However, unless as I claim he thinks of exclusion of *reasons* as the basic idea, it is odd that after the second of

dangerous circumstances. Clearly, we are as apt to be in breach of obligations through negligence, perhaps because of actions (or bodily movements) for no reason or because of inaction, just as much as through *actions for excluded reasons*. The law must *exclude* “acts for no reason”, and not merely provide a reason for not doing the thing in question, in order for there to be a legal *obligation* not to be negligent in this way. Also, if there are to be any legal obligations not to be negligent by virtue of inaction, the law must exclude negligent “inaction for no reason”, and not merely provide a reason for doing the thing in question. (We have already noted that there can only be an obligation when there are exclusionary reasons.) Therefore, in the logic of exclusionary reasons there must also be a place for reference to *specific types* of action and inaction, and not merely places for referring to action in general and to *specific reasons*.

Raz’s notion that pre-emptive reasons exclude all their depended-on reasons goes too far. As regards the law, I suggest that the reasons given by law exclude the following kinds of *action/reason complexes*. First, they exclude *performance of proscribed actions and omission of required actions for a wide range of reasons or for no reason*. The reasons thus mentioned in the exclusion will be reasons against doing what the law requires or reasons for doing something inconsistent with what it requires – no *supportive* depended-on reasons will be excluded under this head. (As mentioned above in relation to the reasons excluded by promises, the exclusion most obviously covers action/(inaction) for the reason that one *desires* to do/(not to do) the thing proscribed/(required).)

Second they exclude certain kinds of justification, based on certain reasons. (Here, “justification” refers to the activity of justifying something.) Excluded is (i) any justification of actions *conflicting* with the law by appeal to a wide range of reasons, and (ii) in certain contexts only, justification of actions conforming with the law by appeal to supportive depended-on reasons. (ii) would apply to legal procedures of adjudication and to justification by private citizens which appealed to supportive depended-on reasons which, in Raz’s example, had already been weighed by the arbitrator whom they had appointed. It is not likely to exclude cruelty-based justification of refraining from sending children up chimneys. (The basic idea in (ii)

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these quotes he did not go on to acknowledge that the “scope” of exclusion may also be limited to just some *actions* which might be performed for the excluded reason.

is that we have to avoid double-counts of reasons, and conflicts with valid authoritative rulings, but I do not see how to state general principles for applying (ii).)

Within (ii), it is unclear whether there need to be two distinct kinds of pre-emption: (a) pre-emption of one reason by another reason and (b) pre-emption of a person's judgement by his recognition of a reason. Raz sees pre-emptiveness as a property of reasons as such, so, presumably, he would want to reduce (b)-type pre-emption to (a)-type pre-emption. However, reduction might be as successful going in the opposite direction. Supportive depended-on reasons are always excluded once *appeal* is made to the reason which depends on them, in order to avoid double-counting. Pre-emption has emerged as a solution to the double-counting problem. It seems that it may be *recognition* of a certain reason which pre-empts *those who recognised it* from also weighing the depended-on reasons in their practical judgement. That is enough to solve the double-counting problem.

In Raz's arbitration example noted above, it may be the recognition of the dependent reason by the participants which is pre-emptive. It is not clear that anyone not a party to the arbitration should, in reaching his own view about what should be done, ignore reasons on which the arbitrator has depended. Certainly, as Raz sets up the example the participants have special reason to defer to the arbitrator: "He has authority to settle the dispute for they agreed to abide by his decision" (p.41). If we have to have such a "special reason" before another reason is pre-empted, and if, as Raz says, pre-emption is essential for there is to be authority, this may clash with his later claim that consent has no primary role in validating authority, which is discussed below. At least, if we need "special reason", and consent is not effective as a special reason, we need another special reason.

Here, there is a danger that what is proposed may seem to amount to a bending of the original notion of exclusion, which concerned reason not to act for a certain reason. In my application of this to justification, it may seem that the claim is that, in some contexts, the excluding factor is some fact, that is a fact because of which no justification which is based on pre-empted reasons will be a valid justification. However, the claim is really that there can be reason not to attempt to provide a justification based even in part on pre-empted reasons. Raz says that when there are valid exclusionary reasons not to act for certain reasons, one *can* still consider the balance of all fundamental reasons. So, a justification based on all relevant fundamental reasons may be a valid justification. The point is rather that, if some of

those reasons are pre-empted, there is reason in certain contexts not to go about the task of justification in that way: there is reason to be guided instead by the pre-emptive reasons themselves, as when one is guided by authority. (Of course, in certain contexts a stronger point may hold: while even the judge *can* base a justification on all relevant fundamental reasons, and might conceivably make a true reading of the balance of those reasons, it would be wrong for him to work in this way. It is his duty to be guided by pre-emptive reasons, such as case-law precedents.) So, the present claim is consistent with the original notion of exclusion of reasons by reasons. The new idea extends this, by making the exclusion relative to particular kinds of action.

I have claimed that Raz's notion of pre-emption runs together two ideas best kept separate: how to strike the overall balance of reasons, and whether a certain reason is valid in as much as that one may act rationally for it. These are different just because, in acting for a reason, it may be possible to act rationally without making out a case that one's act is the best thing to do, that is without engaging in any activity of justification. (More precisely, one may be able so to act without irrationality.)

So, despite what Raz says, supportive depended-on reasons need not generally be "replaced", for purposes of practical reason, by the law's dependent reasons. Depended-on reasons consistent with law are less likely to be pre-empted *as adequate reasons for action* than for purposes of *justification*, and they are certainly not universally pre-empted even for justification. In acting on such reasons, since they support the law, one cannot run foul of the dependent reason. (For simplicity, I ignore the possibility of depended-on reasons which support one law and conflict with another.) It *may* be careless to the point of irrationality to act for such reasons – one is taking a chance – but the law itself is silent about that. Furthermore, in many contexts, there is nothing irrational in acting for those reasons. I consider some such contexts below.

This is all that Raz needs. His concern is how to avoid double-counting while claiming both that law makes a difference to our reasons and that the reasons which it gives depend on other reasons. There is only a danger of double-counting when we are *counting* reasons, that is, when we are considering whether an act is justified. When we are simply acting for a reason which is in favour of something not illegal, it may not be irrational to do no counting of reasons, and then there can be no double-counting problem.

With these adjustments to the account of pre-emption, there is nothing in it to cause us to doubt the correctness of Raz's more substantial claim in the NJT. This is that laws can give us new reasons to do what they require and that these reasons depend on prior reasons independent of the law. Pre-emption only arose as an issue as regards how to weigh these dependent reasons along with our other reasons without a problem of double-counting. I hope I have shown how that problem can be avoided by using a modified form of the notion of pre-emption, so avoiding the strange consequences of Raz's apparent claim that pre-emptive reasons exclude the reasons which they pre-empt.

Let us check this against some further examples. Consider the law against murder. I mentioned earlier Raz and Bernard Williams both note that it is not good if one desists from murder after giving it some consideration: the thought of murder shouldn't have entered one's head. So, there can be something wrong if a reason given by law, which Raz says is pre-emptive, figures *at all* in one's practical reasoning. But by calling it pre-emptive, Raz apparently meant that it alone, and not the reasons on which it depends, should figure on one's practical reasoning. So is this law pre-emptive or not? The problem is that the kind of practical reasoning in question should not normally be undertaken. The law against murder is a pre-emptive reason only in exceptional circumstances, ones in which it is appropriate to reason about the justification of murder. Then, as when under extreme provocation and thinking murderous thoughts, the lesson is not to go back to first principles – the law does indeed give one good reason not to evaluate the merits of a murder in terms of fundamental, depended-on reasons. The law is then the best reason to consult. This law is also a pre-emptive reason for the judge and jury in the murder case.

Next, consider a law about a speed limit on a road. It seems that the requirements of authority will be satisfied so long as one does not exceed the speed limit - authority does not care about why we conform with its requirements, only that we conform. It is not illegal to act for different, depended-on, reasons, so long as we conform. Here, law is happy to remain in the background of our practical reasoning, ready to object if we flout it but unconcerned whether we are guided by it or not. (This echoes a distinction between regulative ideals and motivation. In those terms, there is nothing wrong with driving within the speed limit for reasons of safety etc., while not being motivated by the fact of the speed limit.)

In more level terms, and without personifying the law, so far as I am aware there are no laws requiring us (in the Razian sense) to *comply* with them, that is, to do or refrain from doing things *expressly for the reason that that is required by law*. This is partially acknowledged in Raz (1979): “It is a truism that the law accepts conformity for *other reasons* (convenience, prudence, etc.). ... it sometimes welcomes reliance on *other* (for example, independent moral) *reasons* for doing what the law requires” (p.30, emphasis added). However, this is less than I am claiming, if the first lot of these “other reasons” are second order, here being allowed as adequate reasons for *complying* with the law (as, in order to avoid punishment), not as adequate reasons for conforming with the law, and if the second lot of “other reasons” are merely reasons reinforcing the reason to comply with the law.

The law will not object if an agent always ignores it and, luckily, meets its requirements accidentally. This lucky agent is open to criticism - he is irresponsible, he fails to fulfil political obligations in a wider sense - but it appears that he meets his obligations under the law. Furthermore, if the lucky agent accepts that he must pay the penalty if *should* break any law, then he accepts the authority of the law.<sup>5</sup>

The lucky agent is not a rational agent to start with, but he may become one if he finds that he is so constituted that his independently motivated actions never break the law. In knowing this, he may know that his approach is an effective plan for conformity with the law. It would be strange if, just because of this, he were counted as acting *for the reason that* the law requires such-and-such. Rather, he acts for his own reasons, while knowing that in this way he complies with the law as regulative ideal.

I have concentrated here on reasons given by laws, those being the reasons most relevant to this dissertation. I should note that Raz’s notion of pre-emption is also too sweeping in relation to promises. In doing something which one has promised to do there need be nothing irrational in acting for a reason that makes no reference to the promise. Suppose I promise to buy some theatre tickets and later I buy tickets because it seems like a good idea at the time, thus accidentally fulfilling the promise. My purchase was not irrational: the promise did not exclude purchase of tickets for the reason that it would be nice to go to the theatre. On the other hand, a

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<sup>5</sup> If “fidelity to law” implies acceptance of its authority, there is some support for this in a remark by Rawls, on civil disobedience. “The law is broken but fidelity to law is expressed by ... the willingness to accept the legal consequences of one’s conduct” (Rawls, p.322).



justification of my action which failed to include the promise could be defective, in particular if it was found that my action was *not* justified. In a context of justification, the promise may pre-empt the depended-on reasons for buying the tickets, but they are not always pre-empted: so long as I buy the tickets, those depended-on reasons remain good enough reasons for buying tickets. (There can be reason to act for the reason that one has promised, just because of the intrinsic value of promises in personal relations. However, it seems unlikely that all valid promises are valuable in human relations – consider the promise to pay rent to a Rachman-type landlord. Here, all that matters is paying the rent and *conforming* to the promise requirement.)

*How, according to Raz, does law give us obligations, and not merely reasons?*

In this chapter so far, I have mainly focussed on authoritative requirements as reasons, and now I turn to their standing as obligations. Raz says that “an obligation to obey the law as it is understood in political writings today is a mere prima facie obligation, ... usually thought of as nothing more than a mere reason to obey” (Raz (1986), p.101).<sup>6</sup> Raz’s position is that when we have political obligations they are stringent - more than mere reasons.

Ideally, this aspect of the theory of political obligation would drop out of his theory of obligation in general, the account discussed in chapter 1, based on exclusionary reasons and categorical principles validated by their place in intrinsically desirable forms of life. However, it is not this simple. As noted above, Raz indicates three separate grounds on which political obligations might be based and does not reconcile these different possibilities. I now look at each of these. (I also mentioned above the claim in Raz (1989) that laws which institute or support social conventions oblige us because of a *rule* that we conform to such laws. However, for reasons discussed below, this is a development of at least one of the three views of the basis of political obligation, rather than an independent basis.)

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<sup>6</sup> Many writers argue that there is no general obligation to obey the law, and that there is not even a prima facie obligation to obey the law (e.g. M.B.E. Smith and Donald Regan). However, I have not found any writers who argue that there is an obligation to obey the law and that this is “nothing more than a mere reason to obey”.

(i) *Basis of political obligation in pre-emption*

This follows on from the service conception. Raz says that “the justification of the binding force of authoritative reasons rests on dependent reasons” (p.59). However, up to this point in the 1986 book he has offered no argument for this: in fact, the arguments so far have been about the capacity of authority to give us *reasons*, not its capacity to *bind* us. (As I have already noted, Raz uses “binding” to signal an obligation.) He then appeals to pre-emption to explain this binding force:

“... the difference is ... in the existence of a pre-emptive reason. That is why what is validly required by a legitimate authority is one’s duty, even where previously it was merely something one had sufficient reason to do. Authoritative directives make a difference in their ability to turn ‘oughts’ into duties” (p.60).

To this remark is appended another mysterious footnote about the treatment of pre-emption in his earlier work: “On the pre-emptive character of duties, see my [Raz (1977)].” However, Raz (1977) does not mention “pre-emption” or its cognates. He speaks there of the “peremptory force” of duties, and of their character as reasons backed by categorical principles which exclude a range of conflicting reasons. There, it is exclusionary reasons, not pre-emptive ones, which are said to give obligations their peremptory force (p.223).

What are we to make of this? I suggest that Raz should have said that it is in virtue of its capacity to give us exclusionary reasons that government can give us obligations. I have noted above that, pre-emptory reasons are exclusionary in a more limited way than as Raz claims. However, by excluding a wide range of reasons not to do what the law prohibits, they exclude enough to play the exclusion role in giving us obligations.

As for “peremptoriness”, it cannot be the factor which explains why “what is validly required by a legitimate authority is one’s duty”. Obligations are but one kind of peremptory reason (another is a gun held to one’s head). That a requirement imposes an obligation implies that it is a peremptory reason. It would be fallacious to explain a reason’s obligatory status as due to being peremptory: that could be no more than a sign that it might be obligatory, one necessary condition for its being obligatory having been met.

What about the other conditions for obligation? To be true to the account in Raz (1977), he should have said in the 1986 account that “what is validly required by a legitimate authority is one’s duty” because there is a valid O principle, a categorical principle, that one should do [X in circumstances C]. However, there is no obvious adequate quick completion of “[X in circumstances C]”. The easy completion is “[what legitimate authority requires]” but that leads to circularity, since legitimate authorities are the ones capable of imposing duties on us. So, Raz (1977) indicates that there is a substantial gap in the 1986 account.

As noted above, Raz (1989) includes an attempt to fill this gap in relation to laws promoting conventions for the solution of coordination problems. This was to be done by invoking a *rule* forming part of a coordinative social practice, a rule that one should conform with such laws, on certain conditions, such as that the government is suitable to take responsibility for solving coordination problems. In the terms of the 1977 account, such a rule would be a principle of obligation (what I have called an “O principle”). The rule would be categorical, as required in that account, for each agent’s reasons for complying with it are independent of his goals and desires. However, it is less clear that it would meet the final 1977 condition, namely that the obligation must have intrinsic value.

I noted above that the introduction of such a rule tends to undermine the claim that political obligation is “piecemeal”. Why can Raz not adhere to the piecemeal approach? As each law is itself a rule, why can each separate law not serve to create the exclusionary reasons necessary for obligation, without need of a “meta-rule”? It may be said that each law can only do that if it is a *valid* principle. Raz’s meta-rule might do what he requires by functioning as a validating principle, validating each separate law as a separate O principle. Perhaps we do not even need the rule as such a principle. We are looking for a basis to validate law as a reason-giving rule. Green notes that there are many ways in which a statement may be effective for purposes of establishing a social convention – it may need only to be the most salient such statement (Green, pp.112/5). It follows that salience of authoritative directives may be enough to establish authority; general salience, general authority. This is not true to the character of the authority which governments claim to have - they would be affronted to be told that they had lost most of their authority because, for example, television commentators were taking a more active lead in promoting social

conventions. We need something like Raz's meta-rule to explain the authority which governments claim to have.

So, laws can provide exclusionary reasons and categorical reasons. I now turn to the final Raz (1977) condition on their being capable of creating obligations, namely that they create bonds with intrinsic value.

(ii) *Basis of political obligation in the intrinsic value of obligations*

The full claim to this effect at the end of the 1977 account of obligation is as follows:

“The dependence of (PO) principles on the intrinsic desirability of forms of life in which people create or acknowledge special bonds between them and certain other individuals explains how the analysis of (PO) promises can serve as the model for the analysis of all kinds of obligations, for *all* [my emphasis] depend for their validity on the value of special bonds, and many of them are, like promises, constitutive elements of special human relations (husband-wife, parent-child, leader-led, etc.). (Raz (1977) p.228)”

I will try to make some aspects of this more explicit (without necessarily being able to make any of it easier to read). It implies that *all* obligations depend for their validity on the value of special bonds, which (by analogy with promises) figure in the validation of the O principles which validate the obligations. “Depend” indicates that the value of the bonds is a *necessary* condition for the validity of the obligations. The bonds are valuable as part of intrinsically valuable forms of life in which people create or acknowledge these bonds between themselves and certain other individuals. To this extent the bonds are themselves intrinsically valuable. (The chain is: intrinsically valuable forms of life, bonds with value as parts thereof, O principles validated by the value of these bonds, obligations in particular circumstances validated by the O principles. “Intrinsically desirable” means “intrinsically valuable”.) Finally, *many* of these bonds are constitutive elements in special human relations (husband-wife, etc.).

In political obligation, who would figure in these relations? Who is the “obligee”? The obvious candidates are (a) the citizens of the country whose laws are being considered, (b) all those who are under the same obligations (including visitors to the jurisdiction), (c) the state itself (or some particular institution of it), as the “law giver” and (d) officials and other individuals who exercise the authority of the state (judges, politicians, the police ...). Among those who hold that we have political

obligations, there is no consensus about who are our obligees. I shall now offer three arguments against (d), the notion that the obligees are officials and politicians. My purpose is to make it plausible that the obligees really are people at large (whether as per (a) or (b)). I take it that if our obligee were, in the first instance, the government, then it would figure as such as the agent for the society at large, and so the ultimate obligees would be as per (a) or (b). Then, when looking below at possible intrinsically valuable “special bonds”, we need only look at obligations owed to people at large. (I favour (b) over (a), because the obligation to obey the law seems as strong when one is in another country, but I shall not distinguish between (a) and (b) in what follows.)

First argument: when we speak of an obligation to obey the judge, this implies no obligation *to* the judge. Here, the “to” is only part of an infinitive. “To obey the judge” is the content of our obligation, or what we are obliged to do, so this leaves it open whether there is any obligee and, if there is, who it is.

Second argument: we do not normally wrong judges etc. by disobeying them – that will be all in a day’s work for them. Simmons considers and rejects an argument tending to show that what I have just said is wrong, one claiming that we should obey the law out of gratitude to officials and politicians for the benefits of government. Apart from Simmons’ other objections to it, this argument depend on the officials and politicians not being well enough rewarded for their work, and that seems too tenuous to be a basis for identifying them as, in general, our obligees. It seems more plausible that their authority rests on our owing the obligation (to obey the law) to fellow citizens etc., and that it is the second lot of people whom we may wrong by disobeying the law.

Third argument: it seems possible, in principle, that an inanimate “intelligent system” could do the job of a judge (or of anyone in government), and that such a substitution need not change the structure of our obligations in any important way. The obligation to obey the judge would survive the imagined change, becoming an obligation to comply with the pronouncements by the system. It seems unlikely that we would owe obligations to these inanimate things, so, as we could then have the same obligations as we have at present, we have no present obligations to the people who do government jobs.

This line reflects a very traditional view about authority: “respect is due to the office, not to the incumbent”. It explains why self-importance on the part of officials and politicians can seem comical or offensive – they are making a category mistake.

In the account of political obligation in Raz (1986), there is only limited appeal to the intrinsic value of the obligation. As Christiano says of the NJT: “This is an instrumentalist approach to authority since it is committed to the idea that authority is justified to the extent that it leads to good outcomes” (p.179). However, Raz (1986) does have some non-instrumental aspects, in acknowledging a “secondary” role for *respect for* and *consent to* authority in the validation of the authority. Raz considers respect and consent to have noninstrumental value as an expression of identification with one’s community. As this fits within the more general issue of the intrinsic value of obligation, I now make a digression to consider it.

(ii) A. *Raz on respect, consent and political obligation*

In Raz’s 1986 account, valid consent has a “secondary” role (p.93) in the justification of political authority. It “reinforces one’s motivation to respect [the] government’s authority. But it cannot be used as a way of endowing anyone with authority where that person had none” (p.90). “Instrumental considerations [do not] validate consent to the authority of reasonably just governments. They do not extend the scope of authority covered by the main argument” (p.92). However, “Noninstrumental considerations do that [i.e. extend the scope of authority] because they show consent itself to be independently valuable. Identification with one’s community is, though not morally obligatory, a desirable state, at least if that community is reasonably just. Of course consent to obey the law is not a necessary condition of such an attitude. ... [it is] one way of expressing such an attitude” (p.92/3).

Similar comments are made about the role of *respect* for the law in providing another secondary form of justification of political authority. Respect, too, can extend the scope of authority on account of noninstrumental considerations. Raz sees respect and consent as being “in the same boat” in most respects (Raz (1989), p.1198). In what follows I shall not make the parallels explicit, and I shall simply present some of the points in relation to consent and some in relation to respect.

The text from which I extracted the above includes a denial that “the main argument” (i.e. NJT etc.) can “validate wholesale the authority of even reasonably just governments”. There are then some further negative statements, followed by the “Noninstrumental considerations do that” comment. It is unclear how far back this last remark refers – what do these considerations do? Above, I assumed that they did only the last of the things denied in the list of negative statements - i.e. that they can extend the scope of authority. Perhaps they can do more than that, and Raz is here allowing that they might validate a general political obligation. Certainly, he indicates in Raz (1989) that it can validate something more general than the entirely “piecemeal” obligation for which he argued in 1986. He says that, on the assumption that identification with one’s society can be valuable, respect for the law can express such identification “in expressing trust in the government of the society which passed the law ... . The trust is expressed in holding oneself bound to obey the law because it is made by the government, without submitting every law and regulation to careful scrutiny to see whether they are the best, or whether they are just, or whether one has reasons to obey or to disobey them” (Raz (1989), p.1197).

In Raz (1986), the main emphasis is on restrictions on the effects of consent and respect, for example by focusing on conditions for consent to be valid and on its role’s being limited to extending the scope of political authority already established by the NJT. He is concerned to exclude the possibility that consent or respect could ground authority where, in accordance with the NJT, no authority was justified. He mentions the oath which German army officers swore to Hitler as a dangerous example. It shows how those who go through a form of consent may deceive themselves into thinking that they have assumed obligations when, in fact, they have not, because the consent was invalid (p.90). Consent and respect may only extend the authority of what already has some authority under the NJT.

This differs from Raz (1977). There, non-instrumental considerations represent *necessary* conditions for any obligations: *all* obligations depend on the value of “special bonds” as element in valuable forms of life. Now, in the 1986 account, the non-instrumental considerations are secondary and marginal, so they have been substantially devalued.

I now consider further what Raz says about how noninstrumental considerations can extend the scope of authority. Here, I focus on the remarks about respect on p.98/9. “[I]f the attitude of respect is itself the source of the legitimacy of

the authority then it is a self-referential attitude. It respects the authority because [the authority] is legitimate, and [the authority] is legitimate because it is respected. One respects the authority which is founded on the very fact of being so respected.” This is analogous to promises and valid consents, which also involve self-reference, being “acts changing the normative situation because they are undertaken in the belief that they so change the normative situation.” However, he says that this moral “worthwhile-ness” grounds no obligation to accept the authority – as it were, there is no obligation to be obliged. Rather, it makes it possible to become obliged by a “semi-voluntary performative submission” to authority. Raz defends this by noting that there are other cases in which it would be good to incur an obligation, but says that, in those cases, that is not enough to make it obligatory to incur the obligation (p.99). So, it might be good for S to promise to do X but that is not enough to make S obliged so to promise (still less does it establish directly that he is obliged to do X).

So, in Raz (1986) there are four necessary conditions for political obligation to be extended or reinforced by the sense of identification with the community.<sup>7</sup> First, the state must already have some authority under the NJT. Second, the community must be such that identification with it is morally worthwhile. (This seems distinct from the first condition: the NJT might validate some authority in a community which it is better not to identify with.). Third, the subject must actually have the sense of identification (which Raz calls an *attitude*). Fourth, the subject must consent to obey the law as an expression of such an attitude: having the attitude need not result in such a consent (p.93).

It is not immediately obvious why there must be actual identification and actual expression of respect for obligations to be created in this way. Why is it not enough if one *should* identify and *should* have respect (and therefore should express respect)? Raz’s argument against this, also based on an analogy with promises, was that its being good to promise does not make it obligatory to promise. This seems beside the point, and to miss the point that promises are distinctively voluntary obligations. Legal obligations are not voluntary. Does Raz here beg the question as to whether non-voluntary obligations to obey the law may have sufficient value in

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<sup>7</sup> Raz speaks of identification with “one’s community” rather than with society throughout the state. It appears that society is what he means, but perhaps it would make as good sense to claim that political obligation can be grounded by identification with something less, or more local, than the entire society, if that local community has satisfactory and sufficiently extensive relations with the wider society. However, there is not room to pursue this further.



human relations to be valid *without* reference to any voluntary act? Clearly, he does, but it is not so clear that that matters.

If we apply his (1977) account of obligation in general, there should be another important analogy between political obligations and promises, which could secure this result while avoiding reference to the voluntary. As noted in chapter 1, it follows from the 1977 account that the question of validity only arises after there is a social form for the obligation. It is only because people make promises – say the relevant words and take themselves to create obligations thereby, in accordance with, and subject to the conditions given in, this social form – that we can ask whether the bonds which they consider that this creates are a good thing. The key remarks at the end of Raz (1977) speak of the intrinsic value of “special bonds” which we “*create or acknowledge*”. We can disregard bonds which a theorist considers are created if these are not acknowledged by those said to be party to them, for these can have no value in any “form of life”. So, it is only after their acknowledgement as bonds that the question of the validity of obligations arises.

For justification of political obligation on this non-instrumental basis, Raz need not have required “performance”. He has focused on *acts* by which we might extend the scope of political obligation through *expressions* of consent or respect. Activity (including refraining) may seem an essential part of consent, although this is doubtful, but it is harder to see activity as essential for incurring obligations out of *respect*. Yet, it is in relation to respect that Raz speaks of “semi-voluntary performative submission” as a common basis for incurring additional political obligations (p.98).<sup>8</sup> “Performative” further strengthens Raz’s analogy between promises and political obligation, already noted above. However, this requirement for “performance” is unnecessary for noninstrumental justification of political obligation in accordance with the 1977 line. All that is required is acknowledgement of the bond. It is then a valid obligation, or not, according to the facts - it is valid only if it contributes to an intrinsically desirable form of life.

Perhaps Raz takes the line that he takes in 1986 out of concern that it could be too easy to count as being obliged if there were no requirement for (semi)-voluntary performance. However, that risk seems already to be covered adequately by his

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<sup>8</sup> Some light is shed on “semi-voluntary” in Raz (1999), where he speaks of “semi-voluntary acts like breathing, which count as our acts ... only because of a limited ability to suppress them, or control their manner” (p.40).

proviso that law does not have legitimate authority in areas where personal autonomy is “more important”.

However, it seems that the non-instrumental justification offered above will fail against people who sincerely deny that they have political obligation, as they do not acknowledge the bond. We should not worry about that, for they may continue to have *reason* to obey authority under the NJT and it may have sufficient reason to compel them to conform to its directives. I develop this notion below.

Consent may be relevant to the NJT despite what Raz says to the contrary. As already noted, he confirms that the NJT and the autonomy condition are the two main necessary conditions on authority and that they should, “in general”, be jointly sufficient to justify authority. However, in a clash with a directive, whether preserving my autonomy is “more important” depends on more than the matter covered by the directive. In particular, whether autonomy is more important than conforming with right reason is relative to who proposes to make me conform to right reason. If it is a government to which I have consented, its impositions are less threatening to my autonomy. In that case, it is less likely that, in any particular matter, authority will be illegitimate because of my autonomy being more important than conforming with reason.

This ends the digression on Raz views on respect and consent. In the next section, I return to the more general question of the intrinsic value of political obligation as a part of valuable ways of life, and its significance for political obligation.

(ii) Continued: *Basis of political obligation in the intrinsic value of obligations*

Raz focuses on the value of respect and consent as (semi)-voluntary expressions of social identification. It is not clear why respect and consent, and social identification, are the only relevant values for purposes of non-instrumental justification of political authority. I have also stated some doubts about Raz’s voluntariness condition, and about whether performances are an essential part of any non-instrumental justification. Now I consider whether “special bonds” of political obligation could be intrinsically valuable in other ways.

One other avenue for applying the 1977 account to political obligation would be that we are better placed to form special human relations when “special bonds” of respect for law figure in our relations with people at large. (This would be consistent with Raz’s claim that: “The role of government is extensive and important, but confined to maintaining framework conditions conducive to pluralism and autonomy” (p.427).) But why should loners, too, not be subject to, and beneficiaries of, political obligation? A more promising avenue would be that “special” indicates that the bond is of a distinctive kind, not that it figures in special relationships. Then, political obligations may be validated by bonds among people in general, if respect for these bonds is a necessary part of a distinctive and valuable form of life.

In the 1989 paper, Raz notes Green’s claim that authority may be validated by consent, in that consent “concretely instantiates a form of association which may be regarded as a shared good” (quoted by Raz at p.1199). Raz says that Green appeals here to the value of “civic ties and social solidarity of all those who share the role of citizens”. These ties and this solidarity would be another kind of “special bond”. However, Raz gives us good reason to reject this as a basis for political obligation. It is too narrow, as there is political obligation in societies which do not “conventionally have a role of citizen”. Also, it has no bearing areas of law which govern our private relations, such as the law of contract and the law of negligence (Raz (1989), p.1200). So Green’s idea fails.

Patriotism is another candidate to be an intrinsically valuable special bond. This is perhaps the strongest variant of Raz’s sense of “identification” with the community, reinforced with feelings of love and pride. It is what Michael Murphy calls the “affective” side of political obligation, but I have no room to attempt to resolve how it fits with the “practical reason”, or “connative/ cognitive” side of political obligation, on which this dissertation has focused, so I pass on. Possibly it is like Raz’s secondary justifications, capable only of extending obligation which begins on another basis.

Raz’s text on special bonds quoted above mentions the value of bonds as an element in “leader-led” human relations. This is potentially horrible if applied to our relations with national political leaders. Raz considers something of this sort under the “inspirational conception” of authority but concludes that this conception “fails to explain why [such a relation] is an authority relationship at all. It merely explains some features that may accompany it ... ” (p. 35). His reasons are essentially that

there can be love without authority (e.g. a child's love of its parent) and authority without love (as in conventional politics). Clearly, this does not close off the scope for appeal, under the 1977 account, to the value of *some* "leader-led" relations as a distinctive and sufficient ground for authority. However, there are such obvious dangers here, as Raz notes, that the point seems marginal, and I shall not pursue it.

One final potential basis for an intrinsically valuable "special bond" is the value of living under the rule of law. This appears to be a more desirable form of life than living in a state of nature, although anarchists may not accept that. The bonds inherent in this form of life may seem to have intrinsic value to the civic-minded, but then this is open to rebuttal by the same argument as Green's similar proposal (see above): others apart from the civic-minded can have political obligations. The best response at this point may be to question the 1977 requirement for the bonds to have intrinsic value. I mentioned in chapter 1 that Raz is correct that categorical reasons are inadequate, as such, to ground an obligation, as the core reason needs *also* to have an other-directed character. He meets this latter need with his requirement that the bonds have value in a form of life. (We may assume that we are meant to consider forms of *social* life.) Perhaps the case of political obligation shows us that obligations may also be valid without any intrinsic value, based on their instrumental value in securing freedom under the law.

### (iii) *Basis of political obligation in the duty to fellow humans*

Raz says that "Public authority is ultimately based on the moral duty which individuals owe their fellow humans" (p.72). He does not derive this duty, or explain its scope, or explain how it sits alongside the NJT. However, "ultimate" and "humans" suggest that this moral duty predates the law. If the NJT describes adequate *justification* of political obligation, what need of appeal to this "moral duty" as a *basis* for "public authority"? The claim is inconsistent with other comments in Raz (1986):

"... what is validly required by a legitimate authority is one's duty, even where previously it was merely something one had sufficient reason to do. Authoritative directives make a difference in their ability to turn 'oughts' into duties" (p.60)

and

“Parliament, of course, is not limited to the enactment of laws where there is a prior obligation on the subjects to behave in the required way. But there can be ... authorities which are so limited” (p.44).

Maybe the thought is that if there were *no* “prior” moral duties to fellow humans, then law could not create *additional* duties. This vaguely chimes in with the observations above that, following Raz (1977), it takes more than the exclusionary reason-based approach taken in the NJT to validate political obligation.

Raz’s comment on this duty to fellow humans is undeveloped and not tied in to the remainder of the text, and I cannot make sense of it. In context, it may have been no more than a loose way of reinforcing his NJT and the service conception more generally.

#### *Laws and obligations: summary*

I have now looked at three “threads” relevant to how Raz thinks that his account explains obligations and not mere reasons. The results are unclear, although I hope that the material suggests directions in which the account could be taken further without ditching anything important in what we already have.

I suggest that we have these problems in Raz (1986) because its main concern over political authority is that it not be too-easily justified, for government can be a threat to autonomy despite its duties to promote autonomy. This concern is evident in the service conception: government’s “role and primary normal function is to serve the governed ... [by helping them] act on reasons which bind them” (p.55/6). Again, government can have valid reasons of its own, reasons neither applying to its subjects nor depending on such reasons, but only when acting on these reasons is the best way to serve reasons which *do* apply to its subjects. For example, “bureaucratic requirements” arising from work justified directly by the NJT can give rise to valid reasons applying only to government (p.51). We also have the “piecemeal” approach, again limiting the scope of political obligation. My conclusion is that out of his concern to fix safe limits to political obligation Raz has omitted to give it a proper justification. The purpose of the justification offered is to provide a set of rules for

use in *limiting* authority.<sup>9</sup> However, they cannot be relied on for that unless we are convinced that they succeed in explaining our obligations and, as things stand, we should not be convinced that Raz has done that much.

This completes my survey of Raz's account of political obligation. To finish the dissertation, I have made some comments on some consequences of the account.

### *The piecemeal approach to the normal justification of authority*

There are two ways in which it is worth questioning this approach. First, the claim is in tension with the reference in Raz (1989) to a coordination *rule*. This is the idea that we recognise that government has *authority* to coordinate iff we accept a *rule* whereby its announcements concerning coordination practices are to be complied with (call it a C rule) (pp.1189/94). Raz says that it is the C rule which gives the authority's requirements pre-emptive force, without which he says that there can be no authority. If the account needs such a rule, that pushes one towards, if not all the way to, an all-or-nothing attitude to the authority of a government and a set of laws. It rules out freedom to investigate and choose which new requirements to accept. If, for there to be legitimate authority, people must follow some C rule, it will be difficult to find a satisfactory requirement-vetting C rule which, for any halfway decent authority, omits a strong default requiring compliance with new requirements before checking them out. Exceptions would be limited to cases in which there are obvious clear signs that there is something wrong with the new requirement.

Second, authority can require a subject to accept it or reject it at a general level. If he prefers to accept it piecemeal, the threat of punishment for disobedience would force him to limit non-conformity to occasions when he will not be detected.

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<sup>9</sup> If this is correct, it parallels one view of Locke's account of political obligation. "The notorious weakness of Locke's theory of consent ... is almost entirely a consequence of the preoccupations of his argument. He is primarily interested in limiting authority by appealing to the limits on the validity of individual consent" (Green, p7).

He can extend this by deception, covering his tracks, but the requirements of authority would have to be very objectionable to justify that. In the example of the engineer whom Raz would exempt from the requirements of car safety law, MoT certificates will have to be forged if he is to be able to “tax” his car. If he does not tax the car, he will be liable to sanctions for driving without having paid the duty. To avoid the risk of detection he will need to falsify other records. This seems worse than putting the car through an MoT test, however much the engineer finds to object to in the test criteria.

By being on the look out for non-conformity and by operating a system of sanctions, authority forces the general question: “Do you accept this authority or don’t you?”. If the subject considers it is better to conform than to deceive, he generally accepts the authority, for he accepts a duty to conform, in the interests of not deceiving. (As “it’s bad to deceive” is a categorical rule, it is adequate to ground a duty, according to the Raz of 1986 and 1989. The Raz of 1977 can also accept this on account of the place of a duty of truth-telling in valuable forms of life.) Without sanctions, there would be no need to deceive. They force the subject to answer, by his actions, the general question about acceptance of authority.

### *The correlativity thesis*

This is the thesis that authority and obligation are two sides of the same coin. Authority is the capacity to give directives to people who are obliged to conform with those directives *per se*. I think that this is a rather restricted notion of authority, but I am not going to argue against it here. Rather, my interest is in the scope for turning Raz’s accounts of obligation and political obligation against the correlativity thesis. I have argued above that there are some weaknesses in these accounts, particularly in the latter account. Nevertheless, I believe that they remain of great value and that it is worth seeing how well they can be deployed against the suspect correlativity thesis.

In arguing for correlativity, Green makes the following statement about what it implies for authority. He says “... the existence of authority in a society depends on there being standards such as commands, rules, and laws which figure in a particular way in the practical reasoning of its members, in their deliberations about what to do: they guide action without direct appeal to the subjects’ own view of the merits of the case” (Green, p.19). In arguing against this notion, Sartorius claims that a

government can have legitimate authority as a matter of having a moral right to rule, even when there is no correlative obligation to obey (Green, p.237). However, short of establishing a *right* to rule, there is an easier way to defend authority, in accordance with Raz's normal justification thesis, together with the autonomy condition. It seems that this thesis and this condition leave open the following possibility:

(a) the normal justification establishes authority over matter X, in that subjects conform better with reason by conforming with authority's directives over that matter;

(b) the matter is not one over which it is more important that subjects decide for themselves than that they conform with reason.

(c) nonetheless, subjects have no obligation to obey those directives; If this possibility is to be ruled out, we have to say that the subject has an obligation iff authority is being exercised in accordance with the normal justification and autonomy over the relevant matter is not more important than complying with reason. There are two reasons for doubting this. First, there is nothing about the value of autonomy in the 1977 account of obligation in general, so there is no reason to suppose that autonomy will dovetail in this way with our obligations, nor is the dovetailing provided in the 1986 or later writing here considered. Second, there are other necessary conditions in the account of obligation in general which the account of political obligation dispenses with (the intrinsically valuable "special bonds" considerations discussed above). If the latter conditions are indeed valid as additional necessary conditions on obligation in general, there may indeed be authority without obligation, if the normal justification is sufficient to establish authority without those additional conditions being met.

Some maths may make this clearer:

Authority = normal justification plus (reason > autonomy)

Obligation = reason plus noninstrumental considerations.

Then, as normal justification = reason,

by subtraction we have:

Correlativity is the claim that the noninstrumental considerations in the account of obligation in general are equivalent to the "autonomy more important than reason" condition in the account of political obligation. No case is made for this.



If government could have authority without its subjects' having obligations, would it matter whether they had obligations? Yes, because those obligations make a difference to our practical reasoning.

*Autonomy and the NJT*

The account does not tell us how to decide whether autonomy is more important than reason, nor should one expect it to. However, it seems unsatisfactory that authority is given no *locus* to rule on the question. I have only a little to say on this, but I think that it is an important point, so it is presented in the conclusions below, at paragraph (c).

## Conclusions

Raz's multi-level account of account of reason is coherent and fits the examples he considers. However, the notion of *exclusionary* reason is under-defined: it is not, as claimed, a reason not to act for certain reasons, but a reason not to perform *certain* actions for certain reasons or for no reason. Likewise, the notion of pre-emptive reasons is under-defined: reasons are not pre-empted *tout court*, but only relative to kinds of action.

His account of obligations well explains their character as a distinctive kind of reason. He has not fully worked out the claim that each valid obligation is validated by some principle which is made categorical by the place of the obligation as a special bond in an intrinsically desirable form of life. However, the account would be weaker without this claim, to the extent that the remaining ground of the validity of obligations – the categorical nature of the principle which is to validate the obligation – can be shown by counter-examples to be insufficient to the task.

His account of political obligation is essentially a basis for a defence of autonomy against state authority: there is more emphasis on necessary conditions than on establishing that the account given is sufficient to validate authority. While the account inherits great power from the accounts of reason and obligation in general, there are some problems:

(a) It is not clear that political obligations have been shown to be *obligations*, given that the account of political obligation omits certain material, concerning special bonds in intrinsically desirable forms of life, which had earlier been said to explain something essential to all obligations. Perhaps this could be added to the account, but this might require amending the account of obligation in general so as to permit obligations to be validated on entirely instrumental grounds.

(b) The validity of promises as obligations must be relative to the particular terms, from time to time, of the social institution of promising, and thus relative to the terms which those giving and receiving promises consider to apply to the obligation. Something similar would apply by analogy to all obligations. This implies that the scope of political obligations, too, depends on the scope that they are generally considered to have: it is only in so far as they are recognised as obligations that there is any question of their validity. This is not reflected in the account, and it

appears inconsistent with its denial of any role for consent in legitimising authority. There is further support for this notion from within the account of obligation itself, in the statement that the validity of obligations depends on forms of life in which people *create or acknowledge* special bonds.

- (c) The account leaves room for government to have authority to define the limits of the other necessary condition offered for political authority – an autonomy condition – only if there is a fact of the matter as to where those limits should lie, and if government is best to determine this. That is, the account is not consistent with there being an authoritative political settlement of the limits of autonomy, for the account gives government no grounds for rejecting objections to such a settlement other than by showing them to be incorrect. It is not clear why in this area we have to lose the Kantian idea that government has authority to adjudicate between competing claims of right and wrong in social life.

Despite these problems, the account of political obligation is very valuable for the links it makes between political obligation, autonomy, obligation in general and reason.

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